VOLUME V

CODE OF IOWA

2019

CONTAINING

ALL STATUTES OF A GENERAL AND PERMANENT NATURE

Including the Acts of a permanent nature
with January 1, 2019, or earlier effective dates through
the Eighty-seventh General Assembly, 2018 Regular Session

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—

2018

PREFACE TO 2019 IOWA CODE

IOWA CODE — ANNUAL ELECTRONIC PUBLICATIONS — BIENNIAL PRINTED HARDBOUND VOLUMES. This Iowa Code is published pursuant to Iowa Code chapters 2A and 2B by the Legislative Services Agency. An official copy in PDF format and an unofficial, more user-friendly and searchable version of the Iowa Code are published following each regular session of a General Assembly on the Internet and on the Iowa Law Infobase. Printed hardbound volumes of the Iowa Code and the Tables and Indexes are published following the second regular session of a General Assembly.

CODE CONTENTS AND EFFECTIVE AND APPLICABILITY DATES. This 2019 Iowa Code includes all enactments with a January 1, 2019, or earlier effective date from the 2018 Session of the Eighty-seventh Iowa General Assembly and includes enactments from prior sessions that were effective on or before that date. Unless otherwise indicated in the text or in a footnote, new sections, amendments, and repeals from the 2018 Session were effective on or before July 1, 2018. Refer to specific enactments to determine effective and applicability dates not shown. The Table of Contents enumerates the titles and subtitles in this Iowa Code, and each volume contains an analysis by title, subtitle, and chapter. Republished, codified and original versions of the Constitution of the State of Iowa are included at the beginning of Volume I.

EDITORIAL DECISIONS. All duplicative or nonconflicting amendments to a Code section or part of a Code section were harmonized as required under Iowa Code sections 2B.13 and 4.11. A strike or repeal prevailed over an amendment to the same material. If amendments were irreconcilable, the last amendment in the Act, or latest in date of enactment, was codified as provided in Iowa Code sections 2B.13 and 4.8. Code Editor's Notes at the end of Volume VI explain editorial decisions. Iowa Code section 2B.13 governs editorial changes and their effective dates.

HISTORIES AND NOTES. Bracketed material at the end of Code sections traces the sections' histories up through 1982. Beginning with the 1983 Legislative Session, Code section histories are traced by citing all Iowa Acts amending or enacting the Code sections. The history of a transferred section includes the publication year and the Code section from which the transfer took place. An explanatory note describing the most recent changes in each new, amended, or revised Code section follows the history. Internal reference citations follow Code titles, subtitles, chapters, chapter subunits, or sections.

TABLES AND INDEXES. A separate Tables and Indexes volume is published annually and contains conversion tables of Senate and House files and Joint Resolutions to Iowa Acts chapters, tables of disposition of Iowa Acts, tables of Code sections altered, tables of corresponding sections, an Iowa Constitution Index, a General Index, and a Skeleton Index.

EDITORIAL STAFF. The 2019 Iowa Code senior legal editorial staff included Ed Cook, Senior Legal Counsel; Michael Duster, Senior Legal Counsel; Rachele Hjelmaas, Legal Editor; John Heggen, Legal Editor; and Nicholas Schroeder, Legal Counsel. The editorial staff of the Iowa Code welcomes comments and suggestions for improvements.

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DESIGNATION OF GENERAL ASSEMBLY — OFFICIAL LEGAL PUBLICATIONS — CITATIONS

2.2 Designation of general assembly.

1. Each regular session of the general assembly shall be designated by the year in which it convenes and by a number with a new consecutive number assigned with the session beginning in each odd-numbered year.

2. A special session of the general assembly shall be designated as an extraordinary session in the particular year of a numbered general assembly.

2B.17 Official legal publications — citations.

1. An official legal publication designated as such by the legislative services agency as provided in sections 2.42 and 2A.1, is the official and authoritative version of the statutes, administrative rules, or court rules of the state of Iowa.

2. *a.* The codified version of the state's constitution shall be known as the Constitution of the State of Iowa.

b. For statutes, the official versions of publications shall be known as the Iowa Acts, the Iowa Code, and the Code Supplement for supplements for the years 1979 through 2011.

c. For administrative rules, the official versions of the publications shall be known as the Iowa Administrative Bulletin and the Iowa Administrative Code.

d. For court rules, the official version of the publication shall be known as the Iowa Court Rules.

3. The legislative services agency may adopt a style manual providing a uniform system of citing the codified Constitution of the State of Iowa and the official versions of publications listed in subsection 2, including by reference to commonly accepted legal sources. The legislative services agency style manual may provide for a different form of citation for electronic and printed versions of the same publication. Nothing in this section affects rules for style and format adopted pursuant to section 2.42.

4. The codified Constitution of the State of Iowa, and statutes enacted and joint resolutions enacted or passed by the general assembly shall be cited as follows:

a. The codified Constitution of the State of Iowa shall be cited as the Constitution of the State of Iowa, with a reference identifying the preamble or boundaries, or article, section, and subunit of a section. Subject to the legislative services agency style manual, the Constitution of the State of Iowa may be cited as the Iowa Constitution.

b. The Iowa Acts shall be cited as the Iowa Acts with a reference identifying the year of the publication in conformance with section 2.2, and the chapter of a bill enacted or joint resolution enacted or passed during a regular session, or in the alternative the bill or joint resolution chamber designation, and the section of the chapter or bill or subunit of a section. A bill or joint resolution enacted or passed during a special session shall be cited by the extraordinary session designation in conformance with section 2.2. If the Iowa Acts have not been published, a bill or joint resolution may be cited by its bill or joint resolution chamber designation.

c. The Iowa Code shall be cited as the Iowa Code. Supplements to the Iowa Code published for the years 1979 through 2011 shall be cited as the Code Supplement. Subject to the legislative services agency style manual, the Iowa Code may be cited as the Code of Iowa or Code and the Code Supplement may be cited as the Iowa Code Supplement, with references identifying parts of the publication, including but not limited to title or chapter, section, or subunit of a section. If the citation refers to a past edition of the Iowa Code or Code Supplement, the citation shall identify the year of publication. The legislative services agency style manual shall provide for a citation form for any supplements to the Iowa Code published after the year 2013.

5. Administrative rules shall be cited as follows:

a. The Iowa Administrative Bulletin shall be cited as the IAB, with references identifying the volume number which may be based on a fiscal year cycle, the issue number, and the ARC number assigned to the rulemaking document by the administrative rules coordinator pursuant to section 17A.4. Subject to the legislative services agency style manual, the citation may also include the publication's page number.

b. The Iowa Administrative Code shall be cited as the IAC, with references to an agency's identification number placed at the beginning of the citation and with references to parts of the publication, including but not limited to chapter, rule, or subunit of a rule.

6. The Iowa Court Rules shall be cited as the Iowa Court Rules, with references to the rule number and to subunits of the publication, which may include but are not limited to the Iowa Rules of Civil Procedure, the Iowa Rules of Criminal Procedure, the Iowa Rules of Evidence, the Iowa Rules of Appellate Procedure, the Iowa Rules of Professional Conduct, and the Iowa Code of Judicial Conduct. Subject to the legislative services agency style manual, the names of the rules may be abbreviated.

Chapters of the Code are cited as whole numerals; as chapter 135 or chapter 135A.

Sections are cited as decimal numerals; as section 135.101 or section 135A.2. Sections are often divided into subunits. The following is an example of the hierarchical structure of a Code section:

Section: 8C.7A	Subparagraph division: (a)
Subsection: 3	Subparagraph subdivision: (iv)
Paragraph: c	Subparagraph part: (A)
Subparagraph: (3)	Subparagraph subpart: (I)

The above Code section example may be abbreviated as 8C.7A(3)(c)(3)(a)(iv)(A)(I).

ABBREVIATIONS

C51 ..... Code of 1851
R60 ..... Revision of 1860
C73 ..... Code of 1873
C97 ..... Code of 1897
S'02 ..... Supplement of 1902
S'07 ..... Supplement of 1907
S13 ..... Supplement of 1913
SS15 ..... Supplemental Supplement 1915
C24 ..... Code of 1924
C27 ..... Code of 1927
C31 ..... Code of 1931
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C62 ..... Code of 1962
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C71 ..... Code of 1971
C73 ..... Code of 1973
C75 ..... Code of 1975
C77 ..... Code of 1977
C79 ..... Code of 1979
S79 ..... Supplement of 1979
C81 ..... Code of 1981
S81 ..... Supplement of 1981
C83 ..... Code of 1983
CS83 ..... Supplement of 1983
C85 ..... Code of 1985
CS85 ..... Code Supplement of 1985
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C2011 ..... Code of 2011
CS2011 ..... Code Supplement of 2011
C2013 ..... Code of 2013
C2014 ..... Code of 2014
C2015 ..... Code of 2015
C2016 ..... Code of 2016
C2017 ..... Code of 2017
C2018 ..... Code of 2018
C2019 ..... Code of 2019
GA ..... General Assembly
§ or Sec. ..... Section
Art. ..... Article
Ch ..... Chapter
1st Ex ..... First Extra Session
2nd Ex ..... Second Extra Session
R (in tables) ..... Repealed
Vol ..... Volume
Ct.R. ..... Court Rule
R.C.P. ..... Rules of Civil Procedure
R.Cr.P. ..... Rules of Criminal Procedure
R.App.P. .... Rules of Appellate Procedure
R.Prob.P. ..... Rules of Probate Procedure
Stat. ..... Statutes at Large (U. S.)
U.S.C. ..... United States Code
U.S.C. App. United States Code Appendix
Pub. L. No. ... Public Law Number (U. S.)
C.F.R. Code of Federal Regulations (U. S.)
Tit. ..... Title in federal Acts
Subtit. ..... Subtitle in federal Acts
Pt. ..... Part in federal Acts
Subpt. ..... Subpart in federal Acts

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TITLE XII

BUSINESS ENTITIES

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SUBTITLE 1

PARTNERSHIPS

CHAPTER 486

UNIFORM PARTNERSHIP LAW

Repealed effective January 1, 2001, by
98 Acts, ch 1201, §78; see chapter 486A

CHAPTER 486A

UNIFORM PARTNERSHIP ACT

Referred to in §10.1, 169.4A, 501.101, 501A.102, 558.72, 669.14

This chapter applies to all partnerships on and after
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For provisions applicable to partnerships prior to
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ARTICLE 1
GENERAL PROVISIONS

486A.101 Definitions.
As used in this chapter, unless the context otherwise requires:

1. *"Business"* includes every trade, occupation, and profession.
2. *"Debtor in bankruptcy"* means a person who is the subject of any of the following:
a. An order for relief under Tit. 11 of the United States Code or a comparable order under a successor statute of general application.
b. A comparable order under federal, state, or foreign law governing insolvency.
3. *"Distribution"* means a transfer of money or other property from a partnership to a partner in the partner's capacity as a partner or to the partner's transferee.
4. *"Foreign limited liability partnership"* means a partnership that satisfies both of the following:
a. The partnership is formed under laws other than the laws of this state.
b. The partnership has the status of a limited liability partnership under those laws.
5. *"Limited liability partnership"* means a partnership that has filed a statement of qualification under section 486A.1001 and does not have a similar statement in effect in any other jurisdiction.
6. *"Partnership"* means an association of two or more persons to carry on as co-owners a business for profit formed under section 486A.202, predecessor law, or comparable law of another jurisdiction.
7. *"Partnership agreement"* means the agreement, whether written, oral, or implied, among the partners concerning the partnership, including amendments to the partnership agreement.
8. *"Partnership at will"* means a partnership in which the partners have not agreed to remain partners until the expiration of a definite term or the completion of a particular undertaking.
9. *"Partnership interest"* or *"partner's interest in the partnership"* means all of a partner's interests in the partnership, including the partner's transferable interest and all management and other rights.
10. *"Person"* means as defined in section 4.1.
11. *"Property"* means all property, real, personal, or mixed, tangible or intangible, or any interest in such property.
12. *"State"* means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.
13. *"Statement"* means a statement of partnership authority under section 486A.303, a statement of denial under section 486A.304, a statement of dissociation under section 486A.704, a statement of dissolution under section 486A.805, a statement of merger under section 486A.907, a statement of qualification under section 486A.1001, a statement of foreign qualification under section 486A.1102, or an amendment or cancellation of any of the foregoing.
14. *"Transfer"* includes an assignment, conveyance, lease, mortgage, deed, and encumbrance.

98 Acts, ch 1201, §1, 79, 82; 2010 Acts, ch 1061, §180
Referred to in §142D.2

486A.102 Knowledge and notice.

1. A person knows a fact if the person has actual knowledge of it.
2. A person has notice of a fact if any of the following apply:
a. The person knows of it.
b. The person has received a notification of it.
c. The person has reason to know it exists from all of the facts known to the person at the time in question.
3. A person notifies or gives a notification to another by taking steps reasonably required to inform the other person in ordinary course, whether or not the other person learns of it.
4. A person receives a notification when any of the following occur:
a. The notification comes to the person's attention.
b. The notification is duly delivered at the person's place of business or at any other place held out by the person as a place for receiving communications.
5. Except as otherwise provided in subsection 6, a person other than an individual knows,

has notice, or receives a notification of a fact for purposes of a particular transaction when the individual conducting the transaction knows, has notice, or receives a notification of the fact, or in any event when the fact would have been brought to the individual's attention if the person had exercised reasonable diligence. The person exercises reasonable diligence if the person maintains reasonable routines for communicating significant information to the individual conducting the transaction and there is reasonable compliance with the routines. Reasonable diligence does not require an individual acting for the person to communicate information unless the communication is part of the individual's regular duties or the individual has reason to know of the transaction and that the transaction would be materially affected by the information.

6. A partner's knowledge, notice, or receipt of a notification of a fact relating to the partnership is effective immediately as knowledge by, notice to, or receipt of a notification by the partnership, except in the case of a fraud on the partnership committed by or with the consent of that partner.

98 Acts, ch 1201, §2, 79, 82

486A.103 Effect of partnership agreement — nonwaivable provisions.

1. Except as otherwise provided in subsection 2, relations among the partners and between the partners and the partnership are governed by the partnership agreement. To the extent the partnership agreement does not otherwise provide, this chapter governs relations among the partners and between the partners and the partnership.

2. The partnership agreement shall not do any of the following:

a. Vary the rights and duties under section 486A.105 except to eliminate the duty to provide copies of statements to all of the partners.

b. Unreasonably restrict the right of access to books and records under section 486A.403, subsection 2.

c. Eliminate the duty of loyalty under section 486A.404, subsection 2, or 486A.603, subsection 2, paragraph "*c*", except as follows:

(1) The partnership agreement may identify specific types or categories of activities that do not violate the duty of loyalty, if not manifestly unreasonable.

(2) All of the partners or a number or percentage specified in the partnership agreement may authorize or ratify, after full disclosure of all material facts, a specific act or transaction that otherwise would violate the duty of loyalty.

d. Unreasonably reduce the duty of care under section 486A.404, subsection 3, or 486A.603, subsection 2, paragraph "*c*".

e. Eliminate the obligation of good faith and fair dealing under section 486A.404, subsection 4, but the partnership agreement may prescribe the standards by which the performance of the obligation is to be measured, if the standards are not manifestly unreasonable.

f. Vary the power to dissociate as a partner under section 486A.602, subsection 1, except to require the notice under section 486A.601, subsection 1, to be in writing.

g. Vary the right of a court to expel a partner in the events specified in section 486A.601, subsection 5.

h. Vary the requirement to wind up the partnership business in cases specified in section 486A.801, subsection 4, 5, or 6.

i. Vary the law applicable to a limited liability partnership under section 486A.106, subsection 2.

j. Restrict rights of third parties under this chapter.

98 Acts, ch 1201, §3, 79, 82

486A.104 Supplemental principles of law.

1. Unless displaced by particular provisions of this chapter, the principles of law and equity supplement this chapter.

2. If an obligation to pay interest arises under this chapter and the rate is not specified, the rate is that specified in section 535.3.

98 Acts, ch 1201, §4, 79, 82

486A.105 Execution, filing, and recording of statements.

1. A statement may be filed in the office of the secretary of state. A certified copy of a statement that is filed in an office in another state may be filed in the office of the secretary of state. Either filing has the effect provided in this chapter with respect to partnership property located in or transactions that occur in this state.

2. A certified copy of a statement that has been filed in the office of the secretary of state and recorded in the office for recording transfers of real property has the effect provided for recorded statements in this chapter. A recorded statement that is not a certified copy of a statement filed in the office of the secretary of state does not have the effect provided for recorded statements in this chapter.

3. A statement filed by a partnership must be executed by at least two partners. Other statements must be executed by a partner or other person authorized by this chapter. An individual who executes a statement as, or on behalf of, a partner or other person named as a partner in a statement shall personally declare under penalty of perjury that the contents of the statement are accurate.

4. A person authorized by this chapter to file a statement may amend or cancel the statement by filing an amendment or cancellation that names the partnership, identifies the statement, and states the substance of the amendment or cancellation.

5. A person who files a statement pursuant to this section shall promptly send a copy of the statement to every nonfiling partner and to any other person named as a partner in the statement. Failure to send a copy of a statement to a partner or other person does not limit the effectiveness of the statement as to a person not a partner.

6. The secretary of state may collect a fee for filing or providing a certified copy of a statement. The county recorder may collect a fee for recording a statement.

98 Acts, ch 1201, §5, 79, 82
Referred to in §486A.103, 486A.303, 486A.907, 486A.1001, 486A.1102

486A.106 Governing law.

1. Except as otherwise provided in subsection 2, the law of the jurisdiction in which a partnership has its chief executive office governs relations among the partners and between the partners and the partnership.

2. The law of this state governs relations among the partners and the partnership and the liability of partners for an obligation of a limited liability partnership.

98 Acts, ch 1201, §6, 79, 82
Referred to in §486A.103

486A.107 Partnership subject to amendment or repeal of chapter.

A partnership governed by this chapter is subject to any amendment to or repeal of this chapter.

98 Acts, ch 1201, §7, 79, 82

ARTICLE 2
NATURE OF PARTNERSHIP

486A.201 Partnership as entity.

1. A partnership is an entity distinct from its partners.

2. A limited liability partnership continues to be the same entity that existed before the filing of a statement of qualification under section 486A.1001.

98 Acts, ch 1201, §8, 79, 82

486A.202 Formation of partnership.

1. Except as otherwise provided in subsection 2, the association of two or more persons to carry on as co-owners a business for profit forms a partnership, whether or not the persons intend to form a partnership.

2. An association formed under a statute other than this chapter, a predecessor statute, or a comparable statute of another jurisdiction is not a partnership under this chapter.

3. In determining whether a partnership is formed, the following rules apply:

a. Joint tenancy, tenancy in common, tenancy by the entireties, joint property, common property, or part ownership does not by itself establish a partnership, even if the co-owners share profits made by the use of the property.

b. The sharing of gross returns does not by itself establish a partnership, even if the persons sharing them have a joint or common right or interest in property from which the returns are derived.

c. A person who receives a share of the profits of a business is presumed to be a partner in the business, unless the profits were received in payment of or for any of the following:

(1) Of a debt by installments or otherwise.

(2) For services as an independent contractor or of wages or other compensation to an employee.

(3) Of rent.

(4) Of an annuity or other retirement or health benefit to a beneficiary, representative, or designee of a deceased or retired partner.

(5) Of interest or other charge on a loan, even if the amount of payment varies with the profits of the business, including a direct or indirect present or future ownership of the collateral, or rights to income, proceeds, or increase in value derived from the collateral.

(6) For the sale of the goodwill of a business or other property by installments or otherwise.

98 Acts, ch 1201, §9, 79, 82

Referred to in §468.506, 486A.101

486A.203 Partnership property.

Property acquired by a partnership is property of the partnership and not of the partners individually.

98 Acts, ch 1201, §10, 79, 82

486A.204 When property is partnership property.

1. Property is partnership property if acquired in the name of any of the following:

a. The partnership.

b. One or more partners with an indication in the instrument transferring title to the property of the person's capacity as a partner or of the existence of a partnership but without an indication of the name of the partnership.

2. Property is acquired in the name of the partnership by a transfer to any of the following:

a. The partnership in its name.

b. One or more partners in their capacity as partners in the partnership, if the name of the partnership is indicated in the instrument transferring title to the property.

3. Property is presumed to be partnership property if purchased with partnership assets, even if not acquired in the name of the partnership or of one or more partners with an indication in the instrument transferring title to the property of the person's capacity as a partner or of the existence of a partnership.

4. Property acquired in the name of one or more of the partners, without an indication in the instrument transferring title to the property of the person's capacity as a partner or of the existence of a partnership and without use of partnership assets, is presumed to be separate property, even if used for partnership purposes.

98 Acts, ch 1201, §11, 79, 82

ARTICLE 3

RELATIONS OF PARTNERS TO
PERSONS DEALING WITH PARTNERSHIP

486A.301 Partner agent of partnership.

Subject to the effect of a statement of partnership authority under section 486A.303:

1. Each partner is an agent of the partnership for the purpose of its business. An act of a partner, including the execution of an instrument in the partnership name, for apparently carrying on in the ordinary course the partnership business or business of the kind carried on by the partnership binds the partnership, unless the partner had no authority to act for the partnership in the particular matter and the person with whom the partner was dealing knew or had received a notification that the partner lacked authority.

2. An act of a partner which is not apparently for carrying on in the ordinary course the partnership business or business of the kind carried on by the partnership binds the partnership only if the act was authorized by the other partners.

98 Acts, ch 1201, §12, 79, 82
Referred to in §486A.302, 486A.401, 486A.702, 486A.804, 486A.805

486A.302 Transfer of partnership property.

1. Partnership property may be transferred as follows:

a. Subject to the effect of a statement of partnership authority under section 486A.303, partnership property held in the name of the partnership may be transferred by an instrument of transfer executed by a partner in the partnership name.

b. Partnership property held in the name of one or more partners with an indication in the instrument transferring the property to the partners of their capacity as partners or of the existence of a partnership, but without an indication of the name of the partnership, may be transferred by an instrument of transfer executed by the persons in whose name the property is held.

c. Partnership property held in the name of one or more persons other than the partnership, without an indication in the instrument transferring the property to the partners of their capacity as partners or of the existence of a partnership, may be transferred by an instrument of transfer executed by the persons in whose name the property is held.

2. A partnership may recover partnership property from a transferee only if it proves that execution of the instrument of initial transfer did not bind the partnership under section 486A.301 and if one of the following applies:

a. As to a subsequent transferee who gave value for property transferred under subsection 1, paragraphs *"a"* and *"b"*, proves that the subsequent transferee knew or had received a notification that the person who executed the instrument of initial transfer lacked authority to bind the partnership.

b. As to a transferee who gave value for property transferred under subsection 1, paragraph *"c"*, proves that the transferee knew or had received a notification that the property was partnership property and that the person who executed the instrument of initial transfer lacked authority to bind the partnership.

3. A partnership shall not recover partnership property from a subsequent transferee if the partnership would not have been entitled to recover the property, under subsection 2, from any earlier transferee of the property.

4. If a person holds all of the partners' interests in the partnership, all of the partnership property vests in that person. The person may execute a document in the name of the partnership to evidence vesting of the property in that person and may file or record the document.

98 Acts, ch 1201, §13, 79, 82
Referred to in §486A.907

486A.303 Statement of partnership authority.

1. A partnership may file a statement of partnership authority as provided in this subsection.

a. The statement of partnership authority must include all of the following:

(1) The name of the partnership.

(2) The street address of its chief executive office and of one office in this state, if there is one.

(3) The names and mailing addresses of all of the partners or of an agent appointed and maintained by the partnership for the purpose of subsection 2.

(4) The names of the partners authorized to execute an instrument transferring real property held in the name of the partnership.

b. The statement of partnership authority may state the authority, or limitations on the authority, of some or all of the partners to enter into other transactions on behalf of the partnership and any other matter.

2. If a statement of partnership authority names an agent, the agent shall maintain a list of the names and mailing addresses of all of the partners and make it available to any person on request for good cause shown.

3. If a filed statement of partnership authority is executed pursuant to section 486A.105, subsection 3, and states the name of the partnership but does not contain all of the other information required by subsection 1, the statement nevertheless operates with respect to a person not a partner as provided in subsections 4 and 5.

4. Except as otherwise provided in subsection 7, a filed statement of partnership authority supplements the authority of a partner to enter into transactions on behalf of the partnership as follows:

a. Except for transfers of real property, a grant of authority contained in a filed statement of partnership authority is conclusive in favor of a person who gives value without knowledge to the contrary, so long as and to the extent that a limitation on that authority is not then contained in another filed statement. A filed cancellation of a limitation on authority revives the previous grant of authority.

b. A grant of authority to transfer real property held in the name of the partnership contained in a certified copy of a filed statement of partnership authority recorded in the office for recording transfers of that real property is conclusive in favor of a person who gives value without knowledge to the contrary, so long as and to the extent that a certified copy of a filed statement containing a limitation on that authority is not then of record in the office for recording transfers of that real property. The recording in the office for recording transfers of that real property of a certified copy of a filed cancellation of a limitation on authority revives the previous grant of authority.

5. A person not a partner is deemed to know of a limitation on the authority of a partner to transfer real property held in the name of the partnership if a certified copy of the filed statement containing the limitation on authority is of record in the office for recording transfers of that real property.

6. Except as otherwise provided in subsections 4 and 5 and sections 486A.704 and 486A.805, a person not a partner is not deemed to know of a limitation on the authority of a partner merely because the limitation is contained in a filed statement.

7. A statement of partnership authority filed by the secretary of state is effective until amended or canceled, unless an earlier cancellation date is specified in the statement.

98 Acts, ch 1201, §14, 79, 82; 2013 Acts, ch 108, §1

Referred to in §486A.101, 486A.301, 486A.302, 486A.304, 486A.702, 486A.703, 486A.704, 486A.805, 633A.4606

486A.304 Statement of denial.

A partner or other person named as a partner in a filed statement of partnership authority or in a list maintained by an agent pursuant to section 486A.303, subsection 2, may file a statement of denial stating the name of the partnership and the fact that is being denied, which may include denial of a person's authority or status as a partner. A statement of denial is a limitation on authority as provided in section 486A.303, subsections 4 and 5.

98 Acts, ch 1201, §15, 79, 82

Referred to in §486A.101, 486A.1205

486A.305 Partnership liable for partner's actionable conduct.

1. A partnership is liable for loss or injury caused to a person, or for a penalty incurred, as a result of a wrongful act or omission, or other actionable conduct, of a partner acting in the ordinary course of business of the partnership or with authority of the partnership.

2. If, in the course of the partnership's business or while acting with authority of the partnership, a partner receives or causes the partnership to receive money or property of a person not a partner, and the money or property is misapplied by a partner, the partnership is liable for the loss.

98 Acts, ch 1201, §16, 79, 82

486A.306 Partner's liability.

1. Except as otherwise provided in subsections 2 and 3, all partners are liable jointly and severally for all obligations of the partnership unless otherwise agreed by the claimant or provided by law.

2. A person admitted as a partner into an existing partnership is not personally liable for any partnership obligation incurred before the person's admission as a partner.

3. An obligation of a partnership incurred while the partnership is a limited liability partnership, whether arising in contract, tort, or otherwise, is solely the obligation of the partnership. A partner is not personally liable, directly or indirectly, by way of contribution or otherwise, for such an obligation solely by reason of being or so acting as a partner. This subsection applies notwithstanding anything inconsistent in the partnership agreement that existed immediately before the vote required to become a limited liability partnership under section 486A.1001, subsection 2.

98 Acts, ch 1201, §17, 79, 82

Referred to in §486A.307, 486A.703, 486A.806, 486A.807, 486A.903, 486A.906

486A.307 Actions by and against partnership and partners.

1. A partnership may sue and be sued in the name of the partnership.

2. An action may be brought against the partnership and, to the extent not inconsistent with section 486A.306, any or all of the partners in the same action or in separate actions.

3. A judgment against a partnership is not by itself a judgment against a partner. A judgment against a partnership shall not be satisfied from a partner's assets unless there is also a judgment against the partner.

4. A judgment creditor of a partner shall not levy execution against the assets of the partner to satisfy a judgment based on a claim against the partnership unless the partner is personally liable for the claim under section 486A.306 and one or more of the following apply:

a. A judgment based on the same claim has been obtained against the partnership and a writ of execution on the judgment has been returned unsatisfied in whole or in part.

b. The partnership is a debtor in bankruptcy.

c. The partner has agreed that the creditor need not exhaust partnership assets.

d. A court grants permission to the judgment creditor to levy execution against the assets of a partner based on a finding that partnership assets subject to execution are clearly insufficient to satisfy the judgment, that exhaustion of partnership assets is excessively burdensome, or that the grant of permission is an appropriate exercise of the court's equitable powers.

e. Liability is imposed on the partner by law or contract independent of the existence of the partnership.

5. This section applies to any partnership liability or obligation resulting from a representation by a partner or purported partner under section 486A.308.

98 Acts, ch 1201, §18, 79, 82

486A.308 Liability of purported partner.

1. If a person, by words or conduct, purports to be a partner, or consents to being represented by another as a partner, in a partnership or with one or more persons not partners, the purported partner is liable to a person to whom the representation is made,

if that person, relying on the representation, enters into a transaction with the actual or purported partnership. If the representation, either by the purported partner or by a person with the purported partner's consent, is made in a public manner, the purported partner is liable to a person who relies upon the purported partnership even if the purported partner is not aware of being held out as a partner to the claimant. If partnership liability results, the purported partner is liable with respect to that liability as if the purported partner were a partner. If no partnership liability results, the purported partner is liable with respect to that liability jointly and severally with any other person consenting to the representation.

2. If a person is thus represented to be a partner in an existing partnership, or with one or more persons not partners, the purported partner is an agent of persons consenting to the representation to bind the persons to the same extent and in the same manner as if the purported partner were a partner, with respect to persons who enter into transactions in reliance upon the representation. If all of the partners of the existing partnership consent to the representation, a partnership act or obligation results. If fewer than all of the partners of the existing partnership consent to the representation, the person acting and the partners consenting to the representation are jointly and severally liable.

3. A person is not liable as a partner merely because the person is named by another in a statement of partnership authority.

4. A person does not continue to be liable as a partner merely because of a failure to file a statement of dissociation or to amend a statement of partnership authority to indicate the partner's dissociation from the partnership.

5. Except as otherwise provided in subsections 1 and 2, persons who are not partners as to each other are not liable as partners to other persons.

98 Acts, ch 1201, §19, 79, 82
Referred to in §486A.307

ARTICLE 4

RELATIONS OF PARTNERS TO EACH OTHER AND TO PARTNERSHIP

486A.401 Partner's rights and duties.

1. Each partner is deemed to have an account subject to the following:

a. The account is credited with an amount equal to the money plus the value of any other property, net of the amount of any liabilities, the partner contributes to the partnership and the partner's share of the partnership profits.

b. The account is charged with an amount equal to the money plus the value of any other property, net of the amount of any liabilities, distributed by the partnership to the partner and the partner's share of the partnership losses.

2. Each partner is entitled to an equal share of the partnership profits and is chargeable with a share of the partnership losses in proportion to the partner's share of the profits.

3. A partnership shall reimburse a partner for payments made and indemnify a partner for liabilities incurred by the partner in the ordinary course of the business of the partnership or for the preservation of its business or property, if such payments were made or liabilities incurred without violation of the partner's duties to the partnership or the other partners.

4. A partnership shall reimburse a partner for an advance to the partnership beyond the amount of capital the partner agreed to contribute.

5. A payment or advance made by a partner which gives rise to a partnership obligation under subsection 3 or 4 constitutes a loan to the partnership which accrues interest from the date of the payment or advance.

6. Each partner has equal rights in the management and conduct of the partnership business.

7. A partner may use or possess partnership property only on behalf of the partnership.

8. A partner is not entitled to remuneration for services performed for the partnership, except for reasonable compensation for services rendered in winding up the business of the partnership.

9. A person may become a partner only with the consent of all of the partners.

10. A difference arising as to a matter in the ordinary course of business of a partnership may be decided by a majority of the partners. An act outside the ordinary course of business of a partnership and an amendment to the partnership agreement may be undertaken only with the consent of all of the partners.

11. This section does not affect the obligations of a partnership to other persons under section 486A.301.

98 Acts, ch 1201, §20, 79, 82
Referred to in §486A.405

486A.402 Distributions in kind.

A partner has no right to receive, and shall not be required to accept, a distribution in kind.

98 Acts, ch 1201, §21, 79, 82

486A.403 Partner's rights and duties with respect to information.

1. A partnership shall keep its books and records, if any, at its chief executive office.

2. A partnership shall provide partners and their agents and attorneys access to its books and records. It shall provide former partners and their agents and attorneys access to books and records pertaining to the period during which the former partners were partners. The right of access provides the opportunity to inspect and copy books and records during ordinary business hours. A partnership may impose a reasonable charge, covering the costs of labor and material, for copies of documents furnished.

3. Each partner and the partnership shall furnish to a partner, and to the legal representative of a deceased partner or partner under legal disability, all of the following:

a. Without demand, any information concerning the partnership's business and affairs reasonably required for the proper exercise of the partner's rights and duties under the partnership agreement or this chapter.

b. On demand, any other information concerning the partnership's business and affairs, except to the extent the demand or the information demanded is unreasonable or otherwise improper under the circumstances.

98 Acts, ch 1201, §22, 79, 82
Referred to in §486A.103, 486A.405

486A.404 General standards of partner's conduct.

1. The only fiduciary duties a partner owes to the partnership and the other partners are the duty of loyalty and the duty of care set forth in subsections 2 and 3.

2. A partner's duty of loyalty to the partnership and the other partners is limited to the following:

a. To account to the partnership and hold as trustee for the partnership any property, profit, or benefit derived by the partner in the conduct and winding up of the partnership business or derived from a use by the partner of partnership property, including the appropriation of a partnership opportunity.

b. To refrain from dealing with the partnership in the conduct or winding up of the partnership business as or on behalf of a party having an interest adverse to the partnership.

c. To refrain from competing with the partnership in the conduct of the partnership business before the dissolution of the partnership.

3. A partner's duty of care to the partnership and the other partners in the conduct and winding up of the partnership business is limited to refraining from engaging in grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of law.

4. A partner shall discharge the duties to the partnership and the other partners under this chapter or under the partnership agreement and exercise any rights consistently with the obligation of good faith and fair dealing.

5. A partner does not violate a duty or obligation under this chapter or under the partnership agreement merely because the partner's conduct furthers the partner's own interest.

6. A partner may lend money to and transact other business with the partnership, and as

to each loan or transaction the rights and obligations of the partner are the same as those of a person who is not a partner, subject to other applicable law.

7. This section applies to a person winding up the partnership business as the personal or legal representative of the last surviving partner as if the person were a partner.

98 Acts, ch 1201, §23, 79, 82
Referred to in §486A.103, 486A.405, 486A.601, 486A.603

486A.405 Actions by partnership and partners.

1. A partnership may maintain an action against a partner for a breach of the partnership agreement, or for the violation of a duty to the partnership, causing harm to the partnership.

2. A partner may maintain an action against the partnership or another partner for legal or equitable relief, with or without an accounting as to partnership business, to do any of the following:

a. Enforce the partner's rights under the partnership agreement.

b. Enforce the partner's rights under this chapter, including any or all of the following:

(1) The partner's rights under section 486A.401, 486A.403, or 486A.404.

(2) The partner's right on dissociation to have the partner's interest in the partnership purchased pursuant to section 486A.701 or enforce any other right under article 6 or 7.

(3) The partner's right to compel a dissolution and winding up of the partnership business under section 486A.801 or enforce any other right under article 8.

c. Enforce the rights and otherwise protect the interests of the partner, including rights and interests arising independently of the partnership relationship.

3. The accrual of, and any time limitation on, a right of action for a remedy under this section is governed by other law. A right to an accounting upon a dissolution and winding up does not revive a claim barred by law.

98 Acts, ch 1201, §24, 79, 82
Referred to in §486A.701

486A.406 Continuation of partnership beyond definite term or particular undertaking.

1. If a partnership for a definite term or particular undertaking is continued, without an express agreement, after the expiration of the term or completion of the undertaking, the rights and duties of the partners remain the same as they were at the expiration or completion, so far as is consistent with a partnership at will.

2. If the partners, or those of them who habitually acted in the business during the term or undertaking, continue the business without any settlement or liquidation of the partnership, they are presumed to have agreed that the partnership will continue.

98 Acts, ch 1201, §25, 79, 82

ARTICLE 5

TRANSFEREES AND CREDITORS OF PARTNER

486A.501 Partner not co-owner of partnership property.

A partner is not a co-owner of partnership property and has no interest in partnership property which can be transferred, either voluntarily or involuntarily.

98 Acts, ch 1201, §26, 79, 82

486A.502 Partner's transferable interest in partnership.

The only transferable interest of a partner in the partnership is the partner's share of the profits and losses of the partnership and the partner's right to receive distributions. The interest is personal property.

98 Acts, ch 1201, §27, 79, 82

486A.503 Transfer of partner's transferable interest.

1. A transfer, in whole or in part, of a partner's transferable interest in the partnership is or does all of the following:

a. Is permissible.

b. Does not by itself cause the partner's dissociation or a dissolution and winding up of the partnership business.

c. Does not, as against the other partners or the partnership, entitle the transferee, during the continuance of the partnership, to participate in the management or conduct of the partnership business, to require access to information concerning partnership transactions, or to inspect or copy the partnership books or records.

2. A transferee of a partner's transferable interest in the partnership has a right to all of the following:

a. To receive, in accordance with the transfer, distributions to which the transferor would otherwise be entitled.

b. To receive upon the dissolution and winding up of the partnership business, in accordance with the transfer, the net amount otherwise distributable to the transferor.

c. To seek under section 486A.801, subsection 6, a judicial determination that it is equitable to wind up the partnership business.

3. In a dissolution and winding up, a transferee is entitled to an account of partnership transactions only from the date of the latest account agreed to by all of the partners.

4. Upon transfer, the transferor retains the rights and duties of a partner other than the interest in distributions transferred.

5. A partnership need not give effect to a transferee's rights under this section until it has notice of the transfer.

6. A transfer of a partner's transferable interest in the partnership in violation of a restriction on transfer contained in the partnership agreement is ineffective as to a person having notice of the restriction at the time of transfer.

98 Acts, ch 1201, §28, 79, 82

486A.504 Partner's transferable interest subject to charging order.

1. On application by a judgment creditor of a partner or of a partner's transferee, a court having jurisdiction may charge the transferable interest of the judgment debtor to satisfy the judgment. The court may appoint a receiver of the share of the distributions due or to become due to the judgment debtor in respect of the partnership and make all other orders, directions, accounts, and inquiries the judgment debtor might have made or which the circumstances of the case may require.

2. A charging order constitutes a lien on the judgment debtor's transferable interest in the partnership. The court may order a foreclosure of the interest subject to the charging order at any time. The purchaser at the foreclosure sale has the rights of a transferee.

3. At any time before foreclosure, an interest charged may be redeemed by or with any of the following:

a. By the judgment debtor.

b. With property other than partnership property, by one or more of the other partners.

c. With partnership property, by one or more of the other partners with the consent of all of the partners whose interests are not so charged.

4. This chapter does not deprive a partner of a right under exemption laws with respect to the partner's interest in the partnership.

5. This section provides the exclusive remedy by which a judgment creditor of a partner or partner's transferee may satisfy a judgment out of the judgment debtor's transferable interest in the partnership.

98 Acts, ch 1201, §29, 79, 82

ARTICLE 6
PARTNER'S DISSOCIATION

Referred to in §486A.405

486A.601 Events causing partner's dissociation.

A partner is dissociated from a partnership upon the occurrence of any of the following events:

1. The partnership's having notice of the partner's express will to withdraw as a partner or on a later date specified by the partner.
2. An event agreed to in the partnership agreement as causing the partner's dissociation.
3. The partner's expulsion pursuant to the partnership agreement.
4. The partner's expulsion by the unanimous vote of the other partners if any of the following apply:

a. It is unlawful to carry on the partnership business with that partner.

b. There has been a transfer of all or substantially all of that partner's transferable interest in the partnership, other than a transfer for security purposes, or a court order charging the partner's interest, which has not been foreclosed.

c. Within ninety days after the partnership notifies a corporate partner that it will be expelled because it has filed a certificate of dissolution or the equivalent, its charter has been revoked, or its right to conduct business has been suspended by the jurisdiction of its incorporation, there is no revocation of the certificate of dissolution or no reinstatement of its charter or its right to conduct business.

d. A partnership, limited partnership, or limited liability company that is a partner has been dissolved and its business is being wound up.

5. On application by the partnership or another partner, the partner's expulsion by judicial determination because of any of the following:

a. The partner engaged in wrongful conduct that adversely and materially affected the partnership business.

b. The partner willfully or persistently committed a material breach of the partnership agreement or of a duty owed to the partnership or the other partners under section 486A.404.

c. The partner engaged in conduct relating to the partnership business which makes it not reasonably practicable to carry on the business in partnership with the partner.

6. The partner's actions constituting any of the following:

a. Becoming a debtor in bankruptcy.

b. Executing an assignment for the benefit of creditors.

c. Seeking, consenting to, or acquiescing in the appointment of a trustee, receiver, or liquidator of that partner or of all or substantially all of that partner's property.

d. Failing, within ninety days after the appointment, to have vacated or stayed the appointment of a trustee, receiver, or liquidator of the partner or of all or substantially all of the partner's property obtained without the partner's consent or acquiescence, or failing within ninety days after the expiration of a stay to have the appointment vacated.

7. In the case of a partner who is an individual any of the following:

a. The partner's death.

b. The appointment of a general guardian or general conservator for the partner.

c. A judicial determination that the partner has otherwise become incapable of performing the partner's duties under the partnership agreement.

8. In the case of a partner that is a trust or is acting as a partner by virtue of being a trustee of a trust, distribution of the trust's entire transferable interest in the partnership, but not merely by reason of the substitution of a successor trustee.

9. In the case of a partner that is an estate or is acting as a partner by virtue of being a personal representative of an estate, distribution of the estate's entire transferable interest in the partnership, but not merely by reason of the substitution of a successor personal representative.

10. Termination of a partner who is not an individual, partnership, corporation, trust, or estate.

98 Acts, ch 1201, §30, 79, 82
Referred to in §486A.103, 486A.602, 486A.801

486A.602 Partner's power to dissociate — wrongful dissociation.

1. A partner has the power to dissociate at any time, rightfully or wrongfully, by express will pursuant to section 486A.601, subsection 1.

2. A partner's dissociation is wrongful only if any of the following applies:

a. It is in breach of an express provision of the partnership agreement.

b. In the case of a partnership for a definite term or particular undertaking, before the expiration of the term or the completion of the undertaking if any of the following occur:

(1) The partner withdraws by express will, unless the withdrawal follows within ninety days after another partner's dissociation by death or otherwise under section 486A.601, subsections 6 through 10, or wrongful dissociation under this subsection.

(2) The partner is expelled by judicial determination under section 486A.601, subsection 5.

(3) The partner is dissociated by becoming a debtor in bankruptcy.

(4) In the case of a partner who is not an individual, trust other than a business trust, or estate, the partner is expelled or otherwise dissociated because it willfully dissolved or terminated.

3. A partner who wrongfully dissociates is liable to the partnership and to the other partners for damages caused by the dissociation. The liability is in addition to any other obligation of the partner to the partnership or to the other partners.

98 Acts, ch 1201, §31, 79, 82
Referred to in §486A.103, 486A.701, 486A.801

486A.603 Effect of partner's dissociation.

1. If a partner's dissociation results in a dissolution and winding up of the partnership business, article 8 applies; otherwise, article 7 applies.

2. Upon a partner's dissociation all of the following apply:

a. The partner's right to participate in the management and conduct of the partnership business terminates, except as otherwise provided in section 486A.803.

b. The partner's duty of loyalty under section 486A.404, subsection 2, paragraph *"c"*, terminates.

c. The partner's duty of loyalty under section 486A.404, subsection 2, paragraphs *"a"* and *"b"*, and duty of care under section 486A.404, subsection 3, continue only with regard to matters arising and events occurring before the partner's dissociation, unless the partner participates in winding up the partnership's business pursuant to section 486A.803.

98 Acts, ch 1201, §32, 79, 82
Referred to in §486A.103

ARTICLE 7

PARTNER'S DISSOCIATION WHEN BUSINESS NOT WOUND UP

Referred to in §486A.405, 486A.603

486A.701 Purchase of dissociated partner's interest.

1. If a partner is dissociated from a partnership without resulting in a dissolution and winding up of the partnership business under section 486A.801, the partnership shall cause the dissociated partner's interest in the partnership to be purchased for a buyout price determined pursuant to subsection 2.

2. The buyout price of a dissociated partner's interest is the amount that would have been distributable to the dissociating partner under section 486A.807, subsection 2, if, on the date of dissociation, the assets of the partnership were sold at a price equal to the greater of the liquidation value or the value based on a sale of the entire business as a going concern without

the dissociated partner and the partnership were wound up as of that date. Interest must be paid from the date of dissociation to the date of payment.

3. Damages for wrongful dissociation under section 486A.602, subsection 2, and all other amounts owing, whether or not presently due, from the dissociated partner to the partnership, must be offset against the buyout price. Interest must be paid from the date the amount owed becomes due to the date of payment.

4. A partnership shall indemnify a dissociated partner whose interest is being purchased against all partnership liabilities, whether incurred before or after the dissociation, except liabilities incurred by an act of the dissociated partner under section 486A.702.

5. If no agreement for the purchase of a dissociated partner's interest is reached within one hundred twenty days after a written demand for payment, the partnership shall pay, or cause to be paid, in cash to the dissociated partner the amount the partnership estimates to be the buyout price and accrued interest, reduced by any offsets and accrued interest under subsection 3.

6. If a deferred payment is authorized under subsection 8, the partnership may tender a written offer to pay the amount the partnership estimates to be the buyout price and accrued interest, reduced by any offsets under subsection 3, stating the time of payment, the amount and type of security for payment, and the other terms and conditions of the obligation.

7. The payment or tender required by subsection 5 or 6 must be accompanied by all of the following:

a. A written statement of partnership assets and liabilities as of the date of dissociation.

b. The latest available partnership balance sheet and income statement, if any.

c. A written explanation of how the estimated amount of the payment was calculated.

d. Written notice that the payment is in full satisfaction of the obligation to purchase unless, within one hundred twenty days after the written notice, the dissociated partner commences an action to determine the buyout price, any offsets under subsection 3, or other terms of the obligation to purchase.

8. A partner who wrongfully dissociates before the expiration of a definite term or the completion of a particular undertaking is not entitled to payment of any portion of the buyout price until the expiration of the term or completion of the undertaking, unless the partner establishes to the satisfaction of the court that earlier payment will not cause undue hardship to the business of the partnership. A deferred payment must be adequately secured and bear interest.

9. A dissociated partner may maintain an action against the partnership, pursuant to section 486A.405, subsection 2, paragraph *"b"*, subparagraph (2), to determine the buyout price of that partner's interest, any offsets under subsection 3, or other terms of the obligation to purchase. The action must be commenced within one hundred twenty days after the partnership has tendered payment or an offer to pay or within one year after written demand for payment if no payment or offer to pay is tendered. The court shall determine the buyout price of the dissociated partner's interest, any offset due under subsection 3, and accrued interest, and enter judgment for any additional payment or refund. If deferred payment is authorized under subsection 8, the court shall also determine the security for payment and other terms of the obligation to purchase. The court may assess reasonable attorney's fees and the fees and expenses of appraisers or other experts for a party to the action, in amounts the court finds equitable, against a party that the court finds acted arbitrarily, vexatiously, or not in good faith. The finding may be based on the partnership's failure to tender payment or an offer to pay or to comply with subsection 7.

98 Acts, ch 1201, §33, 79, 82

Referred to in §486A.405, 486A.906

486A.702 Dissociated partner's power to bind and liability to partnership.

1. For two years after a partner dissociates without resulting in a dissolution and winding up of the partnership business, the partnership, including a surviving partnership under article 9, is bound by an act of the dissociated partner which would have bound the partnership under section 486A.301 before dissociation only if at the time of entering into the transaction all of the following apply:

a. The other party reasonably believed that the dissociated partner was then a partner.

b. The other party did not have notice of the partner's dissociation.

c. The other party is not deemed to have had knowledge under section 486A.303, subsection 5, or notice under section 486A.704, subsection 3.

2. A dissociated partner is liable to the partnership for any damage caused to the partnership arising from an obligation incurred by the dissociated partner after dissociation for which the partnership is liable under subsection 1.

98 Acts, ch 1201, §34, 79, 82
Referred to in §486A.701, 486A.704, 486A.906

486A.703 Dissociated partner's liability to other persons.

1. A partner's dissociation does not of itself discharge the partner's liability for a partnership obligation incurred before dissociation. A dissociated partner is not liable for a partnership obligation incurred after dissociation, except as otherwise provided in subsection 2.

2. A partner who dissociates without resulting in a dissolution and winding up of the partnership business is liable as a partner to the other party in a transaction entered into by the partnership, or a surviving partnership under article 9, within two years after the partner's dissociation, only if the partner is liable for the obligation under section 486A.306 and at the time of entering into the transaction all of the following apply:

a. The other party reasonably believed that the dissociated partner was then a partner.

b. The other party did not have notice of the partner's dissociation.

c. The other party is not deemed to have had knowledge under section 486A.303, subsection 5, or notice under section 486A.704, subsection 3.

3. By agreement with the partnership creditor and the partners continuing the business, a dissociated partner may be released from liability for a partnership obligation.

4. A dissociated partner is released from liability for a partnership obligation if a partnership creditor, with notice of the partner's dissociation but without the partner's consent, agrees to a material alteration in the nature or time of payment of a partnership obligation.

98 Acts, ch 1201, §35, 79, 82
Referred to in §486A.704, 486A.906

486A.704 Statement of dissociation.

1. A dissociated partner or the partnership may file a statement of dissociation stating the name of the partnership and that the partner is dissociated from the partnership.

2. A statement of dissociation is a limitation on the authority of a dissociated partner for the purposes of section 486A.303, subsections 4 and 5.

3. For the purposes of section 486A.702, subsection 1, paragraph "*c*", and section 486A.703, subsection 2, paragraph "*c*", a person not a partner is deemed to have notice of the dissociation ninety days after the statement of dissociation is filed.

98 Acts, ch 1201, §36, 79, 82
Referred to in §486A.101, 486A.303, 486A.702, 486A.703

486A.705 Continued use of partnership name.

Continued use of a partnership name, or a dissociated partner's name as part of a partnership name, by partners continuing the business does not of itself make the dissociated partner liable for an obligation of the partners or the partnership continuing the business.

98 Acts, ch 1201, §37, 79, 82

ARTICLE 8

WINDING UP PARTNERSHIP BUSINESS

Referred to in §486A.405, 486A.603

486A.801 Events causing dissolution and winding up of partnership business.

A partnership is dissolved, and its business must be wound up, only upon the occurrence of any of the following events:

1. In a partnership at will, the partnership's having notice from a partner, other than a partner who is dissociated under section 486A.601, subsections 2 through 10, of that partner's express will to withdraw as a partner, or on a later date specified by the partner.

2. In a partnership for a definite term or particular undertaking if any of the following occur or are present:

a. The expiration of ninety days after a partner's dissociation by death or otherwise under section 486A.601, subsections 6 through 10, or wrongful dissociation under section 486A.602, subsection 2, unless before that time a majority in interest of the remaining partners, including partners who have rightfully dissociated pursuant to section 486A.602, subsection 2, paragraph "*b*", subparagraph (1), agree to continue the partnership.

b. The express will of all of the partners to wind up the partnership business.

c. The expiration of the term or the completion of the undertaking.

3. An event agreed to in the partnership agreement resulting in the winding up of the partnership business.

4. An event that makes it unlawful for all or substantially all of the business of the partnership to be continued, but a cure of illegality within ninety days after notice to the partnership of the event is effective retroactively to the date of the event for purposes of this section.

5. On application by a partner, a judicial determination that concludes any of the following:

a. The economic purpose of the partnership is likely to be unreasonably frustrated.

b. Another partner has engaged in conduct relating to the partnership business which makes it not reasonably practicable to carry on the business in partnership with that partner.

c. It is not otherwise reasonably practicable to carry on the partnership business in conformity with the partnership agreement.

6. On application by a transferee of a partner's transferable interest, a judicial determination that it is equitable to wind up the partnership business at any of the following times:

a. After the expiration of the term or completion of the undertaking, if the partnership was for a definite term or particular undertaking at the time of the transfer or entry of the charging order that gave rise to the transfer.

b. At any time, if the partnership was a partnership at will at the time of the transfer or entry of the charging order that gave rise to the transfer.

98 Acts, ch 1201, §38, 79, 82

Referred to in §486A.103, 486A.405, 486A.503, 486A.701

486A.802 Partnership continues after dissolution.

1. Subject to subsection 2, a partnership continues after dissolution only for the purpose of winding up its business. The partnership is terminated when the winding up of its business is completed.

2. At any time after the dissolution of a partnership and before the winding up of its business is completed, all of the partners, including any dissociating partner other than a wrongfully dissociating partner, may waive the right to have the partnership's business wound up and the partnership terminated. In that event all of the following apply:

a. The partnership resumes carrying on its business as if dissolution had never occurred, and any liability incurred by the partnership or a partner after the dissolution and before the waiver is determined as if dissolution had never occurred.

b. The rights of a third party accruing under section 486A.804, subsection 1, or arising out

of conduct in reliance on the dissolution before the third party knew or received a notification of the waiver shall not be adversely affected.

98 Acts, ch 1201, §39, 79, 82

486A.803 Right to wind up partnership business.

1. After dissolution, a partner who has not wrongfully dissociated may participate in winding up the partnership's business, but on application of any partner, partner's legal representative, or transferee, the court, for good cause shown, may order judicial supervision of the winding up.

2. The legal representative of the last surviving partner may wind up a partnership's business.

3. A person winding up a partnership's business may preserve the partnership business or property as a going concern for a reasonable time, prosecute and defend actions and proceedings, whether civil, criminal, or administrative, settle and close the partnership's business, dispose of and transfer the partnership's property, discharge the partnership's liabilities, distribute the assets of the partnership pursuant to section 486A.807, settle disputes by mediation or arbitration, and perform other necessary acts.

98 Acts, ch 1201, §40, 79, 82

Referred to in §486A.603

486A.804 Partner's power to bind partnership after dissolution.

Subject to section 486A.805, a partnership is bound by a partner's act after dissolution that meets any of the following criteria:

1. Is appropriate for winding up the partnership business.

2. Would have bound the partnership under section 486A.301 before dissolution, if the other party to the transaction did not have notice of the dissolution.

98 Acts, ch 1201, §41, 79, 82

Referred to in §486A.802, 486A.805, 486A.806

486A.805 Statement of dissolution.

1. After dissolution, a partner who has not wrongfully dissociated may file a statement of dissolution stating the name of the partnership and that the partnership has dissolved and is winding up its business.

2. A statement of dissolution cancels a filed statement of partnership authority for the purposes of section 486A.303, subsection 4, and is a limitation on authority for the purposes of section 486A.303, subsection 5.

3. For the purposes of sections 486A.301 and 486A.804, a person not a partner is deemed to have notice of the dissolution and the limitation on the partners' authority as a result of the statement of dissolution ninety days after it is filed.

4. After filing and, if appropriate, recording a statement of dissolution, a dissolved partnership may file and, if appropriate, record a statement of partnership authority which will operate with respect to a person not a partner as provided in section 486A.303, subsections 4 and 5, in any transaction, whether or not the transaction is appropriate for winding up the partnership business.

98 Acts, ch 1201, §42, 79, 82

Referred to in §486A.101, 486A.303, 486A.804

486A.806 Partner's liability to other partners after dissolution.

1. Except as otherwise provided in subsection 2 and section 486A.306, after dissolution a partner is liable to the other partners for the partner's share of any partnership liability incurred under section 486A.804.

2. A partner who, with knowledge of the dissolution, incurs a partnership liability under section 486A.804, subsection 2, by an act that is not appropriate for winding up the partnership business is liable to the partnership for any damage caused to the partnership arising from the liability.

98 Acts, ch 1201, §43, 79, 82

486A.807 Settlement of accounts and contributions among partners.

1. In winding up a partnership's business, the assets of the partnership, including the contributions of the partners required by this section, must be applied to discharge its obligations to creditors, including, to the extent permitted by law, partners who are creditors. Any surplus must be applied to pay in cash the net amount distributable to partners in accordance with their right to distributions under subsection 2.

2. Each partner is entitled to a settlement of all partnership accounts upon winding up the partnership business. In settling accounts among the partners, profits and losses that result from the liquidation of the partnership assets must be credited and charged to the partners' accounts. The partnership shall make a distribution to a partner in an amount equal to any excess of the credits over the charges in the partner's account. A partner shall contribute to the partnership an amount equal to any excess of the charges over the credits in the partner's account, but excluding from the calculation charges attributable to an obligation for which the partner is not personally liable under section 486A.306.

3. If a partner fails to contribute the full amount required under subsection 2, all of the other partners shall contribute, in the proportions in which those partners share partnership losses, the additional amount necessary to satisfy the partnership obligations for which they are personally liable under section 486A.306. A partner or partner's legal representative may recover from the other partners any contributions the partner makes to the extent the amount contributed exceeds that partner's share of the partnership obligations for which the partner is personally liable under section 486A.306.

4. After the settlement of accounts, each partner shall contribute, in the proportion in which the partner shares partnership losses, the amount necessary to satisfy partnership obligations that were not known at the time of the settlement and for which the partner is personally liable under section 486A.306.

5. The estate of a deceased partner is liable for the partner's obligation to contribute to the partnership.

6. An assignee for the benefit of creditors of a partnership or a partner, or a person appointed by a court to represent creditors of a partnership or a partner, may enforce a partner's obligation to contribute to the partnership.

98 Acts, ch 1201, §44, 79, 82

Referred to in §486A.701, 486A.803, 486A.906

ARTICLE 9

CONVERSIONS AND MERGERS

Referred to in §486A.702, 486A.703

486A.901 Definitions.

In this article:

1. *"General partner"* means a partner in a partnership and a general partner in a limited partnership.

2. *"Limited partner"* means a limited partner in a limited partnership.

3. *"Limited partnership"* means a limited partnership created under chapter 488, predecessor law, or comparable law of another jurisdiction.

4. *"Partner"* includes both a general partner and a limited partner.

98 Acts, ch 1201, §45, 79, 82; 2004 Acts, ch 1021, §111, 117, 118

486A.902 Conversion of partnership to limited partnership.

1. A partnership may be converted to a limited partnership pursuant to this section.

2. The terms and conditions of a conversion of a partnership to a limited partnership must be approved by all of the partners or by a number or percentage specified for conversion in the partnership agreement.

3. After the conversion is approved by the partners, the partnership shall file a certificate of limited partnership in the jurisdiction in which the limited partnership is to be formed. The certificate must include all of the following:

a. A statement that the partnership was converted to a limited partnership from a partnership.

b. Its former name.

c. A statement of the number of votes cast by the partners for and against the conversion and, if the vote is less than unanimous, the number or percentage required to approve the conversion under the partnership agreement.

4. The conversion takes effect when the certificate of limited partnership is filed or at any later date specified in the certificate.

5. A general partner who becomes a limited partner as a result of the conversion remains liable as a general partner for an obligation incurred by the partnership before the conversion takes effect. If the other party to a transaction with the limited partnership reasonably believes when entering the transaction that the limited partner is a general partner, the limited partner is liable for an obligation incurred by the limited partnership within ninety days after the conversion takes effect. The limited partner's liability for all other obligations of the limited partnership incurred after the conversion takes effect is that of a limited partner as provided in chapter 488.

98 Acts, ch 1201, §46, 79, 82; 2004 Acts, ch 1021, §112, 117, 118

486A.903 Conversion of limited partnership to partnership.

1. A limited partnership may be converted to a partnership pursuant to this section.

2. Notwithstanding a provision to the contrary in a limited partnership agreement, the terms and conditions of a conversion of a limited partnership to a partnership must be approved by all of the partners.

3. After the conversion is approved by the partners, the limited partnership shall cancel its certificate of limited partnership.

4. The conversion takes effect when the certificate of limited partnership is canceled.

5. A limited partner who becomes a general partner as a result of the conversion remains liable only as a limited partner for an obligation incurred by the limited partnership before the conversion takes effect. Except as otherwise provided in section 486A.306, the partner is liable as a general partner for an obligation of the partnership incurred after the conversion takes effect.

98 Acts, ch 1201, §47, 79, 82

486A.904 Effect of conversion — entity unchanged.

1. A partnership or limited partnership that has been converted pursuant to this article is for all purposes the same entity that existed before the conversion.

2. When a conversion takes effect all of the following apply:

a. All property owned by the converting partnership or limited partnership remains vested in the converted entity.

b. All obligations of the converting partnership or limited partnership continue as obligations of the converted entity.

c. An action or proceeding pending against the converting partnership or limited partnership may be continued as if the conversion had not occurred.

98 Acts, ch 1201, §48, 79, 82

486A.905 Merger of partnerships.

1. Pursuant to a plan of merger approved as provided in subsection 3, a partnership may be merged with one or more partnerships or limited partnerships.

2. The plan of merger must set forth all of the following:

a. The name of each partnership or limited partnership that is a party to the merger.

b. The name of the surviving entity into which the other partnerships or limited partnerships will merge.

c. Whether the surviving entity is a partnership or a limited partnership and the status of each partner.

d. The terms and conditions of the merger.

e. The manner and basis of converting the interests of each party to the merger into

interests or obligations of the surviving entity, or into money or other property in whole or part.

f. The street address of the surviving entity's chief executive office.

3. The plan of merger must be approved as follows:

a. In the case of a partnership that is a party to the merger, by all of the partners, or a number or percentage specified for merger in the partnership agreement.

b. In the case of a limited partnership that is a party to the merger, by the vote required for approval of a merger by the law of the state or foreign jurisdiction in which the limited partnership is organized and, in the absence of such a specifically applicable law, by all of the partners, notwithstanding a provision to the contrary in the partnership agreement.

4. After a plan of merger is approved and before the merger takes effect, the plan may be amended or abandoned as provided in the plan.

5. The merger takes effect on the later of any of the following:

a. The approval of the plan of merger by all parties to the merger, as provided in subsection 3.

b. The filing of all documents required by law to be filed as a condition to the effectiveness of the merger.

c. Any effective date specified in the plan of merger.

98 Acts, ch 1201, §49, 79, 82

486A.906 Effect of merger.

1. When a merger takes effect all of the following apply:

a. The separate existence of every partnership or limited partnership that is a party to the merger, other than the surviving entity, ceases.

b. All property owned by each of the merged partnerships or limited partnerships vests in the surviving entity.

c. All obligations of every partnership or limited partnership that is a party to the merger become the obligations of the surviving entity.

d. An action or proceeding pending against a partnership or limited partnership that is a party to the merger may be continued as if the merger had not occurred, or the surviving entity may be substituted as a party to the action or proceeding.

2. The secretary of state of this state is the agent for service of process in an action or proceeding against a surviving foreign partnership or limited partnership to enforce an obligation of a domestic partnership or limited partnership that is a party to a merger. The surviving entity shall promptly notify the secretary of state of the mailing address of its chief executive office and of any change of address. Upon receipt of process, the secretary of state shall mail a copy of the process to the surviving foreign partnership or limited partnership.

3. A partner of the surviving partnership or limited partnership is liable for all of the following:

a. All obligations of a party to the merger for which the partner was personally liable before the merger.

b. All other obligations of the surviving entity incurred before the merger by a party to the merger, but those obligations may be satisfied only out of property of the surviving entity.

c. Except as otherwise provided in section 486A.306, all obligations of the surviving entity incurred after the merger takes effect, but those obligations may be satisfied only out of property of the surviving entity if the partner is a limited partner.

4. If the obligations incurred before the merger by a party to the merger are not satisfied out of the property of the surviving partnership or limited partnership, the general partners of that party immediately before the effective date of the merger shall contribute the amount necessary to satisfy that party's obligations to the surviving entity, in the manner provided in section 486A.807 or in chapter 488 or under the law of the jurisdiction in which the party was formed, as the case may be, as if the merged party were dissolved.

5. A partner of a party to a merger who does not become a partner of the surviving partnership or limited partnership is dissociated from the entity, of which that partner was a partner, as of the date the merger takes effect. The surviving entity shall cause the partner's interest in the entity to be purchased under section 486A.701 or another statute specifically

applicable to that partner's interest with respect to a merger. The surviving entity is bound under section 486A.702 by an act of a general partner dissociated under this subsection, and the partner is liable under section 486A.703 for transactions entered into by the surviving entity after the merger takes effect.

98 Acts, ch 1201, §50, 79, 82; 99 Acts, ch 114, §40; 2004 Acts, ch 1021, §113, 117, 118

486A.907 Statement of merger.

1. After a merger, the surviving partnership or limited partnership may file a statement that one or more partnerships or limited partnerships have merged into the surviving entity.

2. A statement of merger must contain all of the following:

a. The name of each partnership or limited partnership that is a party to the merger.

b. The name of the surviving entity into which the other partnerships or limited partnership were merged.

c. The street address of the surviving entity's chief executive office and of an office in this state, if any.

d. Whether the surviving entity is a partnership or a limited partnership.

3. Except as otherwise provided in subsection 4, for the purposes of section 486A.302, property of the surviving partnership or limited partnership which before the merger was held in the name of another party to the merger is property held in the name of the surviving entity upon filing a statement of merger.

4. For the purposes of section 486A.302, real property of the surviving partnership or limited partnership which before the merger was held in the name of another party to the merger is property held in the name of the surviving entity upon recording a certified copy of the statement of merger in the office for recording transfers of that real property.

5. A filed and, if appropriate, recorded statement of merger, executed and declared to be accurate pursuant to section 486A.105, subsection 3, stating the name of a partnership or limited partnership that is a party to the merger in whose name property was held before the merger and the name of the surviving entity, but not containing all of the other information required by subsection 2, operates with respect to the partnerships or limited partnerships named to the extent provided in subsections 3 and 4.

98 Acts, ch 1201, §51, 79, 82

Referred to in §486A.101

486A.908 Nonexclusive.

This article is not exclusive. Partnerships or limited partnerships may be converted or merged in any other manner provided by law.

98 Acts, ch 1201, §52, 79, 82

ARTICLE 10

LIMITED LIABILITY PARTNERSHIP

486A.1001 Statement of qualification.

1. A partnership may become a limited liability partnership pursuant to this section.

2. The terms and conditions on which a partnership becomes a limited liability partnership must be approved by the vote necessary to amend the partnership agreement except, in the case of a partnership agreement that expressly considers obligations to contribute to the partnership, by the vote necessary to amend those provisions.

3. After the approval required by subsection 2, a partnership may become a limited liability partnership by filing a statement of qualification. The statement must contain all of the following:

a. The name of the partnership.

b. The street address of the partnership's chief executive office and, if different, the street address of an office in this state, if any.

c. The address of a registered office and the name and address of a registered agent for

service of process in this state, which the partnership is required to maintain as provided in section 486A.1211.

d. A statement that the partnership elects to be a limited liability partnership.

e. A deferred effective date, if any.

4. The statement shall be executed by one or more partners authorized to execute the statement on behalf of the partnership.

5. The status of a partnership as a limited liability partnership is effective on the later of the filing of the statement or a date specified in the statement. The status remains effective, regardless of changes in the partnership, until the statement is canceled pursuant to section 486A.105, subsection 4.

6. The status of a partnership as a limited liability partnership and the liability of its partners is not affected by errors or later changes in the information required to be contained in the statement of qualification under subsection 3.

7. The filing of a statement of qualification establishes that a partnership has satisfied all conditions precedent to the qualification of the partnership as a limited liability partnership.

8. An amendment or cancellation of a statement of qualification is effective when it is filed or on a deferred effective date specified in the amendment or cancellation.

98 Acts, ch 1201, §53, 79, 82

Referred to in §486A.101, 486A.201, 486A.306, 486A.1211, 488.108, 490.401, 504.401, 504.403

486A.1002 Name.

The name of a limited liability partnership must end with "Registered Limited Liability Partnership", "Limited Liability Partnership", "R.L.L.P.", "L.L.P.", "RLLP", or "LLP".

98 Acts, ch 1201, §54, 79, 82

Referred to in §488.108, 490.401, 504.401, 504.403

ARTICLE 11

FOREIGN LIMITED LIABILITY PARTNERSHIP

486A.1101 Law governing foreign limited liability partnership.

1. The law under which a foreign limited liability partnership is formed governs relations among the partners and between the partners and the partnership and the liability of partners for obligations of the partnership.

2. A foreign limited liability partnership may not be denied a statement of foreign qualification by reason of any difference between the law under which the partnership was formed and the law of this state.

3. A statement of foreign qualification does not authorize a foreign limited liability partnership to engage in any business or exercise any power that a partnership may not engage in or exercise in this state as a limited liability partnership.

98 Acts, ch 1201, §55, 79, 82

486A.1102 Statement of foreign qualification.

1. Before transacting business in this state, a foreign limited liability partnership must file a statement of foreign qualification. The statement must contain all of the following:

a. The name of the foreign limited liability partnership which satisfies the requirements of the state or other jurisdiction under whose law it is formed and ends with "Registered Limited Liability Partnership", "Limited Liability Partnership", "R.L.L.P.", "L.L.P.", "RLLP", or "LLP".

b. The street address of the partnership's chief executive office and, if different, the street address of an office of the partnership in this state, if any.

c. If there is no office of the partnership in this state, the name and street address of the partnership's agent for service of process.

d. A deferred effective date, if any.

2. The agent of a foreign limited liability partnership for service of process must be an

individual who is a resident of this state or other person authorized to do business in this state.

3. The status of a partnership as a foreign limited liability partnership is effective on the later of the filing of the statement of foreign qualification or a date specified in the statement. The status remains effective, regardless of changes in the partnership, until it is canceled pursuant to section 486A.105, subsection 4.

4. An amendment or cancellation of a statement of foreign qualification is effective when it is filed or on a deferred effective date specified in the amendment or cancellation.

98 Acts, ch 1201, §56, 79, 82; 2002 Acts, ch 1119, §178
Referred to in §486A.101

486A.1103 Effect of failure to qualify.

1. A foreign limited liability partnership transacting business in this state may not maintain an action or proceeding in this state unless it has in effect a statement of foreign qualification.

2. The failure of a foreign limited liability partnership to have in effect a statement of foreign qualification does not impair the validity of a contract or act of the foreign limited liability partnership or preclude it from defending an action or proceeding in this state.

3. A limitation on personal liability of a partner is not waived solely by transacting business in this state without a statement of foreign qualification.

4. If a foreign limited liability partnership transacts business in this state without a statement of foreign qualification, the secretary of state is its agent for service of process with respect to a right of action arising out of the transaction of business in this state.

98 Acts, ch 1201, §57, 79, 82

486A.1104 Activities not constituting transacting business.

1. Activities of a foreign limited liability partnership which do not constitute transacting business for the purpose of this article include all of the following:

a. Maintaining, defending, or settling an action or proceeding.

b. Holding meetings of its partners or carrying on any other activity concerning its internal affairs.

c. Maintaining bank accounts.

d. Maintaining offices or agencies for the transfer, exchange, and registration of the partnership's own securities or maintaining trustees or depositories with respect to those securities.

e. Selling through independent contracts.

f. Soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside this state before they become contracts.

g. Creating or acquiring indebtedness, with or without a mortgage, or other security interest in property.

h. Collecting debts or foreclosing mortgages or other security interests in property securing the debts, and holding, protecting, and maintaining property so acquired.

i. Conducting an isolated transaction that is completed within thirty days and is not one in the course of similar transactions.

j. Transacting business in interstate commerce.

2. For purposes of this article, the ownership in this state of income-producing real property or tangible personal property, other than property excluded under subsection 1, constitutes transacting business in this state.

3. This section does not apply in determining the contracts or activities that may subject a foreign limited liability partnership to service of process, taxation, or regulation under any other law of this state.

98 Acts, ch 1201, §58, 79, 82

486A.1105 Action by attorney general.

The attorney general may maintain an action to restrain a foreign limited liability partnership from transacting business in this state in violation of this article.

98 Acts, ch 1201, §59, 79, 82

ARTICLE 12

FILING PROVISIONS

486A.1201 Filing requirements.

1. A document shall satisfy the requirements of this section, and of any other section that adds to or varies these requirements, to be entitled to filing.

2. The document shall be filed in the office of the secretary of state.

3. The document shall contain the information required by this chapter. The document may contain other information as well.

4. The document shall be typewritten or printed. The typewritten or printed portion shall be black. Manually signed photocopies, or other reproduced copies, including facsimiles or other electronically or computer-generated copies of typewritten or printed documents may be filed.

5. The document shall be in the English language. A limited partnership name need not be in English if written in English letters or Arabic or Roman numerals.

6. Except as otherwise provided in this chapter, the document shall be executed by one of the following methods:

a. By two or more partners.

b. By a person authorized under this chapter, the partnership agreement, or other law to execute the document.

c. If the partnership is in the hands of a receiver, trustee, or other court-appointed fiduciary, by such receiver, trustee, or fiduciary.

d. If the document is that of a registered agent, by the registered agent, if the person is an individual, or by a person authorized by the registered agent to execute the document, if the registered agent is an entity.

7. The person executing the document shall sign it and state beneath or opposite the person's signature, the person's name and the capacity in which the person signs. The secretary of state may accept for filing a document containing a copy of a signature, however made.

8. If, pursuant to any provision of this chapter, the secretary of state has prescribed a mandatory form for the document, the document shall be in or on the prescribed form.

9. The document shall be delivered to the office of the secretary of state for filing and shall be accompanied by the correct filing fee.

10. The secretary of state may adopt rules for the electronic filing of documents and the certification of electronically filed documents.

98 Acts, ch 1201, §60, 79, 82

Referred to in §486A.1205

486A.1202 Fees.

1. The secretary of state shall collect fees for documents described in this subsection which are delivered to the secretary's office for filing as follows:

DOCUMENT	FEE
a. Statement of qualification	$ 50
b. Statement of foreign qualification	$100
c. Amendment to statement of qualification	$ 20
d. Amendment to statement of foreign qualification	$ 20
e. Cancellation of statement of	

qualification ..... $ 20
f. Cancellation of statement of foreign
qualification ..... $ 20
g. Application for certificate of existence
or qualification ..... $ 5
h. Any other statement or document
required or permitted to be filed ..... $ 5

2. The secretary of state shall collect a fee of five dollars each time process is served on the secretary under this chapter. The party to a proceeding causing service of process is entitled to recover this fee as costs if the party prevails in the proceeding.

3. The secretary of state shall collect fees for copying and certifying the copy of any filed document relating to a domestic or foreign partnership as follows:

a. One dollar a page for copying.

b. Five dollars for the certificate.

98 Acts, ch 1201, §61, 79, 82

486A.1203 Effective time and date of documents.

1. Except as provided in subsection 2 and section 486A.1204, subsection 3, a document accepted for filing is effective at the later of the following:

a. At the time of filing on the date it is filed, as evidenced by the secretary of state's date and time endorsement on the original document.

b. At the time specified in the document as its effective time on the date it is filed.

2. A document may specify a delayed effective time and date, and if it does so the document becomes effective at the time and date specified. If a delayed effective date but no time is specified, the document is effective at the close of business on that date. A delayed effective date for a document shall not be later than the ninetieth day after the date it is filed.

98 Acts, ch 1201, §62, 79, 82

486A.1204 Correcting filed documents.

1. A partnership may correct a document filed by the secretary of state if the document satisfies one or both of the following:

a. The document contains an incorrect statement.

b. The document was defectively executed, attested, sealed, verified, or acknowledged.

2. A document is corrected by complying with both of the following:

a. By preparing a statement of correction that satisfies all of the following:

(1) The statement describes the document, including its filing date, or a copy of the document is attached to the statement.

(2) The statement specifies the incorrect statement and the reason it is incorrect or the manner in which the execution was defective.

(3) The statement corrects the incorrect statement or defective execution.

b. By delivering the statement to the secretary of state for filing.

3. Statements of corrections are effective on the effective date of the document they correct except as to persons relying on the uncorrected document and adversely affected by the correction. As to those persons, statements of correction are effective when filed.

98 Acts, ch 1201, §63, 79, 82

Referred to in §486A.1203

486A.1205 Filing duty of secretary of state.

1. If a document delivered to the office of the secretary of state for filing satisfies the requirements of section 486A.1201, the secretary of state shall file it and issue any necessary certificate.

2. The secretary of state files a document by stamping or otherwise endorsing "filed", together with the secretary of state's name and official title and the date and time of receipt, on both the document and the receipt for the filing fee. After filing a document, and except as provided in sections 486A.304 and 486A.1213, the secretary of state shall deliver the

document, with the filing fee receipt, or acknowledgment of receipt if no fee is required, attached, to the domestic or foreign partnership or its representative.

3. If the secretary of state refuses to file a document, the secretary of state shall return it to the domestic or foreign partnership or its representative within ten days after the document was received by the secretary of state, together with a brief, written explanation of the reason for the refusal.

4. The secretary of state's duty to file documents under this section is ministerial. Filing or refusing to file a document does not do any of the following:

a. Affect the validity or invalidity of the document in whole or part.

b. Relate to the correctness or incorrectness of information contained in the document.

c. Create a presumption that the document is valid or invalid or that information contained in the document is correct or incorrect.

98 Acts, ch 1201, §64, 79, 82

486A.1206 Appeal from secretary of state's refusal to file document.

1. If the secretary of state refuses to file a document delivered to the secretary of state's office for filing, the domestic or foreign partnership may appeal the refusal, within thirty days after the return of the document, to the district court for the county in which the partnership's principal office is located or, if none is located in this state, for the county in which its registered office is or will be located. The appeal is commenced by petitioning the court to compel filing the document and by attaching to the petition the document and the secretary of state's explanation of the refusal to file.

2. The court may summarily order the secretary of state to file the document or take other action the court considers appropriate.

3. The court's final decision may be appealed as in other civil proceedings.

98 Acts, ch 1201, §65, 79, 82

486A.1207 Evidentiary effect of copy of filed document.

A certificate attached to a copy of a document filed by the secretary of state, bearing the secretary of state's signature, which may be in facsimile, and the seal of the secretary of state, is conclusive evidence that the original document is on file with the secretary of state.

98 Acts, ch 1201, §66, 79, 82

486A.1208 Certificates issued by secretary of state.

1. The secretary of state shall issue to any person, upon request, a certificate that sets forth any facts recorded in the office of the secretary of state.

2. A certificate issued by the secretary of state may be relied upon, subject to any qualification stated in the certificate, as prima facie evidence of the facts set forth in the certificate.

98 Acts, ch 1201, §67, 79, 82

486A.1209 Penalty for signing false document.

1. A person commits an offense if that person signs a document the person knows is false in any material respect with intent that the document be delivered to the secretary of state for filing.

2. An offense under this section is a serious misdemeanor punishable by a fine not to exceed one thousand dollars.

98 Acts, ch 1201, §68, 79, 82

486A.1210 Secretary of state powers.

The secretary of state has the power reasonably necessary to perform the duties required of the secretary of state by this chapter.

98 Acts, ch 1201, §69, 79, 82

486A.1211 Registered office and registered agent.

Each partnership that is qualified under section 486A.1001 shall continuously maintain in this state the following:

1. A registered office.

2. A registered agent, who is one of the following:

a. An individual who resides in this state and whose business office is identical with the registered office.

b. A domestic corporation whose business office is identical with the registered office.

c. A foreign corporation authorized to transact business in this state whose business office is identical with the registered office.

98 Acts, ch 1201, §70, 79, 82

Referred to in §486A.1001

486A.1212 Change of registered office or registered agent.

1. A partnership may change its registered office or registered agent by delivering to the secretary of state for filing a statement of change that sets forth all of the following:

a. The name of the partnership.

b. The street address of its current registered office.

c. If the registered office is to be changed, the street address of the new registered office.

d. The name of its current registered agent.

e. If the registered agent is to be changed, the name of the new registered agent and the new registered agent's written consent to the appointment, either on the statement of change or in an accompanying document.

f. That, after the change or changes are made, the street addresses of its registered office and of the business office of its registered agent will be identical.

2. If a registered agent changes the street address of the registered agent's business office, the registered agent may change the street address of the registered office of any partnership for which the registered agent is the registered agent by giving written notice to the partnership of the change and executing, either manually or in facsimile, and delivering to the secretary of state for filing a statement of change that complies with the requirements of subsection 1 and recites that notice of the change has been given to the partnership.

98 Acts, ch 1201, §71, 79, 82

486A.1213 Resignation of registered agent.

1. The registered agent of a partnership may resign the agency by delivering to the secretary of state for filing a statement of resignation, which shall be accompanied by two exact or conformed copies of such statement. The statement of resignation may include a statement that the registered office is also discontinued.

2. After filing the statement of resignation, the secretary of state shall deliver one copy to the registered office of the partnership and the other copy to the chief executive office of the partnership.

3. The agency appointment is terminated, and the registered office discontinued if so provided, on the thirty-first day after the date on which the statement of resignation was filed.

98 Acts, ch 1201, §72, 79, 82

Referred to in §486A.1205

486A.1214 Service on partnership.

1. A partnership's registered agent is the partnership's agent for service of any process, notice, or demand required or permitted by law to be served on the partnership.

2. If a partnership has no registered agent, or the registered agent cannot with reasonable diligence be served, the partnership may be served by registered or certified mail, return receipt requested, addressed to the partnership at its chief executive office. Service is perfected under this subsection at the earliest of the following:

a. The date the partnership receives the process, notice, or demand.

b. The date shown on the return receipt, if signed on behalf of the partnership.

c. Five days after mailing.

3. This section does not prescribe the only means, or necessarily the required means, of serving a partnership.

98 Acts, ch 1201, §73, 79, 82

ARTICLE 13

MISCELLANEOUS PROVISIONS

486A.1301 Uniformity of application and construction.

This chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it.

98 Acts, ch 1201, §74, 79, 82

486A.1302 Short title.

This chapter may be cited as the *"Uniform Partnership Act"*.

98 Acts, ch 1201, §75, 79, 82

CHAPTER 487

UNIFORM LIMITED PARTNERSHIP LAW

Repealed by its own terms effective January 1, 2006;
2004 Acts, ch 1021, §114; see chapter 488

CHAPTER 488

UNIFORM LIMITED PARTNERSHIP ACT

Referred to in §9H.1, 10B.1, 486A.901, 486A.902, 486A.906, 501A.102, 547.1, 558.72, 669.14

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ARTICLE 1
GENERAL PROVISIONS

488.101 Short title.

This chapter may be cited as the "*Uniform Limited Partnership Act*".

2004 Acts, ch 1021, §1, 118

488.102 Definitions.

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

1. "*Certificate of limited partnership*" means the certificate required by section 488.201. The term includes the certificate as amended or restated.

2. "*Contribution*", except in the phrase "*right of contribution*", means any benefit provided by a person to a limited partnership in order to become a partner or in the person's capacity as a partner.

3. "*Debtor in bankruptcy*" means a person that is the subject of either of the following:

a. An order for relief under Tit. 11 of the United States Code or a comparable order under a successor statute of general application.

b. A comparable order under federal, state, or foreign law governing insolvency.

4. "*Deliver*", "*delivery*", or "*delivered*" means any method of delivery used in conventional commercial practice, including delivery in person, by mail, commercial delivery, and electronic transmission.

5. "*Distribution*" means a transfer of money or other property from a limited partnership to a partner in the partner's capacity as a partner or to a transferee on account of a transferable interest owned by the transferee.

6. *"Electronic transmission"* or *"electronically transmitted"* means any process of communication not directly involving the physical transfer of paper that is suitable for the retention, retrieval, and reproduction of information by the recipient.

7. *"Foreign limited liability limited partnership"* means a foreign limited partnership whose general partners have limited liability for the obligations of the foreign limited partnership under a provision similar to section 488.404, subsection 3.

8. *"Foreign limited partnership"* means a partnership formed under the laws of a jurisdiction other than Iowa and required by those laws to have one or more general partners and one or more limited partners. The term includes a foreign limited liability limited partnership.

9. *"General partner"* means:

a. With respect to a limited partnership, a person that is either of the following:

(1) A person that becomes a general partner under section 488.401.

(2) A person that was a general partner in a limited partnership when the limited partnership became subject to this chapter under section 488.1204, subsection 1 or 2.

b. With respect to a foreign limited partnership, a person that has rights, powers, and obligations similar to those of a general partner in a limited partnership.

10. *"Limited liability limited partnership"*, except in the phrase *"foreign limited liability limited partnership"*, means a limited partnership whose certificate of limited partnership states that the limited partnership is a limited liability limited partnership.

11. *"Limited partner"* means:

a. With respect to a limited partnership, a person that is either of the following:

(1) A person that becomes a limited partner under section 488.301.

(2) A person that was a limited partner in a limited partnership when the limited partnership became subject to this chapter under section 488.1204, subsection 1 or 2.

b. With respect to a foreign limited partnership, a person that has rights, powers, and obligations similar to those of a limited partner in a limited partnership.

12. *"Limited partnership"*, except in the phrases *"foreign limited partnership"* and *"foreign limited liability limited partnership"*, means an entity, having one or more general partners and one or more limited partners, which is formed under this chapter by two or more persons or becomes subject to this chapter under article 11 or section 488.1204, subsection 1 or 2. The term includes a limited liability limited partnership.

13. *"Partner"* means a limited partner or general partner.

14. *"Partnership agreement"* means the partners' agreement, whether oral, implied, in a record, or in any combination, concerning the limited partnership. The term includes the agreement as amended.

15. *"Person"* means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, or government; governmental subdivision, agency, or instrumentality; public corporation; or any other legal or commercial entity.

16. *"Person dissociated as a general partner"* means a person dissociated as a general partner of a limited partnership.

17. *"Principal office"* means the office where the principal executive office of a limited partnership or foreign limited partnership is located, whether or not the office is located in this state.

18. *"Record"* means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

19. *"Registered office"* means:

a. With respect to a limited partnership, the office that the limited partnership is required to designate and maintain under section 488.114.

b. With respect to a foreign limited partnership, its principal office.

20. *"Required information"* means the information that a limited partnership is required to maintain under section 488.111.

21. *"Sign"* means either of the following:

a. To execute or adopt a tangible symbol with the present intent to authenticate a record.

b. To attach or logically associate an electronic symbol, sound, or process to or with a record with the present intent to authenticate the record.

22. *"State"* means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

23. *"Transfer"* includes an assignment, conveyance, deed, bill of sale, lease, mortgage, security interest, encumbrance, gift, and transfer by operation of law.

24. *"Transferable interest"* means a partner's right to receive distributions.

25. *"Transferee"* means a person to which all or part of a transferable interest has been transferred, whether or not the transferor is a partner.

2004 Acts, ch 1021, §2, 118; 2004 Acts, ch 1175, §373 – 375; 2010 Acts, ch 1061, §180; 2016 Acts, ch 1097, §1, 2

Referred to in §9H.1, 10B.1

488.103 Knowledge and notice.

1. A person knows a fact if the person has actual knowledge of it.

2. A person has notice of a fact if any of the following apply:

a. The person knows of it.

b. The person has received a notification of it.

c. The person has reason to know it exists from all of the facts known to the person at the time in question.

d. The person has notice of it under subsection 3 or 4.

3. A certificate of limited partnership on file in the office of the secretary of state is notice that the partnership is a limited partnership and the persons designated in the certificate as general partners are general partners. Except as otherwise provided in subsection 4, the certificate is not notice of any other fact.

4. A person has notice of any of the following:

a. Another person's dissociation as a general partner, ninety days after the effective date of an amendment to the certificate of limited partnership which states that the other person has dissociated, or ninety days after the effective date of a statement of dissociation pertaining to the other person, whichever occurs first.

b. A limited partnership's dissolution, ninety days after the effective date of an amendment to the certificate of limited partnership stating that the limited partnership is dissolved.

c. A limited partnership's termination, ninety days after the effective date of a statement of termination.

d. A limited partnership's conversion under article 11, ninety days after the effective date of the articles of conversion.

e. A merger under article 11, ninety days after the effective date of the articles of merger.

5. A person notifies or gives a notification to another person by taking steps reasonably required to inform the other person in ordinary course, whether or not the other person learns of it.

6. A person receives a notification when either of the following applies:

a. Notification comes to the person's attention.

b. Notification is delivered at the person's place of business or at any other place held out by the person as a place for receiving communications.

7. Except as otherwise provided in subsection 8, a person other than an individual knows, has notice, or receives a notification of a fact for purposes of a particular transaction when the individual conducting the transaction for the person knows, has notice, or receives a notification of the fact, or in any event when the fact would have been brought to the individual's attention if the person had exercised reasonable diligence. A person other than an individual exercises reasonable diligence if the person maintains reasonable routines for communicating significant information to the individual conducting the transaction for the person and there is reasonable compliance with the routines. Reasonable diligence does not require an individual acting for the person to communicate information unless the

communication is part of the individual's regular duties or the individual has reason to know of the transaction and that the transaction would be materially affected by the information.

8. A general partner's knowledge, notice, or receipt of a notification of a fact relating to the limited partnership is effective immediately as knowledge of, notice to, or receipt of a notification by the limited partnership, except in the case of a fraud on the limited partnership committed by or with the consent of the general partner. A limited partner's knowledge, notice, or receipt of a notification of a fact relating to the limited partnership is not effective as knowledge of, notice to, or receipt of a notification by the limited partnership.

2004 Acts, ch 1021, §3, 118
Referred to in §488.207, 488.402

488.104 Nature, purpose, and duration of entity.

1. A limited partnership is an entity distinct from its partners. A limited partnership is the same entity regardless of whether its certificate states that the limited partnership is a limited liability limited partnership.

2. A limited partnership may be organized under this chapter for any lawful purpose.

3. A limited partnership has a perpetual duration.

2004 Acts, ch 1021, §4, 118
Referred to in §488.1204

488.105 Powers.

A limited partnership has the powers to do all things necessary or convenient to carry on its activities, including the power to sue, be sued, and defend in its own name and to maintain an action against a partner for harm caused to the limited partnership by a breach of the partnership agreement or violation of a duty to the partnership.

2004 Acts, ch 1021, §5, 118
Referred to in §488.110

488.106 Governing law.

The law of this state governs relations among the partners of a limited partnership and between the partners and the limited partnership and the liability of partners as partners for an obligation of the limited partnership.

2004 Acts, ch 1021, §6, 118
Referred to in §488.110

488.107 Supplemental principles of law — rate of interest.

1. Unless displaced by particular provisions of this chapter, the principles of law and equity supplement this chapter.

2. If an obligation to pay interest arises under this chapter and the rate is not specified, the rate shall be set according to the provisions of section 535.3.

2004 Acts, ch 1021, §7, 118

488.108 Name.

1. The name of a limited partnership may contain the name of any partner.

2. The name of a limited partnership that is not a limited liability limited partnership must contain the phrase "limited partnership" or the abbreviation "L. P." or "LP" and must not contain the phrase "limited liability limited partnership" or the abbreviation "LLLP" or "L. L. L. P.".

3. The name of a limited liability limited partnership must contain the phrase "limited liability limited partnership" or the abbreviation "LLLP" or "L. L. L. P." and must not contain the abbreviation "LP" or "L. P.".

4. Unless authorized by subsection 5, the name of a limited partnership must be distinguishable in the records of the secretary of state from all of the following:

a. The name of each person other than an individual incorporated, organized, or authorized to transact business in this state.

b. A name reserved, registered, or protected as follows:

(1) For a limited liability partnership, section 486A.1001 or 486A.1002.

(2) For a limited partnership, this section, section 488.109, or section 488.810.
(3) For a business corporation, section 490.401, 490.402, 490.403, or 490.1422.
(4) For a limited liability company under chapter 489, section 489.108, 489.109, or 489.706.
(5) For a nonprofit corporation, section 504.401, 504.402, 504.403, or 504.1423.

5. A limited partnership may apply to the secretary of state for authorization to use a name that does not comply with subsection 4. The secretary of state shall authorize use of the name applied for if, as to each conflicting name, at least one of the following applies:

a. The present user, registrant, or owner of the conflicting name consents in a signed record to the use and submits an undertaking in a form satisfactory to the secretary of state to change the conflicting name to a name that complies with subsection 4 and is distinguishable in the records of the secretary of state from the name applied for.

b. The applicant delivers to the secretary of state a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.

c. The applicant delivers to the secretary of state proof satisfactory to the secretary of state that at least one of the following applies to the present user, registrant, or owner of the conflicting name:

(1) The present user, registrant, or owner of the conflicting name has merged into the applicant.
(2) The present user, registrant, or owner of the conflicting name has been converted into the applicant.
(3) The present user, registrant, or owner of the conflicting name has transferred substantially all of its assets, including the conflicting name, to the applicant.

6. Subject to section 488.905, this section applies to any foreign limited partnership transacting business in this state, having a certificate of authority to transact business in this state, or applying for a certificate of authority.

7. This chapter does not control the use of fictitious names. However, a limited partnership which uses a fictitious name in this state shall deliver to the secretary of state for filing a copy of the resolution of the limited partnership certified by its general partners, adopting the fictitious name.

2004 Acts, ch 1021, §8, 118; 2004 Acts, ch 1049, §191; 2005 Acts, ch 4, §1; 2005 Acts, ch 19, §70; 2006 Acts, ch 1089, §1; 2008 Acts, ch 1162, §137, 154, 155
Referred to in §488.109, 488.201, 488.810, 488.902, 488.905, 490.401, 504.401, 504.403

488.109 Reservation of name.

1. The exclusive right to the use of a name that complies with section 488.108 may be reserved by any of the following:

a. A person intending to organize a limited partnership under this chapter and to adopt the name.

b. A limited partnership or a foreign limited partnership authorized to transact business in this state intending to adopt the name.

c. A foreign limited partnership intending to obtain a certificate of authority to transact business in this state and adopt the name.

d. A person intending to organize a foreign limited partnership and intending to have it obtain a certificate of authority to transact business in this state and adopt the name.

e. A foreign limited partnership formed under the name.

f. A foreign limited partnership formed under a name that does not comply with section 488.108, subsection 2 or 3, but the name reserved under this paragraph may differ from the foreign limited partnership's name only to the extent necessary to comply with section 488.108, subsections 2 and 3.

2. A person may apply to reserve a name under subsection 1 by delivering to the secretary of state for filing an application that states the name to be reserved and the paragraph of subsection 1 that applies. If the secretary of state finds that the name is available for use by the applicant, the secretary of state shall file a statement of name reservation and reserve the name for the exclusive use of the applicant for a nonrenewable period of one hundred twenty days.

3. A person that has reserved a name under this section may deliver to the secretary of state for filing a notice of transfer that states the reserved name, the name and street and mailing address of some other person to which the reservation is to be transferred, and the paragraph of subsection 1 which applies to the other person. Subject to section 488.206, subsection 3, the transfer is effective when the secretary of state files the notice of transfer.

2004 Acts, ch 1021, §9, 118
Referred to in §488.108, 490.401, 504.401, 504.403

488.110 Effect of partnership agreement — nonwaivable provisions.

1. Except as otherwise provided in subsection 2, the partnership agreement governs relations among the partners and between the partners and the partnership. To the extent the partnership agreement does not otherwise provide, this chapter governs relations among the partners and between the partners and the partnership.

2. A partnership agreement shall not do any of the following:

a. Vary a limited partnership's power under section 488.105 to sue, be sued, and defend in its own name.

b. Vary the law applicable to a limited partnership under section 488.106.

c. Vary the requirements of section 488.204.

d. Vary the information required under section 488.111 or unreasonably restrict the right to information under section 488.304 or 488.407, but the partnership agreement may impose reasonable restrictions on the availability and use of information obtained under those sections and may define appropriate remedies, including liquidated damages, for a breach of any reasonable restriction on use.

e. Eliminate the duty of loyalty under section 488.408, but the partnership agreement may do any of the following:

(1) Identify specific types or categories of activities that do not violate the duty of loyalty, if not manifestly unreasonable.

(2) Specify the number or percentage of partners which may authorize or ratify, after full disclosure to all partners of all material facts, a specific act or transaction that otherwise would violate the duty of loyalty.

f. Unreasonably reduce the duty of care under section 488.408, subsection 3.

g. Eliminate the obligation of good faith and fair dealing under section 488.305, subsection 2, and section 488.408, subsection 4, but the partnership agreement may prescribe the standards by which the performance of the obligation is to be measured, if the standards are not manifestly unreasonable.

h. Vary the power of a person to dissociate as a general partner under section 488.604, subsection 1, except to require that the notice under section 488.603, subsection 1, be in a record.

i. Vary the power of a court to decree dissolution in the circumstances specified in section 488.802.

j. Vary the requirement to wind up the partnership's business as specified in section 488.803.

k. Unreasonably restrict the right to maintain an action under article 10.

l. Restrict the right of a partner under section 488.1110, subsection 1, to approve a conversion or merger, or the right of a general partner under section 488.1110, subsection 2, to consent to an amendment to the certificate of limited partnership which deletes a statement that the limited partnership is a limited liability limited partnership.

m. Restrict rights under this chapter of a person other than a partner or a transferee.

2004 Acts, ch 1021, §10, 118
Referred to in §488.201

488.111 Required information.

A limited partnership shall maintain at its registered office all of the following information:

1. A current list showing the full name and last known street and mailing address of each partner, separately identifying the general partners, in alphabetical order, and the limited partners, in alphabetical order.

2. A copy of the initial certificate of limited partnership and all amendments to and restatements of the certificate, together with signed copies of any powers of attorney under which any certificate, amendment, or restatement has been signed.

3. A copy of any filed articles of conversion or merger.

4. A copy of the limited partnership's federal, state, and local income tax returns and reports, if any, for the three most recent years.

5. A copy of any partnership agreement made in a record and any amendment made in a record to any partnership agreement.

6. A copy of any financial statement of the limited partnership for the three most recent years.

7. A copy of the three most recent biennial reports delivered by the limited partnership to the secretary of state pursuant to section 488.210.

8. A copy of any record made by the limited partnership during the past three years of any consent given by or vote taken of any partner pursuant to this chapter or the partnership agreement.

9. Unless contained in a partnership agreement made in a record, a record stating all of the following:

a. The amount of cash, and a description and statement of the agreed value of the other benefits, contributed and agreed to be contributed by each partner.

b. The times at which, or events on the happening of which, any additional contributions agreed to be made by each partner are to be made.

c. For any person that is both a general partner and a limited partner, a specification of what transferable interest the person owns in each capacity.

d. Any events upon the happening of which the limited partnership is to be dissolved and its activities wound up.

2004 Acts, ch 1021, §11, 118; 2016 Acts, ch 1097, §3

Referred to in §488.102, 488.110

488.112 Business transactions of partner with partnership.

A partner may lend money to and transact other business with the limited partnership and has the same rights and obligations with respect to the loan or other transaction as a person that is not a partner.

2004 Acts, ch 1021, §12, 118

488.113 Dual capacity.

A person may be both a general partner and a limited partner. A person that is both a general and limited partner has the rights, powers, duties, and obligations provided by this chapter and the partnership agreement in each of those capacities. When the person acts as a general partner, the person is subject to the obligations, duties, and restrictions under this chapter and the partnership agreement for general partners. When the person acts as a limited partner, the person is subject to the obligations, duties, and restrictions under this chapter and the partnership agreement for limited partners.

2004 Acts, ch 1021, §13, 118

488.114 Registered office and registered agent for service of process.

1. A limited partnership shall designate and continuously maintain in this state both of the following:

a. A registered office, which need not be a place of its activity in this state.

b. A registered agent for service of process.

2. A foreign limited partnership shall designate and continuously maintain in this state a registered agent for service of process.

3. A registered agent for service of process of a limited partnership or foreign limited partnership must be an individual who is a resident of Iowa or other person authorized to do business in this state.

2004 Acts, ch 1021, §14, 118; 2016 Acts, ch 1097, §4

Referred to in §488.102, 488.802, 488.803, 488.807A, 488.906

488.115 Change of registered office or registered agent for service of process.

1. In order to change its registered office, registered agent for service of process, or the address of its registered agent for service of process, a limited partnership or a foreign limited partnership may deliver to the secretary of state for filing a statement of change containing all of the following:

a. The name of the limited partnership or foreign limited partnership.

b. The street and mailing address of its current registered office.

c. If the current registered office is to be changed, the street and mailing address of the new registered office.

d. The name and street and mailing address of its current registered agent for service of process.

e. If the current registered agent for service of process or an address of the agent is to be changed, the new information.

2. Subject to section 488.206, subsection 3, a statement of change is effective when filed by the secretary of state.

2004 Acts, ch 1021, §15, 118; 2016 Acts, ch 1097, §5
Referred to in §488.202, 488.208, 488.210, 488.906

488.116 Resignation of registered agent for service of process.

1. In order to resign as a registered agent for service of process of a limited partnership or foreign limited partnership, the agent must deliver to the secretary of state for filing a statement of resignation containing the name of the limited partnership or foreign limited partnership.

2. After receiving a statement of resignation, the secretary of state shall file it and mail a copy to the registered office of the limited partnership or foreign limited partnership and another copy to the principal office if the address of the office appears in the records of the secretary of state and is different from the address of the registered office.

3. A registered agency for service of process is terminated on the date on which the statement of resignation was filed with the secretary of state.

2004 Acts, ch 1021, §16, 118; 2016 Acts, ch 1097, §6
Referred to in §488.206

488.117 Service of process.

1. A registered agent for service of process appointed by a limited partnership or foreign limited partnership is a registered agent of the limited partnership or foreign limited partnership for service of any process, notice, or demand required or permitted by law to be served upon the limited partnership or foreign limited partnership.

2. If a limited partnership or foreign limited partnership does not appoint or maintain a registered agent for service of process in this state or the registered agent for service of process cannot with reasonable diligence be found at the registered agent's address, the secretary of state is an agent of the limited partnership or foreign limited partnership upon whom process, notice, or demand may be served.

3. Service of any process, notice, or demand on the secretary of state may be made by delivering to and leaving with the secretary of state duplicate copies of the process, notice, or demand. If a process, notice, or demand is served on the secretary of state, the secretary of state shall forward one of the copies by certified mail or restricted certified mail to the limited partnership or foreign limited partnership at its registered office.

4. Service is effected under subsection 3 at the earliest of any of the following:

a. The date the limited partnership or foreign limited partnership receives the process, notice, or demand.

b. The date shown on the return receipt, if signed on behalf of the limited partnership or foreign limited partnership.

c. Five days after the process, notice, or demand is deposited in the mail, if mailed postpaid and correctly addressed.

5. The secretary of state shall keep a record of each process, notice, and demand served pursuant to this section and record the time of, and the action taken regarding, the service.

6. This section does not affect the right to serve process, notice, or demand in any other manner provided by law.

2004 Acts, ch 1021, §17, 118; 2016 Acts, ch 1097, §7
Referred to in §488.1105, 488.1109

488.118 Consent and proxies of partners.

Action requiring the consent of partners under this chapter may be taken without a meeting, and a partner may appoint a proxy to consent or otherwise act for the partner by signing an appointment record, either personally or by the partner's attorney in fact.

2004 Acts, ch 1021, §18, 118

488.119 through 488.200 Reserved.

ARTICLE 2

FORMATION — CERTIFICATE OF LIMITED PARTNERSHIP AND OTHER FILINGS

488.201 Formation of limited partnership — certificate of limited partnership.

1. In order for a limited partnership to be formed, a certificate of limited partnership must be delivered to the secretary of state for filing. The certificate must state all of the following:

a. The name of the limited partnership, which must comply with section 488.108.

b. The street and mailing address of the initial registered office and the name and street and mailing address of the initial registered agent for service of process.

c. The name and the street and mailing address of each general partner.

d. Whether the limited partnership is a limited liability limited partnership.

e. Any additional information required by article 11.

2. A certificate of limited partnership may also contain any other matters but shall not vary or otherwise affect the provisions specified in section 488.110, subsection 2, in a manner inconsistent with that subsection.

3. If there has been substantial compliance with subsection 1, subject to section 488.206, subsection 3, a limited partnership is formed when the secretary of state files the certificate of limited partnership. The secretary of state's filing of the certificate is conclusive proof that all conditions precedent to formation of the limited partnership have been satisfied except in a proceeding by the state to cancel or revoke the certificate or involuntarily dissolve the limited partnership.

4. Subject to subsection 2, if any provision of a partnership agreement is inconsistent with the filed certificate of limited partnership or with a filed statement of dissociation, termination, or change or filed articles of conversion or merger, all of the following apply:

a. The partnership agreement prevails as to partners and transferees.

b. The filed certificate of limited partnership, statement of dissociation, termination, or change or articles of conversion or merger prevail as to persons, other than partners and transferees, that reasonably rely on the filed record to their detriment.

2004 Acts, ch 1021, §19, 118; 2016 Acts, ch 1097, §8
Referred to in §488.102, 488.1104, 488.1204, 633A.4606

488.202 Amendment or restatement of certificate.

1. In order to amend its certificate of limited partnership, a limited partnership must deliver to the secretary of state for filing an amendment or, pursuant to article 11, articles of merger stating all of the following:

a. The name of the limited partnership.

b. The date of filing of its initial certificate.

c. The changes the amendment makes to the certificate as most recently amended or restated.

2. A limited partnership shall promptly deliver to the secretary of state for filing an amendment to a certificate of limited partnership to reflect any of the following:

a. The admission of a new general partner.

b. The dissociation of a person as a general partner.

c. The appointment of a person to wind up the limited partnership's activities under section 488.803, subsection 3 or 4.

3. A general partner that knows that any information in a filed certificate of limited partnership was false when the certificate was filed or has become false due to changed circumstances shall promptly do at least one of the following:

a. Cause the certificate to be amended.

b. If appropriate, deliver to the secretary of state for filing a statement of change pursuant to section 488.115 or a statement of correction pursuant to section 488.207.

4. A certificate of limited partnership may be amended at any time for any other proper purpose as determined by the limited partnership.

5. A restated certificate of limited partnership may be delivered to the secretary of state for filing in the same manner as an amendment.

6. Subject to section 488.206, subsection 3, an amendment or restated certificate is effective when filed by the secretary of state.

2004 Acts, ch 1021, §20, 118; 2004 Acts, ch 1175, §376
Referred to in §488.208

488.203 Statement of termination.

A dissolved limited partnership that has completed winding up may deliver to the secretary of state for filing a statement of termination that states all of the following:

1. The name of the limited partnership.

2. The date of filing of its initial certificate of limited partnership.

3. Any other information as determined by the general partners filing the statement or by a person appointed pursuant to section 488.803, subsection 3 or 4.

2004 Acts, ch 1021, §21, 118
Referred to in §488.803

488.204 Signing of records.

1. Each record delivered to the secretary of state for filing pursuant to this chapter must be signed in the following manner:

a. An initial certificate of limited partnership must be signed by all general partners listed in the certificate.

b. An amendment adding or deleting a statement that the limited partnership is a limited liability limited partnership must be signed by all general partners listed in the certificate.

c. An amendment designating as general partner a person admitted under section 488.801, subsection 3, paragraph "*b*", following the dissociation of a limited partnership's last general partner must be signed by the new general partner.

d. An amendment required by section 488.803, subsection 3, following the appointment of a person to wind up the dissolved limited partnership's activities must be signed by that person.

e. Any other amendment must be signed by all of the following:

(1) At least one general partner listed in the certificate.

(2) Each other person designated in the amendment as a new general partner.

(3) Each person that the amendment indicates has dissociated as a general partner, unless any of the following applies:

(a) The person is deceased or a guardian or general conservator has been appointed for the person and the amendment so states.

(b) The person has previously delivered to the secretary of state for filing a statement of dissociation.

f. A restated certificate of limited partnership must be signed by at least one general partner listed in the certificate, and, to the extent the restated certificate effects a change

under any other paragraph of this subsection, the certificate must be signed in a manner that satisfies that paragraph.

g. A statement of termination must be signed by all general partners listed in the certificate or, if the certificate of a dissolved limited partnership lists no general partners, by the person appointed pursuant to section 488.803, subsection 3 or 4, to wind up the dissolved limited partnership's activities.

h. Articles of conversion must be signed by each general partner listed in the certificate of limited partnership.

i. Articles of merger must be signed as provided in section 488.1108, subsection 1.

j. Any other record delivered on behalf of a limited partnership to the secretary of state for filing must be signed by at least one general partner listed in the certificate.

k. A statement by a person pursuant to section 488.605, subsection 1, paragraph *"d"*, stating that the person has dissociated as a general partner must be signed by that person.

l. A statement of withdrawal by a person pursuant to section 488.306 must be signed by that person.

m. A record delivered on behalf of a foreign limited partnership to the secretary of state for filing must be signed by at least one general partner of the foreign limited partnership.

n. Any other record delivered on behalf of any person to the secretary of state for filing must be signed by that person.

2. Any person may sign by an attorney in fact any record to be filed pursuant to this chapter.

2004 Acts, ch 1021, §22, 118
Referred to in §488.110

488.205 Signing and filing pursuant to judicial order.

1. If a person required by this chapter to sign a record or deliver a record to the secretary of state for filing does not do so, any other person that is aggrieved may petition the appropriate court to order any of the following:

a. The person to sign the record.

b. The person to deliver the record to the secretary of state for filing.

c. The secretary of state to file the record unsigned.

2. If the person aggrieved under subsection 1 is not the limited partnership or foreign limited partnership to which the record pertains, the aggrieved person shall make the limited partnership or foreign limited partnership a party to the action. A person aggrieved under subsection 1 may seek the remedies provided in subsection 1 in the same action in combination or in the alternative.

3. A record filed unsigned pursuant to this section is effective without being signed.

2004 Acts, ch 1021, §23, 118
Referred to in §488.208

488.206 Delivery to and filing of records by secretary of state — effective time and date.

1. A record authorized or required to be delivered to the secretary of state for filing under this chapter must be captioned to describe the record's purpose, contain the information required by this chapter but may include other information as well, and be in a medium permitted by the secretary of state. The document must be typewritten or printed. If the document is electronically transmitted, it must be in a format that can be retrieved or reproduced in typewritten or printed form. The document must be delivered to the office of the secretary of state for filing. Delivery may be made by electronic transmission if and to the extent permitted by the secretary of state. The secretary of state may adopt rules for the electronic filing of documents and the certification of electronically filed documents. If it is filed in typewritten or printed form and not transmitted electronically, the secretary of state may require an exact or conformed copy to be delivered with the document. Unless the secretary of state determines that a record does not comply with the filing requirements of this chapter, and if all filing fees have been paid, the secretary of state shall file the record and perform all of the following:

a. For a statement of dissociation, send all of the following:

(1) A copy of the filed statement and a receipt for the fees to the person which the statement indicates has dissociated as a general partner.

(2) A copy of the filed statement and receipt to the limited partnership.

b. For a statement of withdrawal, send all of the following:

(1) A copy of the filed statement and a receipt for the fees to the person on whose behalf the record was filed.

(2) If the statement refers to an existing limited partnership, a copy of the filed statement and receipt to the limited partnership.

c. For all other records, send a copy of the filed record and a receipt for the fees to the person on whose behalf the record was filed.

2. Upon request and payment of a fee, the secretary of state shall send to the requester a certified copy of the requested record.

3. Except as otherwise provided in sections 488.116 and 488.207, a record delivered to the secretary of state for filing under this chapter may specify an effective time and a delayed effective date. Except as otherwise provided in this chapter, a record filed by the secretary of state is effective according to the following:

a. If the record does not specify an effective time and does not specify a delayed effective date, on the date and at the time the record is filed, as evidenced by the secretary of state's endorsement of the date and time on the record.

b. If the record specifies an effective time but not a delayed effective date, on the date the record is filed at the time specified in the record.

c. If the record specifies a delayed effective date but not an effective time, at 12:01 a.m. on the earlier of either of the following:

(1) The specified date.

(2) The ninetieth day after the record is filed.

d. If the record specifies an effective time and a delayed effective date, at the specified time on the earlier of either of the following:

(1) The specified date.

(2) The ninetieth day after the record is filed.

4. If the secretary of state refuses to file a document, the secretary of state shall return it to the limited partnership or foreign limited partnership or its representative, together with a brief, written explanation of the reason for the refusal.

5. The secretary of state's duty to file documents under this section is ministerial. Filing or refusing to file a document does not do any of the following:

a. Affect the validity or invalidity of the document in whole or part.

b. Relate to the correctness or incorrectness of information contained in the document.

c. Create a presumption that the document is valid or invalid or that information contained in the document is correct or incorrect.

2004 Acts, ch 1021, §24, 118

Referred to in §488.109, 488.115, 488.201, 488.202, 488.907, 488.1108

488.207 Correcting filed record.

1. A limited partnership or foreign limited partnership may deliver to the secretary of state for filing a statement of correction to correct a record previously delivered by the limited partnership or foreign limited partnership to the secretary of state and filed by the secretary of state, if at the time of filing the record contained false or erroneous information or was defectively signed.

2. A statement of correction shall not state a delayed effective date and must do all of the following:

a. Describe the record to be corrected, including its filing date, or attach a copy of the record as filed.

b. Specify the incorrect information and the reason it is incorrect or the manner in which the signing was defective.

c. Correct the incorrect information or defective signature.

3. When filed by the secretary of state, a statement of correction is effective retroactively

as of the effective date of the record the statement corrects, but the statement is effective when filed for the following:

a. For the purposes of section 488.103, subsections 3 and 4.

b. As to persons relying on the uncorrected record and adversely affected by the correction.

2004 Acts, ch 1021, §25, 118
Referred to in §488.202, 488.206, 488.208

488.208 Liability for false information in filed record — penalty.

1. If a record delivered to the secretary of state for filing under this chapter and filed by the secretary of state contains false information, a person that suffers loss by reliance on the information may recover damages for the loss from any or all of the following:

a. A person that signed the record, or caused another to sign it on the person's behalf, and knew the information to be false at the time the record was signed.

b. A general partner that has notice that the information was false when the record was filed or has become false because of changed circumstances, if the general partner has notice for a reasonably sufficient time before the information is relied upon to enable the general partner to effect an amendment under section 488.202, file a petition pursuant to section 488.205, or deliver to the secretary of state for filing a statement of change pursuant to section 488.115 or a statement of correction pursuant to section 488.207.

2. Signing a record authorized or required to be filed under this chapter that the signer knows to be false in material respect constitutes a serious misdemeanor punishable by a fine not to exceed one thousand dollars.

2004 Acts, ch 1021, §26, 118

488.209 Certificate of existence or authorization.

1. The secretary of state, upon request and payment of the requisite fee, shall furnish a certificate of existence for a limited partnership if the records filed in the office of the secretary of state show that the secretary of state has filed a certificate of limited partnership and has not filed a statement of termination. A certificate of existence must state all of the following:

a. The limited partnership's name.

b. That it was duly formed under the laws of this state and the date of formation.

c. Whether all fees, taxes, and penalties under this chapter or other law due the secretary of state have been paid.

d. Whether the limited partnership's most recent biennial report required by section 488.210 has been filed by the secretary of state.

e. Whether the secretary of state has administratively dissolved the limited partnership.

f. Whether the limited partnership's certificate of limited partnership has been amended to state that the limited partnership is dissolved.

g. That a statement of termination has not been filed by the secretary of state.

h. Other facts of record in the office of the secretary of state which may be requested by the applicant.

2. The secretary of state, upon request and payment of the requisite fee, shall furnish a certificate of authorization for a foreign limited partnership if the records filed in the office of the secretary of state show that the secretary of state has filed a certificate of authority, has not revoked the certificate of authority, and has not filed a notice of cancellation. A certificate of authorization must state all of the following:

a. The foreign limited partnership's name and any alternate name adopted under section 488.905, subsection 1, for use in this state.

b. That it is authorized to transact business in this state.

c. Whether all fees, taxes, and penalties under this chapter or other law due the secretary of state have been paid.

d. Whether the foreign limited partnership's most recent biennial report required by section 488.210 has been filed by the secretary of state.

e. That the secretary of state has not revoked its certificate of authority and has not filed a notice of cancellation.

f. Other facts of record in the office of the secretary of state which may be requested by the applicant.

3. Subject to any qualification stated in the certificate, a certificate of existence or authorization issued by the secretary of state may be relied upon as conclusive evidence that the limited partnership or foreign limited partnership is in existence or is authorized to transact business in this state.

2004 Acts, ch 1021, §27, 118; 2004 Acts, ch 1175, §377, 378

488.210 Biennial report for secretary of state.

1. A limited partnership or a foreign limited partnership authorized to transact business in this state shall deliver to the secretary of state for filing a biennial report that states all of the following:

a. The name of the limited partnership or foreign limited partnership.

b. The street and mailing address of its registered office and the name and street and mailing address of its registered agent for service of process in this state.

c. In the case of a limited partnership, the street and mailing address of its principal office.

d. In the case of a foreign limited partnership, the state or other jurisdiction under whose law the foreign limited partnership is formed and any alternate name adopted under section 488.905, subsection 1.

2. Information in a biennial report must be current as of the date the biennial report is delivered to the secretary of state for filing.

3. If a biennial report does not contain the information required in subsection 1, the secretary of state shall promptly notify the reporting limited partnership or foreign limited partnership and return the report to it for correction. If the report is corrected to contain the information required in subsection 1 and delivered to the secretary of state within thirty days after the effective date of the notice, it is timely delivered.

4. If a filed biennial report contains an address of a registered office or the name or address of a registered agent for service of process which differs from the information shown in the records of the secretary of state immediately before the filing, the differing information in the biennial report is considered a statement of change under section 488.115.

5. The first biennial report shall be delivered to the secretary of state between January 1 and April 1 of the first odd-numbered year following the calendar year in which a limited partnership was formed or a foreign limited partnership was authorized to transact business. Subsequent biennial reports must be delivered to the secretary of state between January 1 and April 1 of the following odd-numbered calendar years. A filing fee for the biennial report shall be determined by the secretary of state. For purposes of this section, each biennial report shall contain information related to the two-year period immediately preceding the calendar year in which the report is filed.

2004 Acts, ch 1021, §28, 118; 2016 Acts, ch 1097, §9, 10

Referred to in §488.111, 488.209, 488.906

488.211 through 488.300 Reserved.

ARTICLE 3

LIMITED PARTNERS

488.301 Becoming limited partner.

A person becomes a limited partner according to any of the following:

1. As provided in the partnership agreement.
2. As the result of a conversion or merger under article 11.
3. With the consent of all the partners.

2004 Acts, ch 1021, §29, 118

Referred to in §488.102

488.302 No right or power as limited partner to bind limited partnership.

A limited partner does not have the right or the power as a limited partner to act for or bind the limited partnership.

2004 Acts, ch 1021, §30, 118

488.303 No liability as limited partner for limited partnership obligations.

An obligation of a limited partnership, whether arising in contract, tort, or otherwise, is not the obligation of a limited partner. A limited partner is not personally liable, directly or indirectly, by way of contribution or otherwise, for an obligation of the limited partnership solely by reason of being a limited partner, even if the limited partner participates in the management and control of the limited partnership.

2004 Acts, ch 1021, §31, 118

488.304 Right of limited partner and former limited partner to information.

1. On ten days' demand, made in a record received by the limited partnership, a limited partner may inspect and copy required information during regular business hours in the limited partnership's registered office. The limited partner need not have any particular purpose for seeking the information.

2. During regular business hours and at a reasonable location specified by the limited partnership, a limited partner may obtain from the limited partnership and inspect and copy true and full information regarding the state of the activities and financial condition of the limited partnership and other information regarding the activities of the limited partnership as is just and reasonable if the limited partner complies with all of the following:

a. The limited partner seeks the information for a purpose reasonably related to the partner's interest as a limited partner.

b. The limited partner makes a demand in a record received by the limited partnership, describing with reasonable particularity the information sought and the purpose for seeking the information.

c. The information sought is directly connected to the limited partner's purpose.

3. Within ten days after receiving a demand pursuant to subsection 2, the limited partnership in a record shall inform the limited partner that made the demand of all of the following:

a. What information the limited partnership will provide in response to the demand.

b. When and where the limited partnership will provide the information.

c. If the limited partnership declines to provide any demanded information, the limited partnership's reasons for declining.

4. Subject to subsection 6, a person dissociated as a limited partner may inspect and copy required information during regular business hours in the limited partnership's registered office if the person complies with all of the following:

a. The information pertains to the period during which the person was a limited partner.

b. The person seeks the information in good faith.

c. The person meets the requirements of subsection 2.

5. The limited partnership shall respond to a demand made pursuant to subsection 4 in the same manner as provided in subsection 3.

6. If a limited partner dies, section 488.704 applies.

7. The limited partnership may impose reasonable restrictions on the use of information obtained under this section. In a dispute concerning the reasonableness of a restriction under this subsection, the limited partnership has the burden of proving reasonableness.

8. A limited partnership may charge a person that makes a demand under this section reasonable costs of copying, limited to the costs of labor and material.

9. Whenever this chapter or a partnership agreement provides for a limited partner to give or withhold consent to a matter, before the consent is given or withheld, the limited partnership shall, without demand, provide the limited partner with all information material to the limited partner's decision that the limited partnership knows.

10. A limited partner or person dissociated as a limited partner may exercise the rights under this section through an attorney or other agent. Any restriction imposed under

subsection 7 or by the partnership agreement applies both to the attorney or other agent and to the limited partner or person dissociated as a limited partner.

11. The rights stated in this section do not extend to a person as transferee, but may be exercised by the legal representative of an individual under legal disability who is a limited partner or person dissociated as a limited partner.

2004 Acts, ch 1021, §32, 118; 2016 Acts, ch 1097, §11, 12
Referred to in §488.110, 488.407, 488.704

488.305 Limited duties of limited partners.

1. A limited partner does not have any fiduciary duty to the limited partnership or to any other partner solely by reason of being a limited partner.

2. A limited partner shall discharge the duties to the partnership and the other partners under this chapter or under the partnership agreement and exercise any rights consistently with the obligation of good faith and fair dealing.

3. A limited partner does not violate a duty or obligation under this chapter or under the partnership agreement merely because the limited partner's conduct furthers the limited partner's own interest.

2004 Acts, ch 1021, §33, 118
Referred to in §488.110, 488.601, 488.602

488.306 Person erroneously believing self to be limited partner.

1. Except as otherwise provided in subsection 2, a person that makes an investment in a business enterprise and erroneously but in good faith believes that the person has become a limited partner in the enterprise is not liable for the enterprise's obligations by reason of making the investment, receiving distributions from the enterprise, or exercising any rights of or appropriate to a limited partner, if, on ascertaining the mistake, the person does either of the following:

a. Causes an appropriate certificate of limited partnership, amendment, or statement of correction to be signed and delivered to the secretary of state for filing.

b. Withdraws from future participation as an owner in the enterprise by signing and delivering to the secretary of state for filing a statement of withdrawal under this section.

2. A person that makes an investment described in subsection 1 is liable to the same extent as a general partner to any third party that enters into a transaction with the enterprise, believing in good faith that the person is a general partner, before the secretary of state files a statement of withdrawal, certificate of limited partnership, amendment, or statement of correction to show that the person is not a general partner.

3. If a person makes a diligent effort in good faith to comply with subsection 1, paragraph "*a*", and is unable to cause the appropriate certificate of limited partnership, amendment, or statement of correction to be signed and delivered to the secretary of state for filing, the person has the right to withdraw from the enterprise pursuant to subsection 1, paragraph "*b*", even if the withdrawal would otherwise breach an agreement with others that are or have agreed to become co-owners of the enterprise.

2004 Acts, ch 1021, §34, 118
Referred to in §488.204

488.307 through 488.400 Reserved.

ARTICLE 4
GENERAL PARTNERS

488.401 Becoming general partner.

A person becomes a general partner according to any of the following:

1. As provided in the partnership agreement.

2. Under section 488.801, subsection 3, paragraph "*b*", following the dissociation of a limited partnership's last general partner.

3. As the result of a conversion or merger under article 11.
4. With the consent of all the partners.

2004 Acts, ch 1021, §35, 118
Referred to in §488.102

488.402 General partner agent of limited partnership.

1. Each general partner is an agent of the limited partnership for the purposes of its activities. An act of a general partner, including the signing of a record in the partnership's name, for apparently carrying on in the ordinary course the limited partnership's activities or activities of the kind carried on by the limited partnership binds the limited partnership, unless the general partner did not have authority to act for the limited partnership in the particular matter and the person with which the general partner was dealing knew, had received a notification, or had notice under section 488.103, subsection 4, that the general partner lacked authority.

2. An act of a general partner which is not apparently for carrying on in the ordinary course the limited partnership's activities or activities of the kind carried on by the limited partnership binds the limited partnership only if the act was authorized in the partnership agreement or by all the other partners.

2004 Acts, ch 1021, §36, 118
Referred to in §488.606, 488.804, 488.1112

488.403 Limited partnership liable for general partner's actionable conduct.

1. A limited partnership is liable for loss or injury caused to a person, or for a penalty incurred, as a result of a wrongful act or omission, or other actionable conduct, of a general partner acting in the ordinary course of activities of the limited partnership or with authority of the limited partnership.

2. If, in the course of the limited partnership's activities or while acting with authority of the limited partnership, a general partner receives or causes the limited partnership to receive money or property of a person not a partner, and the money or property is misapplied by a general partner, the limited partnership is liable for the loss.

2004 Acts, ch 1021, §37, 118

488.404 General partner's liability.

1. Except as otherwise provided in subsections 2 and 3, all general partners are liable jointly and severally for all obligations of the limited partnership unless otherwise agreed by the claimant or provided by law.

2. A person that becomes a general partner of an existing limited partnership is not personally liable for an obligation of a limited partnership incurred before the person became a general partner.

3. An obligation of a limited partnership incurred while the limited partnership is a limited liability limited partnership, whether arising in contract, tort, or otherwise, is solely the obligation of the limited partnership. A general partner is not personally liable, directly or indirectly, by way of contribution or otherwise, for such an obligation solely by reason of being or acting as a general partner. This subsection applies despite anything inconsistent in the partnership agreement that existed immediately before the consent required to become a limited liability limited partnership under section 488.406, subsection 2, paragraph *"b"*.

2004 Acts, ch 1021, §38, 118
Referred to in §488.102, 488.405, 488.607, 488.806, 488.807, 488.808, 488.1111

488.405 Actions by and against partnership and partners.

1. To the extent not inconsistent with section 488.404, a general partner may be joined in an action against the limited partnership or named in a separate action.

2. A judgment against a limited partnership is not by itself a judgment against a general partner. A judgment against a limited partnership shall not be satisfied from a general partner's assets unless there is also a judgment against the general partner.

3. A judgment creditor of a general partner shall not levy execution against the assets of the general partner to satisfy a judgment based on a claim against the limited partnership,

unless the partner is personally liable for the claim under section 488.404 and at least one of the following applies:

a. A judgment based on the same claim has been obtained against the limited partnership and a writ of execution on the judgment has been returned unsatisfied in whole or in part.

b. The limited partnership is a debtor in bankruptcy.

c. The general partner has agreed that the creditor need not exhaust limited partnership assets.

d. A court grants permission to the judgment creditor to levy execution against the assets of a general partner based on a finding that limited partnership assets subject to execution are clearly insufficient to satisfy the judgment, that exhaustion of limited partnership assets is excessively burdensome, or that the grant of permission is an appropriate exercise of the court's equitable powers.

e. Liability is imposed on the general partner by law or contract independent of the existence of the limited partnership.

2004 Acts, ch 1021, §39, 118

488.406 Management rights of general partner.

1. Each general partner has equal rights in the management and conduct of the limited partnership's activities. Except as expressly provided in this chapter, any matter relating to the activities of the limited partnership may be exclusively decided by the general partner or, if there is more than one general partner, by a majority of the general partners.

2. The consent of each partner is necessary to do any or all of the following:

a. Amend the partnership agreement.

b. Amend the certificate of limited partnership to add or, subject to section 488.1110, delete a statement that the limited partnership is a limited liability limited partnership.

c. Sell, lease, exchange, or otherwise dispose of all, or substantially all, of the limited partnership's property, with or without the goodwill, other than in the usual and regular course of the limited partnership's activities.

3. A limited partnership shall reimburse a general partner for payments made and indemnify a general partner for liabilities incurred by the general partner in the ordinary course of the activities of the partnership or for the preservation of its activities or property.

4. A limited partnership shall reimburse a general partner for an advance to the limited partnership beyond the amount of capital the general partner agreed to contribute.

5. A payment or advance made by a general partner which gives rise to an obligation of the limited partnership under subsection 3 or 4 constitutes a loan to the limited partnership which accrues interest from the date of the payment or advance.

6. A general partner is not entitled to remuneration for services performed for the partnership.

2004 Acts, ch 1021, §40, 118

Referred to in §488.404

488.407 Right of general partner and former general partner to information.

1. A general partner, without having any particular purpose for seeking the information, may inspect and copy during regular business hours any or all of the following:

a. In the limited partnership's registered office, required information.

b. At a reasonable location specified by the limited partnership, any other records maintained by the limited partnership regarding the limited partnership's activities and financial condition.

2. Each general partner and the limited partnership shall furnish to a general partner all of the following:

a. Without demand, any information concerning the limited partnership's activities and financial condition reasonably required for the proper exercise of the general partner's rights and duties under the partnership agreement or this chapter.

b. On demand, any other information concerning the limited partnership's activities, except to the extent the demand or the information demanded is unreasonable or otherwise improper under the circumstances.

3. Subject to subsection 5, on ten days' demand made in a record received by the limited partnership, a person dissociated as a general partner may have access to the information and records described in subsection 1 at the location specified in subsection 1 if all of the following apply:

a. The information or record pertains to the period during which the person was a general partner.

b. The person seeks the information or record in good faith.

c. The person satisfies the requirements imposed on a limited partner by section 488.304, subsection 2.

4. The limited partnership shall respond to a demand made pursuant to subsection 3 in the same manner as provided in section 488.304, subsection 3.

5. If a general partner dies, section 488.704 applies.

6. The limited partnership may impose reasonable restrictions on the use of information under this section. In any dispute concerning the reasonableness of a restriction under this subsection, the limited partnership has the burden of proving reasonableness.

7. A limited partnership may charge a person dissociated as a general partner that makes a demand under this section reasonable costs of copying, limited to the costs of labor and material.

8. A general partner or person dissociated as a general partner may exercise the rights under this section through an attorney or other agent. Any restriction imposed under subsection 6 or by the partnership agreement applies both to the attorney or other agent and to the general partner or person dissociated as a general partner.

9. The rights under this section do not extend to a person as transferee, but the rights under subsection 3 of a person dissociated as a general partner may be exercised by the legal representative of an individual who dissociated as a general partner under section 488.603, subsection 7, paragraph *"b"* or *"c"*.

2004 Acts, ch 1021, §41, 118; 2016 Acts, ch 1097, §13

Referred to in §488.110

488.408 General standards of general partner's conduct.

1. The only fiduciary duties that a general partner has to the limited partnership and the other partners are the duties of loyalty and care under subsections 2 and 3.

2. A general partner's duty of loyalty to the limited partnership and the other partners is limited to all of the following:

a. To account to the limited partnership and hold as trustee for it any property, profit, or benefit derived by the general partner in the conduct and winding up of the limited partnership's activities or derived from a use by the general partner of limited partnership property, including the appropriation of a limited partnership opportunity.

b. To refrain from dealing with the limited partnership in the conduct or winding up of the limited partnership's activities as or on behalf of a party having an interest adverse to the limited partnership.

c. To refrain from competing with the limited partnership in the conduct or winding up of the limited partnership's activities.

3. A general partner's duty of care to the limited partnership and the other partners in the conduct and winding up of the limited partnership's activities is limited to refraining from engaging in grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of law.

4. A general partner shall discharge the duties to the partnership and the other partners under this chapter or under the partnership agreement and exercise any rights consistently with the obligation of good faith and fair dealing.

5. A general partner does not violate a duty or obligation under this chapter or under the partnership agreement merely because the general partner's conduct furthers the general partner's own interest.

2004 Acts, ch 1021, §42, 118

Referred to in §488.110, 488.509, 488.603, 488.605

488.409 through 488.500 Reserved.

ARTICLE 5
CONTRIBUTIONS AND DISTRIBUTIONS

488.501 Form of contribution.

A contribution of a partner may consist of tangible or intangible property or other benefit to the limited partnership, including money, services performed, promissory notes, other agreements to contribute cash or property, and contracts for services to be performed.

2004 Acts, ch 1021, §43, 118

488.502 Liability for contribution.

1. A partner's obligation to contribute money or other property or other benefit to, or to perform services for, a limited partnership is not excused by the partner's death, disability, or other inability to perform personally.

2. If a partner does not make a promised nonmonetary contribution, the partner is obligated at the option of the limited partnership to contribute money equal to that portion of the value, as stated in the required information, of the stated contribution which has not been made.

3. The obligation of a partner to make a contribution or return money or other property paid or distributed in violation of this chapter may be compromised only by consent of all partners. A creditor of a limited partnership which extends credit or otherwise acts in reliance on an obligation described in subsection 1, without notice of any compromise under this subsection, may enforce the original obligation.

2004 Acts, ch 1021, §44, 118

Referred to in §488.702

488.503 Sharing of distributions.

A distribution by a limited partnership must be shared among the partners on the basis of the value, as stated in the required information when the limited partnership decides to make the distribution, of the contributions the limited partnership has received from each partner.

2004 Acts, ch 1021, §45, 118

488.504 Interim distributions.

A partner does not have a right to any distribution before the dissolution and winding up of the limited partnership unless the limited partnership decides to make an interim distribution.

2004 Acts, ch 1021, §46, 118

488.505 No distribution on account of dissociation.

A person does not have a right to receive a distribution on account of dissociation.

2004 Acts, ch 1021, §47, 118

Referred to in §488.1204

488.506 Distribution in kind.

A partner does not have a right to demand or receive any distribution from a limited partnership in any form other than cash. Subject to section 488.812, subsection 2, a limited partnership may distribute an asset in kind to the extent each partner receives a percentage of the asset equal to the partner's share of distributions.

2004 Acts, ch 1021, §48, 118

488.507 Right to distribution.

When a partner or transferee becomes entitled to receive a distribution, the partner or transferee has the status of, and is entitled to all remedies available to, a creditor of the limited partnership with respect to the distribution. However, the limited partnership's obligation to

make a distribution is subject to offset for any amount owed to the limited partnership by the partner or dissociated partner on whose account the distribution is made.

2004 Acts, ch 1021, §49, 118

488.508 Limitations on distribution.

1. A limited partnership shall not make a distribution in violation of the partnership agreement.

2. A limited partnership shall not make a distribution if after the distribution any of the following would result:

a. The limited partnership would not be able to pay its debts as they become due in the ordinary course of the limited partnership's activities.

b. The limited partnership's total assets would be less than the sum of its total liabilities plus the amount that would be needed, if the limited partnership were to be dissolved, wound up, and terminated at the time of the distribution, to satisfy the preferential rights upon dissolution, winding up, and termination of partners whose preferential rights are superior to those of persons receiving the distribution.

3. A limited partnership may base a determination that a distribution is not prohibited under subsection 2 on financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances or on a fair valuation or other method that is reasonable in the circumstances.

4. Except as otherwise provided in subsection 7, the effect of a distribution under subsection 2 is measured according to either of the following:

a. In the case of distribution by purchase, redemption, or other acquisition of a transferable interest in the limited partnership, as of the date money or other property is transferred or debt incurred by the limited partnership.

b. In all other cases, as of the date of either of the following:

(1) The date the distribution is authorized, if the payment occurs within one hundred twenty days after that date.

(2) The date the payment is made, if payment occurs more than one hundred twenty days after the distribution is authorized.

5. A limited partnership's indebtedness to a partner incurred by reason of a distribution made in accordance with this section is at parity with the limited partnership's indebtedness to its general, unsecured creditors.

6. A limited partnership's indebtedness, including indebtedness issued in connection with or as part of a distribution, is not considered a liability for purposes of subsection 2 if the terms of the indebtedness provide that payment of principal and interest is made only to the extent that a distribution could then be made to partners under this section.

7. If indebtedness is issued as a distribution, each payment of principal or interest on the indebtedness is treated as a distribution, the effect of which is measured on the date the payment is made.

2004 Acts, ch 1021, §50, 118; 2004 Acts, ch 1175, §379

Referred to in §488.509

488.509 Liability for improper distributions.

1. A general partner that consents to a distribution made in violation of section 488.508 is personally liable to the limited partnership for the amount of the distribution which exceeds the amount that could have been distributed without the violation if it is established that in consenting to the distribution the general partner failed to comply with section 488.408.

2. A partner or transferee that received a distribution knowing that the distribution to that partner or transferee was made in violation of section 488.508 is personally liable to the limited partnership but only to the extent that the distribution received by the partner or transferee exceeded the amount that could have been properly paid under section 488.508.

3. A general partner against which an action is commenced under subsection 1 may do any or all of the following:

a. Implead in the action any other person that is liable under subsection 1 and compel contribution from the person.

b. Implead in the action any person that received a distribution in violation of subsection 2 and compel contribution from the person in the amount the person received in violation of subsection 2.

4. An action under this section is barred if it is not commenced within two years after the distribution.

2004 Acts, ch 1021, §51, 118
Referred to in §488.702

488.510 through 488.600 Reserved.

ARTICLE 6
DISSOCIATION

488.601 Dissociation as limited partner.

1. A person does not have a right to dissociate as a limited partner before the termination of the limited partnership.

2. A person is dissociated from a limited partnership as a limited partner upon the occurrence of any of the following events:

a. The limited partnership's having notice of the person's express will to withdraw as a limited partner or on a later date specified by the person.

b. An event agreed to in the partnership agreement as causing the person's dissociation as a limited partner.

c. The person's expulsion as a limited partner pursuant to the partnership agreement.

d. The person's expulsion as a limited partner by the unanimous consent of the other partners if any of the following apply:

(1) It is unlawful to carry on the limited partnership's activities with the person as a limited partner.

(2) There has been a transfer of all of the person's transferable interest in the limited partnership, other than a transfer for security purposes, or a court order charging the person's interest, which has not been foreclosed.

(3) The person is a corporation and, within ninety days after the limited partnership notifies the person that it will be expelled as a limited partner because it has filed a certificate of dissolution or the equivalent, its charter has been revoked, or its right to conduct business has been suspended by the jurisdiction of its incorporation, there is no revocation of the certificate of dissolution or no reinstatement of its charter or its right to conduct business.

(4) The person is a limited liability company or partnership that has been dissolved and whose business is being wound up.

e. On application by the limited partnership, the person's expulsion as a limited partner by judicial order because of any of the following:

(1) The person engaged in wrongful conduct that adversely and materially affected the limited partnership's activities.

(2) The person willfully or persistently committed a material breach of the partnership agreement or of the obligation of good faith and fair dealing under section 488.305, subsection 2.

(3) The person engaged in conduct relating to the limited partnership's activities which makes it not reasonably practicable to carry on the activities with the person as limited partner.

f. In the case of a person who is an individual, the person's death.

g. In the case of a person that is a trust or is acting as a limited partner by virtue of being a trustee of a trust, distribution of the trust's entire transferable interest in the limited partnership, but not merely by reason of the substitution of a successor trustee.

h. In the case of a person that is an estate or is acting as a limited partner by virtue of being a personal representative of an estate, distribution of the estate's entire transferable interest in the limited partnership, but not merely by reason of the substitution of a successor personal representative.

i. Termination of a limited partner that is not an individual, partnership, limited liability company, corporation, trust, or estate.

j. The limited partnership's participation in a conversion or merger under article 11, if either of the following applies:

(1) The limited partnership is not the converted or surviving entity.

(2) The limited partnership is the converted or surviving entity but, as a result of the conversion or merger, the person ceases to be a limited partner.

2004 Acts, ch 1021, §52, 118
Referred to in §488.1204

488.602 Effect of dissociation as limited partner.

1. Upon a person's dissociation as a limited partner, all of the following apply:

a. Subject to section 488.704, the person does not have further rights as a limited partner.

b. The person's obligation of good faith and fair dealing as a limited partner under section 488.305, subsection 2, continues only as to matters arising and events occurring before the dissociation.

c. Subject to section 488.704 and article 11, any transferable interest owned by the person in the person's capacity as a limited partner immediately before dissociation is owned by the person as a mere transferee.

2. A person's dissociation as a limited partner does not of itself discharge the person from any obligation to the limited partnership or the other partners which the person incurred while a limited partner.

2004 Acts, ch 1021, §53, 118
Referred to in §488.1204

488.603 Dissociation as general partner.

A person is dissociated from a limited partnership as a general partner upon the occurrence of any of the following events:

1. The limited partnership's having notice of the person's express will to withdraw as a general partner or on a later date specified by the person.

2. An event agreed to in the partnership agreement as causing the person's dissociation as a general partner.

3. The person's expulsion as a general partner pursuant to the partnership agreement.

4. The person's expulsion as a general partner by the unanimous consent of the other partners if any of the following apply:

a. It is unlawful to carry on the limited partnership's activities with the person as a general partner.

b. There has been a transfer of all or substantially all of the person's transferable interest in the limited partnership, other than a transfer for security purposes, or a court order charging the person's interest, which has not been foreclosed.

c. The person is an entity which participates in a merger and is not the surviving entity.

5. On application by the limited partnership, the person's expulsion as a general partner by judicial determination because of any of the following:

a. The person engaged in wrongful conduct that adversely and materially affected the limited partnership activities.

b. The person willfully or persistently committed a material breach of the partnership agreement or of a duty owed to the partnership or the other partners under section 488.408.

c. The person engaged in conduct relating to the limited partnership's activities which makes it not reasonably practicable to carry on the activities of the limited partnership with the person as a general partner.

6. The person does or is one of the following:

a. Becomes a debtor in bankruptcy.

b. Executes an assignment for the benefit of creditors.

c. Seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator of the person or of all or substantially all of the person's property.

d. Fails, within ninety days after the appointment, to have vacated or stayed the

appointment of a trustee, receiver, or liquidator of the general partner or of all or substantially all of the person's property obtained without the person's consent or acquiescence, or failing within ninety days after the expiration of a stay to have the appointment vacated.

e. Is a corporation that has filed articles of dissolution or the equivalent, has had its charter revoked, or has had its right to conduct business suspended by the jurisdiction of its incorporation, and all of the following apply:

(1) There is no revocation of the articles of dissolution or no reinstatement of its charter of its right to conduct business within ninety days after such filing, revocation, or suspension.

(2) The limited partnership, or any partner, notifies the partners that such filing, revocation, or suspension has occurred, and no vote to retain the general partner occurs within ninety days of such notification.

f. Is a limited liability company or partnership that has been dissolved and whose business is being wound up, and the limited partnership, or any partner, notifies the partners that such dissolution has occurred and no vote to retain the general partner occurs within ninety days of such notification.

7. In the case of a person who is an individual, any of the following:

a. The person's death.

b. The appointment of a guardian or general conservator for the person.

c. A judicial determination that the person has otherwise become incapable of performing the person's duties as a general partner under the partnership agreement.

8. In the case of a person that is a trust or is acting as a general partner by virtue of being a trustee of a trust, distribution of the trust's entire transferable interest in the limited partnership, but not merely by reason of the substitution of a successor trustee.

9. In the case of a person that is an estate or is acting as a general partner by virtue of being a personal representative of an estate, distribution of the estate's entire transferable interest in the limited partnership, but not merely by reason of the substitution of a successor personal representative.

10. Termination of a general partner that is not an individual, partnership, limited liability company, corporation, trust, or estate.

11. The limited partnership's participation in a conversion or merger under article 11, if either of the following applies:

a. The limited partnership is not the converted or surviving entity.

b. The limited partnership is the converted or surviving entity but, as a result of the conversion or merger, the person ceases to be a general partner.

2004 Acts, ch 1021, §54, 118
Referred to in §229.27, 488.110, 488.407, 488.604, 488.1204

488.604 Person's power to dissociate as general partner — wrongful dissociation.

1. A person has the power to dissociate as a general partner at any time, rightfully or wrongfully, by express will pursuant to section 488.603, subsection 1.

2. A person's dissociation as a general partner is wrongful only if either of the following applies:

a. The dissociation is in breach of an express provision of the partnership agreement.

b. The dissociation occurs before the termination of the limited partnership, and at least one of the following also applies:

(1) The person withdraws as a general partner by express will.

(2) The person is expelled as a general partner by judicial determination under section 488.603, subsection 5.

(3) The person is dissociated as a general partner by becoming a debtor in bankruptcy.

(4) In the case of a person that is not an individual, trust other than a business trust, or estate, the person is expelled or otherwise dissociated as a general partner because it willfully dissolved or terminated.

3. A person that wrongfully dissociates as a general partner is liable to the limited partnership and, subject to section 488.1001, to the other partners for damages caused by

the dissociation. The liability is in addition to any other obligation of the general partner to the limited partnership or to the other partners.

2004 Acts, ch 1021, §55, 118
Referred to in §488.110

488.605 Effect of dissociation as general partner.

1. Upon a person's dissociation as a general partner, all of the following apply:

a. The person's right to participate as a general partner in the management and conduct of the partnership's activities terminates.

b. The person's duty of loyalty as a general partner under section 488.408, subsection 2, paragraph *"c"*, terminates.

c. The person's duty of loyalty as a general partner under section 488.408, subsection 2, paragraphs *"a"* and *"b"*, and duty of care under section 488.408, subsection 3, continue only with regard to matters arising and events occurring before the person's dissociation as a general partner.

d. The person may sign and deliver to the secretary of state for filing a statement of dissociation pertaining to the person and, at the request of the limited partnership, shall sign an amendment to the certificate of limited partnership which states that the person has dissociated.

e. Subject to section 488.704 and article 11, any transferable interest owned by the person immediately before dissociation in the person's capacity as a general partner is owned by the person as a mere transferee.

2. A person's dissociation as a general partner does not of itself discharge the person from any obligation to the limited partnership or the other partners which the person incurred while a general partner.

2004 Acts, ch 1021, §56, 118
Referred to in §488.204

488.606 Power to bind — liability to limited partnership before dissolution of partnership of person dissociated as general partner.

1. After a person is dissociated as a general partner and before the limited partnership is dissolved, converted under article 11, or merged out of existence under article 11, the limited partnership is bound by an act of the person only if all of the following apply:

a. The act would have bound the limited partnership under section 488.402 before the dissociation.

b. At the time the other party enters into the transaction, all of the following apply:

(1) Less than two years have passed since the dissociation.

(2) The other party does not have notice of the dissociation and reasonably believes that the person is a general partner.

2. If a limited partnership is bound under subsection 1, the person dissociated as a general partner which caused the limited partnership to be bound is liable to the following:

a. To the limited partnership for any damage caused to the limited partnership arising from the obligation incurred under subsection 1.

b. If a general partner or another person dissociated as a general partner is liable for the obligation, to the general partner or other person for any damage caused to the general partner or other person arising from the liability.

2004 Acts, ch 1021, §57, 118

488.607 Liability to other persons of person dissociated as general partner.

1. A person's dissociation as a general partner does not of itself discharge the person's liability as a general partner for an obligation of the limited partnership incurred before dissociation. Except as otherwise provided in subsections 2 and 3, the person is not liable for a limited partnership's obligation incurred after dissociation.

2. A person whose dissociation as a general partner resulted in a dissolution and winding up of the limited partnership's activities is liable to the same extent as a general partner under section 488.404 on an obligation incurred by the limited partnership under section 488.804.

3. A person that has dissociated as a general partner but whose dissociation did not result

in a dissolution and winding up of the limited partnership's activities is liable on a transaction entered into by the limited partnership after the dissociation only if all of the following apply:

a. A general partner would be liable on the transaction.

b. At the time the other party enters into the transaction, all of the following apply:

(1) Less than two years have passed since the dissociation.

(2) The other party does not have notice of the dissociation and reasonably believes that the person is a general partner.

4. By agreement with a creditor of a limited partnership and the limited partnership, a person dissociated as a general partner may be released from liability for an obligation of the limited partnership.

5. A person dissociated as a general partner is released from liability for an obligation of the limited partnership if the limited partnership's creditor, with notice of the person's dissociation as a general partner but without the person's consent, agrees to a material alteration in the nature or time of payment of the obligation.

2004 Acts, ch 1021, §58, 118

Referred to in §488.812, 488.1111

488.608 through 488.700 Reserved.

ARTICLE 7

TRANSFERABLE INTERESTS AND RIGHTS

488.701 Partner's transferable interest.

The only interest of a partner which is transferable is the partner's transferable interest. A transferable interest is personal property.

2004 Acts, ch 1021, §59, 118

488.702 Transfer of partner's transferable interest.

1. All of the following apply to a transfer, in whole or in part, of a partner's transferable interest:

a. It is permissible.

b. It does not by itself cause the partner's dissociation or a dissolution and winding up of the limited partnership's activities.

c. It does not, as against the other partners or the limited partnership, entitle the transferee to participate in the management or conduct of the limited partnership's activities, to require access to information concerning the limited partnership's transactions except as otherwise provided in subsection 3, or to inspect or copy the required information or the limited partnership's other records.

2. A transferee has a right to receive, in accordance with the transfer, all of the following:

a. Distributions to which the transferor would otherwise be entitled.

b. Upon the dissolution and winding up of the limited partnership's activities, the net amount otherwise distributable to the transferor.

3. In a dissolution and winding up, a transferee is entitled to an account of the limited partnership's transactions only from the date of dissolution.

4. Upon transfer, the transferor retains the rights of a partner other than the interest in distributions transferred and retains all duties and obligations of a partner.

5. A limited partnership need not give effect to a transferee's rights under this section until the limited partnership has notice of the transfer.

6. A transfer of a partner's transferable interest in the limited partnership in violation of a restriction on transfer contained in the partnership agreement is ineffective as to a person having notice of the restriction at the time of transfer.

7. A transferee that becomes a partner with respect to a transferable interest is liable for the transferor's obligations under sections 488.502 and 488.509. However, the transferee is

not obligated for liabilities unknown to the transferee at the time the transferee became a partner.

2004 Acts, ch 1021, §60, 118
Referred to in §488.704

488.703 Rights of creditor of partner or transferee.

1. On application to a court of competent jurisdiction by any judgment creditor of a partner or transferee, the court may charge the transferable interest of the judgment debtor with payment of the unsatisfied amount of the judgment with interest. To the extent so charged, the judgment creditor has only the rights of a transferee. The court may appoint a receiver of the share of the distributions due or to become due the judgment debtor in respect of the partnership and make all other orders, directions, accounts, and inquiries the judgment debtor might have made or which the circumstances of the case may require to give effect to the charging order.

2. A charging order constitutes a lien on the judgment debtor's transferable interest. The court may order a foreclosure upon the interest subject to the charging order at any time. The purchaser at the foreclosure sale has the rights of a transferee.

3. At any time before foreclosure, an interest charged may be redeemed by any of the following:

a. By the judgment debtor.

b. With property other than limited partnership property, by one or more of the other partners.

c. With limited partnership property, by the limited partnership with the consent of all partners whose interests are not so charged.

4. This chapter does not deprive any partner or transferee of the benefit of any exemption laws applicable to the partner's or transferee's transferable interest.

5. This section provides the exclusive remedy by which a judgment creditor of a partner or transferee may satisfy a judgment out of the judgment debtor's transferable interest.

2004 Acts, ch 1021, §61, 118; 2004 Acts, ch 1175, §380

488.704 Power of estate of deceased partner.

If a partner dies, the deceased partner's personal representative or other legal representative may exercise the rights of a transferee as provided in section 488.702 and, for the purposes of settling the estate, may exercise the rights of a current limited partner under section 488.304.

2004 Acts, ch 1021, §62, 118
Referred to in §229.27, 488.304, 488.407, 488.602, 488.605

488.705 through 488.800 Reserved.

ARTICLE 8
DISSOLUTION

Referred to in §488.1105, 488.1109

488.801 Nonjudicial dissolution.

Except as otherwise provided in section 488.802, a limited partnership is dissolved, and its activities must be wound up, only upon the occurrence of any of the following:

1. The happening of an event specified in the partnership agreement.

2. The consent of all general partners and of limited partners owning a majority of the rights to receive distributions as limited partners at the time the consent is to be effective.

3. After the dissociation of a person as a general partner, upon occurrence of either of the following:

a. If the limited partnership has at least one remaining general partner, the consent to dissolve the limited partnership given within ninety days after the dissociation by partners

owning a majority of the rights to receive distributions as partners at the time the consent is to be effective.

b. If the limited partnership does not have a remaining general partner, the passage of ninety days after the dissociation, unless before the end of the period, all of the following occur:

(1) Consent to continue the activities of the limited partnership and admit at least one general partner is given by limited partners owning a majority of the rights to receive distributions as limited partners at the time the consent is to be effective.

(2) At least one person is admitted as a general partner in accordance with the consent.

4. The passage of ninety days after the dissociation of the limited partnership's last limited partner, unless before the end of the period the limited partnership admits at least one limited partner.

5. The signing and filing of a declaration of dissolution by the secretary of state under section 488.809, subsection 3.

2004 Acts, ch 1021, §63, 118
Referred to in §488.204, 488.401, 488.1204

488.802 Judicial dissolution.

On application by or for a partner, the district court for the county in which the office described in section 488.114, subsection 1, paragraph *"a"*, is located may order dissolution of a limited partnership if it is not reasonably practicable to carry on the activities of the limited partnership in conformity with the partnership agreement.

2004 Acts, ch 1021, §64, 118
Referred to in §488.110, 488.801

488.803 Winding up.

1. A limited partnership continues after dissolution only for the purpose of winding up its activities.

2. In winding up its activities, the limited partnership:

a. May amend its certificate of limited partnership to state that the limited partnership is dissolved, preserve the limited partnership business or property as a going concern for a reasonable time, prosecute and defend actions and proceedings, whether civil, criminal, or administrative, transfer the limited partnership's property, settle disputes by mediation or arbitration, file a statement of termination as provided in section 488.203, and perform other necessary acts.

b. Shall discharge the limited partnership's liabilities, settle and close the limited partnership's activities, and marshal and distribute the assets of the partnership.

3. If a dissolved limited partnership does not have a general partner, a person to wind up the dissolved limited partnership's activities may be appointed by the consent of limited partners owning a majority of the rights to receive distributions as limited partners at the time the consent is to be effective. A person appointed under this subsection:

a. Has the powers of a general partner under section 488.804.

b. Shall promptly amend the certificate of limited partnership to state all of the following:

(1) That the limited partnership does not have a general partner.

(2) The name of the person that has been appointed to wind up the limited partnership.

(3) The street and mailing address of the person.

4. On the application of any partner, the district court in the county in which the office described in section 488.114, subsection 1, paragraph *"a"*, is located may order judicial supervision of the winding up, including the appointment of a person to wind up the dissolved limited partnership's activities, if any of the following applies:

a. A limited partnership does not have a general partner and within a reasonable time following the dissolution no person has been appointed pursuant to subsection 3.

b. The applicant establishes other good cause.

2004 Acts, ch 1021, §65, 118
Referred to in §488.110, 488.202, 488.203, 488.204, 488.809

488.804 Power of general partner and person dissociated as general partner to bind partnership after dissolution.

1. A limited partnership is bound by a general partner's act after dissolution in which any of the following applies:

a. The act is appropriate for winding up the limited partnership's activities.

b. The act would have bound the limited partnership under section 488.402 before dissolution, if, at the time the other party enters into the transaction, the other party does not have notice of the dissolution.

2. A person dissociated as a general partner binds a limited partnership through an act occurring after dissolution if both of the following apply:

a. At the time the other party enters into the transaction, all of the following apply:

(1) Less than two years have passed since the dissociation.

(2) The other party does not have notice of the dissociation and reasonably believes that the person is a general partner.

b. At least one of the following applies:

(1) The act is appropriate for winding up the limited partnership's activities.

(2) The act would have bound the limited partnership under section 488.402 before dissolution and at the time the other party enters into the transaction the other party does not have notice of the dissolution.

2004 Acts, ch 1021, §66, 118

Referred to in §488.607, 488.803, 488.805

488.805 Liability after dissolution of general partner and person dissociated as general partner to limited partnership, other general partners, and persons dissociated as general partner.

1. If a general partner having knowledge of the dissolution causes a limited partnership to incur an obligation under section 488.804, subsection 1, by an act that is not appropriate for winding up the partnership's activities, the general partner is liable for all of the following:

a. To the limited partnership for any damage caused to the limited partnership arising from the obligation.

b. If another general partner or a person dissociated as a general partner is liable for the obligation, to that other general partner or person for any damage caused to that other general partner or person arising from the liability.

2. If a person dissociated as a general partner causes a limited partnership to incur an obligation under section 488.804, subsection 2, the person is liable for all of the following:

a. To the limited partnership for any damage caused to the limited partnership arising from the obligation.

b. If a general partner or another person dissociated as a general partner is liable for the obligation, to the general partner or other person for any damage caused to the general partner or other person arising from the liability.

2004 Acts, ch 1021, §67, 118

488.806 Known claims against dissolved limited partnership.

1. A dissolved limited partnership may dispose of the known claims against it by following the procedure described in subsection 2.

2. A dissolved limited partnership may notify its known claimants of the dissolution in a record. The notice must do all of the following:

a. Specify the information required to be included in a claim.

b. Provide a mailing address to which the claim is to be sent.

c. State the deadline for receipt of the claim, which may not be less than one hundred twenty days after the date the notice is received by the claimant.

d. State that the claim will be barred if not received by the deadline.

e. Unless the limited partnership has been throughout its existence a limited liability limited partnership or elected under prior law to become a limited liability limited partnership, state that the barring of a claim against the limited partnership will also bar any

corresponding claim against any general partner or person dissociated as a general partner which is based on section 488.404.

3. A claim against a dissolved limited partnership is barred if the requirements of subsection 2 are met and at least one of the following applies:

a. The claim is not received by the specified deadline.

b. In the case of a claim that is timely received but rejected by the dissolved limited partnership, the claimant does not commence an action to enforce the claim against the limited partnership within ninety days after the receipt of the notice of the rejection.

4. This section does not apply to a claim based on an event occurring after the effective date of dissolution or a liability that is contingent on that date.

2004 Acts, ch 1021, §68, 118
Referred to in §488.807, 488.808, 488.809

488.807 Other claims against dissolved limited partnership.

1. A dissolved limited partnership may publish notice of its dissolution and request persons having claims against the limited partnership to present them in accordance with the notice.

2. The notice must do all of the following:

a. Be published at least once in a newspaper of general circulation in the county in which the dissolved limited partnership's principal office is located or, if it has none in this state, in the county in which the limited partnership's registered office is or was last located.

b. Describe the information required to be contained in a claim and provide a mailing address to which the claim is to be sent.

c. State that a claim against the limited partnership is barred unless an action to enforce the claim is commenced within five years after publication of the notice.

d. Unless the limited partnership has been throughout its existence a limited liability limited partnership or elected under prior law to become a limited liability limited partnership, state that the barring of a claim against the limited partnership will also bar any corresponding claim against any general partner or person dissociated as a general partner which is based on section 488.404.

3. If a dissolved limited partnership publishes a notice in accordance with subsection 2, the claim of each of the following claimants is barred unless the claimant commences an action to enforce the claim against the dissolved limited partnership within five years after the publication date of the notice:

a. A claimant that did not receive notice in a record under section 488.806.

b. A claimant whose claim was timely sent to the dissolved limited partnership but not acted on.

c. A claimant whose claim is contingent or based on an event occurring after the effective date of dissolution.

4. A claim not barred under this section may be enforced:

a. Against the dissolved limited partnership, to the extent of its undistributed assets.

b. If the assets have been distributed in liquidation, against a partner or transferee to the extent of that person's proportionate share of the claim or the limited partnership's assets distributed to the partner or transferee in liquidation, whichever is less, but a person's total liability for all claims under this paragraph does not exceed the total amount of assets distributed to the person as part of the winding up of the dissolved limited partnership.

c. Against any person liable on the claim under section 488.404.

2004 Acts, ch 1021, §69, 118; 2016 Acts, ch 1097, §14
Referred to in §488.807A, 488.808, 488.809

488.807A Court proceedings.

1. A dissolved limited partnership that has published a notice under section 488.807 may file an application with the district court of the county in which the office described in section 488.114 is located for a determination of the amount and form of security to be provided for the payment of claims that are contingent or have not been made known to the dissolved limited partnership or that are based on an event occurring after the effective date

of dissolution but that based on the facts known to the dissolved limited partnership, are reasonably estimated to arise after the effective date of dissolution. Provision need not be made for any claim that is or is reasonably anticipated to be barred under section 488.807.

2. Within ten days after the filing of the application, notice of the proceeding shall be given by the dissolved limited partnership to each claimant holding a contingent claim whose contingent claim is shown on the records of the dissolved limited partnership.

3. The court may appoint a guardian ad litem to represent all claimants whose identities are unknown in any proceeding brought under this section. The reasonable fees and expenses of such guardian, including all reasonable expert witness fees, shall be paid by the dissolved limited partnership.

4. Provision by the dissolved limited partnership for security in the amount and form ordered by the court under subsection 1 shall satisfy the dissolved limited partnership's obligations with respect to claims that are contingent, have not been made known to the dissolved limited partnership or are based on an event occurring after the effective date of dissolution, and such claims shall not be enforced against a partner who received assets in liquidation.

2004 Acts, ch 1021, §70, 118

488.808 Liability of general partner and person dissociated as general partner when claim against limited partnership barred.

If a claim against a dissolved limited partnership is barred under section 488.806 or 488.807, any corresponding claim under section 488.404 is also barred.

2004 Acts, ch 1021, §71, 118

488.809 Administrative dissolution.

1. The secretary of state may dissolve a limited partnership administratively if the limited partnership does not, within sixty days after the due date, do any of the following:

a. Pay any fee, tax, or penalty under this chapter or other law due the secretary of state.

b. Deliver its biennial report to the secretary of state.

2. If the secretary of state determines that a ground exists for administratively dissolving a limited partnership, the secretary of state shall file a record of the determination and serve the limited partnership with a copy of the filed record.

3. If within sixty days after service of the copy the limited partnership does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the secretary of state that each ground determined by the secretary of state does not exist, the secretary of state shall administratively dissolve the limited partnership by preparing, signing, and filing a declaration of dissolution that states the grounds for dissolution. The secretary of state shall serve the limited partnership with a copy of the filed declaration.

4. A limited partnership administratively dissolved continues its existence but may carry on only activities necessary to wind up its activities and liquidate its assets under sections 488.803 and 488.812 and to notify claimants under sections 488.806 and 488.807.

5. The administrative dissolution of a limited partnership does not terminate the authority of its registered agent for service of process.

2004 Acts, ch 1021, §72, 118; 2004 Acts, ch 1175, §381; 2016 Acts, ch 1097, §15

Referred to in §488.801

488.810 Reinstatement following administrative dissolution.

1. A limited partnership that has been administratively dissolved may apply to the secretary of state for reinstatement at any time after the effective date of dissolution. The application must be delivered to the secretary of state for filing and state all of the following:

a. The name of the limited partnership and the effective date of its administrative dissolution.

b. That the grounds for dissolution either did not exist or have been eliminated.

c. If the application is received more than five years after the effective date of the dissolution, that the limited partnership's name satisfies the requirements of section 488.108.

2. If the secretary of state determines that an application contains the information

required by subsection 1 and that the information is correct, the secretary of state shall prepare a declaration of reinstatement that states this determination, sign, and file the declaration of reinstatement, and deliver a copy to the limited partnership.

3. When reinstatement becomes effective, it relates back to and takes effect as of the effective date of the administrative dissolution and the limited partnership may resume its activities as if the administrative dissolution had never occurred.

4. A limited partnership shall not relinquish the right to retain its name if the reinstatement is effective within five years of the effective date of the limited partnership's dissolution.

2004 Acts, ch 1021, §73, 118; 2006 Acts, ch 1089, §2 – 5

Referred to in §488.108, 490.401, 504.401, 504.403

488.811 Appeal from denial of reinstatement.

1. If the secretary of state denies a limited partnership's application for reinstatement following administrative dissolution, the secretary of state shall prepare, sign, and file a notice that explains the reason or reasons for denial and serve the limited partnership with a copy of the notice.

2. Within thirty days after service of the notice of denial, the limited partnership may appeal from the denial of reinstatement by petitioning the district court to set aside the dissolution. The petition must be served on the secretary of state and contain a copy of the secretary of state's declaration of dissolution, the limited partnership's application for reinstatement, and the secretary of state's notice of denial.

3. The court may summarily order the secretary of state to reinstate the dissolved limited partnership or may take other action the court considers appropriate.

2004 Acts, ch 1021, §74, 118

488.812 Disposition of assets — when contributions required.

1. In winding up a limited partnership's activities, the assets of the limited partnership, including the contributions required by this section, must be applied to satisfy the limited partnership's obligations to creditors, including, to the extent permitted by law, partners that are creditors.

2. Any surplus remaining after the limited partnership complies with subsection 1 must be paid in cash as a distribution.

3. If a limited partnership's assets are insufficient to satisfy all of its obligations under subsection 1, with respect to each unsatisfied obligation incurred when the limited partnership was not a limited liability limited partnership, the following rules apply:

a. Each person that was a general partner when the obligation was incurred and that has not been released from the obligation under section 488.607 shall contribute to the limited partnership for the purpose of enabling the limited partnership to satisfy the obligation. The contribution due from each of those persons is in proportion to the right to receive distributions in the capacity of general partner in effect for each of those persons when the obligation was incurred.

b. If a person does not contribute the full amount required under paragraph *"a"* with respect to an unsatisfied obligation of the limited partnership, the other persons required to contribute by paragraph *"a"* on account of the obligation shall contribute the additional amount necessary to discharge the obligation. The additional contribution due from each of those other persons is in proportion to the right to receive distributions in the capacity of general partner in effect for each of those other persons when the obligation was incurred.

c. If a person does not make the additional contribution required by paragraph *"b"*, further additional contributions are determined and due in the same manner as provided in that paragraph.

4. A person that makes an additional contribution under subsection 3, paragraph *"b"* or *"c"*, may recover from any person whose failure to contribute under subsection 3, paragraph *"b"* or *"c"*, necessitated the additional contribution. A person shall not recover under this subsection more than the amount additionally contributed. A person's liability under this subsection shall not exceed the amount the person failed to contribute.

5. The estate of a deceased individual is liable for the person's obligations under this section.

6. An assignee for the benefit of creditors of a limited partnership or a partner, or a person appointed by a court to represent creditors of a limited partnership or a partner, may enforce a person's obligation to contribute under subsection 3.

2004 Acts, ch 1021, §75, 118

Referred to in §488.506, 488.809

488.813 through 488.900 Reserved.

ARTICLE 9
FOREIGN LIMITED PARTNERSHIPS

488.901 Governing law.

1. The laws of the state or other jurisdiction under which a foreign limited partnership is organized govern relations among the partners of the foreign limited partnership and between the partners and the foreign limited partnership and the liability of partners as partners for an obligation of the foreign limited partnership.

2. A foreign limited partnership shall not be denied a certificate of authority by reason of any difference between the laws of the jurisdiction under which the foreign limited partnership is organized and the laws of this state.

3. A certificate of authority does not authorize a foreign limited partnership to engage in any business or exercise any power that a limited partnership shall not engage in or exercise in this state.

2004 Acts, ch 1021, §76, 118

488.902 Application for certificate of authority.

1. A foreign limited partnership may apply for a certificate of authority to transact business in this state by delivering an application to the secretary of state for filing. The application must state all of the following:

a. The name of the foreign limited partnership and, if the name does not comply with section 488.108, an alternate name adopted pursuant to section 488.905, subsection 1.

b. The name of the state or other jurisdiction under whose law the foreign limited partnership is organized.

c. The street and mailing address of the foreign limited partnership's principal office and, if the laws of the jurisdiction under which the foreign limited partnership is organized require the foreign limited partnership to maintain an office in that jurisdiction, the street and mailing address of the required office.

d. The name and street and mailing address of the foreign limited partnership's initial registered agent for service of process in this state.

e. The name and street and mailing address of each of the foreign limited partnership's general partners.

f. Whether the foreign limited partnership is a foreign limited liability limited partnership.

2. A foreign limited partnership shall deliver with the completed application a certificate of existence or a record of similar import signed by the secretary of state or other official having custody of the foreign limited partnership's publicly filed records in the state or other jurisdiction under whose law the foreign limited partnership is organized.

2004 Acts, ch 1021, §77, 118; 2016 Acts, ch 1097, §16

488.903 Activities not constituting transacting business.

1. Activities of a foreign limited partnership which do not constitute transacting business in this state within the meaning of this article include all of the following:

a. Maintaining, defending, and settling an action or proceeding.

b. Holding meetings of its partners or carrying on any other activity concerning its internal affairs.

c. Maintaining accounts in financial institutions.

d. Maintaining offices or agencies for the transfer, exchange, and registration of the foreign limited partnership's own securities or maintaining trustees or depositories with respect to those securities.

e. Selling through independent contractors.

f. Soliciting or obtaining orders, whether by mail or electronic means or through employees or agents or otherwise, if the orders require acceptance outside this state before they become contracts.

g. Creating or acquiring indebtedness, mortgages, or security interests in real or personal property.

h. Securing or collecting debts or enforcing mortgages or other security interests in property securing the debts, and holding, protecting, and maintaining property so acquired.

i. Owning, without more, real or personal property.

j. Conducting an isolated transaction that is completed within thirty days and is not one in the course of similar transactions of a like manner.

k. Transacting business in interstate commerce.

2. For purposes of this article, the ownership in this state of income-producing real or tangible personal property, other than property excluded under subsection 1, constitutes transacting business in this state.

3. This section does not apply in determining the contacts or activities that may subject a foreign limited partnership to service of process, taxation, or regulation under any other law of this state.

2004 Acts, ch 1021, §78, 118

488.904 Approval of application for certificate of authority — notification.

Unless the secretary of state determines that an application for a certificate of authority does not comply with the filing requirements of this chapter, the secretary of state, upon receiving payment of all filing fees, shall file the application, notify the applicant that the application has been approved, and provide a receipt for the payment of fees. Such notification shall serve as certificate of authority to transact business in this state.

2004 Acts, ch 1021, §79, 118

488.905 Noncomplying name of foreign limited partnership.

1. A foreign limited partnership whose name does not comply with section 488.108 shall not obtain a certificate of authority until it adopts, for the purpose of transacting business in this state, an alternate name that complies with section 488.108. A foreign limited partnership that adopts an alternate name under this subsection and then obtains a certificate of authority with the name need not also comply with chapter 547. After obtaining a certificate of authority with an alternate name, a foreign limited partnership shall transact business in this state under the name unless the foreign limited partnership is authorized under chapter 547 to transact business in this state under another name.

2. If a foreign limited partnership authorized to transact business in this state changes its name to one that does not comply with section 488.108, it shall not thereafter transact business in this state until it complies with subsection 1 and obtains an amended certificate of authority.

2004 Acts, ch 1021, §80, 118

Referred to in §488.108, 488.209, 488.210, 488.902

488.906 Revocation of certificate of authority.

1. A certificate of authority of a foreign limited partnership to transact business in this state may be revoked by the secretary of state in the manner provided in subsections 2 and 3 if the foreign limited partnership does not do any of the following:

a. Pay, within sixty days after the due date, any fee, tax or penalty under this chapter or other law due the secretary of state.

b. Deliver, within sixty days after the due date, its biennial report required under section 488.210.

c. Appoint and maintain a registered agent for service of process as required by section 488.114, subsection 2.

d. Deliver for filing a statement of a change under section 488.115 within thirty days after a change has occurred in the name or address of the registered agent for service of process.

2. In order to revoke a certificate of authority, the secretary of state must prepare, sign, and file a notice of revocation and send a copy to the foreign limited partnership's registered agent for service of process in this state, or if the foreign limited partnership does not appoint and maintain a proper agent in this state, to the foreign limited partnership's registered office. The notice must state all of the following:

a. The revocation's effective date, which must be at least sixty days after the date the secretary of state sends the copy.

b. The foreign limited partnership's failures to comply with subsection 1 which are the reason for the revocation.

3. The authority of the foreign limited partnership to transact business in this state ceases on the effective date of the notice of revocation unless before that date the foreign limited partnership cures each failure to comply with subsection 1 stated in the notice. If the foreign limited partnership cures the failures, the secretary of state shall so indicate on the filed notice.

2004 Acts, ch 1021, §81, 118; 2004 Acts, ch 1175, §382; 2016 Acts, ch 1097, §17, 18

488.907 Cancellation of certificate of authority — effect of failure to have certificate.

1. In order to cancel its certificate of authority to transact business in this state, a foreign limited partnership must deliver to the secretary of state for filing a notice of cancellation. The certificate is canceled when the notice becomes effective under section 488.206.

2. A foreign limited partnership transacting business in this state shall not maintain an action or proceeding in this state unless it has a certificate of authority to transact business in this state.

3. The failure of a foreign limited partnership to have a certificate of authority to transact business in this state does not impair the validity of a contract or act of the foreign limited partnership or prevent the foreign limited partnership from defending an action or proceeding in this state.

4. A partner of a foreign limited partnership is not liable for the obligations of the foreign limited partnership solely by reason of the foreign limited partnership's having transacted business in this state without a certificate of authority.

5. If a foreign limited partnership transacts business in this state without a certificate of authority or cancels its certificate of authority, it appoints the secretary of state as its agent for service of process for rights of action arising out of the transaction of business in this state.

2004 Acts, ch 1021, §82, 118

488.908 Action by attorney general.

The attorney general may maintain an action to restrain a foreign limited partnership from transacting business in this state in violation of this article.

2004 Acts, ch 1021, §83, 118

488.909 through 488.1000 Reserved.

ARTICLE 10

ACTIONS BY PARTNERS

Referred to in §488.110

488.1001 Direct action by partner.

1. Subject to subsection 2, a partner may maintain a direct action against the limited partnership or another partner for legal or equitable relief, with or without an accounting as to the partnership's activities, to enforce the rights and otherwise protect the interests of

the partner, including rights and interests under the partnership agreement or this chapter or arising independently of the partnership relationship.

2. A partner commencing a direct action under this section is required to plead and prove an actual or threatened injury that is not solely the result of an injury suffered or threatened to be suffered by the limited partnership.

3. The accrual of, and any time limitation on, a right of action for a remedy under this section is governed by other law. A right to an accounting upon a dissolution and winding up does not revive a claim barred by law.

2004 Acts, ch 1021, §84, 118
Referred to in §488.604

488.1002 Derivative action.

A partner may maintain a derivative action to enforce a right of a limited partnership, but a partner shall not commence such a proceeding until both of the following have occurred:

1. A written demand has been made upon the general partner or partners, requesting that they cause the limited partnership to take suitable action.

2. Ninety days have expired from the date the demand was made, unless the partner has earlier been notified that the demand has been rejected by the general partner or partners or unless irreparable injury to the limited partnership would result by waiting for the expiration of the ninety-day period.

2004 Acts, ch 1021, §85, 118

488.1003 Proper plaintiff.

A derivative action may be maintained only by a person that is a partner at the time the action is commenced and where one of the following also applies:

1. The person was a partner when the conduct giving rise to the action occurred.

2. The person's status as a partner devolved upon the person by operation of law or pursuant to the terms of the partnership agreement from a person that was a partner at the time of the conduct.

2004 Acts, ch 1021, §86, 118; 2005 Acts, ch 19, §71

488.1004 Pleading.

In a derivative action, the petition must state with particularity the date and content of plaintiff's demand and either the general partners' response to the demand or how the limited partnership would be irreparably harmed by waiting for such a response for ninety days.

2004 Acts, ch 1021, §87, 118

488.1005 Proceeds and expenses.

1. Except as otherwise provided in subsection 2:

a. Any proceeds or other benefits of a derivative action, whether by judgment, compromise, or settlement, belong to the limited partnership and not to the derivative plaintiff.

b. If the derivative plaintiff receives any proceeds, the derivative plaintiff shall immediately remit them to the limited partnership.

2. If a derivative action is successful in whole or in part, the court may award the plaintiff reasonable expenses, including reasonable attorney fees, from the recovery of the limited partnership.

3. If the court finds that the derivative proceeding was commenced or maintained without reasonable cause or for an improper purpose, it may order the plaintiff to pay any defendant's reasonable expenses, including reasonable attorney fees, incurred in defending the action.

2004 Acts, ch 1021, §88, 118

488.1006 through 488.1100 Reserved.

ARTICLE 11

CONVERSION AND MERGER

Referred to in §488.102, 488.103, 488.201, 488.202, 488.301, 488.401, 488.601, 488.602, 488.603, 488.605, 488.606

488.1101 Definitions.

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

1. *"Constituent limited partnership"* means a constituent organization that is a limited partnership.

2. *"Constituent organization"* means an organization that is party to a merger.

3. *"Converted organization"* means the organization into which a converting organization converts pursuant to sections 488.1102 through 488.1105.

4. *"Converting limited partnership"* means a converting organization that is a limited partnership.

5. *"Converting organization"* means an organization that converts into another organization pursuant to section 488.1102.

6. *"General partner"* means a general partner of a limited partnership.

7. *"Governing statute"* of an organization means the statute that governs the organization's internal affairs.

8. *"Organization"* means a general partnership, including a limited liability partnership; limited partnership, including a limited liability limited partnership; limited liability company; business trust; corporation; or any other person having a governing statute. The term includes domestic and foreign organizations whether or not organized for profit.

9. *"Organizational documents"* means all of the following:

a. For a domestic or foreign general partnership, its partnership agreement.

b. For a limited partnership or foreign limited partnership, its certificate of limited partnership and partnership agreement.

c. For a domestic or foreign limited liability company, its articles of organization and operating agreement, or comparable records as provided in its governing statute.

d. For a business trust, its agreement of trust and declaration of trust.

e. For a domestic or foreign corporation for profit, its articles of incorporation, bylaws, and other agreements among its shareholders which are authorized by its governing statute, or comparable records as provided in its governing statute.

f. For any other organization, the basic records that create the organization and determine its internal governance and the relations among the persons that own it, have an interest in it, or are members of it.

10. *"Personal liability"* means personal liability for a debt, liability, or other obligation of an organization which is imposed on a person that co-owns, has an interest in, or is a member of the organization according to either of the following:

a. By the organization's governing statute solely by reason of the person co-owning, having an interest in, or being a member of the organization.

b. By the organization's organizational documents under a provision of the organization's governing statute authorizing those documents to make one or more specified persons liable for all or specified debts, liabilities, and other obligations of the organization solely by reason of the person or persons co-owning, having an interest in, or being a member of the organization.

11. *"Surviving organization"* means an organization into which one or more other organizations are merged. A surviving organization may preexist the merger or be created by the merger.

2004 Acts, ch 1021, §89, 118

488.1102 Conversion.

1. An organization other than a limited partnership may convert to a limited partnership, and a limited partnership may convert to another organization pursuant to this section and sections 488.1103 through 488.1105 and a plan of conversion, if all of the following apply:

a. The other organization's governing statute authorizes the conversion.

b. The conversion is not prohibited by the law of the jurisdiction that enacted the governing statute.

c. The other organization complies with its governing statute in effecting the conversion.

2. A plan of conversion must be in a record and must include all of the following:

a. The name and form of the organization before conversion.

b. The name and form of the organization after conversion.

c. The terms and conditions of the conversion, including the manner and basis for converting interests in the converting organization into any combination of money, interests in the converted organization, and other consideration.

d. The organizational documents of the converted organization.

2004 Acts, ch 1021, §90, 118
Referred to in §488.1101

488.1103 Action on plan of conversion by converting limited partnership.

1. Subject to section 488.1110, a plan of conversion must be consented to by all the partners of a converting limited partnership.

2. Subject to section 488.1110 and any contractual rights, after a conversion is approved, and at any time before a filing is made under section 488.1104, a converting limited partnership may amend the plan or abandon the planned conversion according to any or all of the following:

a. As provided in the plan.

b. Except as prohibited by the plan, by the same consent as was required to approve the plan.

2004 Acts, ch 1021, §91, 118
Referred to in §488.1101, 488.1102

488.1104 Filings required for conversion — effective date.

1. After a plan of conversion is approved:

a. A converting limited partnership shall deliver to the secretary of state for filing articles of conversion, which must include all of the following:

(1) A statement that the limited partnership has been converted into another organization.

(2) The name and form of the organization and the jurisdiction of its governing statute.

(3) The date the conversion is effective under the governing statute of the converted organization.

(4) A statement that the conversion was approved as required by this chapter.

(5) A statement that the conversion was approved as required by the governing statute of the converted organization.

(6) If the converted organization is a foreign organization not authorized to transact business in this state, the street and mailing address of an office which the secretary of state may use for the purposes of section 488.1105, subsection 3.

b. If the converting organization is not a converting limited partnership, the converting organization shall deliver to the secretary of state for filing a certificate of limited partnership, which must include, in addition to the information required by section 488.201, all of the following:

(1) A statement that the limited partnership was converted from another organization.

(2) The name and form of the organization and the jurisdiction of its governing statute.

(3) A statement that the conversion was approved in a manner that complied with the organization's governing statute.

2. A conversion becomes effective according to the following:

a. If the converted organization is a limited partnership, when the certificate of limited partnership takes effect.

b. If the converted organization is not a limited partnership, as provided by the governing statute of the converted organization.

2004 Acts, ch 1021, §92, 118
Referred to in §488.1101, 488.1102, 488.1103

488.1105 Effect of conversion.

1. An organization that has been converted pursuant to this article is for all purposes the same entity that existed before the conversion.

2. When a conversion takes effect, all of the following apply:

a. All property owned by the converting organization remains vested in the converted organization.

b. All debts, liabilities, and other obligations of the converting organization continue as obligations of the converted organization.

c. An action or proceeding pending by or against the converting organization may be continued as if the conversion had not occurred.

d. Except as prohibited by other law, all of the rights, privileges, immunities, powers, and purposes of the converting organization remain vested in the converted organization.

e. Except as otherwise provided in the plan of conversion, the terms and conditions of the plan of conversion take effect.

f. Except as otherwise agreed, the conversion does not dissolve a converting limited partnership for the purposes of article 8.

3. A converted organization that is a foreign organization consents to the jurisdiction of the courts of this state to enforce any obligation owed by the converting limited partnership, if before the conversion the converting limited partnership was subject to suit in this state on the obligation. A converted organization that is a foreign organization and not authorized to transact business in this state appoints the secretary of state as its agent for service of process for purposes of enforcing an obligation under this subsection. Service on the secretary of state under this subsection is made in the same manner and with the same consequences as in section 488.117, subsections 3 and 4.

2004 Acts, ch 1021, §93, 118

Referred to in §488.1101, 488.1102, 488.1104

488.1106 Mergers.

1. A limited partnership may merge with one or more other constituent organizations pursuant to this section and sections 488.1107 through 488.1109 and a plan of merger, if all of the following apply:

a. The governing statute of each of the other organizations authorizes the merger.

b. The merger is not prohibited by the law of a jurisdiction that enacted any of those governing statutes.

c. Each of the other organizations complies with its governing statute in effecting the merger.

2. A plan of merger must be in a record and must include all of the following:

a. The name and form of each constituent organization.

b. The name and form of the surviving organization and, if the surviving organization is to be created by the merger, a statement to that effect.

c. The terms and conditions of the merger, including the manner and basis for converting the interests in each constituent organization into any combination of money, interests in the surviving organization, and other consideration.

d. If the surviving organization is to be created by the merger, the surviving organization's organizational documents.

e. If the surviving organization is not to be created by the merger, any amendments to be made by the merger to the surviving organization's organizational documents.

2004 Acts, ch 1021, §94, 118; 2004 Acts, ch 1175, §383

488.1107 Action on plan of merger by constituent limited partnership.

1. Subject to section 488.1110, a plan of merger must be consented to by all the partners of a constituent limited partnership.

2. Subject to section 488.1110 and any contractual rights, after a merger is approved, and at any time before a filing is made under section 488.1108, a constituent limited partnership may amend the plan or abandon the planned merger according to any or all of the following:

a. As provided in the plan.

b. Except as prohibited by the plan, with the same consent as was required to approve the plan.

2004 Acts, ch 1021, §95, 118
Referred to in §488.1106

488.1108 Filings required for merger — effective date.

1. After each constituent organization has approved a merger, articles of merger must be signed on behalf of all of the following:

a. Each preexisting constituent limited partnership, by each general partner listed in the certificate of limited partnership.

b. Each other preexisting constituent organization, by an authorized representative.

2. The articles of merger must include all of the following:

a. The name and form of each constituent organization and the jurisdiction of its governing statute.

b. The name and form of the surviving organization, the jurisdiction of its governing statute, and, if the surviving organization is created by the merger, a statement to that effect.

c. The date the merger is effective under the governing statute of the surviving organization.

d. If the surviving organization is to be created by the merger, one of the following:

(1) If it will be a limited partnership, the limited partnership's certificate of limited partnership.

(2) If it will be an organization other than a limited partnership, the organizational document that creates the organization.

e. If the surviving organization preexists the merger, any amendments provided for in the plan of merger for the organizational document that created the organization.

f. A statement as to each constituent organization that the merger was approved as required by the organization's governing statute.

g. If the surviving organization is a foreign organization not authorized to transact business in this state, the street and mailing address of an office which the secretary of state may use for the purposes of section 488.1109, subsection 2.

h. Any additional information required by the governing statute of any constituent organization.

3. Each constituent limited partnership shall deliver the articles of merger for filing in the office of the secretary of state.

4. A merger becomes effective under this article according to one of the following:

a. If the surviving organization is a limited partnership, upon the later of the following:

(1) Compliance with subsection 3.

(2) Subject to section 488.206, subsection 3, as specified in the articles of merger.

b. If the surviving organization is not a limited partnership, as provided by the governing statute of the surviving organization.

2004 Acts, ch 1021, §96, 118
Referred to in §488.204, 488.1106, 488.1107

488.1109 Effect of merger.

1. When a merger becomes effective, all of the following apply:

a. The surviving organization continues or comes into existence.

b. Each constituent organization that merges into the surviving organization ceases to exist as a separate entity.

c. All property owned by each constituent organization that ceases to exist vests in the surviving organization.

d. All debts, liabilities, and other obligations of each constituent organization that ceases to exist continue as obligations of the surviving organization.

e. An action or proceeding pending by or against any constituent organization that ceases to exist may be continued as if the merger had not occurred.

f. Except as prohibited by other law, all of the rights, privileges, immunities, powers,

and purposes of each constituent organization that ceases to exist vest in the surviving organization.

g. Except as otherwise provided in the plan of merger, the terms and conditions of the plan of merger take effect.

h. Except as otherwise agreed, if a constituent limited partnership ceases to exist, the merger does not dissolve the limited partnership for the purposes of article 8.

i. If the surviving organization is created by the merger, one of the following applies:

(1) If it is a limited partnership, the certificate of limited partnership becomes effective.

(2) If it is an organization other than a limited partnership, the organizational document that creates the organization becomes effective.

j. If the surviving organization preexists the merger, any amendments provided for in the articles of merger for the organizational document that created the organization become effective.

2. A surviving organization that is a foreign organization consents to the jurisdiction of the courts of this state to enforce any obligation owed by a constituent organization, if before the merger the constituent organization was subject to suit in this state on the obligation. A surviving organization that is a foreign organization and not authorized to transact business in this state appoints the secretary of state as its agent for service of process for the purposes of enforcing an obligation under this subsection. Service on the secretary of state under this subsection is made in the same manner and with the same consequences as in section 488.117, subsections 3 and 4.

2004 Acts, ch 1021, §97, 118

Referred to in §488.1106, 488.1108

488.1110 Restrictions on approval of conversions and mergers and on relinquishing limited liability limited partnership status.

1. If a partner of a converting or constituent limited partnership will have personal liability with respect to a converted or surviving organization, approval and amendment of a plan of conversion or merger are ineffective without the consent of the partner, unless all of the following apply:

a. The limited partnership's partnership agreement provides for the approval of the conversion or merger with the consent of fewer than all the partners.

b. The partner has consented to the provision of the partnership agreement.

2. An amendment to a certificate of limited partnership which deletes a statement that the limited partnership is a limited liability limited partnership is ineffective without the consent of each general partner, unless all of the following apply:

a. The limited partnership's partnership agreement provides for the amendment with the consent of less than all the general partners.

b. Each general partner that does not consent to the amendment has consented to the provision of the partnership agreement.

3. A partner does not give the consent required by subsection 1 or 2 merely by consenting to a provision of the partnership agreement which permits the partnership agreement to be amended with the consent of fewer than all the partners.

2004 Acts, ch 1021, §98, 118

Referred to in §488.110, 488.406, 488.1103, 488.1107

488.1111 Liability of general partner after conversion or merger.

1. A conversion or merger under this article does not discharge any liability under sections 488.404 and 488.607 of a person that was a general partner in or dissociated as a general partner from a converting or constituent limited partnership, but all of the following apply:

a. The provisions of this chapter pertaining to the collection or discharge of the liability continue to apply to the liability.

b. For the purposes of applying those provisions, the converted or surviving organization is deemed to be the converting or constituent limited partnership.

c. If a person is required to pay any amount under this subsection, all of the following apply:

(1) The person has a right of contribution from each other person that was liable as a general partner under section 488.404 when the obligation was incurred and has not been released from the obligation under section 488.607.

(2) The contribution due from each of those persons is in proportion to the right to receive distributions in the capacity of general partner in effect for each of those persons when the obligation was incurred.

2. In addition to any other liability provided by law, both of the following apply:

a. A person that immediately before a conversion or merger became effective was a general partner in a converting or constituent limited partnership that was not a limited liability limited partnership is personally liable for each obligation of the converted or surviving organization arising from a transaction with a third party after the conversion or merger becomes effective, if, at the time the third party enters into the transaction, all of the following apply to the third party:

(1) The third party does not have notice of the conversion or merger.

(2) The third party reasonably believes all of the following:

(a) The converted or surviving business is the converting or constituent limited partnership.

(b) The converting or constituent limited partnership is not a limited liability limited partnership.

(c) The person is a general partner in the converting or constituent limited partnership.

b. A person that was dissociated as a general partner from a converting or constituent limited partnership before the conversion or merger became effective is personally liable for each obligation of the converted or surviving organization arising from a transaction with a third party after the conversion or merger becomes effective, if all of the following apply:

(1) Immediately before the conversion or merger became effective the converting or surviving limited partnership was not a limited liability limited partnership.

(2) At the time the third party enters into the transaction less than two years have passed since the person dissociated as a general partner and all of the following apply to the third party:

(a) The third party does not have notice of the dissociation.

(b) The third party does not have notice of the conversion or merger.

(c) The third party reasonably believes that the converted or surviving organization is the converting or constituent limited partnership, the converting or constituent limited partnership is not a limited liability limited partnership, and the person is a general partner in the converting or constituent limited partnership.

2004 Acts, ch 1021, §99, 118

488.1112 Power of general partners and persons dissociated as general partners to bind organization after conversion or merger.

1. An act of a person that immediately before a conversion or merger became effective was a general partner in a converting or constituent limited partnership binds the converted or surviving organization after the conversion or merger becomes effective, if all of the following apply:

a. Before the conversion or merger became effective, the act would have bound the converting or constituent limited partnership under section 488.402.

b. At the time the third party enters into the transaction, all of the following apply to the third party:

(1) The third party does not have notice of the conversion or merger.

(2) The third party reasonably believes that the converted or surviving business is the converting or constituent limited partnership and that the person is a general partner in the converting or constituent limited partnership.

2. An act of a person that before a conversion or merger became effective was dissociated as a general partner from a converting or constituent limited partnership binds the converted or surviving organization after the conversion or merger becomes effective, if all of the following apply:

a. Before the conversion or merger became effective, the act would have bound the

converting or constituent limited partnership under section 488.402 if the person had been a general partner.

b. At the time the third party enters into the transaction, less than two years have passed since the person dissociated as a general partner and all of the following apply to the third party:

(1) The third party does not have notice of the dissociation.

(2) The third party does not have notice of the conversion or merger.

(3) The third party reasonably believes that the converted or surviving organization is the converting or constituent limited partnership and that the person is a general partner in the converting or constituent limited partnership.

3. If a person having knowledge of the conversion or merger causes a converted or surviving organization to incur an obligation under subsection 1 or 2, the person is liable to either or both of the following:

a. To the converted or surviving organization for any damage caused to the organization arising from the obligation.

b. If another person is liable for the obligation, to that other person for any damage caused to that other person arising from the liability.

2004 Acts, ch 1021, §100, 118

488.1113 Article not exclusive.

This article does not preclude an entity from being converted or merged under other law.

2004 Acts, ch 1021, §101, 118

488.1114 through 488.1200 Reserved.

ARTICLE 12
MISCELLANEOUS PROVISIONS

488.1201 Uniformity of application and construction.

In applying and construing this chapter, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

2004 Acts, ch 1021, §102, 118

488.1202 Severability.

If any provision of this chapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

2004 Acts, ch 1021, §103, 118

488.1203 Relation to Electronic Signatures in Global and National Commerce Act.

This chapter modifies, limits, or supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. §7001 et seq., but this chapter does not modify, limit, or supersede section 101(c) of that Act or authorize electronic delivery of any of the notices described in section 103(b) of that Act.

2004 Acts, ch 1021, §104, 118

488.1204 Application to existing relationships.

1. Before January 1, 2006, this chapter governs only the following:

a. A limited partnership formed on or after January 1, 2005.

b. Except as otherwise provided in subsections 3 and 4, a limited partnership formed before January 1, 2005, that elects, in the manner provided in its partnership agreement or by law for amending the partnership agreement, to be subject to this chapter.

2. Except as otherwise provided in subsection 3, on and after January 1, 2006, this chapter governs all limited partnerships.

3. With respect to a limited partnership formed before January 1, 2005, the following rules apply except as the partners otherwise elect in the manner provided in the partnership agreement or by law for amending the partnership agreement:

a. Section 488.104, subsection 3, does not apply and the limited partnership has whatever duration it had under the law applicable immediately before January 1, 2005.

b. The limited partnership is not required to amend its certificate of limited partnership to comply with section 488.201, subsection 1, paragraph *"d"*.

c. Sections 488.505, 488.601, and 488.602 do not apply, and a limited partner has the same right and power to dissociate from the limited partnership, with the same consequences, as existed immediately before January 1, 2005.

d. Section 488.603, subsection 4, does not apply.

e. Section 488.603, subsection 5, does not apply, and a court has the same power to expel a general partner as the court had immediately before January 1, 2005.

f. Section 488.801, subsection 3, does not apply and the connection between a person's dissociation as a general partner and the dissolution of the limited partnership is the same as existed immediately before January 1, 2005.

g. If a limited partnership elected under prior law to become a limited liability limited partnership by filing a statement of qualification with the secretary of state, the statement of qualification is deemed to be an amendment to the certificate of limited partnership in compliance with section 488.201, subsection 1, paragraph *"d"*, and the limited liability limited partnership automatically is a limited liability limited partnership under this chapter.

4. With respect to a limited partnership that elects pursuant to subsection 1, paragraph *"b"*, to be subject to this chapter, after the election takes effect, the provisions of this chapter relating to the liability of the limited partnership's general partners to third parties apply according to the following:

a. Before January 1, 2006, to all of the following:

(1) A third party that had not done business with the limited partnership in the year before the election took effect.

(2) A third party that had done business with the limited partnership in the year before the election took effect only if the third party knows or has received a notification of the election.

b. On and after January 1, 2006, to all third parties, but those provisions remain inapplicable to any obligation incurred while those provisions were inapplicable under paragraph *"a"*, subparagraph (2).

c. Notwithstanding the foregoing provisions of this subsection, if a preexisting limited liability limited partnership elects to be subject to this chapter prior to January 1, 2006, this chapter's provisions relating to the liability of general partners to third parties apply immediately to all third parties, regardless of whether a third party has previously done business with the limited liability limited partnership.

2004 Acts, ch 1021, §105, 118
Referred to in §488.102

488.1205 Savings clause.

This chapter does not affect an action commenced, proceeding brought, or right accrued before January 1, 2005.

2004 Acts, ch 1021, §106, 118; 2018 Acts, ch 1026, §153
Section amended

488.1206 Fees.

1. The secretary of state shall collect the following fees when the documents described in this subsection are delivered to the secretary's office for filing:

a. Certificate of limited partnership $100

b. Application for registration of foreign limited partnership and for issuance of a certificate of registration to transact business in this state $100

c. Amendment to certificate of limited

partnership $100
d. Amendment to application for
registration of foreign limited partnership $100
e. Cancellation of certificate of limited
partnership ..... $ 20
f. Cancellation of registration of foreign
limited partnership ..... $ 20
g. A consent required to be filed under
this chapter..... $ 20
h. Application to reserve a limited
partnership name ..... $ 10
i. A notice of transfer of reservation of
name ..... $ 10
j. Articles of correction ..... $ 5
k. Application for certificate of existence
or registration ..... $ 5
l. A statement of dissociation ..... $ 20
m. A statement of dissolution ..... $ 20
n. A statement of termination ..... $ 20
o. A statement of change ..... $ 20
p. Any other document required or
permitted to be filed ..... $ 5

2. The secretary of state shall collect a fee of five dollars each time process is served on the secretary under this chapter. The party to a proceeding causing service of process is entitled to recover this fee as costs if the party prevails in the proceeding.

3. The secretary of state shall collect the following fees for copying and certifying the copy of any filed document relating to a limited partnership or foreign limited partnership:

a. One dollar per page for copying.

b. Five dollars for certification.

2004 Acts, ch 1021, §107, 118

488.1207 Effective date. Repealed by 2017 Acts, ch 29, §164.

SUBTITLE 2

BUSINESS AND PROFESSIONAL CORPORATIONS AND COMPANIES

Referred to in §491.39

CHAPTER 489

REVISED UNIFORM LIMITED LIABILITY COMPANY ACT

Referred to in §9H.4, 10.1, 10B.4, 10B.7, 169.4A, 476C.1, 488.108, 490.401, 501A.102, 504.401, 504.403, 524.315, 524.1309, 524.2001, 547.1, 558.72

Before January 1, 2011, this chapter governs
limited liability companies formed on or
after January 1, 2009, and companies
electing to be subject to this chapter;
on and after January 1, 2011, this chapter governs
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ARTICLE 1
GENERAL PROVISIONS

489.101 Short title.
This chapter may be cited as the *"Revised Uniform Limited Liability Company Act"*.
2008 Acts, ch 1162, §1, 155

489.102 Definitions.
As used in this chapter:
1. *"Certificate of organization"* means the certificate required by section 489.201. The term includes the certificate as amended or restated.
2. *"Contribution"* means any benefit provided by a person to a limited liability company that is any of the following:
a. In order to become a member upon formation of the company and in accordance with an agreement between or among the persons that have agreed to become the initial members of the company.
b. In order to become a member after formation of the company and in accordance with an agreement between the person and the company.
c. In the person's capacity as a member and in accordance with the operating agreement or an agreement between the member and the company.
3. *"Debtor in bankruptcy"* means a person that is the subject of any of the following:
a. An order for relief under Tit. 11 of the United States Code or a successor statute of general application.
b. A comparable order under federal, state, or foreign law governing insolvency.
4. *"Deliver"* or *"delivery"* means any method of delivery used in conventional commercial practice, including delivery in person, by mail, commercial delivery, and electronic transmission.
5. *"Distribution"*, except as otherwise provided in section 489.405, subsection 6, means a transfer of money or other property from a limited liability company to another person on account of a transferable interest.
6. *"Domestic cooperative"* means an entity organized on a cooperative basis under chapter 497, 498, or 499 or a cooperative organized under chapter 501 or 501A.
7. *"Effective"*, with respect to a record required or permitted to be delivered to the secretary of state for filing under this chapter, means effective under section 489.205, subsection 3.

8. *"Electronic transmission"* means any process of communication not directly involving the physical transfer of paper that is suitable for the retention, retrieval, and reproduction of information by the recipient.

9. *"Foreign limited liability company"* means an unincorporated entity formed under the law of a jurisdiction other than this state and denominated by that law as a limited liability company.

10. *"Limited liability company"*, except in the phrase *"foreign limited liability company"*, means an entity formed under this chapter.

11. *"Manager"* means a person that under the operating agreement of a manager-managed limited liability company is responsible, alone or in concert with others, for performing the management functions stated in section 489.407, subsection 3.

12. *"Manager-managed limited liability company"* means a limited liability company that qualifies under section 489.407, subsection 1.

13. *"Member"* means a person that has become a member of a limited liability company under section 489.401 and has not dissociated under section 489.602.

14. *"Member-managed limited liability company"* means a limited liability company that is not a manager-managed limited liability company.

15. *"Operating agreement"* means the agreement, whether or not referred to as an operating agreement and whether oral, in a record, implied, or in any combination thereof, of all the members of a limited liability company, including a sole member, concerning the matters described in section 489.110, subsection 1. The term includes the agreement as amended or restated.

16. *"Organizer"* means a person that acts under section 489.201 to form a limited liability company.

17. *"Person"* means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

18. *"Principal office"* means the principal executive office of a limited liability company or foreign limited liability company, whether or not the office is located in this state.

19. *"Record"* means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

20. *"Registered office"* means the office that a limited liability company or foreign limited liability company is required to designate and maintain under section 489.113.

21. *"Sign"* means, with the present intent to authenticate or adopt a record, to do any of the following:

a. Execute or adopt a tangible symbol.

b. Attach to or logically associate with the record an electronic symbol, sound, or process.

22. *"State"* means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

23. *"Transfer"* includes an assignment, conveyance, deed, bill of sale, lease, mortgage, security interest, encumbrance, gift, or transfer by operation of law.

24. *"Transferable interest"* means the right, as originally associated with a person's capacity as a member, to receive distributions from a limited liability company in accordance with the operating agreement, whether or not the person remains a member or continues to own any part of the right.

25. *"Transferee"* means a person to which all or part of a transferable interest has been transferred, whether or not the transferor is a member.

2008 Acts, ch 1162, §2, 155; 2010 Acts, ch 1100, §1
Referred to in §9H.1, 10B.1, 10D.1, 203.1, 489.1304, 501A.102

489.103 Knowledge — notice.

1. A person knows a fact when the person has or is any of the following:

a. Has actual knowledge of it.

b. Is deemed to know it under subsection 4, paragraph *"a"*, or law other than this chapter.

2. A person has notice of a fact when the person has or is any of the following:

a. Has reason to know the fact from all of the facts known to the person at the time in question.

b. Is deemed to have notice of the fact under subsection 4, paragraph *"b"*.

3. A person notifies another of a fact by taking steps reasonably required to inform the other person in ordinary course, whether or not the other person knows the fact.

4. A person that is not a member is deemed both of the following:

a. To know of a limitation on authority to transfer real property as provided in section 489.302, subsection 7.

b. To have notice of all of the following regarding a limited liability company's:

(1) Dissolution, ninety days after a statement of dissolution under section 489.702, subsection 2, paragraph *"b"*, subparagraph (1), becomes effective.

(2) Termination, ninety days after a statement of termination under section 489.702, subsection 2, paragraph *"b"*, subparagraph (6), becomes effective.

(3) Merger, conversion, or domestication, ninety days after articles of merger, conversion, or domestication under article 10 become effective.

2008 Acts, ch 1162, §3, 155
Referred to in §489.206, 489.302

489.104 Nature, purpose, and duration of limited liability company.

1. A limited liability company is an entity distinct from its members.

2. A limited liability company may have any lawful purpose, regardless of whether for profit.

3. A limited liability company has perpetual duration.

2008 Acts, ch 1162, §4, 155

489.105 Powers.

1. Except as otherwise provided in subsection 2, a limited liability company has the capacity to sue and be sued in its own name and the power to do all things necessary or convenient to carry on its activities.

2. Until a limited liability company has or has had at least one member, the company lacks the capacity to do any act or carry on any activity except all of the following:

a. Delivering to the secretary of state for filing a statement of change under section 489.114, an amendment to the certificate under section 489.202, a statement of correction under section 489.206, a biennial report under section 489.209, or a statement of termination under section 489.702, subsection 2, paragraph *"b"*, subparagraph (6).

b. Admitting a member under section 489.401.

c. Dissolving under section 489.701.

3. A limited liability company that has or has had at least one member may ratify an act or activity that occurred when the company lacked capacity under subsection 2.

2008 Acts, ch 1162, §5, 155
Referred to in §489.110

489.106 Governing law.

The law of this state governs all of the following:

1. The internal affairs of a limited liability company.

2. The liability of a member as member and a manager as manager for the debts, obligations, or other liabilities of a limited liability company.

2008 Acts, ch 1162, §6, 155
Referred to in §489.110

489.107 Supplemental principles of law.

Unless displaced by particular provisions of this chapter, the principles of law and equity supplement this chapter.

2008 Acts, ch 1162, §7, 155

489.108 Name.

1. The name of a limited liability company must contain the words *"limited liability company"* or *"limited company"* or the abbreviation "L. L. C.", "LLC", "L. C.", or "LC". "Limited" may be abbreviated as "Ltd.", and "company" may be abbreviated as "Co.".

2. Unless authorized by subsection 3, the name of a limited liability company must be distinguishable in the records of the secretary of state from all of the following:

a. The name of each person that is not an individual and that is incorporated, organized, or authorized to transact business in this state.

b. Each name reserved under section 489.109.

3. A limited liability company may apply to the secretary of state for authorization to use a name that does not comply with subsection 2. The secretary of state shall authorize use of the name applied for if either of the following applies:

a. The present user, registrant, or owner of the noncomplying name consents in a signed record to the use and submits an undertaking in a form satisfactory to the secretary of state to change the noncomplying name to a name that complies with subsection 2 and is distinguishable in the records of the secretary of state from the name applied for.

b. The applicant delivers to the secretary of state a certified copy of the final judgment of a court establishing the applicant's right to use in this state the name applied for.

4. A limited liability company may use the name, including the fictitious name, of another entity that is used in this state if the other entity is formed under the law of this state or is authorized to transact business in this state and the proposed user limited liability company meets any of the following conditions:

a. Has merged with the other entity.

b. Has been formed by reorganization of the other entity.

c. Has acquired all or substantially all of the assets, including the name, of the other entity.

5. This article does not control the use of fictitious names. However, if a limited liability company uses a fictitious name in this state, it shall deliver to the secretary of state for filing a certified copy of the resolution of its members if it is member-managed or its managers if it is manager-managed, adopting the fictitious name.

6. Subject to section 489.805, this section applies to a foreign limited liability company transacting business in this state which has a certificate of authority to transact business in this state or which has applied for a certificate of authority.

2008 Acts, ch 1162, §8, 155; 2009 Acts, ch 133, §160

Referred to in §488.108, 489.201, 489.706, 489.802, 489.805, 490.401, 504.401, 504.403

489.109 Reservation of name.

1. A person may reserve the exclusive use of the name of a limited liability company, including a fictitious or assumed name for a foreign limited liability company whose name is not available, by delivering an application to the secretary of state for filing. The application must state the name and address of the applicant and the name proposed to be reserved. If the secretary of state finds that the name applied for is available, it must be reserved for the applicant's exclusive use for a one-hundred-twenty-day period.

2. The owner of a name reserved for a limited liability company may transfer the reservation to another person by delivering to the secretary of state for filing a signed notice of the transfer which states the name and address of the transferee.

2008 Acts, ch 1162, §9, 155

Referred to in §488.108, 489.108, 490.401, 504.401, 504.403, 524.310

489.110 Operating agreement — scope, function, and limitations.

1. Except as otherwise provided in subsections 2 and 3, the operating agreement governs all of the following:

a. Relations among the members as members and between the members and the limited liability company.

b. The rights and duties under this chapter of a person in the capacity of manager.

c. The activities of the company and the conduct of those activities.

d. The means and conditions for amending the operating agreement.

2. To the extent the operating agreement does not otherwise provide for a matter described in subsection 1, this chapter governs the matter.

3. An operating agreement shall not do any of the following:

a. Vary a limited liability company's capacity under section 489.105 to sue and be sued in its own name.

b. Vary the law applicable under section 489.106.

c. Vary the power of the court under section 489.204.

d. Subject to subsections 4 through 7, eliminate the duty of loyalty, the duty of care, or any other fiduciary duty.

e. Subject to subsections 4 through 7, eliminate the contractual obligation of good faith and fair dealing under section 489.409, subsection 4.

f. Unreasonably restrict the duties and rights stated in section 489.410.

g. Vary the power of a court to decree dissolution in the circumstances specified in section 489.701, subsection 1, paragraphs *"d"* and *"e"*.

h. Vary the requirement to wind up a limited liability company's business as specified in section 489.702, subsection 1, and section 489.702, subsection 2, paragraph *"a"*.

i. Unreasonably restrict the right of a member to maintain an action under article 9.

j. Restrict the right to approve a merger, conversion, or domestication under section 489.1014 to a member that will have personal liability with respect to a surviving, converted, or domesticated organization.

k. Except as otherwise provided in section 489.112, subsection 2, restrict the rights under this chapter of a person other than a member or manager.

4. If not manifestly unreasonable, the operating agreement may do any of the following:

a. Restrict or eliminate the duty to do any of the following:

(1) As required in section 489.409, subsection 2, paragraph *"a"*, and section 489.409, subsection 8, to account to the limited liability company and to hold as trustee for it any property, profit, or benefit derived by the member in the conduct or winding up of the company's business, from a use by the member of the company's property, or from the appropriation of a limited liability company opportunity.

(2) As required in section 489.409, subsection 2, paragraph *"b"*, and section 489.409, subsection 8, to refrain from dealing with the company in the conduct or winding up of the company's business as or on behalf of a party having an interest adverse to the company.

(3) As required by section 489.409, subsection 2, paragraph *"c"*, and section 489.409, subsection 8, to refrain from competing with the company in the conduct of the company's business before the dissolution of the company.

b. Identify specific types or categories of activities that do not violate the duty of loyalty.

c. Alter the duty of care, except to authorize intentional misconduct or knowing violation of law.

d. Alter any other fiduciary duty, including eliminating particular aspects of that duty.

e. Prescribe the standards by which to measure the performance of the contractual obligation of good faith and fair dealing under section 489.409, subsection 4.

5. The operating agreement may specify the method by which a specific act or transaction that would otherwise violate the duty of loyalty may be authorized or ratified by one or more disinterested and independent persons after full disclosure of all material facts.

6. To the extent the operating agreement of a member-managed limited liability company expressly relieves a member of a responsibility that the member would otherwise have under this chapter and imposes the responsibility on one or more other members, the operating agreement may, to the benefit of the member that the operating agreement relieves of the responsibility, also eliminate or limit any fiduciary duty that would have pertained to the responsibility.

7. The operating agreement may alter or eliminate the indemnification for a member or manager provided by section 489.408, subsection 1, and may eliminate or limit a member's or manager's liability to the limited liability company and members for money damages, except for any of the following:

a. A breach of the duty of loyalty.

b. A financial benefit received by the member or manager to which the member or manager is not entitled.

c. A breach of a duty under section 489.406.

d. Intentional infliction of harm on the company or a member.

e. An intentional violation of criminal law.

8. The court shall decide any claim under subsection 4 that a term of an operating agreement is manifestly unreasonable. All of the following apply:

a. The court shall make its determination as of the time the challenged term became part of the operating agreement and by considering only circumstances existing at that time.

b. The court may invalidate the term only if, in light of the purposes and activities of the limited liability company, it is readily apparent that any of the following applies:

(1) The objective of the term is unreasonable.

(2) The term is an unreasonable means to achieve the provision's objective.

2008 Acts, ch 1162, §10, 155; 2013 Acts, ch 30, §114, 115

Referred to in §489.102, 489.112, 489.408

489.111 Operating agreement — effect on limited liability company and persons becoming members — preformation agreement.

1. A limited liability company is bound by and may enforce the operating agreement, whether or not the company has itself manifested assent to the operating agreement.

2. A person that becomes a member of a limited liability company is deemed to assent to the operating agreement.

3. Two or more persons intending to become the initial members of a limited liability company may make an agreement providing that upon the formation of the company the agreement will become the operating agreement. One person intending to become the initial member of a limited liability company may assent to terms providing that upon the formation of the company the terms will become the operating agreement.

4. An operating agreement in a signed record that excludes modification or rescission except by a signed record cannot be otherwise modified or rescinded.

2008 Acts, ch 1162, §11, 155; 2017 Acts, ch 54, §76

489.112 Operating agreement — effect on third parties and relationship to records effective on behalf of limited liability company.

1. An operating agreement may specify that its amendment requires the approval of a person that is not a party to the operating agreement or the satisfaction of a condition. An amendment is ineffective if its adoption does not include the required approval or satisfy the specified condition.

2. The obligations of a limited liability company and its members to a person in the person's capacity as a transferee or dissociated member are governed by the operating agreement. Subject only to any court order issued under section 489.503, subsection 2, paragraph "*b*", to effectuate a charging order, an amendment to the operating agreement made after a person becomes a transferee or dissociated member is effective with regard to any debt, obligation, or other liability of the limited liability company or its members to the person in the person's capacity as a transferee or dissociated member.

3. If a record that has been delivered by a limited liability company to the secretary of state for filing and has become effective under this chapter contains a provision that would be ineffective under section 489.110, subsection 3, if contained in the operating agreement, the provision is likewise ineffective in the record.

4. Subject to subsection 3, if a record that has been delivered by a limited liability company to the secretary of state for filing and has become effective under this chapter conflicts with a provision of the operating agreement, the following rules apply:

a. The operating agreement prevails as to members, dissociated members, transferees, and managers.

b. The record prevails as to other persons to the extent they reasonably rely on the record.

2008 Acts, ch 1162, §12, 155

Referred to in §489.110, 489.201, 489.202, 489.1304

489.113 Registered office and registered agent for service of process.

A limited liability company or a foreign limited liability company that has a certificate of authority under section 489.802 shall designate and continuously maintain in this state all of the following:

1. A registered office, which need not be a place of its activity in this state.

2. A registered agent for service of process who may be any of the following:

a. An individual who resides in this state and whose business office is identical with the registered office.

b. A domestic corporation, limited liability company, or not-for-profit domestic corporation whose business office is identical with the registered office.

c. A foreign corporation, foreign limited liability company, or not-for-profit foreign corporation authorized to transact business in this state whose business office is identical with the registered office.

2008 Acts, ch 1162, §13, 155; 2010 Acts, ch 1100, §2

Referred to in §489.102, 489.806

489.114 Change of registered office or registered agent for service of process.

1. A limited liability company or foreign limited liability company may change its registered office or its registered agent for service of process by delivering to the secretary of state for filing a statement of change that sets forth all of the following:

a. The name of the company.

b. If the current registered office is to be changed, the street and mailing addresses of the new registered office.

c. If the current registered agent is to be changed, the name of the new registered agent and the new agent's consent to the appointment. The agent's consent may be on the statement or attached to it.

d. That after the change or changes are made, the street address of its registered office and the business office of its registered agent will be identical.

2. If a registered agent changes the street address of the registered agent's business office, the registered agent may change the street address of the registered office of any limited liability company or foreign limited liability company for which the person is the registered agent by notifying the limited liability company or foreign limited liability company in writing of the change and signing, either manually or in facsimile, and delivering to the secretary of state for filing a statement that complies with the requirements of subsection 1 and recites that the limited liability company or foreign limited liability company has been notified of the change.

3. If a registered agent changes the registered agent's business address to another place, the registered agent may change the business address and the address of the registered agent by filing a statement as required by subsection 2 for each limited liability company or foreign limited liability company, or a single statement of all limited liability companies or all foreign limited liability companies named in the notice, except that it need be signed only by the registered agent and need not be responsive to subsection 1, paragraph "*c*", and must recite that a copy of the statement has been mailed to each limited liability company or foreign limited liability company named in the notice.

4. A limited liability company or foreign limited liability company may also change its registered office or registered agent in its biennial report as provided in section 489.209.

5. Subject to section 489.205, subsection 3, a statement of change is effective when filed by the secretary of state.

2008 Acts, ch 1162, §14, 155; 2010 Acts, ch 1100, §3

Referred to in §489.105, 489.202, 489.209, 489.806

489.115 Resignation of registered agent for service of process.

1. A registered agent may resign the agent's agency appointment by signing and delivering to the secretary of state for filing the signed original statement of resignation. The statement of resignation may include a statement that the registered office is also discontinued. The registered agent shall send a copy of the statement of resignation by

certified mail, return receipt requested, to the limited liability company or foreign limited liability company at its principal office and to the registered office, if not discontinued. The registered agent shall certify to the secretary of state that the copies have been sent to the limited liability company or foreign limited liability company, including the date the copies were sent.

2. The agency appointment is terminated, and the registered office discontinued if so provided, on the date on which the statement was filed.

2008 Acts, ch 1162, §15, 155; 2010 Acts, ch 1100, §4
Referred to in §489.205

489.116 Service of process.

1. A limited liability company's or foreign limited liability company's registered agent is the company's agent for service of process, notice, or demand required or permitted by law to be served on the company.

2. If a limited liability company or foreign limited liability company has no registered agent, or the agent cannot with reasonable diligence be served, the company may be served by registered or certified mail, return receipt requested, addressed to the company at its principal office. Service is perfected under this subsection at the earliest of any of the following:

a. The date the limited liability company or foreign limited liability company receives the mail.

b. The date shown on the return receipt, if signed on behalf of the company.

c. Five days after its deposit in the United States mail, as evidenced by the postmark, if mailed postpaid and correctly addressed.

3. A limited liability company or foreign limited liability company may be served pursuant to this section, as provided in another provision of this chapter, or as provided in sections 617.3 through 617.6, unless the manner of service is otherwise specifically provided for by another provision of law.

2008 Acts, ch 1162, §16, 155; 2010 Acts, ch 1100, §5; 2010 Acts, ch 1193, §56
Referred to in §489.706, 489.1005, 489.1009, 489.1013

489.117 Fees.

1. The secretary of state shall collect the following fees when documents described in this subsection are delivered to the secretary's office for filing:

a. Certificate of organization ..... $ 50
b. Application for use of indistinguishable name ..... $ 10
c. Application for reserved name ..... $ 10
d. Notice of transfer of reserved name ..... $ 10
e. Statement of change of registered agent or registered office or both ..... No fee
f. Registered agent's statement of change of registered office for each affected limited liability company ..... No fee
g. Registered agent's statement of resignation ..... No fee
h. Amendment to certificate of organization ..... $ 50
i. Restatement of certificate of organization with amendment of certificate ..... $ 50
j. Articles of merger ..... $ 50
k. Statement of dissolution ..... $ 5
l. Declaration of administrative dissolution ..... No fee
m. Application for reinstatement following administrative dissolution ..... $ 5

n. Certificate of reinstatement ..... No fee
o. Application for certificate of authority $100
p. Application for amended certificate of authority $100
q. Statement of cancellation ..... $ 10
r. Certificate of revocation of authority to transact business ..... No fee
s. Statement of correction ..... $ 5
t. Application for certificate of existence or authorization ..... $ 5
u. Any other document required or permitted to be filed by this chapter ..... $ 5

2. The secretary of state shall collect a fee of five dollars each time process is served on the secretary under this chapter. The party to a proceeding causing service of process is entitled to recover this fee as costs if the party prevails in the proceeding.

3. The secretary of state shall collect the following fees for copying and certifying the copy of any filed document relating to a domestic or foreign limited liability company:

a. One dollar a page for copying.

b. Five dollars for the certificate.

4. The secretary of state may impose, assess, and collect a filing fee as a condition to accepting a biennial report as provided in section 489.209.

2008 Acts, ch 1162, §17, 155; 2010 Acts, ch 1100, §6, 7
Referred to in §489.209, 524.303
Authority to refund fees; 2012 Acts, ch 1131, §28; 2013 Acts, ch 135, §24, 52; 2015 Acts, ch 141, §22, 60, 67, 68; 2017 Acts, ch 171, §23, 50

489.118 through 489.200 Reserved.

ARTICLE 2

FORMATION — CERTIFICATE OF ORGANIZATION AND OTHER FILINGS

489.201 Formation of limited liability company — certificate of organization.

1. One or more persons may act as organizers to form a limited liability company by signing and delivering to the secretary of state for filing a certificate of organization.

2. A certificate of organization must state all of the following:

a. The name of the limited liability company, which must comply with section 489.108.

b. The street address of the initial registered office and the name of the initial registered agent for service of process on the company.

3. Subject to section 489.112, subsection 3, a certificate of organization may also contain statements as to matters other than those required by subsection 2. However, a statement in a certificate of organization is not effective as a statement of authority.

4. A limited liability company is formed when the secretary of state has filed the certificate of organization, unless the certificate states a delayed effective date pursuant to section 489.205, subsection 3. If the certificate states a delayed effective date, a limited liability company is not formed if, before the certificate takes effect, a statement of cancellation is signed and delivered to the secretary of state for filing and the secretary of state files the certificate.

5. Subject to any delayed effective date and except in a proceeding by this state to dissolve a limited liability company, the filing of the certificate of organization by the secretary of state is conclusive proof that the organizer satisfied all conditions to the formation of a limited liability company.

2008 Acts, ch 1162, §18, 155; 2010 Acts, ch 1100, §8
Referred to in §489.102, 489.203, 489.205, 489.1008

489.202 Amendment or restatement of certificate of organization.

1. A certificate of organization may be amended or restated at any time.

2. To amend its certificate of organization, a limited liability company must deliver to the secretary of state for filing an amendment stating all of the following:

a. The name of the company.

b. The date of filing of its certificate of organization.

c. The changes the amendment makes to the certificate as most recently amended or restated.

3. To restate its certificate of organization, a limited liability company must deliver to the secretary of state for filing a restatement, designated as such in its heading, stating all of the following:

a. In the heading or an introductory paragraph, the company's present name and the date of the filing of the company's initial certificate of organization.

b. If the company's name has been changed at any time since the company's formation, each of the company's former names.

c. The changes the restatement makes to the certificate as most recently amended or restated.

4. Subject to section 489.112, subsection 3, and section 489.205, subsection 3, an amendment to or restatement of a certificate of organization is effective when filed by the secretary of state.

5. If a member of a member-managed limited liability company, or a manager of a manager-managed limited liability company, knows that any information in a filed certificate of organization was inaccurate when the certificate was filed or has become inaccurate owing to changed circumstances, the member or manager shall promptly do any of the following:

a. Cause the certificate to be amended.

b. If appropriate, deliver to the secretary of state for filing a statement of change under section 489.114 or a statement of correction under section 489.206.

2008 Acts, ch 1162, §19, 155
Referred to in §489.105

489.203 Signing of records to be delivered for filing to secretary of state.

1. A record delivered to the secretary of state for filing pursuant to this chapter must be signed as follows:

a. Except as otherwise provided in paragraphs *"b"* and *"c"*, a record signed on behalf of a limited liability company must be signed by a person authorized by the company.

b. A limited liability company's initial certificate of organization must be signed by at least one person acting as an organizer.

c. A record filed on behalf of a limited liability company that does not have or has not had at least one member must be signed by an organizer.

d. A record filed on behalf of a dissolved limited liability company that has no members must be signed by the person winding up the company's activities under section 489.702, subsection 3, or a person appointed under section 489.702, subsection 4, to wind up those activities.

e. A statement of cancellation under section 489.201, subsection 4, must be signed by each organizer that signed the initial certificate of organization, but a personal representative of a deceased or incompetent organizer may sign in the place of the decedent or incompetent.

f. A statement of denial by a person under section 489.303 must be signed by that person.

g. Any other record must be signed by the person on whose behalf the record is delivered to the secretary of state.

2. Any record filed under this chapter may be signed by an agent.

2008 Acts, ch 1162, §20, 155
Referred to in §489.209, 489.1004, 489.1008

489.204 Signing and filing pursuant to judicial order.

1. If a person required by this chapter to sign a record or deliver a record to the secretary

of state for filing under this chapter does not do so, any other person that is aggrieved may petition the district court to order one or more of the following:

a. The person to sign the record.

b. The person to deliver the record to the secretary of state for filing.

c. The secretary of state to file the record unsigned.

2. If a petitioner under subsection 1 is not the limited liability company or foreign limited liability company to which the record pertains, the petitioner shall make the company a party to the action.

3. If a district court orders an unsigned record to be delivered to the secretary of state, the secretary of state shall file the record and the court order upon receipt.

2008 Acts, ch 1162, §21, 155
Referred to in §489.110

489.205 Delivery to and filing of records by secretary of state — effective time and date.

1. A record authorized or required to be delivered to the secretary of state for filing under this chapter must be captioned to describe the record's purpose, be in a medium permitted by the secretary of state, and be delivered to the secretary of state. If the filing fees have been paid, unless the secretary of state determines that a record does not comply with the filing requirements of this chapter, the secretary of state shall file the record and any of the following applies:

a. For a statement of denial under section 489.303, send a copy of the filed statement and a receipt for the fees to the person on whose behalf the statement was delivered for filing and to the limited liability company.

b. For all other records, send a copy of the filed record and a receipt for the fees to the person on whose behalf the record was filed.

2. Upon request and payment of the requisite fee, the secretary of state shall send to the requester a certified copy of a requested record.

3. Except as otherwise provided in sections 489.115 and 489.206, and except for a certificate of organization that contains a statement as provided in section 489.201, subsection 4, a record delivered to the secretary of state for filing under this chapter may specify an effective time and a delayed effective date. Subject to section 489.115, section 489.201, subsection 4, and section 489.206, a record filed by the secretary of state is effective as follows:

a. If the record does not specify either an effective time or a delayed effective date, on the date and at the time the record is filed as evidenced by the secretary of state's endorsement of the date and time on the record.

b. If the record specifies an effective time but not a delayed effective date, on the date the record is filed at the time specified in the record.

c. If the record specifies a delayed effective date but not an effective time, at 12:01 a.m. on the earlier of any of the following:

(1) The specified date.

(2) The ninetieth day after the record is filed.

d. If the record specifies an effective time and a delayed effective date, at the specified time on the earlier of any of the following:

(1) The specified date.

(2) The ninetieth day after the record is filed.

e. A delayed effective date for a record shall not be later than the ninetieth day after the date on which it is filed.

2008 Acts, ch 1162, §22, 155
Referred to in §489.102, 489.114, 489.201, 489.202, 489.209, 489.302, 489.1004

489.206 Correcting filed record.

1. A limited liability company or foreign limited liability company may deliver to the secretary of state for filing a statement of correction to correct a record previously delivered by the company to the secretary of state and filed by the secretary of state, if at the time of filing the record contained inaccurate information or was defectively signed.

2. A statement of correction under subsection 1 shall not have a delayed effective date and must do all of the following:

a. Describe the record to be corrected, including its filing date, or attach a copy of the record as filed.

b. Specify the inaccurate information and the reason it is inaccurate or the manner in which the signing was defective.

c. Correct the defective signature or inaccurate information.

3. When filed by the secretary of state, a statement of correction under subsection 1 is effective retroactively as of the effective date of the record the statement corrects, but the statement is effective when filed as to all of the following:

a. For the purposes of section 489.103, subsection 4.

b. As to persons that previously relied on the uncorrected record and would be adversely affected by the retroactive effect.

2008 Acts, ch 1162, §23, 155

Referred to in §489.105, 489.202, 489.205

489.207 Penalty for signing false record.

1. A person commits an offense if that person signs a record the person knows is false in any material respect with intent that the record be delivered to the secretary of state for filing.

2. An offense under this section is a serious misdemeanor punishable by a fine not to exceed one thousand dollars.

2008 Acts, ch 1162, §24, 155

489.208 Certificate of existence or authorization.

1. Any person may apply to the secretary of state to be furnished a certificate of existence for a domestic limited liability company or a certificate of authorization for a foreign limited liability company.

2. A certificate of existence or certificate of authorization must set forth all of the following:

a. The domestic limited liability company's name or the foreign limited liability company's name used in this state.

b. One of the following:

(1) If it is a domestic limited liability company, that the company is duly formed under the laws of this state, the date of its formation, and the period of its duration.

(2) If it is a foreign limited liability company, that the company is authorized to transact business in this state.

c. That all fees, taxes, and penalties due under this chapter or other law to the secretary of state have been paid.

d. That the company's most recent biennial report required by this chapter has been filed by the secretary of state.

e. If it is a domestic limited liability company, that a statement of dissolution or statement of termination has not been filed.

f. Other facts of record in the office of the secretary of state that may be requested by the applicant.

3. Subject to any qualification stated in the certificate, a certificate of existence or certificate of authorization issued by the secretary of state is conclusive evidence that the domestic limited liability company is in existence or the foreign limited liability company is authorized to transact business in this state.

2008 Acts, ch 1162, §25, 155; 2010 Acts, ch 1100, §9; 2016 Acts, ch 1097, §19

489.209 Biennial report for secretary of state.

1. A limited liability company or a foreign limited liability company authorized to transact business in this state shall deliver to the secretary of state for filing a biennial report that states all of the following:

a. The name of the company.

b. The street address of the company's registered office, the name of its registered agent at that office, and the consent of any new registered agent.

c. The street address of its principal office.

d. In the case of a foreign limited liability company, the state or other jurisdiction under whose law the company is formed and any alternate name adopted under section 489.805, subsection 1.

2. Information in a biennial report under this section must be current as of the date the report is delivered to the secretary of state for filing. The report shall be executed on behalf of the limited liability company or foreign limited liability company and signed as provided in section 489.203.

3. The first biennial report under this section must be delivered to the secretary of state between January 1 and April 1 of the first odd-numbered year following the calendar year in which a limited liability company was formed or a foreign limited liability company was authorized to transact business. A subsequent biennial report must be delivered to the secretary of state between January 1 and April 1 of each following odd-numbered calendar year. A filing fee for the biennial report shall be determined by the secretary of state pursuant to section 489.117. Each biennial report shall contain information related to the two-year period immediately preceding the calendar year in which the report is filed.

4. If a biennial report does not contain the information required in this section, the secretary of state shall promptly notify the reporting limited liability company or foreign limited liability company in writing and return the report to it for correction.

5. The secretary of state may provide for the change of registered office or registered agent on the form prescribed by the secretary of state for the biennial report, provided that the form contains the information required in section 489.114. If the secretary of state determines that a biennial report does not contain the information required in this section but otherwise meets the requirements of section 489.114 for the purpose of changing the registered office or registered agent, the secretary of state shall file the statement of change for the registered office or registered agent, effective as provided in section 489.205, subsection 3, before returning the biennial report to the limited liability company as provided in this section. A statement of change of registered office or registered agent accomplished pursuant to this subsection shall be executed by a person authorized to execute the biennial report.

2008 Acts, ch 1162, §26, 155; 2010 Acts, ch 1100, §10

Referred to in §489.105, 489.114, 489.117, 489.705, 489.806

489.210 through 489.300 Reserved.

ARTICLE 3

RELATIONS OF MEMBERS AND MANAGERS TO PERSONS DEALING WITH LIMITED LIABILITY COMPANY

489.301 No agency power of member as member.

1. A member is not an agent of a limited liability company solely by reason of being a member.

2. A person's status as a member does not prevent or restrict law other than this chapter from imposing liability on a limited liability company because of the person's conduct.

2008 Acts, ch 1162, §27, 155

489.302 Statement of authority.

1. A limited liability company may deliver to the secretary of state for filing a statement of authority. All of the following apply to the statement:

a. It must include the name of the company and the street address of its principal office.

b. With respect to any position that exists in or with respect to the company, it may state

the authority, or limitations on the authority, of all persons holding the position to do any of the following:

(1) Execute an instrument transferring real property held in the name of the company.

(2) Enter into other transactions on behalf of, or otherwise act for or bind, the company.

c. It may state the authority, or limitations on the authority, of a specific person to do any of the following:

(1) Execute an instrument transferring real property held in the name of the company.

(2) Enter into other transactions on behalf of, or otherwise act for or bind, the company.

2. To amend or cancel a statement of authority filed by the secretary of state under section 489.205, subsection 1, a limited liability company must deliver to the secretary of state for filing an amendment or cancellation stating all of the following:

a. The name of the company.

b. The street address of the company's principal office.

c. The caption of the statement being amended or canceled and the date the statement being affected became effective.

d. The contents of the amendment or a declaration that the statement being affected is canceled.

3. A statement of authority affects only the power of a person to bind a limited liability company to persons that are not members.

4. Subject to subsection 3 and section 489.103, subsection 4, and except as otherwise provided in subsections 6, 7, and 8, a limitation on the authority of a person or a position contained in an effective statement of authority is not by itself evidence of knowledge or notice of the limitation by any person.

5. Subject to subsection 3, a grant of authority not pertaining to a transfer of real property and contained in an effective statement of authority is conclusive in favor of a person that gives value in reliance on the grant, except to the extent that when the person gives value, any of the following applies:

a. The person has knowledge to the contrary.

b. The statement has been canceled or restrictively amended under subsection 2.

c. A limitation on the grant is contained in another statement of authority that became effective after the statement containing the grant became effective.

6. Subject to subsection 3, an effective statement of authority that grants authority to transfer real property held in the name of the limited liability company and that is recorded by certified copy in the office for recording transfers of the real property is conclusive in favor of a person that gives value in reliance on the grant without knowledge to the contrary, except to the extent that when the person gives value, any of the following applies:

a. The statement has been canceled or restrictively amended under subsection 2 and a certified copy of the cancellation or restrictive amendment has been recorded in the office for recording transfers of the real property.

b. A limitation on the grant is contained in another statement of authority that became effective after the statement containing the grant became effective and a certified copy of the later-effective statement is recorded in the office for recording transfers of the real property.

7. Subject to subsection 3, if a certified copy of an effective statement containing a limitation on the authority to transfer real property held in the name of a limited liability company is recorded in the office for recording transfers of that real property, all persons are deemed to know of the limitation.

8. Subject to subsection 9, an effective statement of dissolution or statement of termination is a cancellation of any filed statement of authority for the purposes of subsection 6 and is a limitation on authority for the purposes of subsection 7.

9. After a statement of dissolution becomes effective, a limited liability company may deliver to the secretary of state for filing and, if appropriate, may record a statement of authority that is designated as a post-dissolution statement of authority. The statement operates as provided in subsections 6 and 7.

10. A statement of authority filed by the secretary of state under section 489.205, subsection 1, is effective until amended or canceled as provided in subsection 2, unless an earlier cancellation date is specified in the statement.

11. An effective statement of denial operates as a restrictive amendment under this section and may be recorded by certified copy for the purposes of subsection 6, paragraph *"a"*.

2008 Acts, ch 1162, §28, 155; 2009 Acts, ch 41, §144, 145; 2010 Acts, ch 1100, §11, 12; 2013 Acts, ch 108, §2

Referred to in §489.103, 489.407A

489.303 Statement of denial.

A person named in a filed statement of authority granting that person authority may deliver to the secretary of state for filing a statement of denial that does all of the following:

1. Provides the name of the limited liability company and the caption of the statement of authority to which the statement of denial pertains.
2. Denies the grant of authority.
3. Certifies to the secretary of state that the person denying authority has sent a copy of the statement of denial to the limited liability company, including the date on which the copy was sent.

2008 Acts, ch 1162, §29, 155; 2010 Acts, ch 1100, §13

Referred to in §489.203, 489.205

489.304 Liability of members and managers.

1. For debts, obligations, or other liabilities of a limited liability company, whether arising in contract, tort, or otherwise all of the following apply:

a. They are solely the debts, obligations, or other liabilities of the company.

b. They do not become the debts, obligations, or other liabilities of a member or manager solely by reason of the member acting as a member or manager acting as a manager.

2. The failure of a limited liability company to observe any particular formalities relating to the exercise of its powers or management of its activities is not a ground for imposing liability on the members or managers for the debts, obligations, or other liabilities of the company.

2008 Acts, ch 1162, §30, 155

Referred to in §421.26, 422.16, 489.702, 489.1201

489.305 through 489.400 Reserved.

ARTICLE 4

RELATIONS OF MEMBERS TO EACH OTHER AND TO LIMITED LIABILITY COMPANY

489.401 Becoming member.

1. If a limited liability company is to have only one member upon formation, a person becomes the member as agreed by that person and the organizer of the company or a majority of organizers if more than one. That person and the organizer may be, but need not be, different persons. If different, the organizer acts on behalf of the initial member.
2. If a limited liability company is to have more than one member upon formation, those persons become members as agreed by the persons before the formation of the company. The organizer acts on behalf of the persons in forming the company and may be, but need not be, one of the persons.
3. If a limited liability company has no members upon formation, a person becomes a member of the limited liability company with the consent of the organizer or a majority of the organizers if more than one. The organizers may consent to more than one person simultaneously becoming the company's initial members.
4. After formation of a limited liability company, a person becomes a member upon any of the following:

a. As provided in the operating agreement.

b. As the result of a transaction effective under article 10.

c. With the consent of all the members.

d. If, within ninety consecutive days after the company ceases to have any members, all of the following occur:

(1) The last person to have been a member, or the legal representative of that person, designates a person to become a member.

(2) The designated person consents to become a member.

5. A person may become a member without acquiring a transferable interest and without making or being obligated to make a contribution to the limited liability company.

2008 Acts, ch 1162, §31, 155; 2009 Acts, ch 41, §146

Referred to in §489.102, 489.105

489.402 Form of contribution.

A contribution may consist of tangible or intangible property or other benefit to a limited liability company, including money, services performed, promissory notes, other agreements to contribute money or property, and contracts for services to be performed.

2008 Acts, ch 1162, §32, 155

489.403 Liability for contributions.

1. A person's obligation to make a contribution to a limited liability company is not excused by the person's death, disability, or other inability to perform personally. If a person does not make a required contribution, the person or the person's estate is obligated to contribute money equal to the value of the part of the contribution which has not been made, at the option of the company.

2. A creditor of a limited liability company which extends credit or otherwise acts in reliance on an obligation described in subsection 1 may enforce the obligation.

3. An operating agreement may provide that the interest of any member who fails to make a contribution that the member is obligated to make is subject to specified penalties for, or specified consequences of, such failure. The penalty or consequence may take the form of reducing or eliminating the defaulting member's proportionate interest in a limited liability company, subordinating the member's interest to that of a nondefaulting member, a forced sale of the member's interest, forfeiture of the member's interest, the lending by other members of the amount necessary to meet the member's commitment, a fixing of the value of the member's interest by appraisal or by formula and redemption, or sale of the member's interest at such value or other penalty or consequence.

2008 Acts, ch 1162, §33, 155

Referred to in §489.502

489.404 Sharing of and right to distributions before dissolution.

1. Any distributions made by a limited liability company before its dissolution and winding up must be in equal shares among members and dissociated members, except to the extent necessary to comply with any transfer effective under section 489.502 and any charging order in effect under section 489.503.

2. A person has a right to a distribution before the dissolution and winding up of a limited liability company only if the company decides to make an interim distribution. A person's dissociation does not entitle the person to a distribution.

3. A person does not have a right to demand or receive a distribution from a limited liability company in any form other than money. Except as otherwise provided in section 489.708, subsection 3, a limited liability company may distribute an asset in kind if each part of the asset is fungible with each other part and each person receives a percentage of the asset equal in value to the person's share of distributions.

4. If a member or transferee becomes entitled to receive a distribution, the member or transferee has the status of, and is entitled to all remedies available to, a creditor of the limited liability company with respect to the distribution.

2008 Acts, ch 1162, §34, 155

489.405 Limitations on distribution.

1. A limited liability company shall not make a distribution if after the distribution any of the following applies:

a. The company would not be able to pay its debts as they become due in the ordinary course of the company's activities.

b. The company's total assets would be less than the sum of its total liabilities plus the amount that would be needed, if the company were to be dissolved, wound up, and terminated at the time of the distribution, to satisfy the preferential rights upon dissolution, winding up, and termination of members whose preferential rights are superior to those of persons receiving the distribution.

2. A limited liability company may base a determination that a distribution is not prohibited under subsection 1 on financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances or on a fair valuation or other method that is reasonable under the circumstances.

3. Except as otherwise provided in subsection 5, the effect of a distribution under subsection 1 is measured as follows:

a. In the case of a distribution by purchase, redemption, or other acquisition of a transferable interest in the company, as of the date money or other property is transferred or debt incurred by the company.

b. In all other cases, as follows:

(1) The date that distribution is authorized, if the payment occurs within one hundred twenty days after that date.

(2) The date that payment is made, if the payment occurs more than one hundred twenty days after the distribution is authorized.

4. A limited liability company's indebtedness to a member incurred by reason of a distribution made in accordance with this section is at parity with the company's indebtedness to its general, unsecured creditors.

5. A limited liability company's indebtedness, including indebtedness issued in connection with or as part of a distribution, is not a liability for purposes of subsection 1 if the terms of the indebtedness provide that payment of principal and interest are made only to the extent that a distribution could be made to members under this section. If indebtedness is issued as a distribution, each payment of principal or interest on the indebtedness is treated as a distribution, the effect of which is measured on the date the payment is made.

6. In subsection 1, "*distribution*" does not include amounts constituting reasonable compensation for present or past services or reasonable payments made in the ordinary course of business under a bona fide retirement plan or other benefits program.

2008 Acts, ch 1162, §35, 155
Referred to in §489.102, 489.406, 489.408

489.406 Liability for improper distributions.

1. Except as otherwise provided in subsection 2, if a member of a member-managed limited liability company or manager of a manager-managed limited liability company consents to a distribution made in violation of section 489.405 and in consenting to the distribution fails to comply with section 489.409, the member or manager is personally liable to the company for the amount of the distribution that exceeds the amount that could have been distributed without the violation of section 489.405.

2. To the extent the operating agreement of a member-managed limited liability company expressly relieves a member of the authority and responsibility to consent to distributions and imposes that authority and responsibility on one or more other members, the liability stated in subsection 1 applies to the other members and not the member that the operating agreement relieves of authority and responsibility.

3. A person that receives a distribution knowing that the distribution to that person was made in violation of section 489.405 is personally liable to the limited liability company but only to the extent that the distribution received by the person exceeded the amount that could have been properly paid under section 489.405.

4. A person against which an action is commenced because the person is liable under subsection 1 may do all of the following:

a. Implead any other person that is subject to liability under subsection 1 and seek to compel contribution from the person.

b. Implead any person that received a distribution in violation of subsection 3 and seek to compel contribution from the person in the amount the person received in violation of subsection 3.

5. An action under this section is barred if not commenced within two years after the distribution.

2008 Acts, ch 1162, §36, 155
Referred to in §489.110, 489.502

489.407 Management of limited liability company.

1. A limited liability company is a member-managed limited liability company unless the operating agreement does any of the following:

a. Expressly provides that any of the following apply:

(1) The company is or will be "manager-managed".

(2) The company is or will be "managed by managers".

(3) Management of the company is or will be "vested in managers".

b. Includes words of similar import.

2. In a member-managed limited liability company, all of the following rules apply:

a. The management and conduct of the company are vested in the members.

b. Each member has equal rights in the management and conduct of the company's activities.

c. A difference arising among members as to a matter in the ordinary course of the activities of the company may be decided by a majority of the members.

d. An act outside the ordinary course of the activities of the company, including selling, leasing, exchanging, or otherwise disposing of all, or substantially all, of the company's property, with or without the goodwill, may be undertaken only with the consent of all members.

e. The operating agreement may be amended only with the consent of all members.

f. Approve a merger, conversion, or domestication under article 10.

3. In a manager-managed limited liability company, all of the following rules apply:

a. Except as otherwise expressly provided in this chapter, any matter relating to the activities of the company is decided exclusively by the managers.

b. Each manager has equal rights in the management and conduct of the activities of the company.

c. A difference arising among managers as to a matter in the ordinary course of the activities of the company may be decided by a majority of the managers.

d. The consent of all members is required to do any of the following:

(1) Sell, lease, exchange, or otherwise dispose of all, or substantially all, of the company's property, with or without the goodwill, outside the ordinary course of the company's activities.

(2) Approve a merger, conversion, or domestication under article 10.

(3) Undertake any other act outside the ordinary course of the company's activities.

(4) Amend the operating agreement.

e. A manager may be chosen at any time by the consent of a majority of the members and remains a manager until a successor has been chosen, unless the manager at an earlier time resigns, is removed, or dies, or, in the case of a manager that is not an individual, terminates. A manager may be removed at any time by the consent of a majority of the members without notice or cause.

f. A person need not be a member to be a manager, but the dissociation of a member that is also a manager removes the person as a manager. If a person that is both a manager and a member ceases to be a manager, that cessation does not by itself dissociate the person as a member.

g. A person's ceasing to be a manager does not discharge any debt, obligation, or other

liability to the limited liability company or members which the person incurred while a manager.

4. An action requiring the consent of members under this chapter may be taken without a meeting, and a member may appoint a proxy or other agent to consent or otherwise act for the member by signing an appointing record, personally or by the member's agent.

5. The dissolution of a limited liability company does not affect the applicability of this section. However, a person that wrongfully causes dissolution of the company loses the right to participate in management as a member and a manager.

6. This chapter does not entitle a member to remuneration for services performed for a member-managed limited liability company, except for reasonable compensation for services rendered in winding up the activities of the company.

2008 Acts, ch 1162, §37, 155
Referred to in §489.102, 489.702

489.407A Real estate interest transferred by limited liability company or foreign limited liability company.

1. A transfer of an interest in real estate situated in this state held by a limited liability company or a foreign limited liability company authorized to transact business in this state is subject to the provisions of this section.

2. *a.* In a member-managed company, a transfer of an interest in real estate held by the company may be undertaken by any of the following:

(1) As provided in the operating agreement, or if the operating agreement does not so provide, only with the consent of all members.

(2) As provided in a statement of authority filed by the company with the secretary of state and the recorder of the county where the real estate is situated pursuant to section 489.302.

b. A requirement of paragraph *"a"* is applicable to every transfer of an interest in real estate situated in this state held by a member-managed company, whether or not the transfer is in the ordinary course of the company's business.

3. *a.* In a manager-managed company, a transfer of an interest in real estate held by the company may be undertaken by any of the following:

(1) As provided in the operating agreement, or if the operating agreement does not so provide, only with the consent of a majority of all managers.

(2) As provided in a statement of authority filed by the company with the secretary of state and the recorder of the county where the real estate is situated pursuant to section 489.302.

b. A requirement in paragraph *"a"* is applicable to every transfer of an interest in real estate situated in this state held by a manager-managed limited liability company, whether or not the transfer is in the ordinary course of the company's business.

2013 Acts, ch 108, §4

489.408 Indemnification and insurance.

1. A limited liability company shall reimburse for any payment made and indemnify for any debt, obligation, or other liability incurred by a member of a member-managed company or the manager of a manager-managed company in the course of the member's or manager's activities on behalf of the company, if, in making the payment or incurring the debt, obligation, or other liability, the member or manager complied with the duties stated in sections 489.405 and 489.409.

2. A limited liability company may purchase and maintain insurance on behalf of a member or manager of the company against liability asserted against or incurred by the member or manager in that capacity or arising from that status even if, under section 489.110, subsection 7, the operating agreement could not eliminate or limit the person's liability to the company for the conduct giving rise to the liability.

2008 Acts, ch 1162, §38, 155
Referred to in §489.110

489.409 Standards of conduct for members and managers.

1. A member of a member-managed limited liability company owes to the company and,

subject to section 489.901, subsection 2, the other members the fiduciary duties of loyalty and care stated in subsections 2 and 3.

2. The duty of loyalty of a member in a member-managed limited liability company includes all of the following duties:

a. To account to the company and to hold as trustee for it any property, profit, or benefit derived by the member regarding any of the following:

(1) In the conduct or winding up of the company's activities.

(2) From a use by the member of the company's property.

(3) From the appropriation of a limited liability company opportunity.

b. To refrain from dealing with the company in the conduct or winding up of the company's activities as or on behalf of a person having an interest adverse to the company.

c. To refrain from competing with the company in the conduct of the company's activities before the dissolution of the company.

3. Subject to the business judgment rule as stated in subsection 7, the duty of care of a member of a member-managed limited liability company in the conduct and winding up of the company's activities is to act with the care that a person in a like position would reasonably exercise under similar circumstances and in a manner the member reasonably believes to be in the best interests of the company. In discharging this duty, a member may rely in good faith upon opinions, reports, statements, or other information provided by another person that the member reasonably believes is a competent and reliable source for the information.

4. A member in a member-managed limited liability company or a manager-managed limited liability company shall discharge the duties under this chapter or under the operating agreement and exercise any rights consistently with the contractual obligation of good faith and fair dealing.

5. It is a defense to a claim under subsection 2, paragraph "*b*", and any comparable claim in equity or at common law that the transaction was fair to the limited liability company.

6. All of the members of a member-managed limited liability company or a manager-managed limited liability company may authorize or ratify, after full disclosure of all material facts, a specific act or transaction that otherwise would violate the duty of loyalty.

7. *a.* A member satisfies the duty of care in subsection 3 if all of the following apply:

(1) The member is not interested in the subject matter of the business judgment.

(2) The member is informed with respect to the subject of the business judgment to the extent the member reasonably believes to be appropriate in the circumstances.

(3) The member has a rational basis for believing that the business judgment is in the best interests of the limited liability company.

b. A person challenging the business judgment of a member has the burden of proving a breach of the duty of care, and in a damage action, the burden of proving that the breach was the legal cause of damage suffered by the limited liability company.

8. In a manager-managed limited liability company, all of the following rules apply:

a. Subsections 1, 2, 3, 5, and 7 apply to the manager or managers and not the members.

b. The duty stated under subsection 2, paragraph "*c*", continues until winding up is completed.

c. Subsection 4 applies to the members and managers.

d. Subsection 6 applies only to the members.

e. A member does not have any fiduciary duty to the company or to any other member solely by reason of being a member.

2008 Acts, ch 1162, §39, 155

Referred to in §489.110, 489.406, 489.408, 489.602, 489.1203

489.410 Right of members, managers, and dissociated members to information.

1. In a member-managed limited liability company, all of the following rules apply:

a. On reasonable notice, a member may inspect and copy during regular business hours, at a reasonable location specified by the company, any record maintained by the company regarding the company's activities, financial condition, and other circumstances, to the extent the information is material to the member's rights and duties under the operating agreement or this chapter.

b. The company shall furnish to each member all of the following:

(1) Without demand, any information concerning the company's activities, financial condition, and other circumstances which the company knows and is material to the proper exercise of the member's rights and duties under the operating agreement or this chapter, except to the extent the company can establish that it reasonably believes the member already knows the information.

(2) On demand, any other information concerning the company's activities, financial condition, and other circumstances, except to the extent the demand or information demanded is unreasonable or otherwise improper under the circumstances.

c. The duty to furnish information under paragraph *"b"* also applies to each member to the extent the member knows any of the information described in paragraph *"b"*.

2. In a manager-managed limited liability company, all of the following rules apply:

a. The informational rights stated in subsection 1 and the duty stated in subsection 1, paragraph *"c"*, apply to the managers and not the members.

b. During regular business hours and at a reasonable location specified by the company, a member may obtain from the company and inspect and copy full information regarding the activities, financial condition, and other circumstances of the company as is just and reasonable if all of the following apply:

(1) The member seeks the information for a purpose material to the member's interest as a member.

(2) The member makes a demand in a record received by the company, describing with reasonable particularity the information sought and the purpose for seeking the information.

(3) The information sought is directly connected to the member's purpose.

c. Within ten days after receiving a demand pursuant to paragraph *"b"*, subparagraph (2), the company shall in a record inform the member that made the demand all of the following:

(1) Of the information that the company will provide in response to the demand and when and where the company will provide the information.

(2) If the company declines to provide any demanded information, the company's reasons for declining.

d. Whenever this chapter or an operating agreement provides for a member to give or withhold consent to a matter, before the consent is given or withheld, the company shall, without demand, provide the member with all information that is known to the company and is material to the member's decision.

3. On ten days' demand made in a record received by a limited liability company, a dissociated member may have access to information to which the person was entitled while a member if the information pertains to the period during which the person was a member, the person seeks the information in good faith, and the person satisfies the requirements imposed on a member by subsection 2, paragraph *"b"*. The company shall respond to a demand made pursuant to this subsection in the manner provided in subsection 2, paragraph *"c"*.

4. A limited liability company may charge a person that makes a demand under this section the reasonable costs of copying, limited to the costs of labor and material.

5. A member or dissociated member may exercise rights under this section through an agent or, in the case of an individual under legal disability, a legal representative. Any restriction or condition imposed by the operating agreement or under subsection 7 applies both to the agent or legal representative and the member or dissociated member.

6. The rights under this section do not extend to a person as transferee.

7. In addition to any restriction or condition stated in its operating agreement, a limited liability company, as a matter within the ordinary course of its activities, may impose reasonable restrictions and conditions on access to and use of information to be furnished under this section, including designating information confidential and imposing nondisclosure and safeguarding obligations on the recipient. In a dispute concerning the reasonableness of a restriction under this subsection, the company has the burden of proving reasonableness.

2008 Acts, ch 1162, §40, 155

Referred to in §489.110, 489.504

489.411 through 489.500 Reserved.

ARTICLE 5

TRANSFERABLE INTERESTS AND RIGHTS OF TRANSFEREES AND CREDITORS

489.501 Nature of transferable interest.

A transferable interest is personal property.

2008 Acts, ch 1162, §41, 155

489.502 Transfer of transferable interest.

1. For a transfer, in whole or in part, all of the following applies to a transferable interest:

a. It is permissible.

b. It does not by itself cause a member's dissociation or a dissolution and winding up of the limited liability company's activities.

c. Subject to section 489.504, it does not entitle the transferee to do any of the following:

(1) Participate in the management or conduct of the company's activities.

(2) Except as otherwise provided in subsection 3, have access to records or other information concerning the company's activities.

2. A transferee has the right to receive, in accordance with the transfer, distributions to which the transferor would otherwise be entitled.

3. In a dissolution and winding up of a limited liability company, a transferee is entitled to an account of the company's transactions only from the date of dissolution.

4. A transferable interest may be evidenced by a certificate of the interest issued by the limited liability company in a record, and, subject to this section, the interest represented by the certificate may be transferred by a transfer of the certificate.

5. A limited liability company need not give effect to a transferee's rights under this section until the company has notice of the transfer.

6. A transfer of a transferable interest in violation of a restriction on transfer contained in the operating agreement or another agreement to which the transferor is a party is ineffective as to a person having notice of the restriction at the time of transfer.

7. Except as otherwise provided in section 489.602, subsection 4, paragraph *"b"*, when a member transfers a transferable interest, the transferor retains the rights of a member other than the interest in distributions transferred and retains all duties and obligations of a member.

8. When a member transfers a transferable interest to a person that becomes a member with respect to the transferred interest, the transferee is liable for the member's obligations under section 489.403 and section 489.406, subsection 3, known to the transferee when the transferee becomes a member.

2008 Acts, ch 1162, §42, 155

Referred to in §489.404, 489.503, 489.504, 489.708, 489.1203

489.503 Charging order.

1. On application by a judgment creditor of a member or transferee, a court may enter a charging order against the transferable interest of the judgment debtor for the unsatisfied amount of the judgment. A charging order constitutes a lien on a judgment debtor's transferable interest and requires the limited liability company to pay over to the person to which the charging order was issued any distribution that would otherwise be paid to the judgment debtor.

2. To the extent necessary to effectuate the collection of distributions pursuant to a charging order in effect under subsection 1, the court may do all of the following:

a. Appoint a receiver of the distributions subject to the charging order, with the power to make all inquiries the judgment debtor might have made.

b. Make all other orders necessary to give effect to the charging order.

3. Upon a showing that distributions under a charging order will not pay the judgment debt within a reasonable time, the court may foreclose the lien and order the sale of the transferable interest. The purchaser at the foreclosure sale only obtains the transferable interest, does not thereby become a member, and is subject to section 489.502.

4. At any time before foreclosure under subsection 3, the member or transferee whose transferable interest is subject to a charging order under subsection 1 may extinguish the charging order by satisfying the judgment and filing a certified copy of the satisfaction with the court that issued the charging order.

5. At any time before foreclosure under subsection 3, a limited liability company or one or more members whose transferable interests are not subject to the charging order may pay to the judgment creditor the full amount due under the judgment and thereby succeed to the rights of the judgment creditor, including the charging order.

6. This chapter does not deprive any member or transferee of the benefit of any exemption laws applicable to the member's or transferee's transferable interest.

7. This section provides the exclusive remedy by which a person seeking to enforce a judgment against a member or transferee may, in the capacity of judgment creditor, satisfy the judgment from the judgment debtor's transferable interest.

2008 Acts, ch 1162, §43, 155
Referred to in §489.112, 489.404, 489.602, 489.708, 489.1203

489.504 Power of personal representative of deceased member.

If a member dies, the deceased member's personal representative or other legal representative may exercise the rights of a transferee provided in section 489.502, subsection 3, and, for the purposes of settling the estate, the rights of a current member under section 489.410.

2008 Acts, ch 1162, §44, 155
Referred to in §489.502, 489.603

489.505 through 489.600 Reserved.

ARTICLE 6
MEMBER'S DISSOCIATION

489.601 Member's power to dissociate — wrongful dissociation.

1. A person has the power to dissociate as a member at any time, rightfully or wrongfully, by withdrawing as a member by express will under section 489.602, subsection 1.

2. A person's dissociation from a limited liability company is wrongful only if any of the following applies to the dissociation:

a. It is in breach of an express provision of the operating agreement.

b. It occurs before the termination of the company and any of the following applies:

(1) The person withdraws as a member by express will.

(2) The person is expelled as a member by judicial order under section 489.602, subsection 5.

(3) The person is dissociated under section 489.602, subsection 7, paragraph "*a*", by becoming a debtor in bankruptcy.

(4) In the case of a person that is not a trust other than a business trust, an estate, or an individual, the person is expelled or otherwise dissociated as a member because it willfully dissolved or terminated.

3. A person that wrongfully dissociates as a member is liable to the limited liability company and, subject to section 489.901, to the other members for damages caused by the dissociation. The liability is in addition to any other debt, obligation, or other liability of the member to the company or the other members.

2008 Acts, ch 1162, §45, 155

489.602 Events causing dissociation.

A person is dissociated as a member from a limited liability company when any of the following applies:

1. The company has notice of the person's express will to withdraw as a member, but, if the person specified a withdrawal date later than the date the company had notice, on that later date.

2. An event stated in the operating agreement as causing the person's dissociation occurs.

3. The person is expelled as a member pursuant to the operating agreement.

4. The person is expelled as a member by the unanimous consent of the other members if any of the following applies:

a. It is unlawful to carry on the company's activities with the person as a member.

b. There has been a transfer of all of the person's transferable interest in the company, other than any of the following:

(1) A transfer for security purposes.

(2) A charging order in effect under section 489.503 which has not been foreclosed.

c. The person is a corporation and, within ninety days after the company notifies the person that it will be expelled as a member because the person has filed a certificate of dissolution or the equivalent, its charter has been revoked, or its right to conduct business has been suspended by the jurisdiction of its incorporation, the certificate of dissolution has not been revoked or its charter or right to conduct business has not been reinstated.

d. The person is a limited liability company or partnership that has been dissolved and whose business is being wound up.

5. On application by the company, the person is expelled as a member by judicial order because the person has done any of the following:

a. Has engaged, or is engaging, in wrongful conduct that has adversely and materially affected, or will adversely and materially affect, the company's activities.

b. Has willfully or persistently committed, or is willfully and persistently committing, a material breach of the operating agreement or the person's duties or obligations under section 489.409.

c. Has engaged in, or is engaging in, conduct relating to the company's activities which makes it not reasonably practicable to carry on the activities with the person as a member.

6. In the case of a person who is an individual, any of the following applies:

a. The person dies.

b. In a member-managed limited liability company, any of the following applies:

(1) A guardian or general conservator for the person is appointed.

(2) There is a judicial order that the person has otherwise become incapable of performing the person's duties as a member under this chapter or the operating agreement.

7. In a member-managed limited liability company, the person does any of the following:

a. Becomes a debtor in bankruptcy.

b. Executes an assignment for the benefit of creditors.

c. Seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator of the person or of all or substantially all of the person's property.

8. In the case of a person that is a trust or is acting as a member by virtue of being a trustee of a trust, the trust's entire transferable interest in the company is distributed.

9. In the case of a person that is an estate or is acting as a member by virtue of being a personal representative of an estate, the estate's entire transferable interest in the company is distributed.

10. In the case of a member that is not an individual, partnership, limited liability company, corporation, trust, or estate, the termination of the member.

11. The company participates in a merger under article 10, if any of the following applies:

a. The company is not the surviving entity.

b. Otherwise as a result of the merger, the person ceases to be a member.

12. The company participates in a conversion under article 10.

13. The company participates in a domestication under article 10, if, as a result of the domestication, the person ceases to be a member.

14. The company terminates.

2008 Acts, ch 1162, §46, 155
Referred to in §489.102, 489.502, 489.601

489.603 Effect of person's dissociation as member.

1. When a person is dissociated as a member of a limited liability company, all of the following apply:

a. The person's right to participate as a member in the management and conduct of the company's activities terminates.

b. If the company is member-managed, the person's fiduciary duties as a member end with regard to matters arising and events occurring after the person's dissociation.

c. Subject to section 489.504 and article 10, any transferable interest owned by the person immediately before dissociation in the person's capacity as a member is owned by the person solely as a transferee.

2. A person's dissociation as a member of a limited liability company does not of itself discharge the person from any debt, obligation, or other liability to the company or the other members which the person incurred while a member.

2008 Acts, ch 1162, §47, 155

489.604 Member's power to dissociate under certain circumstances.

1. If the certificate of organization or an operating agreement does not specify the time or the events upon the happening of which a member may dissociate, a member may dissociate from the limited liability company in the event any amendment to the certificate of organization or operating agreement that is adopted over the member's written dissent adversely affects the rights or preferences of the dissenting member's transferable interest in any of the ways described in paragraphs *"a"* through *"f"*. A dissociation in the event of such dissent and adverse effect is deemed to have occurred as of the effective date of the amendment, if the member gives notice to the limited liability company not more than sixty days after the date of the amendment. In valuing the member's distribution pursuant to this subsection, any depreciation in anticipation of the amendment shall be excluded. An amendment that does any of the following is subject to this section:

a. Alters or abolishes a member's right to receive a distribution.

b. Alters or abolishes a member's right to voluntarily dissociate.

c. Alters or abolishes a member's right to vote on any matter, except as the rights may be altered or abolished through the acceptance of contributions or the making of contribution agreements.

d. Alters or abolishes a member's preemptive right to make contributions.

e. Establishes or changes the conditions for or consequences of expulsion.

f. Waives the application of this section to the limited liability company.

2. A member dissociating under this section is not liable for damages for the breach of any agreement not to withdraw.

3. This section applies to a limited liability company whose original articles of organization or certificate of organization is filed with the secretary of state on or after July 1, 1997.

4. This section applies to a limited liability company whose original articles of organization are filed with the secretary of state and effective on or prior to June 30, 1997, if such company's operating agreement provides that it is subject to this section.

5. The operating agreement of a limited liability company may waive the applicability of this section to the company and its members.

2008 Acts, ch 1162, §48, 155
Referred to in §524.1309

489.605 through 489.700 Reserved.

ARTICLE 7
DISSOLUTION AND WINDING UP

Referred to in §489.1005, 489.1009, 489.1013, 489.1205

489.701 Events causing dissolution.

1. A limited liability company is dissolved, and its activities must be wound up, upon the occurrence of any of the following:

a. An event or circumstance that the operating agreement states causes dissolution.

b. The consent of all the members.

c. Once the company has at least one member, the passage of ninety consecutive days during which the company has no members.

d. On application by a member, the entry by a district court of an order dissolving the company on the grounds that any of the following applies:

(1) The conduct of all or substantially all of the company's activities is unlawful.

(2) It is not reasonably practicable to carry on the company's activities in conformity with the certificate of organization and the operating agreement.

e. On application by a member or transferee, the entry by a district court of an order dissolving the company on the grounds that the managers or those members in control of the company have done any of the following:

(1) Have acted, are acting, or will act in a manner that is illegal or fraudulent.

(2) Have acted or are acting in a manner that is oppressive and was, is, or will be directly harmful to the applicant.

2. In a proceeding brought under subsection 1, paragraph *"e"*, the court may order a remedy other than dissolution.

2008 Acts, ch 1162, §49, 155
Referred to in §489.105, 489.110, 489.702, 489.1205

489.702 Winding up.

1. A dissolved limited liability company shall wind up its activities, and the company continues after dissolution only for the purpose of winding up.

2. In winding up its activities, all of the following apply to a limited liability company:

a. It shall discharge the company's debts, obligations, or other liabilities, settle and close the company's activities, and marshal and distribute the assets of the company.

b. It may do all of the following:

(1) Deliver to the secretary of state for filing a statement of dissolution stating the name of the company and that the company is dissolved.

(2) Preserve the company activities and property as a going concern for a reasonable time.

(3) Prosecute and defend actions and proceedings, whether civil, criminal, or administrative.

(4) Transfer the company's property.

(5) Settle disputes by mediation or arbitration.

(6) Deliver to the secretary of state for filing a statement of termination stating the name of the company and that the company is terminated.

(7) Perform other acts necessary or appropriate to the winding up.

3. If a dissolved limited liability company has no members, the legal representative of the last person to have been a member may wind up the activities of the company. If the person does so, the person has the powers of a sole manager under section 489.407, subsection 3, and is deemed to be a manager for the purposes of section 489.304, subsection 1, paragraph *"b"*.

4. If the legal representative under subsection 3 declines or fails to wind up the company's activities, a person may be appointed to do so by the consent of transferees owning a majority of the rights to receive distributions as transferees at the time the consent is to be effective. All of the following apply to a person appointed under this subsection:

a. The person has the powers of a sole manager under section 489.407, subsection 3, and is deemed to be a manager for the purposes of section 489.304, subsection 1, paragraph *"b"*.

b. The person shall promptly deliver to the secretary of state for filing an amendment to the company's certificate of organization to do all of the following:

(1) State that the company has no members.

(2) State that the person has been appointed pursuant to this subsection to wind up the company.

(3) Provide the street and mailing addresses of the person.

5. The district court may order judicial supervision of the winding up of a dissolved limited liability company, including the appointment of a person to wind up the company's activities pursuant to any of the following:

a. On application of a member, if the applicant establishes good cause.

b. On the application of a transferee, if all of the following apply:

(1) The company does not have any members.

(2) The legal representative of the last person to have been a member declines or fails to wind up the company's activities.

(3) Within a reasonable time following the dissolution a person has not been appointed pursuant to subsection 4.

c. In connection with a proceeding under section 489.701, subsection 1, paragraph "*d*" or "*e*".

2008 Acts, ch 1162, §50, 155; 2009 Acts, ch 133, §161
Referred to in §489.103, 489.105, 489.110, 489.203, 489.705, 489.1205

489.703 Known claims against dissolved limited liability company.

1. Except as otherwise provided in subsection 4, a dissolved limited liability company may give notice of a known claim under subsection 2, which has the effect as provided in subsection 3.

2. A dissolved limited liability company may in a record notify its known claimants of the dissolution. The notice must do all of the following:

a. Specify the information required to be included in a claim.

b. Provide a mailing address to which the claim is to be sent.

c. State the deadline for receipt of the claim, which may not be less than one hundred twenty days after the date the notice is received by the claimant.

d. State that the claim will be barred if not received by the deadline.

3. A claim against a dissolved limited liability company is barred if the requirements of subsection 2 are met and any of the following applies:

a. The claim is not received by the specified deadline.

b. If the claim is timely received but rejected by the company, all of the following apply:

(1) The company causes the claimant to receive a notice in a record stating that the claim is rejected and will be barred unless the claimant commences an action against the company to enforce the claim within ninety days after the claimant receives the notice.

(2) The claimant does not commence the required action within the ninety days.

4. This section does not apply to a claim based on an event occurring after the effective date of dissolution or a liability that on that date is contingent.

2008 Acts, ch 1162, §51, 155
Referred to in §489.704, 489.705

489.704 Other claims against dissolved limited liability company.

1. A dissolved limited liability company may publish notice of its dissolution and request persons having claims against the company to present them in accordance with the notice.

2. The notice authorized by subsection 1 must do all of the following:

a. Be published at least once in a newspaper of general circulation in the county in this state in which the dissolved limited liability company's principal office is located or, if it has none in this state, in the county in which the company's registered office is or was last located.

b. Describe the information required to be contained in a claim and provide a mailing address to which the claim is to be sent.

c. State that a claim against the company is barred unless an action to enforce the claim is commenced within five years after publication of the notice.

3. If a dissolved limited liability company publishes a notice in accordance with subsection 2, unless the claimant commences an action to enforce the claim against the company within five years after the publication date of the notice, the claim of each of the following claimants is barred:

a. A claimant that did not receive notice in a record under section 489.703.

b. A claimant whose claim was timely sent to the company but not acted on.

c. A claimant whose claim is contingent at, or based on an event occurring after, the effective date of dissolution.

4. A claim not barred under this section may be enforced as follows:

a. Against a dissolved limited liability company, to the extent of its undistributed assets.

b. If assets of the company have been distributed after dissolution, against a member or transferee to the extent of that person's proportionate share of the claim or of the assets distributed to the member or transferee after dissolution, whichever is less, but a person's total liability for all claims under this paragraph does not exceed the total amount of assets distributed to the person after dissolution.

2008 Acts, ch 1162, §52, 155

Referred to in §489.705

489.705 Administrative dissolution.

1. The secretary of state may commence a proceeding under this section to administratively dissolve a limited liability company if any of the following apply:

a. The limited liability company has not delivered a biennial report to the secretary of state in a form that meets the requirements of section 489.209 within sixty days after it is due, or has not paid within sixty days after the due date, any fee, tax, or penalty due to the secretary of state under this chapter or law other than this chapter.

b. The limited liability company is without a registered office or registered agent in this state for sixty days or more.

c. The limited liability company does not notify the secretary of state within sixty days that its registered agent or registered office has been changed, that its registered agent has resigned, or that its registered office has been discontinued.

d. The limited liability company's period of duration stated in its certificate of organization has expired.

2. If the secretary of state determines that a ground exists for administratively dissolving a limited liability company, the secretary of state shall file a record of the determination and serve the company with a copy of the filed record.

3. If within sixty days after service of the copy pursuant to subsection 2 a limited liability company does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the secretary of state that each ground determined by the secretary of state does not exist, the secretary of state shall dissolve the company administratively by preparing, signing, and filing a declaration of dissolution that states the grounds for dissolution. The secretary of state shall serve the company with a copy of the filed declaration.

4. A limited liability company that has been administratively dissolved continues in existence but, subject to section 489.706, may carry on only activities necessary to wind up its activities and liquidate its assets under sections 489.702 and 489.708 and to notify claimants under sections 489.703 and 489.704.

5. The administrative dissolution of a limited liability company does not terminate the authority of its registered agent for service of process.

2008 Acts, ch 1162, §53, 155; 2010 Acts, ch 1100, §14

Referred to in §489.706

489.706 Reinstatement following administrative dissolution.

1. A limited liability company administratively dissolved under section 489.705 may apply to the secretary of state for reinstatement at any time after the effective date of dissolution. The application must be delivered to the secretary of state and meet all of the following requirements:

a. Recite the name of the limited liability company at its date of dissolution and the effective date of its administrative dissolution.

b. State that the ground or grounds for dissolution as provided in section 489.705 have been eliminated.

c. If the application is received more than five years after the effective date of the administrative dissolution, state a name that satisfies the requirements of section 489.108.

d. State the federal tax identification number of the limited liability company.

2. The secretary of state shall refer the federal tax identification number contained in the application for reinstatement to the departments of revenue and workforce development. The departments of revenue and workforce development shall report to the secretary of state the tax status of the limited liability company. If either department reports to the secretary of state that a filing delinquency or liability exists against the limited liability company, the secretary of state shall not cancel the declaration of dissolution until the filing delinquency or liability is satisfied.

3. If the secretary of state determines that the application contains the information required by subsection 1, and that a delinquency or liability reported pursuant to subsection 2 has been satisfied, and that the information is correct, the secretary of state shall cancel the declaration of dissolution and prepare a certificate of reinstatement that recites the secretary of state's determination and the effective date of reinstatement, file the original of the certificate, and serve a copy on the limited liability company under section 489.116. If the limited liability company's name in subsection 1, paragraph "*c*", is different than the name in subsection 1, paragraph "*a*", the certificate of reinstatement shall constitute an amendment to the limited liability company's certificate of organization insofar as it pertains to its name. A limited liability company shall not relinquish the right to retain its name as provided in section 489.108, if the reinstatement is effective within five years of the effective date of the limited liability company's dissolution.

4. When the reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative dissolution as if the administrative dissolution had never occurred.

2008 Acts, ch 1162, §54, 155; 2010 Acts, ch 1040, §1
Referred to in §488.108, 489.705, 490.401, 504.401, 504.403

489.707 Appeal from rejection of reinstatement.

1. If the secretary of state rejects a limited liability company's application for reinstatement following administrative dissolution, the secretary of state shall prepare, sign, and file a notice that explains the reason for rejection and serve the company with a copy of the notice.

2. Within thirty days after service of a notice of rejection of reinstatement under subsection 1, a limited liability company may appeal from the rejection by petitioning the district court to set aside the dissolution. The petition must be served on the secretary of state and contain a copy of the secretary of state's declaration of dissolution, the company's application for reinstatement, and the secretary of state's notice of rejection.

3. The court may order the secretary of state to reinstate a dissolved limited liability company or take other action the court considers appropriate.

2008 Acts, ch 1162, §55, 155

489.708 Distribution of assets in winding up limited liability company's activities.

1. In winding up its activities, a limited liability company must apply its assets to discharge its obligations to creditors, including members that are creditors.

2. After a limited liability company complies with subsection 1, any surplus must be distributed in the following order, subject to any charging order in effect under section 489.503:

a. To each person owning a transferable interest that reflects contributions made by a member and not previously returned, an amount equal to the value of the unreturned contributions.

b. In equal shares among members and dissociated members, except to the extent necessary to comply with any transfer effective under section 489.502.

3. If a limited liability company does not have sufficient surplus to comply with subsection 2, paragraph *"a"*, any surplus must be distributed among the owners of transferable interests in proportion to the value of their respective unreturned contributions.

4. All distributions made under subsections 2 and 3 must be paid in money.

2008 Acts, ch 1162, §56, 155
Referred to in §489.404, 489.705, 489.1203, 489.1205

489.709 through 489.800 Reserved.

ARTICLE 8

FOREIGN LIMITED LIABILITY COMPANIES

Referred to in §489.1206

489.801 Governing law.

1. The law of the state or other jurisdiction under which a foreign limited liability company is formed governs all of the following:

a. The internal affairs of the company.

b. The liability of a member as member and a manager as manager for the debts, obligations, or other liabilities of the company.

2. A foreign limited liability company shall not be denied a certificate of authority by reason of any difference between the law of the jurisdiction under which the company is formed and the law of this state.

3. A certificate of authority does not authorize a foreign limited liability company to engage in any business or exercise any power that a limited liability company shall not engage in or exercise in this state.

2008 Acts, ch 1162, §57, 155

489.802 Application for certificate of authority.

1. A foreign limited liability company may apply for a certificate of authority to transact business in this state by delivering an application to the secretary of state for filing. The application must set forth all of the following:

a. The name of the foreign limited liability company or, if its name is unavailable for use in this state, either a name that satisfies the requirements of section 489.108, or an alternate name adopted pursuant to section 489.805, subsection 1.

b. The name of the state or other jurisdiction under whose law it is formed.

c. Its date of formation and period of duration.

d. The street address of its principal office.

e. The address of its registered office in this state and the name of its registered agent at that office.

f. If the foreign limited liability company is member-managed, the name and street and mailing address of at least one member; or if the foreign limited liability company is manager-managed, the name and street and mailing address of at least one manager.

2. The foreign limited liability company shall deliver the completed application to the secretary of state, and shall also deliver to the secretary of state a certificate of existence or a document of similar import duly authenticated by the secretary of state or other official having custody of records in the state or other jurisdiction under whose law the company is formed and which is dated no earlier than ninety days prior to the date the application is filed with the secretary of state.

2008 Acts, ch 1162, §58, 155; 2010 Acts, ch 1100, §15; 2016 Acts, ch 1097, §20
Referred to in §489.113

489.803 Activities not constituting transacting business.

1. Activities of a foreign limited liability company which do not constitute transacting business in this state within the meaning of this article include all of the following:

a. Maintaining, defending, or settling an action or proceeding.

b. Carrying on any activity concerning its internal affairs, including holding meetings of its members or managers.

c. Maintaining accounts in financial institutions.

d. Maintaining offices or agencies for the transfer, exchange, and registration of the company's own securities or maintaining trustees or depositories with respect to those securities.

e. Selling through independent contractors.

f. Soliciting or obtaining orders, whether by mail or electronic means or through employees or agents or otherwise, if the orders require acceptance outside this state before they become contracts.

g. Creating or acquiring indebtedness, mortgages, or security interests in real or personal property.

h. Securing or collecting debts or enforcing mortgages or other security interests in property securing the debts and holding, protecting, or maintaining property so acquired.

i. Conducting an isolated transaction that is completed within thirty days and is not in the course of similar transactions.

j. Transacting business in interstate commerce.

2. For purposes of this article, the ownership in this state of income-producing real property or tangible personal property, other than property excluded under subsection 1, constitutes transacting business in this state.

3. This section does not apply in determining the contacts or activities that may subject a foreign limited liability company to service of process, taxation, or regulation under law of this state other than this chapter.

2008 Acts, ch 1162, §59, 155

489.804 Filing of certificate of authority.

Unless the secretary of state determines that an application for a certificate of authority does not comply with the filing requirements of this chapter, the secretary of state, upon payment of all filing fees, shall file the application of a foreign limited liability company, prepare, sign, and file a certificate of authority to transact business in this state, and send a copy of the filed certificate, together with a receipt for the fees, to the company or its representative.

2008 Acts, ch 1162, §60, 155

489.805 Noncomplying name of foreign limited liability company.

1. A foreign limited liability company whose name does not comply with section 489.108 shall not obtain a certificate of authority until it adopts, for the purpose of transacting business in this state, an alternate name that complies with section 489.108. After obtaining a certificate of authority with an alternate name, a foreign limited liability company shall transact business in this state under the alternate name.

2. If a foreign limited liability company authorized to transact business in this state changes its name to one that does not comply with section 489.108, it may not thereafter transact business in this state until it complies with subsection 1 and obtains an amended certificate of authority.

2008 Acts, ch 1162, §61, 155

Referred to in §489.108, 489.209, 489.802

489.806 Revocation of certificate of authority.

1. A certificate of authority of a foreign limited liability company to transact business in this state may be revoked by the secretary of state in the manner provided in subsections 2 and 3 if the company does not do any of the following:

a. Pay, within sixty days after the due date, any fee, tax, or penalty due the secretary of state under this chapter or law other than this chapter.

b. Deliver, within sixty days after the due date, its biennial report required under section 489.209.

c. Appoint and maintain a registered agent and registered office as required by section 489.113, subsections 1 and 2.

d. Deliver for filing a statement of a change under section 489.114 within thirty days after a change has occurred in the name of its registered agent or the address of its registered office.

2. To revoke a certificate of authority of a foreign limited liability company, the secretary of state must prepare, sign, and file a notice of revocation and send a copy to the company's registered agent for service of process in this state or, if the company does not appoint and maintain a proper registered agent in this state, to the company's principal office. The notice must state all of the following:

a. The revocation's effective date, which must be at least sixty days after the date the secretary of state sends the copy.

b. The grounds for revocation under subsection 1.

3. The authority of a foreign limited liability company to transact business in this state ceases on the effective date in the notice of revocation unless before that date the company cures each ground for revocation stated in the notice filed under subsection 2. If the company cures each ground, the secretary of state shall file a record so stating.

2008 Acts, ch 1162, §62, 155; 2010 Acts, ch 1100, §16, 17

489.807 Cancellation of certificate of authority.

1. To cancel its certificate of authority to transact business in this state, a foreign limited liability company must deliver to the secretary of state for filing a notice of cancellation stating all of the following:

a. The name of the foreign limited liability company and that the company desires to cancel its certificate of authority.

b. That the foreign limited liability company revokes the authority of its registered agent to accept service on its behalf and appoints the secretary of state as its agent for service of process in any proceeding based on a cause of action arising during the time it was authorized to transact business in this state.

c. A mailing address to which the secretary of state may mail a copy of any process served on the secretary of state under paragraph *"b"*.

d. A commitment to notify the secretary of state in the future of any change in the mailing address of the foreign limited liability company.

2. The certificate is canceled when the notice becomes effective.

2008 Acts, ch 1162, §63, 155

489.808 Effect of failure to have certificate of authority.

1. A foreign limited liability company transacting business in this state shall not maintain an action or proceeding in this state unless it has a certificate of authority to transact business in this state.

2. The failure of a foreign limited liability company to have a certificate of authority to transact business in this state does not impair the validity of a contract or act of the company or prevent the company from defending an action or proceeding in this state.

3. The successor to a foreign limited liability company that transacted business in this state without a certificate of authority and the assignee of a cause of action arising out of that business shall not maintain a proceeding based on that cause of action in any court in this state until the foreign limited liability company or its successor obtains a certificate of authority.

4. A district court may stay a proceeding commenced by a foreign limited liability company, its successor, or assignee until it determines whether the foreign limited liability company or its successor or assignee requires a certificate of authority. If it so determines, the district court may further stay the proceeding until the foreign limited liability company or its successor or assignee obtains the certificate.

5. A foreign limited liability company is liable for a civil penalty not to exceed a total of one thousand dollars if it transacts business in this state without a certificate of authority. The attorney general may collect penalties due under this subsection.

6. A member or manager of a foreign limited liability company is not liable for the debts, obligations, or other liabilities of the company solely because the company transacted business in this state without a certificate of authority.

7. If a foreign limited liability company transacts business in this state without a certificate of authority or cancels its certificate of authority, it appoints the secretary of state as its registered agent for service of process for rights of action arising out of the transaction of business in this state.

2008 Acts, ch 1162, §64, 155

489.809 Action by attorney general.

The attorney general may maintain an action to enjoin a foreign limited liability company from transacting business in this state in violation of this article.

2008 Acts, ch 1162, §65, 155

489.810 through 489.900 Reserved.

ARTICLE 9
ACTIONS BY MEMBERS

Referred to in §489.110

489.901 Direct action by member.

1. Subject to subsection 2, a member may maintain a direct action against another member, a manager, or the limited liability company to enforce the member's rights and otherwise protect the member's interests, including rights and interests under the operating agreement or this chapter or arising independently of the membership relationship.

2. A member maintaining a direct action under this section must plead and prove an actual or threatened injury that is not solely the result of an injury suffered or threatened to be suffered by the limited liability company.

2008 Acts, ch 1162, §66, 155
Referred to in §489.409, 489.601

489.902 Derivative action.

A member may maintain a derivative action to enforce a right of a limited liability company as follows:

1. The member first makes a demand on the other members in a member-managed limited liability company, or the managers of a manager-managed limited liability company, requesting that they cause the company to bring an action to enforce the right, and the managers or other members do not bring the action within ninety days from the date the demand was made unless the member has earlier been notified that the demand has been rejected by the company or unless irreparable injury to the company would result by waiting for the expiration of the ninety-day period.

2. A demand under subsection 1 would be futile.

2008 Acts, ch 1162, §67, 155
Referred to in §489.903, 489.904, 489.906

489.903 Proper plaintiff.

1. Except as otherwise provided in subsection 2, a derivative action under section 489.902 may be maintained only by a person that is a member at the time the action is commenced and remains a member while the action continues.

2. If the sole plaintiff in a derivative action dies while the action is pending, the court may permit another member of the limited liability company to be substituted as plaintiff.

2008 Acts, ch 1162, §68, 155

489.904 Pleading.

In a derivative action under section 489.902, the complaint must state with particularity any of the following:

1. The date and content of the plaintiff's demand and the response to the demand by the managers or other members.

2. If a demand has not been made, the reasons a demand under section 489.902, subsection 1, would be futile.

2008 Acts, ch 1162, §69, 155

489.905 Reserved.

489.906 Proceeds and expenses.

1. Except as otherwise provided in subsection 2, all of the following apply:

a. Any proceeds or other benefits of a derivative action under section 489.902, whether by judgment, compromise, or settlement, belong to the limited liability company and not to the plaintiff.

b. If the plaintiff receives any proceeds, the plaintiff shall remit them immediately to the company.

2. If a derivative action under section 489.902 is successful in whole or in part, the court may award the plaintiff reasonable expenses, including reasonable attorney fees and costs, from the recovery of the limited liability company.

2008 Acts, ch 1162, §70, 155

489.907 through 489.1000 Reserved.

ARTICLE 10

MERGER, CONVERSION, AND DOMESTICATION

Referred to in §489.103, 489.401, 489.407, 489.602, 489.603, 489.1202

489.1001 Definitions.

As used in this article:

1. *"Constituent limited liability company"* means a constituent organization that is a limited liability company.

2. *"Constituent organization"* means an organization that is party to a merger.

3. *"Converted organization"* means the organization into which a converting organization converts pursuant to sections 489.1006 through 489.1009.

4. *"Converting limited liability company"* means a converting organization that is a limited liability company.

5. *"Converting organization"* means an organization that converts into another organization pursuant to section 489.1006.

6. *"Domesticated company"* means the company that exists after a domesticating foreign limited liability company or limited liability company effects a domestication pursuant to sections 489.1010 through 489.1013.

7. *"Domesticating company"* means the company that effects a domestication pursuant to sections 489.1010 through 489.1013.

8. *"Governing statute"* means the statute that governs an organization's internal affairs.

9. *"Organization"* means a general partnership, including a limited liability partnership, limited partnership, including a limited liability limited partnership, limited liability company, business trust, corporation, or any other person having a governing statute. The term includes a domestic or foreign organization regardless of whether organized for profit.

10. *"Organizational documents"* means all of the following:

a. For a domestic or foreign general partnership, its partnership agreement.

b. For a limited partnership or foreign limited partnership, its certificate of limited partnership and partnership agreement.

c. For a domestic or foreign limited liability company, its certificate or articles of organization and operating agreement, or comparable records as provided in its governing statute.

d. For a business trust, its agreement of trust and declaration of trust.

e. For a domestic or foreign corporation for profit, its articles of incorporation, bylaws, and other agreements among its shareholders which are authorized by its governing statute, or comparable records as provided in its governing statute.

f. For any other organization, the basic records that create the organization and determine its internal governance and the relations among the persons that own it, have an interest in it, or are members of it.

11. *"Personal liability"* means liability for a debt, obligation, or other liability of an organization which is imposed on a person that co-owns, has an interest in, or is a member of the organization by any of the following:

a. The governing statute solely by reason of the person co-owning, having an interest in, or being a member of the organization.

b. The organization's organizational documents under a provision of the governing statute authorizing those documents to make one or more specified persons liable for all or specified debts, obligations, or other liabilities of the organization solely by reason of the person or persons co-owning, having an interest in, or being a member of the organization.

12. *"Surviving organization"* means an organization into which one or more other organizations are merged whether the organization preexisted the merger or was created by the merger.

2008 Acts, ch 1162, §71, 155

489.1002 Merger.

1. A limited liability company may merge with one or more other constituent organizations pursuant to this section, sections 489.1003 through 489.1005, and a plan of merger, if all of the following apply:

a. The governing statute of each of the other organizations authorizes the merger.

b. The merger is not prohibited by the law of a jurisdiction that enacted any of the governing statutes.

c. Each of the other organizations complies with its governing statute in effecting the merger.

2. A plan of merger must be in a record and must include all of the following:

a. The name and form of each constituent organization.

b. The name and form of the surviving organization and, if the surviving organization is to be created by the merger, a statement to that effect.

c. The terms and conditions of the merger, including the manner and basis for converting the interests in each constituent organization into any combination of money, interests in the surviving organization, and other consideration.

d. If the surviving organization is to be created by the merger, the surviving organization's organizational documents that are proposed to be in a record.

e. If the surviving organization is not to be created by the merger, any amendments to be made by the merger to the surviving organization's organizational documents that are, or are proposed to be, in a record.

2008 Acts, ch 1162, §72, 155

Referred to in §489.1015

489.1003 Action on plan of merger by constituent limited liability company.

1. Subject to section 489.1014, a plan of merger must be consented to by all the members of a constituent limited liability company.

2. Subject to section 489.1014 and any contractual rights, after a merger is approved, and at any time before articles of merger are delivered to the secretary of state for filing under

section 489.1004, a constituent limited liability company may amend the plan or abandon the merger as follows:

a. As provided in the plan.

b. Except as otherwise prohibited in the plan, with the same consent as was required to approve the plan.

2008 Acts, ch 1162, §73, 155
Referred to in §489.1002, 489.1015

489.1004 Filings required for merger — effective date.

1. After each constituent organization has approved a merger, articles of merger must be signed on behalf of all of the following:

a. Each constituent limited liability company, as provided in section 489.203, subsection 1.

b. Each other constituent organization, as provided in its governing statute.

2. Articles of merger under this section must include all of the following:

a. The name and form of each constituent organization and the jurisdiction of its governing statute.

b. The name and form of the surviving organization, the jurisdiction of its governing statute, and, if the surviving organization is created by the merger, a statement to that effect.

c. The date the merger is effective under the governing statute of the surviving organization.

d. If the surviving organization is to be created by the merger, as follows:

(1) If it will be a limited liability company, the company's certificate of organization.

(2) If it will be an organization other than a limited liability company, the organizational document that creates the organization that is in a public record.

e. If the surviving organization preexists the merger, any amendments provided for in the plan of merger for the organizational document that created the organization that are in a public record.

f. A statement as to each constituent organization that the merger was approved as required by the organization's governing statute.

g. If the surviving organization is a foreign organization not authorized to transact business in this state, the street and mailing addresses of an office that the secretary of state may use for the purposes of section 489.1005, subsection 2.

h. Any additional information required by the governing statute of any constituent organization.

3. Each constituent limited liability company shall deliver the articles of merger for filing in the office of the secretary of state.

4. A merger becomes effective under this article as follows:

a. If the surviving organization is a limited liability company, upon the later of any of the following:

(1) Compliance with subsection 3.

(2) Subject to section 489.205, subsection 3, as specified in the articles of merger.

b. If the surviving organization is not a limited liability company, as provided by the governing statute of the surviving organization.

2008 Acts, ch 1162, §74, 155
Referred to in §489.1002, 489.1003, 489.1015

489.1005 Effect of merger.

1. When a merger becomes effective all of the following apply:

a. The surviving organization continues or comes into existence.

b. Each constituent organization that merges into the surviving organization ceases to exist as a separate entity.

c. All property owned by each constituent organization that ceases to exist vests in the surviving organization.

d. All debts, obligations, or other liabilities of each constituent organization that ceases to exist continue as debts, obligations, or other liabilities of the surviving organization.

e. An action or proceeding pending by or against any constituent organization that ceases to exist may be continued as if the merger had not occurred.

f. Except as prohibited by other law, all of the rights, privileges, immunities, powers, and purposes of each constituent organization that ceases to exist vest in the surviving organization.

g. Except as otherwise provided in the plan of merger, the terms and conditions of the plan of merger take effect.

h. Except as otherwise agreed, if a constituent limited liability company ceases to exist, the merger does not dissolve the limited liability company for the purposes of article 7.

i. If the surviving organization is created by the merger, any of the following applies:

(1) If it is a limited liability company, the certificate of organization becomes effective.

(2) If it is an organization other than a limited liability company, the organizational document that creates the organization becomes effective.

j. If the surviving organization preexisted the merger, any amendments provided for in the articles of merger for the organizational document that created the organization become effective.

2. A surviving organization that is a foreign organization consents to the jurisdiction of the courts of this state to enforce any debt, obligation, or other liability owed by a constituent organization, if before the merger the constituent organization was subject to suit in this state on the debt, obligation, or other liability. A surviving organization that is a foreign organization and not authorized to transact business in this state appoints the secretary of state as its registered agent for service of process for the purposes of enforcing a debt, obligation, or other liability under this subsection. Service on the secretary of state under this subsection must be made in the same manner and has the same consequences as in section 489.116, subsections 2 and 3.

2008 Acts, ch 1162, §75, 155; 2010 Acts, ch 1193, §57, 77
Referred to in §489.1002, 489.1004, 489.1015

489.1006 Conversion.

1. An organization other than a limited liability company or a foreign limited liability company may convert to a limited liability company, and a limited liability company may convert to an organization other than a foreign limited liability company pursuant to this section, sections 489.1007 through 489.1009, and a plan of conversion, if all of the following apply:

a. The other organization's governing statute authorizes the conversion.

b. The conversion is not prohibited by the law of the jurisdiction that enacted the other organization's governing statute.

c. The other organization complies with its governing statute in effecting the conversion.

2. A plan of conversion must be in a record and must include all of the following:

a. The name and form of the organization before conversion.

b. The name and form of the organization after conversion.

c. The terms and conditions of the conversion, including the manner and basis for converting interests in the converting organization into any combination of money, interests in the converted organization, and other consideration.

d. The organizational documents of the converted organization that are, or are proposed to be, in a record.

2008 Acts, ch 1162, §76, 155
Referred to in §489.1001

489.1007 Action on plan of conversion by converting limited liability company.

1. Subject to section 489.1014, a plan of conversion must be consented to by all the members of a converting limited liability company.

2. Subject to section 489.1014 and any contractual rights, after a conversion is approved, and at any time before articles of conversion are delivered to the secretary of state for filing under section 489.1008, a converting limited liability company may amend the plan or abandon the conversion as follows:

a. As provided in the plan.

b. Except as otherwise prohibited in the plan, by the same consent as was required to approve the plan.

2008 Acts, ch 1162, §77, 155
Referred to in §489.1001, 489.1006

489.1008 Filings required for conversion — effective date.

1. After a plan of conversion is approved, all of the following apply:

a. A converting limited liability company shall deliver to the secretary of state for filing articles of conversion, which must be signed as provided in section 489.203, subsection 1, and must include all of the following:

(1) A statement that the limited liability company has been converted into another organization.

(2) The name and form of the organization and the jurisdiction of its governing statute.

(3) The date the conversion is effective under the governing statute of the converted organization.

(4) A statement that the conversion was approved as required by this chapter.

(5) A statement that the conversion was approved as required by the governing statute of the converted organization.

(6) All documents required to be filed with the secretary of state in accordance with the governing statute of the converted organization to effectuate the conversion.

(7) If the converted organization is a foreign organization not authorized to transact business in this state, the street and mailing addresses of an office which the secretary of state may use for the purposes of section 489.1009, subsection 3.

b. If the converting organization is not a converting limited liability company, the converting organization shall deliver to the secretary of state for filing a certificate of organization, which must include, in addition to the information required by section 489.201, subsection 2, all of the following:

(1) A statement that the converted organization was converted from another organization.

(2) The name and form of that converting organization and the jurisdiction of its governing statute.

(3) A statement that the conversion was approved in a manner that complied with the converting organization's governing statute.

2. A conversion becomes effective as follows:

a. If the converted organization is a limited liability company, when the certificate of organization takes effect.

b. If the converted organization is not a limited liability company, as provided by the governing statute of the converted organization.

2008 Acts, ch 1162, §78, 155
Referred to in §489.1001, 489.1006, 489.1007

489.1009 Effect of conversion.

1. An organization that has been converted pursuant to this article is for all purposes the same entity that existed before the conversion.

2. When a conversion takes effect all of the following apply:

a. All property owned by the converting organization remains vested in the converted organization.

b. All debts, obligations, or other liabilities of the converting organization continue as debts, obligations, or other liabilities of the converted organization.

c. An action or proceeding pending by or against the converting organization may be continued as if the conversion had not occurred.

d. Except as prohibited by law other than this chapter, all of the rights, privileges, immunities, powers, and purposes of the converting organization remain vested in the converted organization.

e. Except as otherwise provided in the plan of conversion, the terms and conditions of the plan of conversion take effect.

f. Except as otherwise agreed, the conversion does not dissolve a converting limited liability company for the purposes of article 7.

3. A converted organization that is a foreign organization consents to the jurisdiction of the courts of this state to enforce any debt, obligation, or other liability for which the converting limited liability company is liable if, before the conversion, the converting limited liability company was subject to suit in this state on the debt, obligation, or other liability. A converted organization that is a foreign organization and not authorized to transact business in this state appoints the secretary of state as its registered agent for service of process for purposes of enforcing a debt, obligation, or other liability under this subsection. Service on the secretary of state under this subsection must be made in the same manner and has the same consequences as in section 489.116, subsections 2 and 3.

2008 Acts, ch 1162, §79, 155; 2010 Acts, ch 1193, §58, 77
Referred to in §489.1001, 489.1006, 489.1008

489.1010 Domestication.

1. A foreign limited liability company may become a limited liability company pursuant to this section, sections 489.1011 through 489.1013, and a plan of domestication, if all of the following apply:

a. The foreign limited liability company's governing statute authorizes the domestication.

b. The domestication is not prohibited by the law of the jurisdiction that enacted the governing statute.

c. The foreign limited liability company complies with its governing statute in effecting the domestication.

2. A limited liability company may become a foreign limited liability company pursuant to this section, sections 489.1011 through 489.1013, and a plan of domestication, if all of the following apply:

a. The foreign limited liability company's governing statute authorizes the domestication.

b. The domestication is not prohibited by the law of the jurisdiction that enacted the governing statute.

c. The foreign limited liability company complies with its governing statute in effecting the domestication.

3. A plan of domestication must be in a record and must include all of the following:

a. The name of the domesticating company before domestication and the jurisdiction of its governing statute.

b. The name of the domesticated company after domestication and the jurisdiction of its governing statute.

c. The terms and conditions of the domestication, including the manner and basis for converting interests in the domesticating company into any combination of money, interests in the domesticated company, and other consideration.

d. The organizational documents of the domesticated company that are, or are proposed to be, in a record.

2008 Acts, ch 1162, §80, 155
Referred to in §489.1001, 489.1013

489.1011 Action on plan of domestication by domesticating limited liability company.

1. A plan of domestication must be consented to as follows:

a. By all the members, subject to section 489.1014, if the domesticating company is a limited liability company.

b. As provided in the domesticating company's governing statute, if the company is a foreign limited liability company.

2. Subject to any contractual rights, after a domestication is approved, and at any time before articles of domestication are delivered to the secretary of state for filing under section 489.1012, a domesticating limited liability company may amend the plan or abandon the domestication as follows:

a. As provided in the plan.

b. Except as otherwise prohibited in the plan, by the same consent as was required to approve the plan.

2008 Acts, ch 1162, §81, 155
Referred to in §489.1001, 489.1010

489.1012 Filings required for domestication — effective date.

1. After a plan of domestication is approved, a domesticating company shall deliver to the secretary of state for filing articles of domestication, which must include all of the following:

a. A statement, as the case may be, that the company has been domesticated from or into another jurisdiction.

b. The name of the domesticating company and the jurisdiction of its governing statute.

c. The name of the domesticated company and the jurisdiction of its governing statute.

d. The date the domestication is effective under the governing statute of the domesticated company.

e. If the domesticating company was a limited liability company, a statement that the domestication was approved as required by this chapter.

f. If the domesticating company was a foreign limited liability company, a statement that the domestication was approved as required by the governing statute of the other jurisdiction.

g. If the domesticated company was a foreign limited liability company not authorized to transact business in this state, the street and mailing addresses of an office that the secretary of state may use for the purposes of section 489.1013, subsection 2.

2. A domestication becomes effective as follows:

a. When the certificate of organization takes effect, if the domesticated company is a limited liability company.

b. According to the governing statute of the domesticated company, if the domesticated organization is a foreign limited liability company.

2008 Acts, ch 1162, §82, 155
Referred to in §489.1001, 489.1010, 489.1011

489.1013 Effect of domestication.

1. When a domestication takes effect, all of the following apply:

a. The domesticated company is for all purposes the company that existed before the domestication.

b. All property owned by the domesticating company remains vested in the domesticated company.

c. All debts, obligations, or other liabilities of the domesticating company continue as debts, obligations, or other liabilities of the domesticated company.

d. An action or proceeding pending by or against a domesticating company may be continued as if the domestication had not occurred.

e. Except as prohibited by other law, all of the rights, privileges, immunities, powers, and purposes of the domesticating company remain vested in the domesticated company.

f. Except as otherwise provided in the plan of domestication, the terms and conditions of the plan of domestication take effect.

g. Except as otherwise agreed, the domestication does not dissolve a domesticating limited liability company for the purposes of article 7.

2. A domesticated company that is a foreign limited liability company consents to the jurisdiction of the courts of this state to enforce any debt, obligation, or other liability owed by the domesticating company, if, before the domestication, the domesticating company was subject to suit in this state on the debt, obligation, or other liability. A domesticated company that is a foreign limited liability company and not authorized to transact business in this state appoints the secretary of state as its registered agent for service of process for purposes of enforcing a debt, obligation, or other liability under this subsection. Service on the secretary of state under this subsection must be made in the same manner and has the same consequences as in section 489.116, subsections 2 and 3.

3. If a limited liability company has adopted and approved a plan of domestication under section 489.1010 providing for the company to be domesticated in a foreign jurisdiction, a

statement surrendering the company's certificate of organization must be delivered to the secretary of state for filing setting forth all of the following:

a. The name of the company.

b. A statement that the certificate of organization is being surrendered in connection with the domestication of the company in a foreign jurisdiction.

c. A statement that the domestication was approved as required by this chapter.

d. The jurisdiction of formation of the domesticated foreign limited liability company.

2008 Acts, ch 1162, §83, 155; 2010 Acts, ch 1061, §65; 2010 Acts, ch 1193, §59, 77
Referred to in §489.1001, 489.1010, 489.1012

489.1014 Restrictions on approval of mergers, conversions, and domestications.

1. If a member of a constituent, converting, or domesticating limited liability company will have personal liability with respect to a surviving, converted, or domesticated organization, approval or amendment of a plan of merger, conversion, or domestication is ineffective without the consent of the member, unless all of the following apply:

a. The company's operating agreement provides for approval of a merger, conversion, or domestication with the consent of fewer than all the members.

b. The member has consented to the provision of the operating agreement.

2. A member does not give the consent required by subsection 1 merely by consenting to a provision of the operating agreement that permits the operating agreement to be amended with the consent of fewer than all the members.

2008 Acts, ch 1162, §84, 155
Referred to in §489.110, 489.1003, 489.1007, 489.1011

489.1015 Merger of domestic cooperative into a domestic limited liability company.

1. A limited liability company may merge with a domestic cooperative only as provided by this section. A limited liability company may merge with one or more domestic cooperatives if all of the following apply:

a. Only one limited liability company and one or more domestic cooperatives are parties to the merger.

b. When the merger becomes effective, the separate existence of each domestic cooperative ceases and the limited liability company is the surviving entity per organization.

c. As to each domestic cooperative, the plan of merger is initiated and adopted, and the merger is effectuated, as provided in section 501A.1101.

d. As to the limited liability company, the plan of merger complies with section 489.1002, the plan of merger is approved as provided in section 489.1003, and the articles of merger are prepared, signed, and filed as provided in section 489.1004.

e. Notwithstanding section 489.1002 or 489.1005, the surviving organization must be the limited liability company.

2. Section 501A.1103 governs the abandonment by a domestic cooperative of a merger authorized by this section. Section 489.1003, subsection 2, governs the abandonment by a limited liability company of a merger authorized by this section.

2008 Acts, ch 1162, §85, 155
Referred to in §501A.1101, 501A.1102, 501A.1103

489.1016 Article not exclusive.

This article does not preclude an entity from being merged, converted, or domesticated under law other than this chapter.

2008 Acts, ch 1162, §86, 155

489.1017 through 489.1100 Reserved.

ARTICLE 11
PROFESSIONAL LIMITED LIABILITY COMPANIES

Referred to in §542.7

489.1101 Definitions.

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

1. *"Employee"* or *"agent"* does not include a clerk, stenographer, secretary, bookkeeper, technician, or other person who is not usually and ordinarily considered by custom and practice to be practicing a profession nor any other person who performs all that person's duties for the professional limited liability company under the direct supervision and control of one or more managers, employees, or agents of the professional limited liability company who are duly licensed in this state to practice a profession which the limited liability company is authorized to practice in this state. This article does not require any such persons to be licensed to practice a profession if they are not required to be licensed under any other law of this state.

2. *"Foreign professional limited liability company"* means a limited liability company organized under laws other than the laws of this state for a purpose for which a professional limited liability company may be organized under this article.

3. *"Licensed"* includes registered, certified, admitted to practice, or otherwise legally authorized under the laws of this state.

4. *"Profession"* means the profession of certified public accountancy, architecture, chiropractic, dentistry, physical therapy, practice as a physician assistant, psychology, professional engineering, land surveying, landscape architecture, law, medicine and surgery, optometry, osteopathic medicine and surgery, accounting practitioner, podiatry, real estate brokerage, speech pathology, audiology, veterinary medicine, pharmacy, nursing, marital and family therapy or mental health counseling, provided that the marital and family therapist or mental health counselor is licensed under chapters 147 and 154D, or social work, provided that the social worker is licensed pursuant to chapter 147 and section 154C.3, subsection 1, paragraph *"c"*.

5. *"Professional limited liability company"* means a limited liability company subject to this article, except a foreign professional limited liability company.

6. *"Regulating board"* means any board, commission, court, or governmental authority which, under the laws of this state, is charged with the licensing, registration, certification, admission to practice, or other legal authorization of the practitioners of any profession.

7. *a.* *"Voluntary transfer"* includes a sale, voluntary assignment, gift, pledge, or encumbrance; a voluntary change of legal or equitable ownership or beneficial interest; or a voluntary change of persons having voting rights with respect to any transferable interest, except as proxies.

b. *"Voluntary transfer"* does not include a transfer of an individual's interest in a limited liability company or other property to a guardian or conservator appointed for that individual or the individual's property.

2008 Acts, ch 1088, §141; 2008 Acts, ch 1162, §87, 155; 2011 Acts, ch 1, §1, 5, 6; 2018 Acts, ch 1066, §1, 5

Subsection 4 amended

489.1102 Purposes and powers.

1. A professional limited liability company shall be organized only for the purpose of engaging in the practice of one specific profession, or two or more specific professions which could lawfully be practiced in combination by a licensed individual or a partnership of licensed individuals, and for the additional purpose of doing all lawful things which may be incidental to or necessary or convenient in connection with the practice of the profession or professions. The certificate of organization of a professional limited liability company shall state in substance that the purposes for which the professional limited liability company is organized are to engage in the general practice of a specified profession or professions, or

one or more specified branches or divisions thereof, and to do all lawful things which may be incidental to or necessary or convenient in connection with the practice of the profession or professions.

2. *a.* For purposes of this section, medicine and surgery, osteopathic medicine and surgery, and practice as a physician assistant shall be deemed to be professions which could lawfully be practiced in combination by licensed individuals or a partnership of licensed individuals.

b. Nothing in this section shall be construed to expand the scope of practice of a physician assistant or modify the requirement in section 148C.4 that a physician assistant perform medical services under the supervision of a licensed physician.

c. For purposes of this section, marital and family therapy, mental health counseling, psychology, and social work shall be deemed to be professions which could lawfully be practiced in combination by licensed individuals or a partnership of licensed individuals.

2008 Acts, ch 1162, §88, 155; 2011 Acts, ch 1, §2, 5, 6; 2018 Acts, ch 1066, §2, 5
Referred to in §489.1105, 489.1114
Subsection 2, NEW paragraph c

489.1103 Name.

The name of a professional limited liability company, the name of a foreign professional limited liability company or its name as modified for use in this state, and any fictitious name or trade name adopted by a professional limited liability company or foreign professional limited liability company shall contain the words "Professional Limited Company", "Professional Limited Liability Company", or the abbreviation "P.L.C.", "PLC", "P.L.L.C.", or "PLLC", and except for the addition of such words or abbreviation, shall be a name which could lawfully be used by a licensed individual or by a partnership of licensed individuals in the practice in this state of a profession which the professional limited liability company is authorized to practice. Each regulating board may by rule adopt additional requirements as to the corporate names and fictitious or trade names of professional limited liability companies and foreign professional limited liability companies which are authorized to practice a profession which is within the jurisdiction of the regulating board.

2008 Acts, ch 1162, §89, 155; 2011 Acts, ch 56, §3, 5, 6; 2016 Acts, ch 1097, §21

489.1104 Who may organize.

One or more individuals having capacity to contract and licensed to practice a profession in this state in which the professional limited liability company is to be authorized to practice, may organize a professional limited liability company.

2008 Acts, ch 1162, §90, 155

489.1105 Practice by professional limited liability company.

1. Notwithstanding any other statute or rule of law, a professional limited liability company may practice a profession, but may do so in this state only through a member, manager, employee, or agent, who is licensed to practice the same profession in this state. In its practice of a profession, a professional limited liability company shall not do any act which could not lawfully be done by an individual licensed to practice the profession which the professional limited liability company is authorized to practice.

2. *a.* This section shall not prohibit persons practicing medicine and surgery, persons practicing osteopathic medicine and surgery, or persons practicing as physician assistants from practicing their respective professions in lawful combination pursuant to section 489.1102.

b. Nothing in this section shall be construed to expand the scope of practice of a physician assistant or modify the requirement in section 148C.4 that a physician assistant perform medical services under the supervision of a licensed physician.

2008 Acts, ch 1162, §91, 155; 2011 Acts, ch 1, §3, 5, 6

489.1106 Professional regulation.

A professional limited liability company shall not be required to register with or to obtain any license, registration, certificate, or other legal authorization from a regulating board

in order to practice a profession. Except as provided in this section, this article does not restrict or limit in any manner the authority or duties of any regulating board with respect to individuals practicing a profession which is within the jurisdiction of the regulating board, even if the individual is a member, manager, employee, or agent of a professional limited liability company or foreign professional limited liability company and practices the individual's profession through such professional limited liability company.

2008 Acts, ch 1162, §92, 155

489.1107 Relationship and liability to persons served.

This article does not modify any law applicable to the relationship between an individual practicing a profession and a person receiving professional services, including but not limited to any liability arising out of such practice or any law respecting privileged communications. This article does not modify or affect the ethical standards or standards of conduct of any profession, including but not limited to any standards prohibiting or limiting the practice of the profession by a limited liability company or prohibiting or limiting the practice of two or more professions in combination. All such standards shall apply to the members, managers, employees, and agents through whom a professional limited liability company practices any profession in this state, to the same extent that the standards apply to an individual practitioner.

2008 Acts, ch 1162, §93, 155

489.1108 Issuance of interests.

An interest of a professional limited liability company shall be issued only to an individual who is licensed to practice in any state a profession which the professional limited liability company is authorized to practice. Interests of a professional limited liability company shall not at any time be issued in, transferred into, or held in joint tenancy, tenancy in common, or any other form of joint ownership or co-ownership. Chapter 502 shall not be applicable to nor govern any transaction relating to any interests of a professional limited liability company.

2008 Acts, ch 1162, §94, 155

489.1109 Assignment of interests.

A member or other person shall not make a voluntary assignment of an interest in a professional limited liability company to any person, except to the professional limited liability company or to an individual who is licensed to practice in this state a profession which the limited liability company is authorized to practice. The certificate of organization or operating agreement of the professional limited liability company may contain any additional provisions restricting the assignment of interests. Unless the certificate of organization or an operating agreement otherwise provides, a voluntary assignment requires the unanimous consent of the members.

2008 Acts, ch 1162, §95, 155

489.1110 Convertible interests — rights and options.

A professional limited liability company shall not create or issue any interest convertible into an interest of the professional limited liability company. The provisions of this article with respect to the issuance and transfer of interests apply to the creation, issuance, and transfer of any right or option entitling the holder to purchase from a professional limited liability company any interest of the professional limited liability company. A right or option shall not be transferable, whether voluntarily, involuntarily, by operation of law, or in any other manner. Upon the death of the holder, or when the holder ceases to be licensed to practice a profession in this state which the professional limited liability company is authorized to practice, the right or option shall expire.

2008 Acts, ch 1162, §96, 155

489.1111 Voting trust — proxy.

A member of a professional limited liability company shall not create or enter into a voting trust or any other agreement conferring upon any other person the right to vote or

otherwise represent any interests of a professional limited liability company, and no such voting trust or agreement is valid or effective. Any proxy of a member of a professional limited liability company shall be an individual licensed to practice a profession in this state which the professional limited liability company is authorized to practice. Any provision in any proxy instrument denying the right of the member to revoke the proxy at any time or for any period of time is not valid or effective. This section does not otherwise limit the right of a member to vote by proxy, but the certificate of organization or operating agreement of the professional limited liability company may further limit or deny the right to vote by proxy.

2008 Acts, ch 1162, §97, 155

489.1112 Required purchase by professional limited liability company of its own interests.

1. Notwithstanding any other statute or rule of law, a professional limited liability company shall purchase its own interests as provided in this section; and a member of a professional limited liability company and the member's executor, administrator, legal representative, and successors in interest, shall sell and transfer the interests held by them as provided in this section.

2. Upon the death of a member, the professional limited liability company shall immediately purchase all interests held by the deceased member.

3. In order to remain a member of a professional limited liability company, the member shall at all times be licensed to practice in this state a profession which the professional limited liability company is authorized to practice. When a member does not have or ceases to have this qualification, the professional limited liability company shall immediately purchase all interests held by that member.

4. When a person other than a member of record becomes entitled to have interests of a professional limited liability company transferred into that person's name or to exercise voting rights, except as a proxy, with respect to interests of the professional limited liability company, the professional limited liability company shall immediately purchase the interests. Without limiting the generality of the foregoing, this section shall be applicable whether the event occurs as a result of appointment of a guardian or conservator for a member or the member's property, transfer of interests by operation of law, involuntary transfer of interests, judicial proceeding, execution, levy, bankruptcy proceeding, receivership proceeding, foreclosure or enforcement of a pledge or encumbrance, or any other situation or occurrence. However, this section does not apply to any voluntary transfer of interests as defined in this article.

5. Interests purchased by a professional limited liability company under this section shall be transferred to the professional limited liability company as of the close of business on the date of the death or other event which requires purchase. The member and the member's executors, administrators, legal representatives, or successors in interest, shall promptly do all things which may be necessary or convenient to cause transfer to be made as of the transfer date. However, the interests shall promptly be transferred on the books and records of the professional limited liability company as of the transfer date, notwithstanding any delay in transferring or surrendering the interests or certificates representing the interests, and the transfer shall be valid and effective for all purposes as of the close of business on the transfer date. The purchase price for such interests shall be paid as provided in this article, but the transfer of interests to the professional limited liability company as provided in this section shall not be delayed or affected by any delay or default in making payment.

6. Notwithstanding subsections 1 through 5, purchase by the professional limited liability company is not required upon the occurrence of any event other than death of a member, if the professional limited liability company is dissolved within sixty days after the occurrence of the event. The certificate of organization or operating agreement of the professional limited liability company may provide that purchase is not required upon the death of a member, if the professional limited liability company is dissolved within sixty days after the date of the member's death.

7. Unless otherwise provided in the certificate of organization or an operating agreement

of the professional limited liability company or in an agreement among all members of the professional limited liability company, all of the following apply:

a. The purchase price for interests shall be its book value as of the end of the month immediately preceding the death or other event which requires purchase. Book value shall be determined from the books and records of the professional limited liability company in accordance with the regular method of accounting used by the professional limited liability company, uniformly and consistently applied. Adjustments to book value shall be made, if necessary, to take into account work in process and accounts receivable. A final determination of book value made in good faith by an independent certified public accountant or firm of certified public accountants employed by the professional limited liability company for the purpose shall be conclusive on all persons.

b. The purchase price shall be paid in cash as follows:

(1) Upon the death of a member, thirty percent of the purchase price shall be paid within ninety days after death, and the balance shall be paid in three equal annual installments on the first three anniversaries of the death.

(2) Upon the happening of any other event referred to in this section, one-tenth of the purchase price shall be paid within ninety days after the date of the event, and the balance shall be paid in three equal annual installments on the first three anniversaries of the date of the event.

c. Interest from the date of death or other event shall be payable annually on principal payment dates, at the rate of six percent per annum on the unpaid balance of the purchase price.

d. All persons who are members of the professional limited liability company on the date of death or other event, and their executors, administrators, and legal representatives, shall, to the extent the professional limited liability company fails to meet its obligations under this section, be jointly liable for the payment of the purchase price and interest in proportion to their percentage of ownership of the professional limited liability company's interests, disregarding interests of the deceased or withdrawing member.

e. The part of the purchase price remaining unpaid after the initial payment shall be evidenced by a negotiable promissory note, which shall be executed by the professional limited liability company and all members liable for payment. Any person liable on the note shall have the right to prepay the note in full or in part at any time.

f. If the person making any payment is not reasonably able to determine which of two or more persons is entitled to receive a payment, or if the payment is payable to a person who is unknown, or who is under disability and there is no person legally competent to receive the payment, or who cannot be found after the exercise of reasonable diligence by the person making the payment, it shall be deposited with the treasurer of state and shall be subject to the provisions of section 490.1440 with respect to funds deposited with the treasurer of state upon the voluntary or involuntary dissolution of a business corporation.

8. Notwithstanding the other provisions of this section, no part of the purchase price shall be required to be paid until the certificates, if any, representing the interests have been surrendered to the professional limited liability company.

9. Notwithstanding the other provisions of this section, payment of any part of the purchase price for interests of a deceased member shall not be required until the executor or administrator of the deceased member provides any indemnity, release, or other document from any taxing authority, which is reasonably necessary to protect the professional limited liability company against liability for estate, inheritance, and death taxes.

10. The certificate of organization or an operating agreement of the professional limited liability company or an agreement among all members of a professional limited liability company may provide for a different purchase price, a different method of determining the purchase price, a different interest rate or no interest, and other terms, conditions, and schedules of payment.

11. The certificate of organization or an operating agreement of the professional limited liability company or an agreement among all members of a professional limited liability company may provide for the optional or mandatory purchase of its own interests by the

professional limited liability company in other situations, subject to any applicable law regarding such a purchase.

2008 Acts, ch 1162, §98, 155

489.1113 Certificates representing interests.

Each certificate representing an interest of a professional limited liability company shall state in substance that the certificate represents an interest in a professional limited liability company and is not transferable except as expressly provided in this article and in the certificate of organization or an operating agreement of the professional limited liability company.

2008 Acts, ch 1162, §99, 155

489.1114 Management.

All managers of a professional limited liability company shall at all times be individuals who are licensed to practice a profession in this state or a lawful combination of professions pursuant to section 489.1102, which the limited liability company is authorized to practice. A person who is not licensed shall have no authority or duties in the management or control of the professional limited liability company. If a manager ceases to have this qualification, the manager shall immediately and automatically cease to hold such management position.

2008 Acts, ch 1162, §100, 155; 2011 Acts, ch 1, §4, 5, 6

489.1115 Merger.

A professional limited liability company shall not merge with any entity except another professional limited liability company subject to this article or a professional corporation subject to chapter 496C. Merger is not permitted unless the surviving or new professional limited liability company is a professional limited liability company which complies with all requirements of this article.

2008 Acts, ch 1162, §101, 155

489.1116 Dissolution or liquidation.

A violation of any provision of this article by a professional limited liability company or any of its members or managers shall be cause for its involuntary dissolution, or liquidation of its assets and business by the district court. Upon the death of the last remaining member of a professional limited liability company, or when the last remaining member is not licensed or ceases to be licensed to practice a profession in this state which the professional limited liability company is authorized to practice, or when any person other than the member of record becomes entitled to have all interests of the last remaining member of the professional limited liability company transferred into that person's name or to exercise voting rights, except as a proxy, with respect to such interests, the professional limited liability company shall not practice any profession and it shall be promptly dissolved. However, if prior to dissolution all outstanding interests of the professional limited liability company are acquired by two or more persons licensed to practice a profession in this state which the professional limited liability company is authorized to practice, the professional limited liability company need not be dissolved and may practice the profession as provided in this article.

2008 Acts, ch 1162, §102, 155

489.1117 Foreign professional limited liability company.

1. A foreign professional limited liability company may practice a profession in this state if it complies with the provisions of this article. The secretary of state may prescribe forms for this purpose. A foreign professional limited liability company may practice a profession in this state only through members, managers, employees, and agents who are licensed to practice the profession in this state. The provisions of this article with respect to the practice of a profession by a professional limited liability company apply to a foreign professional limited liability company.

2. This article does not prohibit the practice of a profession in this state by an individual who is a member, manager, employee, or agent of a foreign professional limited liability

company, if the individual could lawfully practice the profession in this state in the absence of any relationship to a foreign professional limited liability company. This subsection applies regardless of whether or not the foreign professional limited liability company is authorized to practice a profession in this state.

2008 Acts, ch 1162, §103, 155

489.1118 Limited liability companies organized under the other laws.

This article does not apply to or interfere with the practice of any profession by or through any professional limited liability company organized after July 1, 1992, under any other law of this state or any other state or country, if the practice is lawful under any other statute or rule of law of this state. Any such professional limited liability company may voluntarily elect to adopt this article and become subject to its provisions, by amending its certificate of organization to be consistent with all provisions of this article and by stating in its amended certificate of organization that the limited liability company has voluntarily elected to adopt this article. Any limited liability company organized under any law of any other state or country may become subject to the provisions of this article by complying with all provisions of this article with respect to foreign professional limited liability companies.

2008 Acts, ch 1162, §104, 155

489.1119 Conflicts with other provisions of this chapter.

The provisions of this article shall prevail over any inconsistent provisions of this chapter.

2008 Acts, ch 1162, §105, 155

489.1120 through 489.1200 Reserved.

ARTICLE 12

SERIES LIMITED LIABILITY COMPANIES

489.1201 Series of transferable interests.

1. An operating agreement may establish or provide for the establishment of a designated series of transferable interests having separate rights, powers, or duties with respect to specified property or obligations of the limited liability company or profits and losses associated with specified property or obligations, and, to the extent provided in the operating agreement, any such series may have a separate business purpose or investment objective. The name of each series must contain the name of the limited liability company and be distinguishable from the name of any other series set forth in the certificate of organization.

2. Notwithstanding contrary provisions of this chapter, the debts, liabilities, and obligations incurred, contracted for, or otherwise existing with respect to a particular series shall be enforceable against the assets of that series only, and not against the assets of the limited liability company generally, if all of the following apply:

a. The operating agreement creates one or more series.

b. Separate and distinct records are maintained for that series and separate and distinct records account for the assets associated with that series. The assets associated with a series must be accounted for separately from the other assets of the limited liability company, including another series.

c. The operating agreement provides for such limitation on liabilities.

d. Notice of the establishment of the series and of the limitation on liabilities of the series is set forth in the certificate of organization of the limited liability company. The filing of the certificate of organization containing a notice of the limitation on liabilities of a series in the office of the secretary of state constitutes notice of the limitation on liabilities of such series.

3. A series meeting all of the conditions of subsection 2 shall be treated as a separate entity to the extent set forth in the certificate of organization.

4. Notwithstanding section 489.304, or a contrary provision in an operating agreement,

a member or manager may agree to be obligated personally for any or all of the debts, obligations, or liabilities of one or more series.

5. An operating agreement may provide for classes or groups of members or managers associated with a series having such relative rights, powers, and duties as the operating agreement may provide. The operating agreement may provide for the future creation of additional classes or groups of members or managers associated with the series having such relative rights, powers, and duties as may from time to time be established, including rights, powers, and duties senior to existing classes and groups of members or managers associated with the series. An operating agreement may provide for the taking of an action, including the amendment of the operating agreement, without the vote or approval of any member or manager or class or group of members or managers, including all action to create under the provisions of the operating agreement a class or group of the series of membership interests that was not previously outstanding. An operating agreement may provide that any member or class or group of members associated with a series does not have voting rights.

6. An operating agreement may grant to all or certain identified members or managers or a specified class or group of the members or managers associated with a series the right to vote on any matter separately or with all or any class or group of the members or managers associated with the series. Voting by members or managers associated with a series may be on a per capita, number, financial interest, class, group, or other basis.

7. Except to the extent modified by this article, the provisions of this chapter which are generally applicable to a limited liability company, and its managers, members and transferees, shall be applicable to each series with respect to the operations of such series.

2008 Acts, ch 1162, §106, 155
Referred to in §10.1, 10.10, 489.1202, 489.1205

489.1202 Management of a series.

1. A series is member-managed unless the operating agreement does any of the following:

a. Expressly provides any of the following:

(1) The series is or will be "manager-managed".

(2) The series is or will be "managed by managers".

(3) Management of the series is or will be "vested in managers".

b. Includes words of similar import.

2. In a member-managed series, unless modified pursuant to section 489.1201, subsections 5 and 6, all of the following rules apply:

a. The management and conduct of the series are vested in the members of the series.

b. Each series member has equal rights in the management and conduct of the series' activities.

c. A difference arising among series members as to a matter in the ordinary course of the activities of the series may be decided by a majority of the series members.

d. An act outside the ordinary course of the activities of the series may be undertaken only with the consent of all members of the series.

e. The operating agreement may be amended only with the consent of all members of the series.

3. In a manager-managed series, all of the following rules apply:

a. Except as otherwise expressly provided in this chapter, any matter relating to the activities of the series is decided exclusively by the managers of the series.

b. Each series manager has equal rights in the management and conduct of the activities of the series.

c. A difference arising among managers of a series as to a matter in the ordinary course of the activities of the series may be decided by a majority of the managers of the series.

d. Unless modified pursuant to section 489.1201, subsections 5 and 6, the consent of all members of the series is required to do any of the following:

(1) Sell, lease, exchange, or otherwise dispose of all, or substantially all, of the series' property, with or without the goodwill, outside the ordinary course of the series' activities.

(2) Approve a merger, conversion, or domestication under article 10.

(3) Undertake any other act outside the ordinary course of the series' activities.

(4) Amend the operating agreement as it pertains to the series.

e. A manager of the series may be chosen at any time by the consent of a majority of the members of the series and remains a manager of the series until a successor has been chosen, unless the series manager at an earlier time resigns, is removed, or dies, or, in the case of a series manager that is not an individual, terminates. A series manager may be removed at any time by the consent of a majority of the members without notice or cause.

f. A person need not be a series member to be a manager of a series, but the dissociation of a series member that is also a series manager removes the person as a manager of the series. If a person that is both a series manager and a series member ceases to be a manager of the series, that cessation does not by itself dissociate the person as a member of the series.

g. A person's ceasing to be a series manager does not discharge any debt, obligation, or other liability to the series or members of the series which the person incurred while a manager of the series.

4. An action requiring the consent of members of a series under this chapter may be taken without a meeting, and a member of a series may appoint a proxy or other agent to consent or otherwise act for the series member by signing an appointing record, personally or by the series member's agent.

5. The dissolution of a series does not affect the applicability of this section. However, a person that wrongfully causes dissolution of the series loses the right to participate in management as a series member and a series manager.

6. This chapter does not entitle a series member of a series to remuneration for services performed for a member-managed series, except for reasonable compensation for services rendered in winding up the activities of the series.

2008 Acts, ch 1162, §107, 155

489.1203 Series distributions.

1. Any distribution made by a series before its dissolution and winding up must be in equal shares among the series members and dissociated series members, except to the extent necessary to comply with any transfer effective under section 489.502 and any charging order in effect under section 489.503.

2. A person has a right to a distribution before the dissolution and winding up of a series only if the series decides to make an interim distribution. A person's dissociation does not entitle the person to a distribution.

3. A person does not have a right to demand or receive a distribution from a series in any form other than money. Except as otherwise provided in section 489.708, subsection 3, a series may distribute an asset in kind if each part of the asset is fungible with each other part and each person receives a percentage of the asset equal in value to the person's share of distributions.

4. If a series member or transferee becomes entitled to receive a distribution, the series member or transferee has the status of, and is entitled to all remedies available to, a creditor of the series with respect to the distribution.

5. *a.* A series shall not make a distribution if after the distribution any of the following occurs:

(1) The series would not be able to pay its debts as they become due in the ordinary course of the series' activities.

(2) The series' total assets would be less than the sum of its total liabilities plus the amount that would be needed, if the series were to be dissolved, wound up, and terminated at the time of the distribution, to satisfy the preferential rights upon dissolution, winding up, and termination of members whose preferential rights are superior to those of persons receiving the distribution.

b. As used in paragraph "*a*", "*distribution*" does not include amounts constituting reasonable compensation for present or past services or reasonable payments made in the ordinary course of business under a bona fide retirement plan or other benefits program.

6. A series may base a determination that a distribution is not prohibited under subsection 1 on financial statements prepared on the basis of accounting practices and principles that

are reasonable in the circumstances or on a fair valuation or other method that is reasonable under the circumstances.

7. Except as otherwise provided in subsection 9, the effect of a distribution under subsection 1 is measured as follows:

a. In the case of a distribution by purchase, redemption, or other acquisition of a transferable interest in the series, as of the date money or other property is transferred or debt incurred by the series.

b. In all other cases, as of the date when one of the following occurs:

(1) The distribution is authorized, if the payment occurs within one hundred twenty days after that date.

(2) The payment is made, if the payment occurs more than one hundred twenty days after the distribution is authorized.

8. A series' indebtedness to a series member incurred by reason of a distribution made in accordance with this section is at parity with the series' indebtedness to its general, unsecured creditors.

9. A series' indebtedness, including indebtedness issued in connection with or as part of a distribution, is not a liability for purposes of subsection 5 if the terms of the indebtedness provide that payment of principal and interest are made only to the extent that a distribution could be made to members of the series under this section. If such indebtedness is issued as a distribution, each payment of principal or interest on the indebtedness is treated as a distribution, the effect of which is measured on the date the payment is made.

10. *a.* Except as otherwise provided in paragraph "*b*", if a member of a member-managed series or manager of a manager-managed series consents to a distribution made in violation of this section and in consenting to the distribution fails to comply with section 489.409, the member or manager is personally liable to the series for the amount of the distribution that exceeds the amount that could have been distributed without the violation of this section.

b. To the extent the operating agreement of a member-managed series expressly relieves a series member of the authority and responsibility to consent to distributions and imposes that authority and responsibility on one or more other members of the series, the liability stated in paragraph "*a*" applies to the other members of the series and not the member of the series that the operating agreement relieves of authority and responsibility.

11. A person that receives a distribution knowing that the distribution to that person was made in violation of this section is personally liable to the limited liability company but only to the extent that the distribution received by the person exceeded the amount that could have been properly paid under this section.

12. A person against which an action is commenced because the person is liable under subsection 10 may do any of the following:

a. Implead any other person that is subject to liability under subsection 10 and seek to compel contribution from the person.

b. Implead any person that received a distribution in violation of subsection 11 and seek to compel contribution from the person in the amount the person received in violation of that subsection.

13. An action under this section is barred if not commenced within two years after the distribution.

2008 Acts, ch 1162, §108, 155; 2009 Acts, ch 133, §162, 163

489.1204 Dissociation from a series.

Unless otherwise provided in the operating agreement, a member shall cease to be associated with a series and to have the power to exercise any rights or powers of a member with respect to such series upon the assignment of all of the member's transferable interest with respect to such series. Except as otherwise provided in an operating agreement, an event under this chapter or identified in an operating agreement that causes a member to cease to be associated with a series, by itself, shall not cause such member to cease to be associated with any other series or terminate the continued membership of a member in the limited liability company.

2008 Acts, ch 1162, §109, 155

489.1205 Termination of a series.

1. Except to the extent otherwise provided in the operating agreement, a series may be terminated and its affairs wound up without causing the dissolution of the limited liability company. The termination of a series established pursuant to section 489.1201, subsection 1, shall not affect the limitation on a liability of such series provided by section 489.1201, subsection 2. A series is not terminated and its affairs shall continue despite the dissolution of the limited liability company under article 7 but the series shall be terminated and its affairs shall be wound up upon the first to occur of any of the events described in section 489.701, subsection 1, paragraphs "*a*" through "*e*", as applied to the series.

2. Notwithstanding section 489.702, unless otherwise provided in the operating agreement, any of the following persons may wind up the affairs of a series:

a. A manager associated with a series who has not wrongfully terminated the series.

b. If there is no manager of a series, the members associated with the series or a person approved by the members associated with the series.

c. If there is more than one class or group of members associated with the series, then by each class or group of members associated with the series, in either case, by members who own more than fifty percent of the transferable interests of the series owned by all of the members associated with the series or by the members of each class or group associated with the series.

3. The persons winding up the affairs of a series, in the name of the series and for and on behalf of the series, may take all actions with respect to the series as are permitted under section 489.702 for a limited liability company. The persons winding up the affairs of a series shall provide for the claims and obligations of the series as provided in section 489.708 for a limited liability company and distribute the assets of the series as provided in section 489.708 for a limited liability company. An action taken pursuant to this subsection shall not affect the liability of a member and shall not impose liability on a liquidating trustee.

2008 Acts, ch 1162, §110, 155

489.1206 Foreign series.

A foreign limited liability company that is authorized to do business in this state under article 8 which is governed by an operating agreement that establishes or provides for the establishment of designated series of transferable interests having separate rights, powers, or duties with respect to specified property or obligations of the foreign limited liability company, or profits and losses associated with the specified property or obligations, shall indicate that fact on the application for a certificate of authority as a foreign limited liability company. In addition, the foreign limited liability company shall state on the application whether the debts, liabilities, and obligations incurred, contracted for, or otherwise existing with respect to a particular series, if any, are enforceable against the assets of such series only, and not against the assets of the foreign limited liability company generally.

2008 Acts, ch 1162, §111, 155

489.1207 through 489.1300 Reserved.

ARTICLE 13
MISCELLANEOUS PROVISIONS

489.1301 Uniformity of application and construction.

In applying and construing this chapter, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

2008 Acts, ch 1162, §112, 155

489.1302 Relation to Electronic Signatures in Global and National Commerce Act.

This chapter modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. §7001 et seq., but does not modify, limit, or supersede

section 101(c) of that Act, 15 U.S.C. §7001(c), or authorize electronic delivery of any of the notices described in section 103(b) of that Act, 15 U.S.C. §7003(b).

2008 Acts, ch 1162, §113, 155

489.1303 Savings clause.

This chapter does not affect an action commenced, proceeding brought, or right accrued before January 1, 2009.

2008 Acts, ch 1162, §114, 155; 2013 Acts, ch 90, §145

489.1304 Application to existing relationships.

1. Before January 1, 2011, this chapter governs all of the following:

a. A limited liability company formed on or after January 1, 2009.

b. Except as otherwise provided in subsection 3, a limited liability company formed before January 1, 2009, which elects, in the manner provided in its operating agreement or by law for amending the operating agreement, to be subject to this chapter.

2. Except as otherwise provided in subsection 3, on and after January 1, 2011, this chapter governs all limited liability companies.

3. For the purposes of applying this chapter to a limited liability company formed before January 1, 2009, all of the following apply:

a. The limited liability company's articles of organization are deemed to be the company's certificate of organization.

b. For the purposes of applying section 489.102, subsection 12, and subject to section 489.112, subsection 4, language in the limited liability company's articles of organization designating the limited liability company's management structure operates as if that language were in the operating agreement.

c. If a professional limited liability company's name complied with section 490A.1503 as that section existed on December 30, 2010, that company's name shall also be deemed to comply with the name requirements of section 489.1103, Code 2011.

2008 Acts, ch 1162, §115, 155; 2011 Acts, ch 56, §4, 6

CHAPTER 490

BUSINESS CORPORATIONS

Referred to in §9H.1, 9H.4, 10.1, 10B.1, 10B.4, 10B.7, 10D.1, 15E.202, 15E.204, 15E.205, 261B.3A, 312.8, 423.1, 455B.397, 455B.430, 468.327, 468.506, 491.1, 495.3, 496B.3, 496B.6, 496B.8, 496B.11, 496B.12, 496B.17, 496C.2, 496C.3, 496C.4, 496C.9, 496C.14, 496C.16, 496C.19, 496C.20, 496C.21, 496C.22, 497.34, 498.36, 499.43B, 499.54, 499.59A, 499.61, 499.69A, 501A.102, 504.1108, 506.12, 508B.2, 514.23, 515.1, 515G.2, 515G.3, 521.2, 521.17, 524.1309, 524.1809, 524.2001, 547.1, 556.1, 556.5, 558.72, 669.14

Chapter effective December 31, 1989; 89 Acts, ch 288, §196
Transition; application to existing corporations;
§490.1701 – 490.1703
Reorganization option for cooperative associations, §499.43B

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490.101 Short title.

This chapter is entitled and may be cited as the *"Iowa Business Corporation Act"*.

89 Acts, ch 288, §1

490.102 Reservation of power to amend or repeal.

The general assembly has the power to amend or repeal all or part of this chapter at any time and all domestic and foreign corporations subject to this chapter are governed by an amendment or repeal.

89 Acts, ch 288, §2

490.103 through 490.119 Reserved.

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490.120 Filing requirements.

1. A document must satisfy the requirements of this section, and of any other section that adds to or varies these requirements, to be entitled to filing.

2. The document must be filed in the office of the secretary of state.

3. The document must contain the information required by this chapter. It may contain other information as well.

4. The document must be typewritten or printed. If the document is electronically transmitted, it must be in a format that can be retrieved or reproduced in typewritten or printed form.

5. The document must be in the English language. A corporate name need not be in English if written in English letters or Arabic or Roman numerals, and the certificate of existence required of foreign corporations need not be in English if accompanied by a reasonably authenticated English translation.

6. Except as provided in section 490.1622, subsection 2, the document must be executed by one of the following methods:

a. The chairperson of the board of directors of a domestic or foreign corporation, its president, or another of its officers.

b. If directors have not been selected or the corporation has not been formed, by an incorporator.

c. If the corporation is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.

7. *a.* The person executing the document shall sign it and state beneath or opposite the person's signature, the person's name and the capacity in which the person signs. The document may, but need not, contain a corporate seal, attestation, acknowledgment, or verification.

b. The secretary of state may accept for filing a document containing a copy of a signature, however made.

8. If the secretary of state has prescribed a mandatory form for the document under section 490.121, the document must be in or on the prescribed form.

9. The document must be delivered to the office of the secretary of state for filing. Delivery may be made by electronic transmission if and to the extent permitted by the secretary of state. If it is filed in typewritten or printed form and not transmitted electronically, the secretary of state may require one exact or conformed copy to be delivered with the document, except as provided in sections 490.503 and 490.1509.

10. When the document is delivered to the office of the secretary of state for filing, the correct filing fee, and any franchise tax, license fee, or penalty, shall be paid in a manner permitted by the secretary of state.

11. The secretary of state may adopt rules for the electronic filing of documents and the certification of electronically filed documents.

12. Whenever a provision of this chapter permits any of the terms of a plan or a filed document to be dependent on facts objectively ascertainable outside of the plan or filed document, all of the following provisions apply:

a. The manner in which the facts will operate upon the terms of the plan or filed document shall be set forth in the plan or filed document.

b. The facts may include, but are not limited to any of the following:

(1) Any of the following that is available in a nationally recognized news or information medium either in print or electronically: statistical or market indices, market prices of any security or group of securities, interest rates, currency exchange rates, or similar economic or financial data.

(2) A determination or action by any person or body, including the corporation or any other party to a plan or filed document.

(3) The terms of, or actions taken under, an agreement to which the corporation is a party, or any other agreement or document.

c. As used in this subsection:

(1) "*Filed document*" means a document filed with the secretary of state under any provision of this chapter except division XV or section 490.1622.

(2) "*Plan*" means a plan of merger or share exchange.

d. The following provisions of a plan or filed document may not be made dependent on facts outside the plan or filed document:

(1) The name and address of any person required in a filed document.

(2) The registered office of any entity required in a filed document.

(3) The registered agent of any entity required in a filed document.

(4) The number of authorized shares and designation of each class or series of shares.

(5) The effective date of a filed document.

(6) Any required statement in a filed document of the date on which the underlying transaction was approved or the manner in which that approval was given.

e. If a provision of a filed document is made dependent on a fact ascertainable outside of the filed document, and that fact is not ascertainable by reference to a source described in paragraph "*b*", subparagraph (1), or a document that is a matter of public record, or the affected shareholders have not received notice of the fact from the corporation, then the corporation shall file with the secretary of state articles of amendment setting forth the fact promptly after the time when the fact referred to is first ascertainable or thereafter changes. Articles of amendment under this paragraph are deemed to be authorized by the authorization of the original filed document to which they relate and may be filed by the corporation without further action by the board of directors or the shareholders.

89 Acts, ch 288, §3; 90 Acts, ch 1205, §16; 2002 Acts, ch 1154, §1, 2, 125; 2007 Acts, ch 140, §1; 2012 Acts, ch 1023, §157

Referred to in §490.125, 490.140, 490.202, 490.601, 490.1006, 490.1102, 490.1103, 490.1601, 490.1622

490.121 Forms.

1. *a.* The secretary of state may prescribe and furnish on request forms including but not limited to the following:

(1) A foreign corporation's application for a certificate of authority to transact business in this state.

(2) A foreign corporation's application for a certificate of withdrawal.

(3) The biennial report.

b. If the secretary of state so requires, use of these listed forms prescribed by the secretary of state is mandatory.

2. The secretary of state may prescribe and furnish on request forms for other documents required or permitted to be filed by this chapter but their use is not mandatory.

89 Acts, ch 288, §4; 96 Acts, ch 1170, §2; 97 Acts, ch 171, §5; 2012 Acts, ch 1023, §157

Referred to in §490.120

490.122 Filing, service, and copying fees.

1. The secretary of state shall collect the following fees when the documents described in this subsection are delivered to the secretary's office for filing:

DOCUMENT	FEE
a. Articles of incorporation	$ 50
b. Application for use of indistinguishable name	$ 10
c. Application for reserved name	$ 10

d. Notice of transfer of reserved name ..... $ 10
e. Application for registered name per month or part thereof ..... $ 2
f. Application for renewal of registered name ..... $ 20
g. Corporation's statement of change of registered agent or registered office or both ..... No fee
h. Agent's statement of change of registered office for each affected corporation ..... No fee
i. Agent's statement of resignation ..... No fee
j. Amendment of articles of incorporation ..... $ 50
k. Restatement of articles of incorporation with amendment of articles ..... $ 50
l. Articles of merger, share exchange, or conversion ..... $ 50
m. Articles of dissolution ..... $ 5
n. Articles of revocation of dissolution ..... $ 5
o. Certificate of administrative dissolution ..... No fee
p. Application for reinstatement following administrative dissolution ..... $ 5
q. Certificate of reinstatement ..... No fee
r. Certificate of judicial dissolution ..... No fee
s. Application for certificate of authority $100
t. Application for amended certificate of authority $100
u. Application for certificate of withdrawal ..... $ 10
v. Certificate of revocation of authority to transact business ..... No fee
w. Articles of correction ..... $ 5
x. Application for certificate of existence or authorization ..... $ 5
y. Any other document required or permitted to be filed by this chapter ..... $ 5

2. The secretary of state shall collect a fee of five dollars each time process is served on the secretary under this chapter. The party to a proceeding causing service of process is entitled to recover this fee as costs if the party prevails in the proceeding.

3. The secretary of state shall collect the following fees for copying and certifying the copy of any filed document relating to a domestic or foreign corporation:

a. $1.00 a page for copying.

b. $5.00 for the certificate.

89 Acts, ch 288, §5; 90 Acts, ch 1205, §17; 97 Acts, ch 171, §6; 2008 Acts, ch 1162, §116, 155
Referred to in §499.45, 499.54, 524.303, 524.1402, 524.1410, 524.1421
Filing fee for biennial report; §490.1622
Authority to refund fees; 2012 Acts, ch 1131, §28; 2013 Acts, ch 135, §24, 52; 2015 Acts, ch 141, §22, 60, 67, 68; 2017 Acts, ch 171, §23, 50

490.123 Effective time and date of documents.

1. Except as provided in subsection 2 and section 490.124, subsection 3, a document accepted for filing is effective at the later of the following times:

a. At the date and time of filing, as evidenced by such means as the secretary of state may use for the purpose of recording the date and time of filing.

b. At the time specified in the document as its effective time on the date it is filed.

2. A document may specify a delayed effective time and date, and if it does so the

document becomes effective at the time and date specified. If a delayed effective date but no time is specified, the document is effective at the close of business on that date. A delayed effective date for a document shall not be later than the ninetieth day after the date it is filed.

89 Acts, ch 288, §6; 2002 Acts, ch 1154, §3, 125
Referred to in §490.1523, 490.1622

490.124 Correcting filed documents.

1. A domestic or foreign corporation may correct a document filed by the secretary of state if the document satisfies one of the following:

a. The document contains an inaccuracy.

b. The document was defectively executed, attested, sealed, verified, or acknowledged.

c. The electronic transmission was defective.

2. A document is corrected by complying with both of the following:

a. By preparing articles of correction that satisfy all of the following requirements:

(1) Describe the document, including its filing date, or attach a copy of it to the articles.

(2) Specify the inaccuracy or defect to be corrected.

(3) Correct the inaccuracy or defect.

b. By delivering the articles to the secretary of state for filing.

3. Articles of correction are effective on the effective date of the document they correct except as to persons relying on the uncorrected document and adversely affected by the correction. As to those persons, articles of correction are effective when filed.

89 Acts, ch 288, §7; 2002 Acts, ch 1154, §4, 125
Referred to in §490.123

490.125 Filing duty of secretary of state.

1. If a document delivered to the office of the secretary of state for filing satisfies the requirements of section 490.120, the secretary of state shall file it.

2. The secretary of state files a document by recording it as filed on the date and time of receipt. After filing a document, except the biennial report required by section 490.1622, and except as provided in sections 490.503 and 490.1509, the secretary of state shall deliver to the domestic or foreign corporation or its representative a copy of the document with an acknowledgment of the date and time of filing.

3. If the secretary of state refuses to file a document, the secretary of state shall return it to the domestic or foreign corporation or its representative, together with a brief, written explanation of the reason for the refusal.

4. The secretary of state's duty to file documents under this section is ministerial. Filing or refusing to file a document does not:

a. Affect the validity or invalidity of the document in whole or part.

b. Relate to the correctness or incorrectness of information contained in the document.

c. Create a presumption that the document is valid or invalid or that information contained in the document is correct or incorrect.

89 Acts, ch 288, §8; 96 Acts, ch 1170, §3; 97 Acts, ch 171, §7; 2002 Acts, ch 1154, §5, 125

490.126 Appeal from secretary of state's refusal to file document.

1. If the secretary of state refuses to file a document delivered to the secretary's office for filing, the domestic or foreign corporation may appeal the refusal, within thirty days after the return of the document, to the district court for the county in which the corporation's principal office or, if none in this state, its registered office is or will be located. The appeal is commenced by petitioning the court to compel filing the document and by attaching to the petition the document and the secretary of state's explanation of the refusal to file.

2. The court may summarily order the secretary of state to file the document or take other action the court considers appropriate.

3. The court's final decision may be appealed as in other civil proceedings.

89 Acts, ch 288, §9

490.127 Evidentiary effect of copy of filed document.

A certificate from the secretary of state delivered with a copy of a document filed by the secretary of state is conclusive evidence that the original document is on file with the secretary of state.

89 Acts, ch 288, §10; 90 Acts, ch 1205, §18; 2002 Acts, ch 1154, §6, 125

490.128 Certificate of existence.

1. Anyone may apply to the secretary of state to furnish a certificate of existence for a domestic corporation or a certificate of authorization for a foreign corporation.

2. A certificate of existence or authorization must set forth all of the following:

a. The domestic corporation's corporate name or the foreign corporation's corporate name used in this state.

b. That one of the following apply:

(1) If it is a domestic corporation, that it is duly incorporated under the law of this state, the date of its incorporation, and the period of its duration if less than perpetual.

(2) If it is a foreign corporation, that it is authorized to transact business in this state.

c. That all fees required by this chapter have been paid.

d. That its most recent biennial report required by section 490.1622 has been filed by the secretary of state.

e. If it is a domestic corporation, that articles of dissolution have not been filed.

f. Other facts of record in the office of the secretary of state that may be requested by the applicant.

3. Subject to any qualification stated in the certificate, a certificate of existence or authorization issued by the secretary of state may be relied upon as conclusive evidence that the domestic or foreign corporation is in existence or is authorized to transact business in this state.

89 Acts, ch 288, §11; 90 Acts, ch 1205, §19; 97 Acts, ch 171, §8

490.129 Penalty for signing false document.

1. A person commits an offense if that person signs a document the person knows is false in any material respect with intent that the document be delivered to the secretary of state for filing.

2. An offense under this section is a serious misdemeanor punishable by a fine of not to exceed one thousand dollars.

89 Acts, ch 288, §12

490.130 Recording of documents with county recorder. Repealed by 91 Acts, ch 211, §13. See §9.7.

490.131 through 490.134 Reserved.

PART C

490.135 Secretary of state — powers.

The secretary of state has the power reasonably necessary to perform the duties required of the secretary of state by this chapter.

89 Acts, ch 288, §14

490.136 through 490.139 Reserved.

PART D

490.140 Definitions.

In this chapter, unless the context requires otherwise:

1. *"Articles of incorporation"* include amended and restated articles of incorporation and articles of merger.

2. *"Authorized shares"* means the shares of all classes a domestic or foreign corporation is authorized to issue.

3. *"Conspicuous"* means so written, displayed, or presented that a reasonable person against whom the writing is to operate should have noticed it. For example, text in italics, boldface, contrasting color, capitals, or underlined is conspicuous.

4. *"Cooperative association"* means an entity which is structured and operated on a cooperative basis pursuant to 26 U.S.C. §1381(a) and which meets the definitional requirements of an association as provided in 12 U.S.C. §1141(j)(a) or 7 U.S.C. §291.

5. *"Corporation"* or *"domestic corporation"* means a corporation for profit, which is not a foreign corporation, incorporated under or subject to this chapter.

6. *"Deliver"* or *"delivery"* means any method of delivery used in conventional commercial practice, including delivery by hand, mail, commercial delivery, and, if authorized in accordance with section 490.141, by electronic transmission.

7. *"Distribution"* means a direct or indirect transfer of money or other property, except its own shares, or incurrence of indebtedness by a corporation to or for the benefit of its shareholders in respect of any of its shares. A distribution may be in the form of a declaration or payment of a dividend; a purchase, redemption, or other acquisition of shares; a distribution of indebtedness; or otherwise.

8. *"Document"* means any of the following:

a. A tangible medium on which information is inscribed, and includes any writing or written instrument.

b. An electronic record.

9. *"Domestic unincorporated entity"* means an unincorporated entity whose internal affairs are governed by the laws of this state.

10. *"Effective date of notice"* is defined in section 490.141.

11. *"Electronic"* means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

12. *"Electronic record"* means information that is stored in an electronic or other medium and is retrievable in paper form through an automated process used in conventional commercial practice, unless otherwise authorized in accordance with section 490.141, subsection 10.

13. *"Electronic transmission"* or *"electronically transmitted"* means any form or process of communication not directly involving the physical transfer of paper or another tangible medium, which is all of the following:

a. Suitable for the retention, retrieval, and reproduction of information by the recipient.

b. Retrievable in paper form by the recipient through an automated process used in conventional commercial practice, unless otherwise authorized in accordance with section 490.141, subsection 10.

14. *"Employee"* includes an officer but not a director. A director may accept duties that make the director also an employee.

15. *"Entity"* includes corporation and foreign corporation; not-for-profit corporation; profit and not-for-profit unincorporated association; business trust, estate, partnership, trust, and two or more persons having a joint or common economic interest; and state, United States, and foreign government.

16. *"Expenses"* means reasonable expenses of any kind that are incurred in connection with a matter.

17. The phrase *"facts objectively ascertainable"* outside of a filed document or plan is defined in section 490.120, subsection 12.

18. *"Foreign corporation"* means a corporation for profit incorporated under a law other than the law of this state.

19. *"Governmental subdivision"* includes authority, city, county, district, township, and other political subdivision.

20. *"Includes"* denotes a partial definition.

21. *"Individual"* includes the estate of an incompetent, a ward, or a deceased individual.

22. *"Means"* denotes an exhaustive definition.
23. *"Notice"* is defined in section 490.141.
24. *"Person"* means a person as defined in section 4.1.
25. *"Principal office"* means the office, in or out of this state, so designated in the biennial report, where the principal executive offices of a domestic or foreign corporation are located.
26. *"Proceeding"* includes civil suit and criminal, administrative, and investigatory action.
27. *"Public corporation"* means a corporation that has a class of voting stock that is listed on a national securities exchange or held of record by more than two thousand shareholders.
28. *"Qualified director"* means the same as defined in section 490.143.
29. *"Record date"* means the date established under division VI or VII on which a corporation determines the identity of its shareholders for purposes of this chapter.
30. *"Secretary"* means the corporate officer to whom the board of directors has delegated responsibility under section 490.840, subsection 3, for custody of the minutes of the meetings of the board of directors and of the shareholders and for authenticating records of the corporation.
31. *"Share"* means the unit into which the proprietary interests in a corporation are divided.
32. *"Shareholder"* means the person in whose name shares are registered in the records of a corporation or the beneficial owner of shares to the extent of the rights granted by a nominee certificate on file with a corporation.
33. *"Sign"* or *"signature"* means, with present intent to authenticate or adopt a document, doing any of the following:
a. Executing or adopting a tangible symbol to a document, and includes any manual, facsimile, or conformed signature.
b. Attaching to or logically associating with an electronic transmission an electronic sound, symbol, or process, and includes an electronic signature in an electronic transmission.
34. *"State"*, when referring to a part of the United States, includes a state and commonwealth and their agencies and governmental subdivisions, and a territory and insular possession and their agencies and governmental subdivisions, of the United States.
35. *"Subscriber"* means a person who subscribes for shares in a corporation, whether before or after incorporation.
36. *"United States"* includes a district, authority, bureau, commission, department, and any other agency of the United States.
37. *"Voting group"* means all shares of one or more classes or series that under the articles of incorporation or this chapter are entitled to vote and be counted together collectively on a matter at a meeting of shareholders. All shares entitled by the articles of incorporation or this chapter to vote generally on the matter are for that purpose a single voting group.
38. *"Voting power"* means the current power to vote in the election of directors.
39. *"Writing"* or *"written"* means any information in the form of a document.

89 Acts, ch 288, §15; 91 Acts, ch 211, §3; 97 Acts, ch 171, §9; 2001 Acts, ch 142, §1; 2002 Acts, ch 1154, §7, 8, 125; 2007 Acts, ch 140, §2; 2011 Acts, ch 2, §1, 10; 2013 Acts, ch 31, §1, 2, 82
Referred to in §15E.202

490.141 Notice or other communication.

1. Notice under this chapter must be in writing unless oral notice is reasonable in the circumstances. Unless otherwise agreed between the sender and the recipient, words in a notice or other communication under this chapter must be in English.
2. A notice or other communication may be given or sent by any method of delivery, except that electronic transmissions must be in accordance with this section. If these methods of delivery are impracticable, a notice or other communication may be communicated by a newspaper of general circulation in the area where published; or by radio, television, or other form of public broadcast communication.
3. Notice or other communication to a domestic or foreign corporation authorized to transact business in this state may be delivered to its registered agent at its registered office or to the secretary of the corporation at its principal office shown in its most recent biennial

report or, in the case of a foreign corporation that has not yet delivered a biennial report, in its application for a certificate of authority.

4. Notice or other communications may be delivered by electronic transmission if consented to by the recipient or if authorized by subsection 10.

5. Any consent under subsection 4 may be revoked by the person who consented by written or electronic notice to the person to whom the consent was delivered. Any such consent is deemed revoked if all of the following apply:

a. The corporation is unable to deliver two consecutive electronic transmissions given by the corporation in accordance with such consent.

b. Such inability becomes known to the secretary or an assistant secretary of the corporation or to the transfer agent, or other person responsible for the giving of notice or other communications; provided, however, the inadvertent failure to treat such inability as a revocation shall not invalidate any meeting or other action.

6. Unless otherwise agreed between the sender and the recipient, an electronic transmission is received when all of the following apply:

a. The electronic transmission enters an information processing system that the recipient has designated or uses for the purposes of receiving electronic transmissions or information of the type sent, and from which the recipient is able to retrieve the electronic transmission.

b. The electronic transmission is in a form capable of being processed by that system.

7. Receipt of an electronic acknowledgment from an information processing system described in subsection 6, paragraph "*a*", establishes that an electronic transmission was received but, by itself, does not establish that the content sent corresponds to the content received.

8. An electronic transmission is received under this section even if no individual is aware of its receipt.

9. Notice or other communication if in a comprehensible form or manner, is effective at the earliest of any of the following:

a. If in physical form, the earliest of when it is actually received or when it is left at any of the following:

(1) A shareholder's address shown on the corporation's record of shareholders maintained by the corporation under section 490.1601, subsection 3.

(2) A director's residence or usual place of business.

(3) The corporation's principal place of business.

b. If mailed by United States mail postage prepaid and correctly addressed to a shareholder, upon deposit in the United States mail.

c. If mailed by United States mail postage prepaid and correctly addressed to a recipient other than a shareholder, the earliest of when it is actually received or as follows:

(1) If sent by registered or certified mail, return receipt requested, the date shown on the return receipt signed by or on behalf of the addressee.

(2) Five days after it is deposited in the United States mail.

d. If an electronic transmission, when it is received as provided in subsection 6.

e. If oral, when communicated.

10. A notice or other communication may be in the form of an electronic transmission that cannot be directly reproduced in paper form by the recipient through an automated process used in conventional commercial practice only if all of the following apply:

a. The electronic transmission is otherwise retrievable in perceivable form.

b. The sender and the recipient have consented in writing to the use of such form of electronic transmission.

11. If this chapter prescribes requirements for notices or other communications in particular circumstances, those requirements govern. If articles of incorporation or bylaws prescribe requirements for notices or other communications, not inconsistent with this section or other provisions of this chapter, those requirements govern. The articles of

incorporation or bylaws may authorize or require delivery of notices of meetings of directors by electronic transmission.

89 Acts, ch 288, §16; 97 Acts, ch 171, §10; 2002 Acts, ch 1154, §9, 125; 2013 Acts, ch 31, §3, 82

Referred to in §490.140, 490.1620

490.142 Number of shareholders.

1. For purposes of this chapter, any of the following identified as a shareholder in a corporation's current record of shareholders constitutes one shareholder:

a. Three or fewer co-owners.

b. A corporation, partnership, trust, estate, or other entity.

c. The trustees, guardians of the property, custodians, or other fiduciaries of a single trust, estate, or account.

2. For purposes of this chapter, shareholdings registered in substantially similar names constitute one shareholder if it is reasonable to believe that the names represent the same person.

89 Acts, ch 288, §17

490.143 Qualified director.

1. For purposes of this chapter, a *"qualified director"* is a director who takes action under any of the following provisions, if at the time action is to be taken any of the following applies:

a. Under section 490.744, the director does not have any of the following:

(1) A material interest in the outcome of the proceeding.

(2) A material relationship with a person who has such an interest.

b. Under section 490.853 or 490.855, all of the following apply:

(1) The director is not a party to the proceeding.

(2) The director is not a director as to whom a transaction is a director's conflicting interest transaction or who sought a disclaimer of the corporation's interest in a business opportunity under section 490.870, which transaction or disclaimer is challenged in the proceeding.

(3) The director does not have a material relationship with a director described in either subparagraph (1) or (2).

c. Under section 490.862, the director is not any of the following:

(1) A director as to whom the transaction is a director's conflicting interest transaction.

(2) A director who has a material relationship with another director as to whom the transaction is a director's conflicting interest transaction.

d. Under section 490.870, the director would be a qualified director under paragraph "*c*", if the business opportunity was a director's conflicting interest transaction.

2. For purposes of this section, all of the following apply:

a. *"Material interest"* means an actual or potential benefit or detriment, other than one which would devolve on the corporation or the shareholders generally, that would reasonably be expected to impair the objectivity of the director's judgment when participating in the action to be taken.

b. *"Material relationship"* means a familial, financial, professional, employment, or other relationship that would reasonably be expected to impair the objectivity of the director's judgment when participating in the action to be taken.

3. The presence of one or more of the following circumstances shall not automatically prevent a director from being a qualified director:

a. Nomination or election of the director to the current board by any director who is not a qualified director with respect to the matter, or by any person that has a material relationship with that director, acting alone or participating with others.

b. Service as a director of another corporation of which a director who is not a qualified director with respect to the matter, or any individual who has a material relationship with that director, is or was also a director.

c. With respect to action to be taken under section 490.744, status as a named defendant,

as a director against whom action is demanded, or as a director who approved the conduct being challenged.

2013 Acts, ch 31, §4, 82

Referred to in §490.140

490.144 Householding.

1. A corporation has delivered written notice or any other report or statement under this chapter, the articles of incorporation, or the bylaws to all shareholders who share a common address if all of the following apply:

a. The corporation delivers one copy of the notice, report, or statement to the common address.

b. The corporation addresses the notice, report, or statement to those shareholders either as a group or to each of those shareholders individually or to the shareholders in a form to which each of those shareholders has consented.

c. Each of those shareholders consents to delivery of a single copy of such notice, report, or statement to the shareholders' common address. Any such consent shall be revocable by any of such shareholders who deliver written notice of revocation to the corporation. If such written notice of revocation is delivered, the corporation shall begin providing individual notices, reports, or other statements to the revoking shareholder no later than thirty days after delivery of the written notice of revocation.

2. Any shareholder who fails to object by written notice to the corporation, within sixty days of written notice by the corporation of its intention to send single copies of notices, reports, or statements to shareholders who share a common address as permitted by subsection 1, shall be deemed to have consented to receiving such single copy at the common address.

2013 Acts, ch 31, §5, 82

490.145 through 490.200 Reserved.

DIVISION II

INCORPORATION

Referred to in §15E.206

490.201 Incorporators.

One or more persons may act as the incorporator or incorporators of a corporation by executing and delivering articles of incorporation to the secretary of state for filing.

89 Acts, ch 288, §18

Referred to in §15E.206

490.202 Articles of incorporation.

1. The articles of incorporation must set forth all of the following:

a. A corporate name for the corporation that satisfies the requirements of section 490.401.

b. The number of shares the corporation is authorized to issue.

c. The street address of the corporation's initial registered office and the name of its initial registered agent at that office.

d. The name and address of each incorporator.

2. The articles of incorporation may set forth any or all of the following:

a. The names and addresses of the individuals who are to serve as the initial directors.

b. Provisions not inconsistent with law regarding:

(1) The purpose or purposes for which the corporation is organized.

(2) Managing the business and regulating the affairs of the corporation.

(3) Defining, limiting, and regulating the powers of the corporation, its board of directors, and shareholders.

(4) A par value for authorized shares or classes of shares.

(5) The imposition of personal liability on shareholders for the debts of the corporation to a specified extent and upon specified conditions.

c. Any provision that under this chapter is required or permitted to be set forth in the bylaws.

d. (1) A provision eliminating or limiting the liability of a director to the corporation or its shareholders for money damages for any action taken, or any failure to take any action, as a director, except liability for any of the following:

(a) The amount of a financial benefit received by a director to which the director is not entitled.

(b) An intentional infliction of harm on the corporation or the shareholders.

(c) A violation of section 490.833.

(d) An intentional violation of criminal law.

(2) A provision shall not eliminate or limit the liability of a director for an act or omission occurring prior to the date when the provision in the articles of incorporation becomes effective.

e. A provision permitting or making obligatory indemnification of a director for liability, as defined in section 490.850, subsection 3, to any person for any action taken, or any failure to take any action, as a director, except liability for any of the following:

(1) Receipt of a financial benefit to which the person is not entitled.

(2) An intentional infliction of harm on the corporation or its shareholders.

(3) A violation of section 490.833.

(4) An intentional violation of criminal law.

3. The articles of incorporation need not set forth any of the corporate powers enumerated in this chapter.

4. Provisions of the articles of incorporation may be made dependent upon facts objectively ascertainable outside the articles of incorporation in accordance with section 490.120.

89 Acts, ch 288, §19; 2002 Acts, ch 1154, §10, 125; 2003 Acts, ch 44, §80; 2007 Acts, ch 140, §3; 2012 Acts, ch 1023, §87

Referred to in §490.831, 490.851, 490.853, 490.1113, 491.5, 524.1309

490.203 Incorporation.

1. Unless a delayed effective date or time is specified, the corporate existence begins when the articles of incorporation are filed.

2. The secretary of state's filing of the articles of incorporation is conclusive proof that the incorporators satisfied all conditions precedent to incorporation except in a proceeding by the state to cancel or revoke the incorporation or involuntarily dissolve the corporation.

89 Acts, ch 288, §20

490.204 Liability for preincorporation transactions.

All persons purporting to act as or on behalf of a corporation, knowing there was no incorporation under this chapter, are jointly and severally liable for all liabilities created while so acting.

89 Acts, ch 288, §21

490.205 Organization of corporation.

1. After incorporation:

a. If initial directors are named in the articles of incorporation, the initial directors shall hold an organizational meeting, at the call of a majority of the directors, to complete the organization of the corporation by appointing officers, adopting bylaws and carrying on any other business brought before the meeting.

b. If initial directors are not named in the articles, the incorporator or incorporators shall hold an organizational meeting at the call of a majority of the incorporators to do one of the following:

(1) Elect directors and complete the organization of the corporation.

(2) Elect a board of directors who shall complete the organization of the corporation.

2. Action required or permitted by this chapter to be taken by incorporators at an organizational meeting may be taken without a meeting if the action taken is evidenced by one or more written consents describing the action taken and signed by each incorporator.

3. An organizational meeting may be held in or out of this state.

89 Acts, ch 288, §22

490.206 Bylaws.

1. The incorporators or board of directors of a corporation shall adopt initial bylaws for the corporation.

2. The bylaws of a corporation may contain any provision for managing the business and regulating the affairs of the corporation that is not inconsistent with law or the articles of incorporation.

89 Acts, ch 288, §23

490.207 Emergency bylaws.

1. Unless the articles of incorporation provide otherwise, the board of directors of a corporation may adopt bylaws to be effective only in an emergency defined in subsection 4. The emergency bylaws, which are subject to amendment or repeal by the shareholders, may make all provisions necessary for managing the corporation during the emergency, including:

a. Procedures for calling a meeting of the board of directors.

b. Quorum requirements for the meeting.

c. Designation of additional or substitute directors.

2. All provisions of the regular bylaws consistent with the emergency bylaws remain effective during the emergency. The emergency bylaws are not effective after the emergency ends.

3. Corporate action taken in good faith in accordance with the emergency bylaws has both of the following effects:

a. The action binds the corporation.

b. The action shall not be used to impose liability on a corporate director, officer, employee, or agent.

4. An emergency exists for purposes of this section if a quorum of the corporation's directors cannot readily be assembled because of some catastrophic event.

89 Acts, ch 288, §24

490.208 through 490.300 Reserved.

DIVISION III

PURPOSES AND POWERS

490.301 Purposes.

1. A corporation incorporated under this chapter has the purpose of engaging in any lawful business unless a more limited purpose is set forth in the articles of incorporation.

2. A corporation engaging in a business that is subject to regulation under another statute of this state may incorporate under this chapter only if permitted by, and subject to all limitations of, the other statute.

89 Acts, ch 288, §25

Referred to in §490.401

490.302 General powers.

Unless its articles of incorporation provide otherwise, a corporation has perpetual duration and succession in its corporate name and has the same powers as an individual to do all things necessary or convenient to carry out its business and affairs, including without limitation power to do all of the following:

1. Sue and be sued, complain, and defend in its corporate name.

2. Have a corporate seal, which may be altered at will, and use it, or a facsimile of it, by impressing or affixing it or in any other manner reproducing it.

3. Make and amend bylaws, not inconsistent with its articles of incorporation or with the laws of this state, for managing the business and regulating the affairs of the corporation.

4. Purchase, receive, lease, or otherwise acquire, and own, hold, improve, use, and otherwise deal with, real or personal property, or any legal or equitable interest in property, wherever located.

5. Sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of all or any part of its property.

6. Purchase, receive, subscribe for, or otherwise acquire, own, hold, vote, use, sell, mortgage, lend, pledge, or otherwise dispose of, and deal in and with shares or other interests in, or obligations of, any other entity.

7. Make contracts and guarantees, incur liabilities, borrow money, issue its notes, bonds, and other obligations, which may be convertible into or include the option to purchase other securities of the corporation, and secure any of its obligations by mortgage or pledge of any of its property, franchises, or income.

8. Lend money, invest and reinvest its funds, and receive and hold real and personal property as security for repayment.

9. Be a promoter, partner, member, associate, or manager of any partnership, joint venture, trust, or other entity.

10. Conduct its business, locate offices, and exercise the powers granted by this chapter within or without this state.

11. Elect directors and appoint officers, employees, and agents of the corporation, define their duties, fix their compensation, and lend them money and credit.

12. Pay pensions and establish pension plans, pension trusts, profit sharing plans, share bonus plans, share option plans, and benefit or incentive plans for any or all of its current or former directors, officers, employees, and agents.

13. Make donations for the public welfare or for charitable, scientific, or educational purposes.

14. Transact any lawful business that will aid governmental policy.

15. Make payments or donations, or do any other act, not inconsistent with law, that furthers the business and affairs of the corporation.

89 Acts, ch 288, §26

490.303 Emergency powers.

1. In anticipation of or during an emergency as defined in subsection 4, the board of directors of a corporation may do either or both of the following:

a. Modify lines of succession to accommodate the incapacity of any director, officer, employee, or agent.

b. Relocate the principal office, designate alternative principal offices or regional offices, or authorize the officers to do so.

2. During an emergency defined in subsection 4, unless emergency bylaws provide otherwise:

a. Notice of a meeting of the board of directors need be given only to those directors whom it is practicable to reach and may be given in any practicable manner, including by publication and radio.

b. One or more officers of the corporation present at a meeting of the board of directors may be deemed to be directors for the meeting, in order of rank and within the same rank in order of seniority, as necessary to achieve a quorum.

3. Corporate action taken in good faith during an emergency under this section to further the ordinary business affairs of the corporation shall both:

a. Bind the corporation.

b. Not be used to impose liability on a corporate director, officer, employee, or agent.

4. An emergency exists for purposes of this section if a quorum of the corporation's directors cannot readily be assembled because of some catastrophic event.

89 Acts, ch 288, §27

490.304 Ultra vires.

1. Except as provided in subsection 2, the validity of corporate action is not challengeable on the ground that the corporation lacks or lacked power to act.

2. A corporation's power to act may be challenged in any of the following proceedings:

a. By a shareholder against the corporation to enjoin the act.

b. By the corporation, directly, derivatively, or through a receiver, trustee, or other legal representative, against an incumbent or former director, officer, employee, or agent of the corporation.

c. By the attorney general under section 490.1430.

3. In a shareholder's proceeding under subsection 2, paragraph *"a"*, to enjoin an unauthorized corporate act, the court may enjoin or set aside the act, if equitable and if all affected persons are parties to the proceeding, and may award damages for loss, other than anticipated profits, suffered by the corporation or another party because of enjoining the unauthorized act.

89 Acts, ch 288, §28

490.305 through 490.400 Reserved.

DIVISION IV

NAMES

490.401 Corporate name.

1. A corporate name:

a. Must contain the word "corporation", "incorporated", "company", or "limited", or the abbreviation "corp.", "inc.", "co.", or "ltd.", or words or abbreviations of like import in another language.

b. Shall not contain language stating or implying that the corporation is organized for a purpose other than that permitted by section 490.301 and its articles of incorporation.

2. Except as authorized by subsections 3 and 4, a corporate name must be distinguishable upon the records of the secretary of state from all of the following:

a. The corporate name of a corporation incorporated or authorized to transact business in this state.

b. A name reserved, registered, or protected as follows:

(1) For a limited liability partnership, section 486A.1001 or 486A.1002.

(2) For a limited partnership, section 488.108, 488.109, or 488.810.

(3) For a business corporation, this section, or section 490.402, 490.403, or 490.1422.

(4) For a limited liability company under chapter 489, section 489.108, 489.109, or 489.706.

(5) For a nonprofit corporation, section 504.401, 504.402, 504.403, or 504.1423.

c. The fictitious name adopted by a foreign corporation or a not-for-profit foreign corporation authorized to transact business in this state because its real name is unavailable.

d. The corporate name of a not-for-profit corporation incorporated or authorized to transact business in this state.

3. A corporation may apply to the secretary of state for authorization to use a name that is not distinguishable upon the secretary's records from one or more of the names described in subsection 2. The secretary of state shall authorize use of the name applied for if one of the following conditions applies:

a. The other corporation consents to the use in writing and submits an undertaking in form satisfactory to the secretary of state to change its name to a name that is distinguishable upon the records of the secretary of state from the name of the applying corporation.

b. The applicant delivers to the secretary of state a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.

4. A corporation may use the name, including the fictitious name, of another domestic or foreign corporation that is used in this state if the other corporation is incorporated or

authorized to transact business in this state and the proposed user corporation submits documentation to the satisfaction of the secretary of state establishing one of the following conditions:

a. Has merged with the other corporation.

b. Has been formed by reorganization of the other corporation.

c. Has acquired all or substantially all of the assets, including the corporate name, of the other corporation.

5. This chapter does not control the use of fictitious names; however, if a corporation or a foreign corporation uses a fictitious name in this state it shall deliver to the secretary of state for filing a copy of the resolution of its board of directors, certified by its secretary, adopting the fictitious name.

89 Acts, ch 288, §29; 90 Acts, ch 1205, §20 – 22; 96 Acts, ch 1170, §4; 2004 Acts, ch 1049, §183, 191, 192; 2006 Acts, ch 1089, §6; 2008 Acts, ch 1162, §138, 154, 155

Referred to in §488.108, 490.202, 490.403, 490.1422, 490.1506, 504.401, 504.403

490.402 Reserved name.

1. A person may reserve the exclusive use of a corporate name, including a fictitious name for a foreign corporation whose corporate name is not available, by delivering an application to the secretary of state for filing. The application must set forth the name and address of the applicant and the name proposed to be reserved. If the secretary of state finds that the corporate name applied for is available, the secretary of state shall reserve the name for the applicant's exclusive use for a nonrenewable one hundred twenty day period.

2. The owner of a reserved corporate name may transfer the reservation to another person by delivering to the secretary of state a signed notice of the transfer that states the name and address of the transferee.

89 Acts, ch 288, §30

Referred to in §488.108, 490.401, 490.1506, 504.401, 504.403, 504.1506, 524.310

490.403 Registered name.

1. A foreign corporation may register its corporate name, or its corporate name with any addition required by section 490.1506, if the name is distinguishable upon the records of the secretary of state from the corporate names that are not available under section 490.401, subsection 2, paragraph "*b*".

2. A foreign corporation registers its corporate name, or its corporate name with any addition required by section 490.1506, by delivering to the secretary of state for filing an application:

a. Setting forth its corporate name, or its corporate name with any addition required by section 490.1506, the state or country and date of its incorporation, and a brief description of the nature of the business in which it is engaged.

b. Accompanied by a certificate of existence, or a document of similar import, from the state or country of incorporation.

3. The name is registered for the applicant's exclusive use upon the effective date of the application.

4. A foreign corporation whose registration is effective may renew it for successive years by delivering to the secretary of state for filing a renewal application which complies with the requirements of subsection 2 between October 1 and December 31 of the preceding year. The renewal application renews the registration for the following calendar year.

5. A foreign corporation whose registration is effective may thereafter qualify as a foreign corporation under that name or consent in writing to the use of that name by a corporation thereafter incorporated under this chapter or by another foreign corporation thereafter authorized to transact business in this state. The first registration terminates when the domestic corporation is incorporated with that name or the foreign corporation qualifies or consents to the qualification of another foreign corporation under the registered name.

89 Acts, ch 288, §31

Referred to in §488.108, 490.401, 490.1506, 504.401, 504.403, 504.1506, 524.310

490.404 through 490.500 Reserved.

DIVISION V

REGISTERED OFFICE AND AGENT — SERVICE

490.501 Registered office and registered agent.

Each corporation must continuously maintain in this state both of the following:

1. A registered office that may be the same as any of its places of business.
2. A registered agent, who may be any of the following:

a. An individual who resides in this state and whose business office is identical with the registered office.

b. A domestic corporation, domestic limited liability company, or not-for-profit domestic corporation whose business office is identical with the registered office.

c. A foreign corporation, foreign limited liability company, or not-for-profit foreign corporation authorized to transact business in this state whose business office is identical with the registered office.

89 Acts, ch 288, §32; 2015 Acts, ch 45, §1

Referred to in §491.111, 624.23

490.502 Change of registered office or registered agent.

1. A corporation may change its registered office or registered agent by delivering to the secretary of state for filing a statement of change that sets forth all of the following:

a. The name of the corporation.

b. If the current registered office is to be changed, the street address of the new registered office.

c. If the current registered agent is to be changed, the name of the new registered agent and the new agent's written consent, either on the statement or attached to it, to the appointment.

d. That after the change or changes are made, the street addresses of its registered office and the business office of its registered agent will be identical.

2. If the street address of a registered agent's business office changes, the agent may change the street address of the registered office of any corporation for which the person is the registered agent by delivering a signed written notice of the change to the corporation and delivering to the secretary of state for filing a signed statement that complies with the requirements of subsection 1 and recites that the corporation has been notified of the change.

3. If a registered agent changes the registered agent's business address to another place, the registered agent may change the business address and the address of the registered agent by filing a statement as required in subsection 2 for each corporation, or a single statement for all corporations named in the notice, except that it need be signed only by the registered agent and need not be responsive to subsection 1, paragraph "*c*", and must recite that a copy of the statement has been mailed to each corporation named in the notice.

4. A corporation may also change its registered office or registered agent in its biennial report as provided in section 490.1622.

89 Acts, ch 288, §33; 96 Acts, ch 1170, §5; 97 Acts, ch 171, §11; 2006 Acts, ch 1089, §7; 2013 Acts, ch 31, §6, 82

Referred to in §490.1622, 490.1701

490.503 Resignation of registered agent.

1. A registered agent may resign the agent's agency appointment by signing and delivering to the secretary of state for filing the signed original statement of resignation. The statement may include a statement that the registered office is also discontinued. The registered agent shall send a copy of the statement of resignation by certified mail to the corporation at its principal office and to the registered office, if not discontinued. The registered agent shall certify to the secretary of state that the copies have been sent to the corporation, including the date the copies were sent.

2. The agency appointment is terminated, and the registered office discontinued if so provided, on the date on which the statement was filed.

89 Acts, ch 288, §34; 96 Acts, ch 1170, §6
Referred to in §490.120, 490.125

490.504 Service on corporation.

1. A corporation's registered agent is the corporation's agent for service of process, notice, or demand required or permitted by law to be served on the corporation.

2. If a corporation has no registered agent, or the agent cannot with reasonable diligence be served, the corporation may be served by registered or certified mail, return receipt requested, addressed to the secretary of the corporation at its principal office. Service is perfected under this subsection at the earliest of:

a. The date the corporation receives the mail.

b. The date shown on the return receipt, if signed on behalf of the corporation.

c. Five days after its deposit in the United States mail, as evidenced by the postmark, if mailed postpaid and correctly addressed.

3. A corporation may be served pursuant to this section, as provided in other provisions of this chapter, or as provided in sections 617.3 through 617.6, unless the manner of service is otherwise specifically provided for by statute.

89 Acts, ch 288, §35; 96 Acts, ch 1170, §7
Referred to in §490.1114, 490.1421, 490.1422, 490.1423, 624.23

490.505 through 490.600 Reserved.

DIVISION VI

SHARES AND SHAREHOLDERS' RIGHTS

Referred to in §490.140

PART A

490.601 Authorized shares.

1. The articles of incorporation must set forth any classes of shares and series of shares within a class, and the number of shares of each class and series, that the corporation is authorized to issue. If more than one class or series of shares is authorized, the articles of incorporation must prescribe a distinguishing designation for each class or series and must describe, prior to the issuance of shares of a class or series, the terms, including the preferences, rights, and limitations of that class or series. Except to the extent varied as permitted by this section, all shares of a class or series must have terms, including preferences, rights, and limitations that are identical with those of other shares of the same class or series.

2. The articles of incorporation must authorize all of the following:

a. One or more classes or series of shares that together have unlimited voting rights.

b. One or more classes or series of shares, which may be the same class or classes as those with voting rights, that together are entitled to receive the net assets of the corporation upon dissolution.

3. The articles of incorporation may authorize one or more classes or series of shares that have any of the following qualities:

a. Have special, conditional, or limited voting rights, or no right to vote, except to the extent otherwise provided by this chapter.

b. Are redeemable or convertible as specified in the articles of incorporation in any of the following ways:

(1) At the option of the corporation, the shareholder, or another person or upon the occurrence of a specified event.

(2) For cash, indebtedness, securities, or other property.

(3) At prices and in amounts specified, or determined in accordance with a designated formula.

c. Entitle the holders to distributions calculated in any manner, including dividends that may be cumulative, noncumulative, or partially cumulative.

d. Have preference over any other class or series of shares with respect to distributions, including distributions upon the dissolution of the corporation.

4. The terms of shares may be made dependent upon facts objectively ascertainable outside the articles of incorporation in accordance with section 490.120, subsection 12.

5. The terms of shares may vary among holders of the same class or series so long as such variations are expressly set forth in the articles of incorporation.

6. The description of the preferences, rights, and limitations of classes or series of shares in subsection 3 is not exhaustive.

89 Acts, ch 288, §36; 2007 Acts, ch 140, §4
Referred to in §490.602

490.602 Terms of class or series determined by board of directors.

1. If the articles of incorporation so provide, the board of directors is authorized, without shareholder approval, to do any of the following:

a. Classify any unissued shares into one or more series within a class.

b. Reclassify any unissued shares of any class into one or more classes or into one or more series within one or more classes.

c. Reclassify any unissued shares of any series of any class into one or more classes or into one or more series within a class.

2. If the board of directors acts pursuant to subsection 1, it must determine the terms, including the preferences, rights, and limitations, to the same extent permitted under section 490.601, of any of the following:

a. Any class of shares before the issuance of any shares of that class.

b. Any series within a class before the issuance of any shares of that series.

3. Before issuing any shares of a class or series created under this section, the corporation must deliver to the secretary of state for filing articles of amendment setting forth the terms determined under subsection 1.

89 Acts, ch 288, §37; 2007 Acts, ch 140, §5
Referred to in §490.1005

490.603 Issued and outstanding shares.

1. A corporation may issue the number of shares of each class or series authorized by the articles of incorporation. Shares that are issued are outstanding shares until they are reacquired, redeemed, converted, or canceled.

2. The reacquisition, redemption, or conversion of outstanding shares is subject to the limitations of subsection 3 and to section 490.640.

3. At all times that shares of the corporation are outstanding, one or more shares that together have unlimited voting rights and one or more shares that together are entitled to receive the net assets of the corporation upon dissolution must be outstanding.

89 Acts, ch 288, §38

490.604 Fractional shares.

1. A corporation may:

a. Issue fractions of a share or pay in money the value of fractions of a share.

b. Arrange for disposition of fractional shares by the shareholders.

c. Issue scrip in registered or bearer form entitling the holder to receive a full share upon surrendering enough scrip to equal a full share.

2. Each certificate representing scrip must be conspicuously labeled “scrip” and must contain the information required by section 490.625, subsection 2.

3. The holder of a fractional share is entitled to exercise the rights of a shareholder, including the right to vote, to receive dividends, and to participate in the assets of the corporation upon liquidation. The holder of scrip is not entitled to any of these rights unless the scrip provides for them.

4. The board of directors may authorize the issuance of scrip subject to any condition considered desirable, including:

a. That the scrip will become void if not exchanged for full shares before a specified date.

b. That the shares for which the scrip is exchangeable may be sold and the proceeds paid to the scrip holders.

89 Acts, ch 288, §39

490.605 through 490.619 Reserved.

PART B

490.620 Subscription for shares before incorporation.

1. A subscription for shares entered into before incorporation is irrevocable for six months unless the subscription agreement provides a longer or shorter period or all the subscribers agree to revocation.

2. The board of directors may determine the payment terms of subscriptions for shares that were entered into before incorporation unless the subscription agreement specifies them. A call for payment by the board of directors must be uniform so far as practicable as to all shares of the same class or series, unless the subscription agreement specifies otherwise.

3. Shares issued pursuant to subscriptions entered into before incorporation are fully paid and nonassessable when the corporation receives the consideration specified in the subscription agreement.

4. If a subscriber defaults in payment of money or property under a subscription agreement entered into before incorporation, the corporation may collect the amount owed as any other debt. Alternatively, unless the subscription agreement provides otherwise, the corporation may rescind the agreement and may sell the shares if the debt remains unpaid more than twenty days after the corporation sends a written demand for payment to the subscriber.

5. A subscription agreement entered into after incorporation is a contract between the subscriber and the corporation subject to section 490.621.

89 Acts, ch 288, §40; 2013 Acts, ch 31, §7, 82

Referred to in §490.622

490.621 Issuance of shares.

1. The powers granted in this section to the board of directors may be reserved to the shareholders by the articles of incorporation.

2. The board of directors may authorize shares to be issued for consideration consisting of any tangible or intangible property or benefit to the corporation, including cash, promissory notes, services performed, contracts for services to be performed, or other securities of the corporation.

3. Before the corporation issues shares, the board of directors must determine that the consideration received or to be received for shares to be issued is adequate. That determination by the board of directors is conclusive insofar as the adequacy of consideration for the issuance of shares relates to whether the shares are validly issued, fully paid, and nonassessable.

4. When the corporation receives the consideration for which the board of directors authorized the issuance of shares, the shares issued for that consideration are fully paid and nonassessable.

5. The corporation may place in escrow shares issued for a contract for future services or benefits or a promissory note, or make other arrangements to restrict the transfer of the shares, and may credit distributions in respect of the shares against their purchase price, until the services are performed, the note is paid, or the benefits received. If the services are not performed, the note is not paid, or the benefits are not received, the shares escrowed or restricted and the distributions credited may be canceled in whole or in part.

6. *a.* An issuance of shares or other securities convertible into or rights exercisable

for shares, in a transaction or a series of integrated transactions, requires approval of the shareholders, at a meeting at which a quorum exists consisting of at least a majority of the votes entitled to be cast on the matter, if both of the following conditions are satisfied:

(1) The shares, other securities, or rights are issued for consideration other than cash or cash equivalents.

(2) The voting power of shares that are issued and issuable as a result of the transaction or series of integrated transactions will comprise more than twenty percent of the voting power of the shares of the corporation that were outstanding immediately before the transaction.

b. For purposes of this subsection, the following shall apply:

(1) For purposes of determining the voting power of shares issued and issuable as a result of a transaction or series of integrated transactions, the voting power of shares shall be the greater of the following:

(a) The voting power of the shares to be issued.

(b) The voting power of the shares that would be outstanding after giving effect to the conversion of convertible shares and other securities and the exercise of rights to be issued.

(2) A series of transactions is integrated if consummation of one transaction is made contingent on consummation of one or more of the other transactions.

89 Acts, ch 288, §41; 2002 Acts, ch 1154, §11, 125

Referred to in §490.620, 490.622, 490.1104

490.622 Liability of shareholders.

1. A purchaser from a corporation of its own shares is not liable to the corporation or its creditors with respect to the shares except to pay the consideration for which the shares were authorized to be issued under section 490.621, or specified in the subscription agreement authorized under section 490.620.

2. Unless otherwise provided in the articles of incorporation, a shareholder of a corporation is not personally liable for the acts or debts of the corporation.

89 Acts, ch 288, §42

490.623 Share dividends.

1. Unless the articles of incorporation provide otherwise, shares may be issued pro rata and without consideration to the corporation's shareholders or to the shareholders of one or more classes or series. An issuance of shares under this subsection is a share dividend.

2. Shares of one class or series shall not be issued as a share dividend in respect of shares of another class or series unless one or more of the following conditions are met:

a. The articles of incorporation so authorize.

b. A majority of the votes entitled to be cast by the class or series to be issued approve the issue.

c. There are no outstanding shares of the class or series to be issued.

3. If the board of directors does not fix the record date for determining shareholders entitled to a share dividend, it is the date the board of directors authorizes the share dividend.

89 Acts, ch 288, §43

490.624 Share options.

1. A corporation may issue rights, options, or warrants for the purchase of shares or other securities of the corporation. The board of directors shall determine the terms upon which the rights, options, or warrants are issued, and the terms, including the consideration for which the shares or other securities are to be issued. The authorization by the board of directors for the corporation to issue such rights, options, or warrants constitutes authorization of the issuance of the shares or other securities for which the rights, options, or warrants are exercisable.

2. The terms and conditions of such rights, options, or warrants, including those outstanding on July 1, 1989, may include, without limitation, restrictions, or conditions that do any of the following:

a. Preclude or limit the exercise, transfer, or receipt of such rights, options, or warrants by any person or persons owning or offering to acquire a specified number or percentage of the

outstanding shares or other securities of the corporation or by any transferee or transferees of any such person or persons.

b. Invalidate or void such rights, options, or warrants held by any such person or persons or any such transferee or transferees.

3. The board of directors may authorize one or more officers to do all of the following:

a. Designate the recipients of rights, options, warrants, or other equity compensation awards that involve the issuance of shares.

b. Determine, within an amount and subject to any other limitations established by the board and, if applicable, the stockholders, the number of such rights, options, warrants, or other equity compensation awards and the terms thereof to be received by the recipients, provided that an officer shall not use such authority to designate the officer or any other persons the board of directors may specify as a recipient of such rights, options, warrants, or other equity compensation awards.

89 Acts, ch 288, §44; 2007 Acts, ch 140, §6; 2008 Acts, ch 1031, §55, 116; 2013 Acts, ch 31, §8, 82

490.624A Poison pill defense authorized.

The terms and conditions of stock rights or options issued by the corporation may include, without limitation, restrictions or conditions that preclude or limit the exercise, transfer, or receipt of such rights or options by a person, or group of persons, owning or offering to acquire a specified number or percentage of the outstanding common shares or other securities of the corporation, or a transferee of the offeror, or that invalidate or void such stock rights or options held by an offeror or a transferee of the offeror.

89 Acts, ch 288, §45

490.625 Content of certificates.

1. Shares may be, but need not be, represented by certificates. Unless this chapter or another section expressly provides otherwise, the rights and obligations of shareholders are identical whether or not their shares are represented by certificates.

2. At a minimum each share certificate must state on its face all of the following:

a. The name of the issuing corporation and that it is organized under the law of this state.

b. The name of the person to whom issued.

c. The number and class of shares and the designation of the series, if any, the certificate represents.

3. If the issuing corporation is authorized to issue different classes of shares or different series within a class, the designations, relative rights, preferences, and limitations applicable to each class, the variations in rights, preferences, and limitations determined for each series, and the authority of the board of directors to determine variations for future series must be summarized on the front or back of each certificate. Alternatively, each certificate may state conspicuously on its front or back that the corporation will furnish the shareholder this information on request in writing and without charge.

4. Each share certificate:

a. Must be signed either manually or in facsimile by two officers designated in the bylaws or by the board of directors.

b. May bear the corporate seal or its facsimile.

5. If the person who signed, either manually or in facsimile, a share certificate no longer holds office when the certificate is issued, the certificate is nevertheless valid.

89 Acts, ch 288, §46

Referred to in §490.604, 490.626

490.626 Shares without certificates.

1. Unless the articles of incorporation or bylaws provide otherwise, the board of directors of a corporation may authorize the issue of some or all of the shares of any or all of its classes or series without certificates. The authorization does not affect shares already represented by certificates until they are surrendered to the corporation.

2. Within a reasonable time after the issue or transfer of shares without certificates, the

corporation shall send the shareholder a written statement of the information required on certificates by section 490.625, subsections 2 and 3, and, if applicable, section 490.627.

89 Acts, ch 288, §47
Referred to in §490.627, 490.732

490.627 Restriction on transfer of shares and other securities.

1. The articles of incorporation, bylaws, an agreement among shareholders, or an agreement between shareholders and the corporation may impose restrictions on the transfer or registration of transfer of shares of the corporation. A restriction does not affect shares issued before the restriction was adopted unless the holders of the shares are parties to the restriction agreement or voted in favor of the restriction.

2. A restriction on the transfer or registration of transfer of shares is valid and enforceable against the holder or a transferee of the holder if the restriction is authorized by this section and its existence is noted conspicuously on the front or back of the certificate or is contained in the information statement required by section 490.626, subsection 2. Unless so noted, a restriction is not enforceable against a person without knowledge of the restriction.

3. A restriction on the transfer or registration of transfer of shares is authorized for any of the following purposes:

a. To maintain the corporation's status when it is dependent on the number or identity of its shareholders.

b. To preserve exemptions under federal or state securities law.

c. For any other reasonable purpose.

4. A restriction on the transfer or registration of transfer of shares may do any of the following:

a. Obligate the shareholder first to offer the corporation or other persons, separately, consecutively, or simultaneously, an opportunity to acquire the restricted shares.

b. Obligate the corporation or other persons, separately, consecutively, or simultaneously, to acquire the restricted shares.

c. Require the corporation, the holders of any class of its shares, or another person to approve the transfer of the restricted shares, if the requirement is not manifestly unreasonable.

d. Prohibit the transfer of the restricted shares to designated persons or classes of persons, if the prohibition is not manifestly unreasonable.

5. For purposes of this section, "*shares*" includes a security convertible into or carrying a right to subscribe for or acquire shares.

89 Acts, ch 288, §48
Referred to in §490.626

490.628 Expense of issue.

A corporation may pay the expenses of selling or underwriting its shares, and of organizing or reorganizing the corporation, from the consideration received for shares.

89 Acts, ch 288, §49

490.629 Reversion of disbursements to cooperative associations.

1. As used in this section, "*disbursement*" means an amount of any distribution or any other increment or sum realized or accruing from stock or other equity interest in a cooperative association organized under this chapter.

2. Once a person's stock or other equity interest in a cooperative association organized under this chapter is deemed abandoned under section 556.5, any disbursement held by the cooperative association for or owing to the person shall be subject to the same requirements as provided in section 499.30A that apply to a cooperative association organized under chapter 499, including all of the following:

a. The retention of the disbursement in a reversion fund established by the cooperative association or the delivery of the disbursement to the treasurer of state.

b. The payment of the disbursement to a person filing a claim with the cooperative association who asserts an interest in the disbursement.

c. The forfeiture of the disbursement to the cooperative association, and the use

of the forfeited disbursement by the cooperative association in order to teach and promote cooperation or provide for economic development, including creating economic opportunities for its shareholders.

2001 Acts, ch 142, §2
Referred to in §556.5

PART C

490.630 Shareholders' preemptive rights.

1. The shareholders of a corporation do not have a preemptive right to acquire the corporation's unissued shares except to the extent the articles of incorporation so provide.

2. A statement included in the articles of incorporation that "the corporation elects to have preemptive rights", or words of similar import, means that the following principles apply except to the extent the articles of incorporation expressly provide otherwise:

a. The shareholders of the corporation have a preemptive right, granted on uniform terms and conditions prescribed by the board of directors to provide a fair and reasonable opportunity to exercise the right, to acquire proportional amounts of the corporation's unissued shares upon the decision of the board of directors to issue them.

b. A shareholder may waive the shareholder's preemptive right. A waiver evidenced by a writing is irrevocable even though it is not supported by consideration.

c. There is no preemptive right with respect to:

(1) Shares issued as compensation to directors, officers, agents, or employees of the corporation, its subsidiaries, or its affiliates.

(2) Shares issued to satisfy conversion or option rights created to provide compensation to directors, officers, agents, or employees of the corporation, its subsidiaries, or its affiliates.

(3) Shares authorized in articles of incorporation that are issued within six months from the effective date of incorporation.

(4) Shares sold otherwise than for money.

d. Holders of shares of any class without general voting rights but with preferential rights to distributions or assets have no preemptive rights with respect to shares of any class.

e. Holders of shares of any class with general voting rights but without preferential rights to distributions or assets have no preemptive rights with respect to shares of any class with preferential rights to distributions or assets unless the shares with preferential rights are convertible into or carry a right to subscribe for or acquire shares without preferential rights.

f. Shares subject to preemptive rights that are not acquired by shareholders may be issued to any person for a period of one year after being offered to shareholders at a consideration set by the board of directors that is not lower than the consideration set for the exercise of preemptive rights. An offer at a lower consideration or after the expiration of one year is subject to the shareholders' preemptive rights.

3. For purposes of this section, *"shares"* includes a security convertible into or carrying a right to subscribe for or acquire shares.

89 Acts, ch 288, §50; 2006 Acts, ch 1089, §8

490.631 Corporation's acquisition of its own shares.

1. A corporation may acquire its own shares and, except as may be otherwise provided pursuant to section 490.632, shares so acquired constitute authorized but unissued shares.

2. If the articles of incorporation prohibit the reissue of the acquired shares, the number of authorized shares is reduced by the number of shares acquired.

89 Acts, ch 288, §51; 90 Acts, ch 1205, §23; 2002 Acts, ch 1154, §12, 125
Referred to in §490.1005

490.632 Reacquired shares as issued but not outstanding shares.

1. A corporation which, as of December 30, 1989, treated any of its shares which it had reacquired as issued but not outstanding shares may continue to treat those shares as issued but not outstanding shares.

2. If a corporation reacquires its own shares after December 30, 1989, but before January

1, 1991, those shares constitute issued but not outstanding shares as of and after their reacquisition if either of the following is applicable:

a. When the shares are reacquired, the articles of incorporation contain a provision specifying that reacquired shares constitute issued but not outstanding shares.

b. Prior to January 1, 1991, the board of directors adopts a resolution specifying that shares reacquired after December 30, 1989, and prior to January 1, 1991, constitute issued but not outstanding shares.

3. If a corporation reacquires its own shares after December 31, 1990, those shares constitute issued but not outstanding shares if, at the time they are reacquired by the corporation, either of the following is applicable:

a. The articles of incorporation contain a provision specifying that reacquired shares constitute issued but not outstanding shares.

b. The board of directors has adopted a resolution specifying that reacquired shares constitute issued but not outstanding shares.

4. Unless otherwise provided in its articles of incorporation, a corporation may at any time, by resolution adopted by its board of directors, cancel or otherwise restore to the status of authorized but unissued shares any of its shares which it has previously reacquired and treated as issued but not outstanding shares.

90 Acts, ch 1205, §24; 91 Acts, ch 97, §54
Referred to in §490.631

490.633 through 490.639 Reserved.

PART D

490.640 Distribution to shareholders.

1. A board of directors may authorize and the corporation may make distributions to its shareholders subject to restriction by the articles of incorporation and the limitation in subsection 3.

2. If the board of directors does not fix the record date for determining shareholders entitled to a distribution, other than one involving a repurchase or reacquisition of shares, it is the date the board of directors authorizes the distribution.

3. No distribution may be made if, after giving it effect either of the following would result:

a. The corporation would not be able to pay its debts as they become due in the usual course of business.

b. The corporation's total assets would be less than the sum of its total liabilities plus, unless the articles of incorporation permit otherwise, the amount that would be needed, if the corporation were to be dissolved at the time of the distribution, to satisfy the preferential rights upon dissolution of shareholders whose preferential rights are superior to those receiving the distribution.

4. The board of directors may base a determination that a distribution is not prohibited under subsection 3 either on financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances or on a fair valuation or other method that is reasonable in the circumstances.

5. The effect of a distribution under subsection 3 is measured:

a. In the case of distribution by purchase, redemption, or other acquisition of the corporation's shares, as of the earlier of:

(1) The date money or other property is transferred or debt incurred by the corporation.

(2) The date the shareholder ceases to be a shareholder with respect to the acquired shares.

b. In the case of any other distribution of indebtedness, as of the date the indebtedness is distributed.

c. In all other cases, as of:

(1) The date the distribution is authorized if the payment occurs within one hundred twenty days after the date of authorization.

(2) The date the payment is made if it occurs more than one hundred twenty days after the date of authorization.

6. A corporation's indebtedness to a shareholder incurred by reason of a distribution made in accordance with this section is at parity with the corporation's indebtedness to its general, unsecured creditors except to the extent subordinated by agreement.

7. Indebtedness of a corporation, including indebtedness issued as a distribution, is not considered a liability for purposes of determinations under subsection 3 if its terms provide that payment of principal and interest are made only if and to the extent that payment of a distribution to shareholders could then be made under this section. If the indebtedness is issued as a distribution, each payment of principal or interest is treated as a distribution, the effect of which is measured on the date the payment is actually made.

8. This section shall not apply to distributions in liquidation under division XIV.

89 Acts, ch 288, §52; 2002 Acts, ch 1154, §13, 125; 2008 Acts, ch 1015, §1

Referred to in §490.603, 490.732, 490.833, 490.1434

490.641 through 490.700 Reserved.

DIVISION VII

MEETINGS — NOTICE — VOTING

Referred to in §490.140

PART A

490.701 Annual meeting.

1. Unless directors are elected by written consent in lieu of an annual meeting as permitted by section 490.704, a corporation shall hold annually, at a time stated in or fixed in accordance with the bylaws, a meeting of shareholders; provided, however, that if a corporation's articles of incorporation authorize shareholders to cumulate their votes when electing directors pursuant to section 490.728, directors shall not be elected by less than unanimous consent.

2. Annual shareholders' meetings may be held in or out of this state at the place stated in or fixed in accordance with the bylaws. If no place is stated in or fixed in accordance with the bylaws, annual meetings shall be held at the corporation's principal office.

3. The failure to hold an annual meeting at the time stated in or fixed in accordance with a corporation's bylaws does not affect the validity of any corporate action.

89 Acts, ch 288, §53; 2013 Acts, ch 31, §9, 82

490.702 Special meeting.

1. Except as provided in subsection 5, a corporation shall hold a special meeting of shareholders upon the occurrence of either of the following:

a. On call of its board of directors or the person or persons authorized to call a special meeting by the articles of incorporation or bylaws.

b. If the shareholders of at least ten percent of all the votes entitled to be cast on any issue proposed to be considered at the proposed special meeting sign, date, and deliver to the corporation one or more written demands for the meeting describing the purpose or purposes for which it is to be held, provided that the articles of incorporation may fix a lower percentage or a higher percentage not exceeding twenty-five percent of all the votes entitled to be cast on any issue proposed to be considered. Unless otherwise provided in the articles of incorporation, a written demand for a special meeting may be revoked by a writing to that effect received by the corporation prior to the receipt by the corporation of demands sufficient in number to require the holding of a special meeting.

2. If not otherwise fixed under section 490.703 or 490.707, the record date for determining shareholders entitled to demand a special meeting is the date the first shareholder signs the demand.

3. Special shareholders' meetings may be held in or out of this state at the place stated in or fixed in accordance with the bylaws. If no place is stated or fixed in accordance with the bylaws, special meetings shall be held at the corporation's principal office.

4. Only business with the purpose or purposes described in the meeting notice required by section 490.705, subsection 3, may be conducted at a special shareholders' meeting.

5. Notwithstanding subsections 1 through 4, a public corporation is required to hold a special meeting only upon the occurrence of either of the following:

a. On call of its board of directors or the person or persons authorized to call a special meeting by the articles of incorporation or bylaws.

b. If the holders of at least fifty percent of all the votes entitled to be cast on any issue proposed to be considered at the proposed special meeting sign, date, and deliver to the corporation's secretary one or more written demands for the meeting describing the purpose or purposes for which it is to be held.

89 Acts, ch 288, §54; 97 Acts, ch 117, §1, 2; 2002 Acts, ch 1154, §14, 125; 2011 Acts, ch 2, §2, 10

Referred to in §490.703

490.703 Court-ordered meeting.

1. The district court of the county where a corporation's principal office, or, if none in this state, its registered office, is located may summarily order a meeting to be held pursuant to any of the following:

a. On application of any shareholder of the corporation entitled to participate in an annual meeting if an annual meeting was not held or action by written consent in lieu thereof did not become effective within the earlier of six months after the end of the corporation's fiscal year or fifteen months after its last annual meeting.

b. On application of a shareholder who signed a demand for a special meeting valid under section 490.702 if any of the following applies:

(1) Notice of the special meeting was not given within thirty days after the date the demand was delivered to the corporation's secretary.

(2) The special meeting was not held in accordance with the notice.

2. The court may fix the time and place of the meeting, ascertain the shares entitled to participate in the meeting, specify a record date or dates for ascertaining shareholders entitled to notice of and to vote at the meeting, prescribe the form and content of the meeting notice, fix the quorum required for specific matters to be considered at the meeting or direct that the votes represented at the meeting constitute a quorum for action on those matters, and enter other orders necessary to accomplish the purpose or purposes of the meeting.

89 Acts, ch 288, §55; 2013 Acts, ch 31, §10, 82

Referred to in §490.702, 490.705

490.704 Action without meeting.

1. Unless otherwise provided in the articles of incorporation, any action required or permitted by this chapter to be taken at a shareholders' meeting may be taken without a meeting or vote, and, except as provided in subsection 5, without prior notice, if one or more written consents describing the action taken are signed by the holders of outstanding shares having not less than ninety percent of the votes entitled to be cast at a meeting at which all shares entitled to vote on the action were present and voted, and are delivered to the corporation for inclusion in the minutes or filing with the corporate records.

2. Except in the case of a public corporation, the articles of incorporation may provide that any action required or permitted by this chapter to be taken at a shareholders' meeting may be taken without a meeting, and without prior notice, if consents in writing setting forth the action so taken are signed by the holders of outstanding shares having not less than the minimum number of votes that would be required to authorize or take the action at a meeting at which all shares entitled to vote on the action were present and voted. The written consent shall bear the date of signature of the shareholder who signs the consent and be delivered to the corporation for inclusion in the minutes or filing with the corporate records.

3. If not otherwise fixed under section 490.707 and if prior board action is not required

respecting the action to be taken without a meeting, the record date for determining the shareholders entitled to take action without a meeting shall be the first date on which a signed written consent is delivered to the corporation. If not otherwise fixed under section 490.707 and if prior board action is required respecting the action to be taken without a meeting, the record date shall be the close of business on the day the resolution of the board taking such prior action is adopted. No written consent shall be effective to take the corporate action referred to therein unless, within sixty days of the earliest date on which a consent delivered to the corporation as required by this section was signed, written consents signed by sufficient shareholders to take the action have been delivered to the corporation. A written consent may be revoked by a writing to that effect delivered to the corporation before unrevoked written consents sufficient in number to take the corporate action are delivered to the corporation.

4. A consent signed pursuant to the provisions of this section has the effect of a meeting vote and may be described as such in any document. Unless the articles of incorporation, bylaws, or a resolution of the board of directors provides for a reasonable delay to permit tabulation of written consents, the action taken by written consent shall be effective when written consents signed by sufficient shareholders to take the action are delivered to the corporation.

5. *a.* If this chapter requires that notice of a proposed action be given to nonvoting shareholders and the action is to be taken by written consent of the voting shareholders, the corporation must give its nonvoting shareholders written notice of the action not more than ten days after any of the following:

(1) Written consents sufficient to take the action have been delivered to the corporation.

(2) Such later date that tabulation of consents is completed pursuant to an authorization under subsection 4.

b. The notice must reasonably describe the action taken and contain or be accompanied by the same material that, under any provision of this chapter, would have been required to be sent to nonvoting shareholders in a notice of a meeting at which the proposed action would have been submitted to the shareholders for action.

6. *a.* If action is taken by less than unanimous written consent of the voting shareholders, the corporation must give its nonconsenting voting shareholders written notice of the action not more than ten days after any of the following:

(1) Written consents sufficient to take the action have been delivered to the corporation.

(2) Such later date that tabulation of consents is completed pursuant to an authorization under subsection 4.

b. The notice must reasonably describe the action taken and contain or be accompanied by the same material that, under any provision of this chapter, would have been required to be sent to voting shareholders in a notice of a meeting at which the action would have been submitted to the shareholders for action.

7. The notice requirements in subsections 5 and 6 shall not delay the effectiveness of actions taken by written consent, and a failure to comply with such notice requirements shall not invalidate actions taken by written consent, provided that this subsection shall not be deemed to limit judicial power to fashion any appropriate remedy in favor of a shareholder adversely affected by a failure to give such notice within the required time period.

89 Acts, ch 288, §56; 2002 Acts, ch 1154, §15, 125; 2013 Acts, ch 31, §11, 82

Referred to in §490.701, 490.808, 490.1320, 490.1340

490.705 Notice of meeting.

1. A corporation shall notify shareholders of the date, time, and place of each annual and special shareholders' meeting no fewer than ten nor more than sixty days before the meeting date. The notice shall include the record date for determining the shareholders entitled to vote at the meeting, if such date is different than the record date for determining shareholders entitled to notice of the meeting. If the board of directors has authorized participation by means of remote communication pursuant to section 490.709 for any class or series of shareholders, the notice to such class or series of shareholders shall describe the means of remote communication to be used. Unless this chapter or the articles of incorporation require otherwise, the corporation is required to give notice only

to shareholders entitled to vote at the meeting as of the record date for determining the shareholders entitled to notice of the meeting.

2. Unless this chapter or the articles of incorporation require otherwise, notice of an annual meeting need not include a description of the purpose or purposes for which the meeting is called.

3. Notice of a special meeting must include a description of the purpose or purposes for which the meeting is called.

4. If not otherwise fixed under section 490.703 or 490.707, the record date for determining shareholders entitled to notice of and to vote at an annual or special shareholders' meeting is the close of business on the day before the first notice is delivered to shareholders.

5. Unless the bylaws require otherwise, if an annual or special shareholders' meeting is adjourned to a different date, time, or place, notice need not be given of the new date, time, or place if the new date, time, or place is announced at the meeting before adjournment. If a new record date for the adjourned meeting is or must be fixed under section 490.707, however, notice of the adjourned meeting must be given under this section to shareholders entitled to vote at such adjourned meeting as of the record date fixed for notice of such adjourned meeting.

89 Acts, ch 288, §57; 2013 Acts, ch 31, §12, 82

Referred to in §490.702

490.706 Waiver of notice.

1. A shareholder may waive any notice required by this chapter, the articles of incorporation, or bylaws before or after the date and time stated in the notice. The waiver must be in writing, be signed by the shareholder entitled to the notice, and be delivered to the corporation for inclusion in the minutes or filing with the corporate records.

2. A shareholder's attendance at a meeting:

a. Waives objection to lack of notice or defective notice of the meeting, unless the shareholder at the beginning of the meeting or promptly upon the shareholder's arrival objects to holding the meeting or transacting business at the meeting.

b. Waives objection to consideration of a particular matter at the meeting that is not within the purpose or purposes described in the meeting notice, unless the shareholder objects to considering the matter when it is presented.

89 Acts, ch 288, §58

490.707 Record date.

1. The bylaws may fix or provide the manner of fixing the record date or dates for one or more voting groups in order to determine the shareholders entitled to notice of a shareholders' meeting, to demand a special meeting, to vote, or to take any other action. If the bylaws do not fix or provide for fixing a record date, the board of directors of the corporation may fix a future date as the record date.

2. A record date fixed under this section shall not be more than seventy days before the meeting or action requiring a determination of shareholders.

3. A determination of shareholders entitled to notice of or to vote at a shareholders' meeting is effective for any adjournment of the meeting unless the board of directors fixes a new record date or dates, which it must do if the meeting is adjourned to a date more than one hundred twenty days after the date fixed for the original meeting.

4. If a court orders a meeting adjourned to a date more than one hundred twenty days after the date fixed for the original meeting, it may provide that the original record date continues in effect or it may fix a new record date or dates.

5. The record date for a shareholders' meeting fixed by or in the manner provided in the bylaws or by the board of directors shall be the record date for determining shareholders entitled both to notice of and to vote at the shareholders' meeting unless, in the case of a record date fixed by the board of directors and to the extent not prohibited by the bylaws, the board, at the time it fixes the record date for shareholders entitled to notice of the meeting,

fixes a later record date on or before the date of the meeting to determine the shareholders entitled to vote at the meeting.

89 Acts, ch 288, §59; 2013 Acts, ch 31, §13, 82
Referred to in §490.702, 490.704, 490.705, 490.720

490.708 Conduct of the meeting.

1. At each meeting of shareholders, a chairperson shall preside. The chairperson shall be appointed as provided in the bylaws or, in the absence of such provisions, by the board.

2. The chairperson, unless the articles of incorporation or bylaws provide otherwise, shall determine the order of business and shall have the authority to establish rules for the conduct of the meeting.

3. Any rules adopted for, and the conduct of, the meeting shall be fair to shareholders.

4. The chairperson of the meeting shall announce at the meeting when the polls close for each matter voted upon. If no announcement is made, the polls shall be deemed to have closed upon the final adjournment of the meeting. After the polls close, no ballots, proxies, or votes nor any revocations or changes to any ballots, proxies, or votes may be accepted.

2002 Acts, ch 1154, §16, 125

490.709 Remote participation in annual and special meetings.

1. Shareholders of any class or series may participate in any meeting of shareholders by means of remote communication to the extent the board of directors authorizes such participation for such class or series. Participation by means of remote communication shall be subject to such guidelines and procedures as the board of directors adopts, and shall be in conformity with subsection 2.

2. Shareholders participating in a shareholders' meeting by means of remote communication shall be deemed present and may vote at such a meeting if the corporation has implemented reasonable measures to do all of the following:

a. Verify that each person participating remotely is a shareholder.

b. Provide such shareholders a reasonable opportunity to participate in the meeting and to vote on matters submitted to the shareholders, including an opportunity to communicate, and to read or hear the proceedings of the meeting, substantially concurrently with such proceedings.

2013 Acts, ch 31, §14, 82
Referred to in §490.705

490.710 through 490.719 Reserved.

PART B

490.720 Shareholders' list for meeting.

1. After fixing a record date for a meeting, a corporation shall prepare an alphabetical list of the names of all its shareholders who are entitled to notice of a shareholders' meeting. If the board of directors fixes a different record date under section 490.707, subsection 5, to determine the shareholders entitled to vote at the meeting, a corporation also shall prepare an alphabetical list of the names of all its shareholders who are entitled to vote at the meeting. A list must be arranged by voting group and within each voting group by class or series of shares, and show the address of and number of shares held by each shareholder.

2. The shareholders' list for notice must be available for inspection by any shareholder beginning two business days after notice of the meeting is given for which the list was prepared and continuing through the meeting, at the corporation's principal office or at a place identified in the meeting notice in the city where the meeting will be held. A shareholders' list for voting must be similarly available for inspection promptly after the record date for voting. A shareholder, or a shareholder's agent or attorney, is entitled on written demand to inspect and, subject to the requirements of section 490.1602, subsection

4, to copy a list, during regular business hours and at the person's expense, during the period it is available for inspection.

3. The corporation shall make the list of shareholders entitled to vote available at the meeting, and any shareholder, or a shareholder's agent or attorney, is entitled to inspect the list at any time during the meeting or any adjournment.

4. If the corporation refuses to allow a shareholder, or a shareholder's agent or attorney, to inspect a shareholders' list before or at the meeting, or copy a list as permitted by subsection 2, the district court of the county where a corporation's principal office or, if none in this state, its registered office, is located, on application of the shareholder, may summarily order the inspection or copying at the corporation's expense and may postpone the meeting for which the list was prepared until the inspection or copying is complete.

5. Refusal or failure to prepare or make available a shareholders' list does not affect the validity of action taken at the meeting.

89 Acts, ch 288, §60; 91 Acts, ch 211, §4; 2013 Acts, ch 31, §15, 82

Referred to in §490.1602

490.721 Voting entitlement of shares.

1. Except as provided in subsections 2 and 3 or unless the articles of incorporation provide otherwise, each outstanding share, regardless of class, is entitled to one vote on each matter voted on at a shareholders' meeting. Only shares are entitled to vote.

2. Absent special circumstances, the shares of a corporation are not entitled to vote if they are owned, directly or indirectly, by a second corporation, domestic or foreign, and the first corporation owns, directly or indirectly, a majority of the shares entitled to vote for directors of the second corporation.

3. Subsection 2 does not limit the power of a corporation to vote any shares, including its own shares, held by it in a fiduciary capacity.

4. Redeemable shares are not entitled to vote after notice of redemption is mailed to the holders and a sum sufficient to redeem the shares has been deposited with a bank, trust company, or other financial institution under an irrevocable obligation to pay the holders the redemption price on surrender of the shares.

89 Acts, ch 288, §61

490.722 Proxies.

1. A shareholder may vote the shareholder's shares in person or by proxy.

2. An appointment of a proxy is effective when a signed appointment form or an electronic transmission of the appointment is received by the inspector of election or the officer or agent of the corporation authorized to tabulate votes. An appointment is valid for eleven months unless a longer period is expressly provided in the appointment.

3. An appointment of a proxy is revocable unless the appointment form or electronic transmission states that it is irrevocable and the appointment is coupled with an interest. Appointments coupled with an interest include, but are not limited to, the appointment of:

a. A pledgee.

b. A person who purchased or agreed to purchase the shares.

c. A creditor of the corporation who extended it credit under terms requiring the appointment.

d. An employee of the corporation whose employment contract requires the appointment.

e. A party to a voting agreement created under section 490.731.

4. The death or incapacity of the shareholder appointing a proxy does not affect the right of the corporation to accept the proxy's authority unless notice of the death or incapacity is received by the secretary or other officer or agent authorized to tabulate votes before the proxy exercises the proxy's authority under the appointment.

5. An appointment made irrevocable under subsection 3 is revoked when the interest with which it is coupled is extinguished.

6. A transferee for value of shares subject to an irrevocable appointment may revoke the appointment if the transferee did not know of its existence when the transferee acquired the shares and the existence of the irrevocable appointment was not noted conspicuously

on the certificate representing the shares or on the information statement for shares without certificates.

7. Subject to section 490.724 and to any express limitation on the proxy's authority stated in the appointment form or electronic transmission, a corporation is entitled to accept the proxy's vote or other action as that of the shareholder making the appointment.

89 Acts, ch 288, §62; 2002 Acts, ch 1154, §17, 125; 2013 Acts, ch 31, §16, 82

490.723 Shares held by nominees.

1. A corporation may establish a procedure by which the beneficial owner of shares that are registered in the name of a nominee is recognized by the corporation as the shareholder. The extent of this recognition may be determined in the procedure.

2. The procedure may set forth:

a. The types of nominees to which it applies.

b. The rights or privileges that the corporation recognizes in a beneficial owner.

c. The manner in which the procedure is selected by the nominee.

d. The information that must be provided when the procedure is selected.

e. The period for which selection of the procedure is effective.

f. Other aspects of the rights and duties created.

89 Acts, ch 288, §63

490.724 Corporation's acceptance of votes.

1. If the name signed on a vote, consent, waiver, or proxy appointment corresponds to the name of a shareholder, the corporation if acting in good faith is entitled to accept the vote, consent, waiver, or proxy appointment and give it effect as the act of the shareholder.

2. If the name signed on a voted consent, waiver, or proxy appointment does not correspond to the name of its shareholder, the corporation if acting in good faith is nevertheless entitled to accept the vote, consent, waiver, or proxy appointment and give it effect as the act of the shareholder if:

a. The shareholder is an entity and the name signed purports to be that of an officer or agent of the entity.

b. The name signed purports to be that of an administrator, executor, guardian of the property, or conservator representing the shareholder and, if the corporation requests, evidence of fiduciary status acceptable to the corporation has been presented with respect to the vote, consent, waiver, or proxy appointment.

c. The name signed purports to be that of a receiver or trustee in bankruptcy of the shareholder and, if the corporation requests, evidence of this status acceptable to the corporation has been presented with respect to the vote, consent, waiver, or proxy appointment.

d. The name signed purports to be that of a pledgee, beneficial owner, or attorney in fact of the shareholder and, if the corporation requests, evidence acceptable to the corporation of the signatory's authority to sign for the shareholder has been presented with respect to the vote, consent, waiver, or proxy appointment.

e. Two or more persons are the shareholder as co-tenants or fiduciaries and the name signed purports to be the name of at least one of the co-owners and the person signing appears to be acting on behalf of all the co-owners.

3. The corporation is entitled to reject a vote, consent, waiver, or proxy appointment if the secretary or other officer or agent authorized to tabulate votes, acting in good faith, has reasonable basis for doubt about the validity of the signature on it or about the signatory's authority to sign for the shareholder.

4. The corporation and its officer or agent who accepts or rejects a vote, consent, waiver, or proxy appointment in good faith and in accordance with the standards of this section are not liable in damages to the shareholder for the consequences of the acceptance or rejection.

5. Corporate action based on the acceptance or rejection of a vote, consent, waiver,

or proxy appointment under this section is valid unless a court of competent jurisdiction determines otherwise.

89 Acts, ch 288, §64; 2002 Acts, ch 1154, §18, 125; 2003 Acts, ch 44, §81; 2013 Acts, ch 31, §17, 82

Referred to in §490.722

490.725 Quorum and voting requirements for voting groups.

1. Shares entitled to vote as a separate voting group may take action on a matter at a meeting only if a quorum of those shares exists with respect to that matter. Unless the articles of incorporation or this chapter provides otherwise, a majority of the votes entitled to be cast on the matter by the voting group constitutes a quorum of that voting group for action on that matter.

2. Once a share is represented for any purpose at a meeting, it is deemed present for quorum purposes for the remainder of the meeting and for any adjournment of that meeting unless a new record date is or must be set for that adjourned meeting.

3. If a quorum exists, action on a matter, other than the election of directors, by a voting group is approved if the votes cast within the voting group favoring the action exceed the votes cast opposing the action, unless the articles of incorporation or this chapter require a greater number of affirmative votes.

4. An amendment of articles of incorporation adding, changing, or deleting a quorum or voting requirement for a voting group greater than specified in subsection 2 or 3 is governed by section 490.727.

5. The election of directors is governed by section 490.728.

89 Acts, ch 288, §65

Referred to in §490.726

490.726 Action by single or multiple groups.

1. If the articles of incorporation or this chapter provide for voting by a single voting group on a matter, action on that matter is taken when voted upon by that voting group as provided in section 490.725.

2. If the articles of incorporation or this chapter provide for voting by two or more voting groups on a matter, action on that matter is taken only when voted upon by each of those voting groups counted separately as provided in section 490.725. Action may be taken by one voting group on a matter even though no action is taken by another voting group entitled to vote on the matter.

89 Acts, ch 288, §66

490.727 Greater quorum or voting requirements.

1. The articles of incorporation or bylaws may provide for a greater quorum or voting requirement for shareholders or voting groups of shareholders than is provided for by this chapter.

2. An amendment to the articles of incorporation or bylaws that adds, changes, or deletes a greater quorum or voting requirement must meet the same quorum requirement and be adopted by the same vote and voting groups required to take action under the quorum and voting requirements then in effect or proposed to be adopted, whichever is greater.

89 Acts, ch 288, §67; 2002 Acts, ch 1154, §19, 125; 2003 Acts, ch 44, §82

Referred to in §490.725

490.728 Voting for directors — cumulative voting.

1. Unless otherwise provided in the articles of incorporation, directors are elected by a plurality of the votes cast by the shares entitled to be voted in the election at a meeting at which a quorum is present.

2. Shareholders do not have a right to cumulate their votes for directors unless the articles of incorporation so provide.

3. A statement included in the articles of incorporation that "[all] [a designated voting group of] shareholders are entitled to cumulate their votes for directors", or words of similar import, means that the shareholders designated are entitled to multiply the number of votes

they are entitled to cast by the number of directors for whom they are entitled to vote and cast the product for a single candidate or distribute the product among two or more candidates.

4. Shares otherwise entitled to be voted cumulatively shall not be voted cumulatively at a particular meeting unless any of the following applies:

a. The meeting notice or proxy statement accompanying the notice states conspicuously that cumulative voting is authorized.

b. A shareholder who has the right to cumulate the shareholder's votes gives notice to the corporation not less than forty-eight hours before the time set for the meeting of the shareholder's intent to cumulate votes during the meeting, and if one shareholder gives this notice all other shareholders in the same voting group participating in the election are entitled to cumulate their votes without giving further notice.

89 Acts, ch 288, §68; 90 Acts, ch 1205, §25; 2002 Acts, ch 1154, §20, 125; 2013 Acts, ch 31, §18, 82; 2014 Acts, ch 1092, §104, 105

Referred to in §490.701, 490.725

490.729 Inspectors of election.

1. A corporation having any shares listed on a national securities exchange or regularly traded in a market maintained by one or more members of a national or affiliated securities association shall, and any other corporation may, appoint one or more inspectors to act at a meeting of shareholders and make a written report of the inspectors' determinations. Each inspector shall take and sign an oath faithfully to execute the duties of inspector with strict impartiality and according to the best of the inspector's ability.

2. The inspectors shall do all of the following:

a. Ascertain the number of shares outstanding and the voting power of each.

b. Determine the shares represented at a meeting.

c. Determine the validity of proxies and ballots.

d. Count all votes.

e. Determine the result.

3. An inspector may be an officer or employee of the corporation.

2002 Acts, ch 1154, §21, 125

PART C

490.730 Voting trusts.

1. One or more shareholders may create a voting trust, conferring on a trustee the right to vote or otherwise act for them, by signing an agreement setting out the provisions of the trust, which may include anything consistent with its purpose, and transferring their shares to the trustee. When a voting trust agreement is signed, the trustee must prepare a list of the names and addresses of all voting trust beneficial owners, together with the number and class of shares each transferred to the trust, and deliver copies of the list and agreement to the corporation's principal office.

2. A voting trust becomes effective on the date the first shares subject to the trust are registered in the trustee's name.

3. Limits, if any, on the duration of a voting trust shall be as set forth in the voting trust. A voting trust that became effective between December 31, 1989, and June 30, 2014, both dates inclusive, remains governed by the provisions of this section then in effect, unless the voting trust is amended to provide otherwise by unanimous agreement of the parties to the voting trust.

89 Acts, ch 288, §69; 2014 Acts, ch 1024, §1

Referred to in §490.731

490.731 Voting agreements.

1. Two or more shareholders may provide for the manner in which they will vote their shares by signing an agreement for that purpose. A voting agreement created under this section is not subject to section 490.730.

2. A voting agreement created under this section is specifically enforceable.

89 Acts, ch 288, §70
Referred to in §490.722

490.732 Shareholder agreements.

1. An agreement among the shareholders of a corporation that complies with this section is effective among the shareholders and the corporation even though it is inconsistent with one or more other provisions of this chapter in that it does one of the following:

a. Eliminates the board of directors or restricts the discretion or powers of the board of directors.

b. Governs the authorization or making of distributions whether or not in proportion to ownership of shares, subject to the limitations in section 490.640.

c. Establishes who shall be directors or officers of the corporation, or their terms of office or manner of selection or removal.

d. Governs, in general or in regard to specific matters, the exercise or division of voting power by or between the shareholders and directors or by or among any of them, including use of weighted voting rights or director proxies.

e. Establishes the terms and conditions of any agreement for the transfer or use of property or the provision of services between the corporation and any shareholder, director, officer, or employee of the corporation, or among any of them.

f. Transfers to one or more shareholders or other persons all or part of the authority to exercise the corporate powers or to manage the business and affairs of the corporation, including the resolution of any issue about which there exists a deadlock among directors or shareholders.

g. Requires dissolution of the corporation at the request of one or more of the shareholders or upon the occurrence of a specified event or contingency.

h. Otherwise governs the exercise of the corporate powers or the management of the business and affairs of the corporation or the relationship among the shareholders, the directors, and the corporation, or among any of them, and is not contrary to public policy.

2. An agreement authorized by this section must satisfy all of the following requirements:

a. Be set forth in one of the following places and manners:

(1) The articles of incorporation or bylaws and approved by all persons who are shareholders at the time of the agreement.

(2) In a written agreement that is signed by all persons who are shareholders at the time of the agreement and is made known to the corporation.

b. Be subject to amendment only by all persons who are shareholders at the time of the amendment, unless the agreement provides otherwise.

3. The existence of an agreement authorized by this section shall be noted conspicuously on the front or back of each certificate for outstanding shares or on the information statement required by section 490.626, subsection 2. If at the time of the agreement the corporation has shares outstanding represented by certificates, the corporation shall recall the outstanding certificates and issue substitute certificates that comply with this subsection. The failure to note the existence of the agreement on the certificate or information statement shall not affect the validity of the agreement or any action taken pursuant to it. Any purchaser of shares who, at the time of purchase, did not have knowledge of the existence of the agreement shall be entitled to rescission of the purchase. A purchaser shall be deemed to have knowledge of the existence of the agreement if its existence is noted on the certificate or information statement for the shares in compliance with this subsection and, if the shares are not represented by a certificate, the information statement is delivered to the purchaser at or prior to the time of purchase of the shares. An action to enforce the right of rescission authorized by this subsection must be commenced within the earlier of ninety days after discovery of the existence of the agreement or two years after the time of purchase of the shares.

4. An agreement authorized by this section shall cease to be effective when the corporation becomes a public corporation. If the agreement ceases to be effective for any reason, the board of directors may, if the agreement is contained or referred to in

the corporation's articles of incorporation or bylaws, adopt an amendment to the articles of incorporation or bylaws, without shareholder action, to delete the agreement and any references to it.

5. An agreement authorized by this section that limits the discretion or powers of the board of directors shall relieve the directors of, and impose upon the person or persons in whom such discretion or powers are vested, liability for acts or omissions imposed by law on directors to the extent that the discretion or powers of the directors are limited by the agreement.

6. The existence or performance of an agreement authorized by this section shall not be a ground for imposing personal liability on any shareholder for the acts or debts of the corporation even if the agreement or its performance treats the corporation as if it were a partnership or results in failure to observe the corporate formalities otherwise applicable to the matters governed by the agreement.

7. Incorporators or subscribers for shares may act as shareholders with respect to an agreement authorized by this section if no shares have been issued when the agreement is made.

8. Limits, if any, on the duration of an agreement authorized by this section shall be as set forth in the agreement. An agreement that became effective between January 1, 2003, and June 30, 2014, both dates inclusive, unless the agreement provided otherwise, remains governed by the provisions of this section then in effect.

2002 Acts, ch 1154, §22, 125; 2002 Acts, ch 1175, §88; 2013 Acts, ch 31, §19, 82; 2014 Acts, ch 1024, §2, 3; 2017 Acts, ch 54, §76

Referred to in §490.801

490.733 through 490.739 Reserved.

PART D

Referred to in §490.809

490.740 Definitions.

In this part, unless the context otherwise requires:

1. *"Derivative proceeding"* means a civil suit in the right of a domestic corporation or, to the extent provided in section 490.747, in the right of a foreign corporation.

2. *"Shareholder"* includes a beneficial owner whose shares are held in a voting trust or held by a nominee on the beneficial owner's behalf.

89 Acts, ch 288, §71; 2002 Acts, ch 1154, §23, 125

490.741 Standing.

A shareholder shall not commence or maintain a derivative proceeding unless the shareholder satisfies both of the following:

1. Was a shareholder of the corporation at the time of the act or omission complained of or became a shareholder through transfer by operation of law from one who was a shareholder at that time.

2. Fairly and adequately represents the interests of the corporation in enforcing the right of the corporation.

2002 Acts, ch 1154, §24, 125

Referred to in §490.809

490.742 Demand.

A shareholder shall not commence a derivative proceeding until both of the following have occurred:

1. A written demand has been made upon the corporation to take suitable action.

2. Ninety days have expired from the date delivery of the demand was made, unless the shareholder has earlier been notified that the demand has been rejected by the corporation

or unless irreparable injury to the corporation would result by waiting for the expiration of the ninety-day period.

2002 Acts, ch 1154, §25, 125; 2013 Acts, ch 31, §20, 82

490.743 Stay of proceedings.

If the corporation commences an inquiry into the allegations made in the demand or complaint, the court may stay any derivative proceeding for a period of time as the court deems appropriate.

2002 Acts, ch 1154, §26, 125

Referred to in §490.747

490.744 Dismissal.

1. A derivative proceeding shall be dismissed by the court on motion by the corporation if one of the groups specified in subsection 2 or 5 has determined in good faith after conducting a reasonable inquiry upon which its conclusions are based that the maintenance of the derivative proceeding is not in the best interests of the corporation. A corporation moving to dismiss on this basis shall submit in support of the motion a short and concise statement of the reasons for its determination.

2. Unless a panel is appointed pursuant to subsection 5, the determination in subsection 1 shall be made by any of the following:

a. A majority vote of qualified directors present at a meeting of the board of directors if the qualified directors constitute a quorum.

b. A majority vote of a committee consisting of two or more qualified directors appointed by majority vote of qualified directors present at a meeting of the board of directors, whether or not such qualified directors constitute a quorum.

3. *a.* If a derivative proceeding is commenced after a determination has been made rejecting a demand by a shareholder, the complaint shall allege with particularity facts establishing any of the following:

(1) That a majority of the board of directors did not consist of qualified directors at the time the determination was made.

(2) That the requirements of subsection 1 have not been met.

b. All discovery and other proceedings shall be stayed during the pendency of any motion to dismiss unless the court finds upon the motion of any party that particularized discovery is necessary to preserve evidence or prevent undue prejudice to that party.

4. If a majority of the board of directors consisted of qualified directors at the time the determination was made, the plaintiff shall have the burden of proving that the requirements of subsection 1 have not been met; if not, the corporation shall have the burden of proving that the requirements of subsection 1 have been met.

5. The court may appoint a panel of one or more independent persons upon motion by the corporation to make a determination whether the maintenance of the derivative proceeding is in the best interests of the corporation. In such case, the plaintiff shall have the burden of proving that the requirements of subsection 1 have not been met.

2002 Acts, ch 1154, §27, 125; 2012 Acts, ch 1023, §157; 2013 Acts, ch 31, §21, 82

Referred to in §490.143

490.745 Discontinuance or settlement.

A derivative proceeding shall not be discontinued or settled without the court's approval. If the court determines that a proposed discontinuance or settlement will substantially affect the interests of the corporation's shareholders or a class of shareholders, the court shall direct that notice be given to the shareholders affected.

2002 Acts, ch 1154, §28, 125

Referred to in §490.747

490.746 Payment of expenses.

On termination of the derivative proceeding, the court may do any of the following:

1. Order the corporation to pay the plaintiff's expenses incurred in the proceeding, if it finds that the proceeding has resulted in a substantial benefit to the corporation.

2. Order the plaintiff to pay any defendant's expenses incurred in defending the proceeding, if it finds that the proceeding was commenced or maintained without reasonable cause or for an improper purpose.

2002 Acts, ch 1154, §29, 125; 2013 Acts, ch 31, §22, 82
Referred to in §490.747

490.747 Applicability to foreign corporations.

In any derivative proceeding in the right of a foreign corporation, the matters covered by this part shall be governed by the laws of the jurisdiction of incorporation of the foreign corporation except for sections 490.743, 490.745, and 490.746.

2002 Acts, ch 1154, §30, 125
Referred to in §490.740

490.748 Shareholder action to appoint custodian or receiver.

1. The district court may appoint one or more persons to be custodians, or, if the corporation is insolvent, to be receivers, of and for a corporation in a proceeding by a shareholder where it is established that any of the following applies:

a. The directors are deadlocked in the management of the corporate affairs, the shareholders are unable to break the deadlock, and irreparable injury to the corporation is threatened or being suffered.

b. The directors or those in control of the corporation are acting fraudulently and irreparable injury to the corporation is threatened or being suffered.

2. *a.* The district court may issue injunctions, appoint a temporary custodian or temporary receiver with all the powers and duties the court directs, take other action to preserve the corporate assets wherever located, and carry on the business of the corporation until a full hearing is held.

b. The district court shall hold a full hearing, after notifying all parties to the proceeding and any interested persons designated by the court, before appointing a custodian or receiver.

c. The district court has jurisdiction over the corporation and all of its property, wherever located.

3. The district court may appoint an individual or domestic or foreign corporation, authorized to transact business in this state, as a custodian or receiver and may require the custodian or receiver to post bond, with or without sureties, in an amount the court directs.

4. The district court shall describe the powers and duties of the custodian or receiver in its appointing order, which may be amended from time to time. Among other powers, all of the following apply:

a. A custodian may exercise all of the powers of the corporation, through or in place of its board of directors, to the extent necessary to manage the business and affairs of the corporation.

b. A receiver may do any of the following:

(1) Dispose of all or any part of the assets of the corporation wherever located, at a public or private sale, if authorized by the district court.

(2) Sue and defend in the receiver's own name as receiver in all courts of this state.

5. The district court during a custodianship may redesignate the custodian as a receiver, and during a receivership may redesignate the receiver as a custodian, if doing so is in the best interests of the corporation.

6. The district court from time to time during the custodianship or receivership may order compensation paid and expense disbursements or reimbursements made to the custodian or receiver from the assets of the corporation or proceeds from the sale of its assets.

2013 Acts, ch 31, §23, 82

490.749 through 490.800 Reserved.

DIVISION VIII

DIRECTORS AND OFFICERS

Referred to in §490.1405

PART A

490.801 Requirement for and functions of board of directors.

1. Except as provided in section 490.732, each corporation must have a board of directors.

2. All corporate powers shall be exercised by or under the authority of the board of directors of the corporation, and the business and affairs of the corporation shall be managed by or under the direction, and subject to the oversight, of its board of directors, subject to any limitation set forth in the articles of incorporation, or in an agreement authorized under section 490.732.

89 Acts, ch 288, §72; 2002 Acts, ch 1154, §31, 125; 2013 Acts, ch 31, §24, 82
Referred to in §490.825

490.802 Qualifications of directors.

The articles of incorporation or bylaws may prescribe qualifications for directors. A director need not be a resident of this state or a shareholder of the corporation unless the articles of incorporation or bylaws so prescribe.

89 Acts, ch 288, §73

490.803 Number and election of directors.

1. A board of directors must consist of one or more individuals, with the number specified in or fixed in accordance with the articles of incorporation or bylaws.

2. *a.* The number of directors may be increased or decreased from time to time by amendment to, or in the manner provided in, the articles of incorporation or the bylaws.

b. (1) Notwithstanding paragraph *"a"*, the number of directors of a public corporation subject to section 490.806A, subsection 1, or section 490.806B, shall be increased or decreased only by the affirmative vote of a majority of its board of directors.

(2) This paragraph *"b"* is repealed on January 1, 2022.

3. *a.* Directors are elected at the first annual shareholders' meeting and at each annual meeting thereafter unless their terms are staggered under section 490.806.

b. (1) Notwithstanding paragraph *"a"*, for a public corporation subject to section 490.806A, subsection 1, or section 490.806B, a director's term shall be staggered as provided in section 490.806A, subsection 1, or may be staggered as provided in section 490.806B.

(2) This subparagraph* is repealed on January 1, 2022.

89 Acts, ch 288, §74; 91 Acts, ch 211, §5; 2002 Acts, ch 1154, §32, 125; 2011 Acts, ch 2, §3, 10; 2018 Acts, ch 1015, §1
Referred to in §490.806B
*"This paragraph" probably intended; corrective legislation is pending
Subsections 2 and 3 amended

490.804 Election of directors by certain classes of shareholders.

If the articles of incorporation authorize dividing the shares into classes, the articles may also authorize the election of all or a specified number of directors by the holders of one or more authorized classes of shares. Each class, or classes, of shares entitled to elect one or more directors is a separate voting group for purposes of the election of directors.

89 Acts, ch 288, §75
Referred to in §490.806A

490.805 Terms of directors generally.

1. The terms of the initial directors of a corporation expire at the first shareholders' meeting at which directors are elected.

2. *a.* The terms of all other directors expire at the next annual shareholders' meeting following their election unless their terms are staggered under section 490.806.

b. (1) Notwithstanding paragraph *"a"*, for a public corporation subject to section 490.806A, subsection 1, or section 490.806B, the terms of directors shall be staggered as provided in section 490.806A, subsection 1, or may be staggered as provided in section 490.806B.

(2) This paragraph *"b"* is repealed on January 1, 2022.

3. A decrease in the number of directors does not shorten an incumbent director's term.

4. *a.* The term of a director elected to fill a vacancy expires at the next shareholders' meeting at which directors are elected.

b. (1) Notwithstanding paragraph *"a"*, for a public corporation subject to section 490.806A, subsection 1, or section 490.806B, the term of a director elected to fill a vacancy expires as provided in section 490.806A, subsection 1, or section 490.806B.

(2) This paragraph *"b"* is repealed on January 1, 2022.

5. Despite the expiration of a director's term, the director continues to serve until a successor for that director is elected and qualifies or until there is a decrease in the number of directors.

89 Acts, ch 288, §76; 2011 Acts, ch 2, §4, 10; 2018 Acts, ch 1015, §2
Subsections 2 and 4 amended

490.806 Staggered terms for directors.

1. The articles of incorporation may provide for staggering the terms of directors by dividing the total number of directors into two or three groups, with each group containing one-half or one-third of the total, as near as may be. In that event, the terms of directors in the first group expire at the first annual shareholders' meeting after their election, the terms of the second group expire at the second annual shareholders' meeting after their election, and the terms of the third group, if any, expire at the third annual shareholders' meeting after their election. At each annual shareholders' meeting held thereafter, directors shall be chosen for a term of two years or three years, as the case may be, to succeed those whose terms expire.

2. *a.* Subsection 1 does not apply to a public corporation that is subject to section 490.806A, subsection 1, but may apply to a public corporation that is subject to section 490.806B.

b. This subsection is repealed on January 1, 2022.

89 Acts, ch 288, §77; 2011 Acts, ch 2, §5, 10; 2018 Acts, ch 1015, §3
Referred to in §490.803, 490.805, 490.806A, 490.806B
Section amended

490.806A Public corporations — staggered terms.

1. Except as provided in subsection 2, and notwithstanding anything to the contrary in the articles of incorporation or bylaws of a public corporation, the terms of directors of a public corporation shall be staggered by dividing the number of directors into three groups, as nearly equal in number as possible. The first group shall be referred to as "class I directors", the second group shall be referred to as "class II directors", and the third group shall be referred to as "class III directors".

a. On or before the date on which a public corporation first convenes an annual shareholders' meeting following the time the public corporation becomes subject to this subsection, the board of directors of the public corporation shall by majority vote designate from among its members directors to serve as class I directors, class II directors, and class III directors.

b. The terms of directors serving in office on the date that the public corporation becomes subject to this subsection shall be as follows:

(1) Class I directors shall continue in office until the first annual shareholders' meeting following the date that the public corporation becomes subject to this subsection, and until their successors are elected. The shareholders' meeting shall be conducted not less than eleven months following the last annual shareholders' meeting conducted before the public corporation became subject to this subsection.

(2) Class II directors shall continue in office until one year following the first annual shareholders' meeting described in subparagraph (1), and until their successors are elected.

(3) Class III directors shall continue in office until two years following the first annual shareholders' meeting described in subparagraph (1), and until their successors are elected.

c. At each annual shareholders' meeting of a public corporation subject to this subsection, the successors to the class of directors whose term expires at that meeting shall be elected to hold office for a term of three years following such meeting and until their successors are elected.

d. The board of directors of a public corporation subject to this subsection shall adopt an amendment to its articles of incorporation as provided in section 490.1005A.

e. Notwithstanding this subsection, the articles of incorporation of a public corporation may confer upon the holders of preferred shares the right to elect one or more directors pursuant to section 490.804, who shall serve for such term, and have such voting powers, as shall be stated in the articles of incorporation.

2. Every public corporation shall be subject to subsection 1, unless it is exempt pursuant to this subsection.

a. (1) In order for a public corporation in existence on March 23, 2011, to be exempt from subsection 1, its board of directors must adopt a resolution or take action under section 490.821 expressly making an election to be exempt from the provisions of subsection 1. Such resolution or action must be adopted or taken within forty days after March 23, 2011.

(2) Upon adopting the resolution or taking board action under section 490.821, the public corporation is no longer subject to subsection 1, effective immediately unless otherwise provided for in the resolution or by the board action.

b. If on March 23, 2011, the articles of incorporation of the public corporation already provide for staggering the terms of its directors under section 490.806, the public corporation shall be exempt from the provisions of subsection 1. In such event, no further corporate action is required, and the public corporation is not required to amend or modify any provision of its articles of incorporation or bylaws in order to be exempt from subsection 1.

c. A corporation that becomes a public corporation on or after March 23, 2011, is exempt from the provisions of subsection 1.

3. This section is repealed on January 1, 2022.

2011 Acts, ch 2, §6, 10; 2018 Acts, ch 1015, §4

Referred to in §490.803, 490.805, 490.806, 490.806B, 490.810, 490.1005A

For continuation of an amendment to articles of incorporation adopted in compliance with this section, and in effect immediately prior to January 1, 2022, see 2018 Acts, ch 1015, §8

NEW subsection 3

490.806B Public corporations — nonstaggered terms.

1. Notwithstanding section 490.806A, the board of directors of any public corporation which, as of January 1, 2019, is subject to section 490.806A, subsection 1, shall adopt an amendment to its articles of incorporation that includes all of the following:

a. The staggered terms of the class I directors, class II directors, and class III directors elected or appointed prior to January 1, 2019, shall cease at the expiration of their then current terms as provided in section 490.806A, subsection 1.

b. The terms of directors elected or appointed on or after January 1, 2019, shall expire at the next annual shareholders' meeting following their election or appointment.

c. Any other changes that the directors determine are necessary to implement the provisions of this subsection.

2. Any amendment to the articles of incorporation as provided in subsection 1 shall be made without shareholder approval.

3. Notwithstanding subsection 1, the public corporation's articles of incorporation may provide for staggering the terms of its directors as provided in section 490.806.

4. Section 490.803, subsection 2, paragraph *"b"*, and section 490.810, subsection 1A, shall continue to apply to a public corporation subject to subsection 1 of this section.

5. This section is repealed on January 1, 2022.

2018 Acts, ch 1015, §5, 9

Referred to in §490.803, 490.805, 490.806, 490.810

For continuation of an amendment to articles of incorporation adopted in compliance with this section, and in effect immediately prior to January 1, 2022, see 2018 Acts, ch 1015, §8

Section effective January 1, 2019; 2018 Acts, ch 1015, §9

NEW section

490.807 Resignation of directors.

1. A director may resign at any time by delivering a written resignation to the board of directors or its chair, or to the secretary of the corporation.

2. A resignation is effective when the resignation is delivered unless the resignation specifies a later effective date or an effective date determined upon the happening of an event or events. A resignation that is conditioned upon failing to receive a specified vote for election as a director may provide that it is irrevocable.

89 Acts, ch 288, §78; 2013 Acts, ch 31, §25, 82

Referred to in §490.810

490.808 Removal of directors by shareholders.

1. The shareholders may remove one or more directors with or without cause unless the articles of incorporation provide that directors may be removed only for cause.

2. If a director is elected by a voting group of shareholders, only the shareholders of that voting group may participate in the vote to remove that director.

3. If cumulative voting is authorized, a director shall not be removed if the number of votes sufficient to elect that director under cumulative voting is voted against the director's removal. If cumulative voting is not authorized, a director may be removed only if the number of votes cast to remove that director exceeds the number of votes cast not to remove the director.

4. A director may be removed by the shareholders only at a meeting called for the purpose of removing the director and after notice stating that the purpose, or one of the purposes, of the meeting is removal of the director. A director shall not be removed pursuant to written consents under section 490.704 unless written consents are obtained from the holders of all the outstanding shares of the corporation entitled to vote on the removal of the director.

89 Acts, ch 288, §79; 91 Acts, ch 211, §6

490.809 Removal of directors by judicial proceeding.

1. The district court of the county where a corporation's principal office or, if none in this state, its registered office is located may remove a director of the corporation from office in a proceeding commenced by or in the right of the corporation if the court finds that both of the following apply:

a. The director engaged in fraudulent conduct with respect to the corporation or its shareholders, grossly abused the position of director, or intentionally inflicted harm on the corporation.

b. Considering the director's course of conduct and the inadequacy of other available remedies, removal would be in the best interest of the corporation.

2. A shareholder proceeding on behalf of the corporation under subsection 1 shall comply with all of the requirements of division VII, part D, except section 490.741.

3. The court, in addition to removing the director, may bar the director from reelection for a period prescribed by the court.

4. This section does not limit the equitable powers of the court to order other relief.

89 Acts, ch 288, §80; 2002 Acts, ch 1154, §33, 125

490.810 Vacancy on board.

1. Unless the articles of incorporation provide otherwise, if a vacancy occurs on a board of directors, including a vacancy resulting from an increase in the number of directors, the vacancy may be filled in any of the following manners:

a. The shareholders may fill the vacancy.

b. The board of directors may fill the vacancy.

c. If the directors remaining in office constitute fewer than a quorum of the board, they may fill the vacancy by the affirmative vote of a majority of all the directors remaining in office.

1A. *a.* For a public corporation subject to section 490.806A, subsection 1, or section 490.806B, a vacancy on the board of directors, including but not limited to a vacancy

resulting from an increase in the number of directors, shall be filled solely by the affirmative vote of a majority of the remaining directors, even though less than a quorum of the board.

b. This subsection is repealed on January 1, 2022.

2. If the vacant office was held by a director elected by a voting group of shareholders, only the holders of shares of that voting group are entitled to vote to fill the vacancy if it is filled by the shareholders, and only the directors elected by that voting group are entitled to fill the vacancy if it is filled by the directors.

3. A vacancy that will occur at a specific later date, by reason of a resignation effective at a later date under section 490.807, subsection 2 or otherwise, may be filled before the vacancy occurs but the new director shall not take office until the vacancy occurs.

89 Acts, ch 288, §81; 2011 Acts, ch 2, §7, 10; 2013 Acts, ch 31, §26, 82; 2018 Acts, ch 1015, §6

Referred to in §490.806B
Subsection 1A amended

490.811 Compensation of directors.

Unless the articles of incorporation or bylaws provide otherwise, the board of directors may fix the compensation of directors.

89 Acts, ch 288, §82

490.812 through 490.819 Reserved.

PART B

490.820 Meetings.

1. The board of directors may hold regular or special meetings in or out of this state.

2. Unless the articles of incorporation or bylaws provide otherwise, the board of directors may permit any or all directors to participate in a regular or special meeting by, or conduct the meeting through the use of, any means of communication by which all directors participating may simultaneously hear each other during the meeting. A director participating in a meeting by this means is deemed to be present in person at the meeting.

89 Acts, ch 288, §83
Referred to in §490.825

490.821 Action without meeting.

1. Except to the extent that the articles of incorporation or bylaws require that action by the board of directors be taken at a meeting, action required or permitted by this chapter to be taken by the board of directors may be taken without a meeting if each director signs a consent describing the action to be taken and delivers it to the corporation.

2. Action taken under this section is the act of the board of directors when one or more consents signed by all the directors are delivered to the corporation. The consent may specify the time at which the action taken is to be effective. A director's consent may be withdrawn by revocation signed by the director and delivered to the corporation prior to delivery to the corporation of unrevoked written consents signed by all the directors.

3. A consent signed under this section has the effect of an action taken at a meeting of the board of directors and may be described as such in any document.

89 Acts, ch 288, §84; 2002 Acts, ch 1154, §34, 125
Referred to in §490.806A, 490.825

490.822 Notice of meeting.

1. Unless the articles of incorporation or bylaws provide otherwise, regular meetings of the board of directors may be held without notice of the date, time, place, or purpose of the meeting.

2. Unless the articles of incorporation or bylaws provide for a longer or shorter period, special meetings of the board of directors must be preceded by at least two days' notice of the

date, time, and place of the meeting. The notice need not describe the purpose of the special meeting unless required by the articles of incorporation or bylaws.

89 Acts, ch 288, §85
Referred to in §490.825

490.823 Waiver of notice.

1. A director may waive any notice required by this chapter, the articles of incorporation, or bylaws before or after the date and time stated in the notice. Except as provided by subsection 2, the waiver must be in writing, signed by the director entitled to the notice, and filed with the minutes or corporate records.

2. A director's attendance at or participation in a meeting waives any required notice to that director of the meeting unless the director at the beginning of the meeting or promptly upon the director's arrival objects to holding the meeting or transacting business at the meeting and does not thereafter vote for or assent to action taken at the meeting.

89 Acts, ch 288, §86
Referred to in §490.825

490.824 Quorum and voting.

1. Unless the articles of incorporation or bylaws require a different number, or unless otherwise specifically provided in this chapter, a quorum of a board of directors consists of either:

a. A majority of the fixed number of directors if the corporation has a fixed board size.

b. A majority of the number of directors prescribed, or, if no number is prescribed the number in office immediately before the meeting begins, if the corporation has a variable-range size board.

2. The articles of incorporation or bylaws may authorize a quorum of a board of directors to consist of no fewer than one-third of the fixed or prescribed number of directors determined under subsection 1.

3. If a quorum is present when a vote is taken, the affirmative vote of a majority of directors present is the act of the board of directors unless the articles of incorporation or bylaws require the vote of a greater number of directors.

4. *a.* A director who is present at a meeting of the board of directors or a committee of the board of directors when corporate action is taken is deemed to have assented to the action taken unless one or more of the following occurs:

(1) The director objects at the beginning of the meeting or promptly upon the director's arrival to holding it or transacting business at the meeting.

(2) The director's dissent or abstention from the action taken is entered in the minutes of the meeting.

(3) The director delivers written notice of the director's dissent or abstention to the presiding officer of the meeting before its adjournment or to the corporation immediately after adjournment of the meeting.

b. The right of dissent or abstention is not available to a director who votes in favor of the action taken.

89 Acts, ch 288, §87; 2002 Acts, ch 1154, §35, 125; 2012 Acts, ch 1023, §157
Referred to in §490.825, 490.853

490.825 Committees.

1. Unless this chapter, the articles of incorporation, or the bylaws provide otherwise, a board of directors may create one or more committees and appoint one or more members of the board of directors to serve on any committee.

2. Unless this chapter provides otherwise, the creation of a committee and appointment of members to it must be approved by the greater of either:

a. A majority of all the directors in office when the action is taken.

b. The number of directors required by the articles of incorporation or bylaws to take action under section 490.824.

3. Sections 490.820 through 490.824 apply both to committees of the board and to committee members.

4. To the extent specified by the board of directors or in the articles of incorporation or bylaws, each committee may exercise the powers of the board of directors under section 490.801.

5. A committee shall not, however:

a. Authorize or approve distributions, except according to formula or method, or within limits, prescribed by the board of directors.

b. Approve or propose to shareholders action that this chapter requires be approved by shareholders.

c. Fill vacancies on the board of directors or, subject to subsection 7, on any of its committees.

d. Adopt, amend, or repeal bylaws.

6. The creation of, delegation of authority to, or action by a committee does not alone constitute compliance by a director with the standards of conduct described in section 490.830.

7. The board of directors may appoint one or more directors as alternate members of any committee to replace any absent or disqualified member during the member's absence or disqualification. Unless the articles of incorporation or the bylaws or the resolution creating the committee provide otherwise, in the event of the absence or disqualification of a member of a committee, the member or members present at any meeting and not disqualified from voting, unanimously, may appoint another director to act in place of the absent or disqualified member.

89 Acts, ch 288, §88; 2002 Acts, ch 1154, §36, 125; 2003 Acts, ch 108, §90

490.826 Submission of matters for shareholder vote.

A corporation may agree to submit a matter to a vote of its shareholders even if, after approving the matter, the board of directors determines it no longer recommends the matter.

2013 Acts, ch 31, §27, 82

Referred to in §490.1003, 490.1104, 490.1202, 490.1402

490.827 through 490.829 Reserved.

PART C

490.830 Standards of conduct for directors.

1. Each member of the board of directors, when discharging the duties of a director, shall act in conformity with all of the following:

a. In good faith.

b. In a manner the director reasonably believes to be in the best interests of the corporation.

2. The members of the board of directors or a committee of the board, when becoming informed in connection with their decision-making function or devoting attention to their oversight function, shall discharge their duties with the care that a person in a like position would reasonably believe appropriate under similar circumstances.

3. In discharging board or committee duties a director shall disclose, or cause to be disclosed, to the other board or committee members information which the director knows is not already known by them but is known by the director to be material to the discharge of their decision-making or oversight functions, except that disclosure is not required to the extent that the director reasonably believes that doing so would violate a duty imposed under law, a legally enforceable obligation of confidentiality, or a professional ethics rule.

4. In discharging board or committee duties, a director who does not have knowledge that makes reliance unwarranted is entitled to rely on the performance by any of the persons specified in subsection 6, paragraph *"a"*, to whom the board may have delegated, formally or informally by course of conduct, the authority or duty to perform one or more of the board's functions that are delegable under applicable law.

5. In discharging board or committee duties a director, who does not have knowledge

that makes reliance unwarranted, is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by any of the persons specified in subsection 6.

6. A director is entitled to rely, in accordance with subsection 4 or 5, on any of the following:

a. One or more officers or employees of the corporation whom the director reasonably believes to be reliable and competent in the functions performed or the information, opinions, reports, or statements provided.

b. Legal counsel, public accountants, or other persons as to matters involving skills or expertise the director reasonably believes are either of the following:

(1) Matters within the particular person's professional or expert competence.

(2) Matters as to which the particular person merits confidence.

c. A committee of the board of directors of which the director is not a member if the director reasonably believes the committee merits confidence.

89 Acts, ch 288, §89; 2002 Acts, ch 1154, §37, 125; 2013 Acts, ch 31, §28, 82

Referred to in §490.825, 490.833, 491.16A

490.831 Standards of liability for directors.

1. A director shall not be liable to the corporation or its shareholders for any decision as director to take or not to take action, or any failure to take any action, unless the party asserting liability in a proceeding establishes both of the following:

a. That any of the following apply:

(1) No defense interposed by the director based on any of the following precludes liability:

(a) A provision in the articles of incorporation authorized by section 490.202, subsection 2, paragraph "*d*".

(b) The protection afforded by section 490.861 for action taken in compliance with section 490.862 or 490.863.

(c) The protection afforded by section 490.870.

(2) The protection afforded by section 490.870 does not preclude liability.

b. That the challenged conduct consisted or was the result of one of the following:

(1) Action not in good faith.

(2) A decision that satisfies one of the following:

(a) That the director did not reasonably believe to be in the best interests of the corporation.

(b) As to which the director was not informed to an extent the director reasonably believed appropriate in the circumstances.

(3) A lack of objectivity due to the director's familial, financial, or business relationship with, or a lack of independence due to the director's domination or control by, another person having a material interest in the challenged conduct, which also meets both of the following criteria:

(a) Which relationship or which domination or control could reasonably be expected to have affected the director's judgment respecting the challenged conduct in a manner adverse to the corporation.

(b) After a reasonable expectation to such effect has been established, the director shall not have established that the challenged conduct was reasonably believed by the director to be in the best interests of the corporation.

(4) A sustained failure of the director to devote attention to ongoing oversight of the business and affairs of the corporation, or a failure to devote timely attention, by making, or causing to be made, appropriate inquiry, when particular facts and circumstances of significant concern materialize that would alert a reasonably attentive director to the need for such oversight, attention, or inquiry.

(5) Receipt of a financial benefit to which the director was not entitled or any other breach of the director's duties to deal fairly with the corporation and its shareholders that is actionable under applicable law.

2. *a.* A party seeking to hold the director liable for money damages shall also have the burden of establishing both of the following:

(1) That harm to the corporation or its shareholders has been suffered.

(2) The harm suffered was proximately caused by the director's challenged conduct.

b. A party seeking to hold the director liable for other money payment under a legal remedy, such as compensation for the unauthorized use of corporate assets, shall also have whatever persuasion burden may be called for to establish that the payment sought is appropriate in the circumstances.

c. A party seeking to hold the director liable for other money payment under an equitable remedy, such as profit recovery by or disgorgement to the corporation, shall also have whatever persuasion burden may be called for to establish that the equitable remedy sought is appropriate in the circumstances.

3. This section shall not do any of the following:

a. In any instance where fairness is at issue, such as consideration of the fairness of a transaction to the corporation under section 490.861, subsection 2, paragraph "*c*", alter the burden of proving the fact or lack of fairness otherwise applicable.

b. Alter the fact or lack of liability of a director under another section of this chapter, such as the provisions governing the consequences of an unlawful distribution under section 490.833 or a transactional interest under section 490.861.

c. Affect any rights to which the corporation or a shareholder may be entitled under another statute of this state or the United States.

89 Acts, ch 288, §90; 2002 Acts, ch 1154, §38, 125; 2003 Acts, ch 44, §83; 2008 Acts, ch 1015, §2; 2009 Acts, ch 133, §164; 2013 Acts, ch 31, §29, 30, 82

Referred to in §490.842, 491.16A

490.832 Director conflict of interest. Repealed by 2013 Acts, ch 31, §81, 82.

490.833 Liability for unlawful distribution.

1. A director who votes for or assents to a distribution in excess of what may be authorized and made pursuant to section 490.640, subsection 1, or section 490.1409, subsection 1, is personally liable to the corporation for the amount of the distribution that exceeds what could have been distributed without violating section 490.640, subsection 1, or section 490.1409, subsection 1, if the party asserting liability establishes that when taking the action the director did not comply with section 490.830.

2. A director held liable for an unlawful distribution under subsection 1 is entitled to both of the following:

a. Contribution from every other director who could be held liable under subsection 1 for the unlawful distribution.

b. Recoupment from each shareholder of the pro rata portion of the amount of the unlawful distribution the shareholder accepted, knowing the distribution was made in violation of section 490.640, subsection 1, or section 490.1409, subsection 1.

3. *a.* A proceeding to enforce the liability of a director under subsection 1 is barred unless it is commenced within two years after one of the following dates:

(1) The date on which the effect of the distribution was measured under section 490.640, subsection 5 or 8.

(2) The date as of which the violation of section 490.640, subsection 1, occurred as the consequence of disregard of a restriction in the articles of incorporation.

(3) The date on which the distribution of assets to shareholders under section 490.1409, subsection 1, was made.

b. A proceeding to enforce contribution or recoupment under subsection 2 is barred unless it is commenced within one year after the liability of the claimant has been finally adjudicated under subsection 1.

89 Acts, ch 288, §92; 2002 Acts, ch 1154, §40, 125

Referred to in §490.202, 490.831, 491.16A

490.834 through 490.839 Reserved.

PART D

490.840 Officers.

1. A corporation has the offices described in its bylaws or designated by the board of directors in accordance with the bylaws.

2. The board of directors may elect individuals to fill one or more offices of the corporation. An officer may appoint one or more officers if authorized by the bylaws or the board of directors.

3. The bylaws or the board of directors shall assign to one of the officers responsibility for preparing minutes of the directors' and shareholders' meetings and for maintaining and authenticating the records of the corporation required to be kept under section 490.1601, subsections 1 and 5.

4. The same individual may simultaneously hold more than one office in a corporation.

89 Acts, ch 288, §93; 2002 Acts, ch 1154, §41, 125
Referred to in §490.140, 491.16A

490.841 Functions of officers.

Each officer has the authority and shall perform the functions set forth in the bylaws or, to the extent consistent with the bylaws, the functions prescribed by the board of directors or by direction of an officer authorized by the board of directors to prescribe the functions of other officers.

89 Acts, ch 288, §94; 2013 Acts, ch 31, §31, 82
Referred to in §491.16A

490.842 Standards of conduct for officers.

1. An officer when performing in such capacity has the duty to act in conformity with all of the following:

a. In good faith.

b. With the care that a person in a like position would reasonably exercise under similar circumstances.

c. In a manner the officer reasonably believes to be in the best interests of the corporation.

2. In discharging the officer's duties an officer, who does not have knowledge that makes reliance unwarranted, is entitled to rely on any of the following:

a. The performance of properly delegated responsibilities by one or more employees of the corporation whom the officer reasonably believes to be reliable and competent in performing the responsibilities delegated.

b. Information, opinions, reports, or statements, including financial statements and other financial data, prepared or presented by one or more employees of the corporation whom the officer reasonably believes to be reliable and competent in the matters presented.

c. Legal counsel, public accountants, or other persons retained by the corporation as to matters involving skills or expertise the officer reasonably believes are matters within the particular person's professional or expert competence, or as to which the particular person merits confidence.

3. An officer shall not be liable as an officer to the corporation or its shareholders for any decision to take or not to take action, or any failure to take any action, if the duties of the officer are performed in compliance with this section. Whether an officer who does not comply with this section shall have liability will depend in such instance on applicable law, including those principles of section 490.831 that have relevance.

89 Acts, ch 288, §95; 2002 Acts, ch 1154, §42, 125; 2013 Acts, ch 31, §32, 82
Referred to in §491.16A

490.843 Resignation and removal of officers.

1. An officer may resign at any time by delivering notice to the corporation. A resignation is effective when the notice is delivered unless the notice specifies a later effective time. If a resignation is made effective at a later time and the board or appointing officer accepts the future effective time, the board or the appointing officer may fill the pending vacancy before

the effective time if the board or appointing officer provides that the successor does not take office until the effective time.

2. An officer may be removed at any time with or without cause by any of the following:

a. The board of directors.

b. The officer who appointed such officer, unless the bylaws or the board of directors provide otherwise.

c. Any other officer if authorized by the bylaws or the board of directors.

3. In this section, *"appointing officer"* means the officer, including any successor to that officer, who appointed the officer resigning or being removed.

89 Acts, ch 288, §96; 91 Acts, ch 211, §7; 2002 Acts, ch 1154, §43, 125

490.844 Contract rights of officers.

1. The appointment of an officer does not itself create contract rights.

2. An officer's removal does not affect the officer's contract rights, if any, with the corporation. An officer's resignation does not affect the corporation's contract rights, if any, with the officer.

89 Acts, ch 288, §97

490.845 through 490.849 Reserved.

PART E

490.850 Definitions.

As used in this part of this chapter, unless the context otherwise requires:

1. *"Corporation"* includes any domestic or foreign predecessor entity of a corporation in a merger.

2. *"Director"* or *"officer"* means an individual who is or was a director or officer, respectively, of a corporation or who, while a director or officer of the corporation, is or was serving at the corporation's request as a director, officer, partner, trustee, employee, or agent of another domestic or foreign corporation, partnership, joint venture, trust, employee benefit plan, or other entity. A director or officer is considered to be serving an employee benefit plan at the corporation's request if the individual's duties to the corporation also impose duties on, or otherwise involve services by, the individual to the plan or to participants in or beneficiaries of the plan. *"Director"* or *"officer"* includes, unless the context requires otherwise, the estate or personal representative of a director or officer.

3. *"Liability"* means the obligation to pay a judgment, settlement, penalty, fine, including an excise tax assessed with respect to an employee benefit plan, or expenses incurred with respect to a proceeding.

4. *a.* *"Official capacity"* means:

(1) When used with respect to a director, the office of director in a corporation.

(2) When used with respect to an officer, as contemplated in section 490.856, the office in a corporation held by the officer.

b. *"Official capacity"* does not include service for any other domestic or foreign corporation or any partnership, joint venture, trust, employee benefit plan, or other entity.

5. *"Party"* means an individual who was, is, or is threatened to be made a defendant or respondent in a proceeding.

6. *"Proceeding"* means any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative and whether formal or informal.

89 Acts, ch 288, §98; 2002 Acts, ch 1154, §44, 125; 2005 Acts, ch 19, §72; 2013 Acts, ch 30, §116; 2013 Acts, ch 31, §33 – 35, 82

Referred to in §490.202, 491.3, 491.16, 497.34, 498.36, 499.59A, 508C.16, 524.801

490.851 Permissible indemnification.

1. Except as otherwise provided in this section, a corporation may indemnify an individual

who is a party to a proceeding because the individual is a director against liability incurred in the proceeding if either of the following apply:

a. All of the following apply:

(1) The individual acted in good faith.

(2) The individual reasonably believed:

(a) In the case of conduct in the individual's official capacity, that the individual's conduct was in the best interests of the corporation.

(b) In all other cases, that the individual's conduct was at least not opposed to the best interests of the corporation.

(3) In the case of any criminal proceeding, the individual had no reasonable cause to believe the individual's conduct was unlawful.

b. The individual engaged in conduct for which broader indemnification has been made permissible or obligatory under a provision of the articles of incorporation as authorized by section 490.202, subsection 2, paragraph *"e"*.

2. A director's conduct with respect to an employee benefit plan for a purpose the director reasonably believed to be in the interests of the participants in and beneficiaries of the plan is conduct that satisfies the requirement of subsection 1, paragraph *"b"*, subparagraph (2).

3. The termination of a proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent is not, of itself, determinative that the director did not meet the relevant standard of conduct described in this section.

4. Unless ordered by a court under section 490.854, subsection 1, paragraph *"c"*, a corporation shall not indemnify a director under this section in either of the following circumstances:

a. In connection with a proceeding by or in the right of the corporation, except for reasonable expenses incurred in connection with the proceeding if it is determined that the director has met the relevant standard of conduct under subsection 1.

b. In connection with any proceeding with respect to conduct for which the director was adjudged liable on the basis that the director received a financial benefit to which the director was not entitled, whether or not involving action in the director's official capacity.

89 Acts, ch 288, §99; 2002 Acts, ch 1154, §45, 125; 2003 Acts, ch 44, §84, 116
Referred to in §490.853, 490.854, 490.855, 490.858, 491.3, 491.16, 497.34, 498.36, 499.59A, 508C.16, 524.801

490.852 Mandatory indemnification.

A corporation shall indemnify a director who was wholly successful, on the merits or otherwise, in the defense of any proceeding to which the director was a party because the director is or was a director of the corporation against reasonable expenses incurred by the director in connection with the proceeding.

89 Acts, ch 288, §100; 2002 Acts, ch 1154, §46, 125
Referred to in §490.853, 490.854, 490.856, 491.3, 491.16, 497.34, 498.36, 499.59A, 508C.16, 524.801

490.853 Advance for expenses.

1. A corporation may, before final disposition of a proceeding, advance funds to pay for or reimburse the reasonable expenses incurred in connection with the proceeding by an individual who is a party to the proceeding because that individual is a member of the board of directors if the director delivers all of the following to the corporation:

a. A signed written affirmation of the director's good faith belief that the relevant standard of conduct described in section 490.851 has been met by the director or that the proceeding involved conduct for which liability has been eliminated under a provision of the articles of incorporation as authorized by section 490.202, subsection 2, paragraph *"d"*.

b. A signed written undertaking of the director to repay any funds advanced if the director is not entitled to mandatory indemnification under section 490.852 and it is ultimately determined under section 490.854 or 490.855 that the director has not met the relevant standard of conduct described in section 490.851.

2. The undertaking required by subsection 1, paragraph *"b"*, must be an unlimited general obligation of the director but need not be secured and may be accepted without reference to the financial ability of the director to make repayment.

3. Authorizations under this section shall be made according to any of the following:

a. By the board of directors as follows:

(1) If there are two or more qualified directors, by a majority vote of all the qualified directors, a majority of whom shall for such purpose constitute a quorum, or by a majority of the members of a committee of two or more qualified directors appointed by such a vote.

(2) If there are fewer than two qualified directors, by the vote necessary for action by the board in accordance with section 490.824, subsection 3, in which authorization directors who are not qualified directors may participate.

b. By the shareholders, but shares owned by or voted under the control of a director who at the time is not a qualified director shall not be voted on the authorization.

89 Acts, ch 288, §101; 2002 Acts, ch 1154, §47, 125; 2002 Acts, ch 1175, §89; 2013 Acts, ch 31, §36, 82

Referred to in §490.143, 490.854, 490.858, 491.3, 491.16, 497.34, 498.36, 499.59A, 508C.16, 524.801

490.854 Court-ordered indemnification.

1. A director who is a party to a proceeding because the person is a director may apply for indemnification or an advance for expenses to the court conducting the proceeding or to another court of competent jurisdiction. After receipt of an application, and after giving any notice it considers necessary, the court shall do one of the following:

a. Order indemnification if the court determines that the director is entitled to mandatory indemnification under section 490.852.

b. Order indemnification or advance for expenses if the court determines that the director is entitled to indemnification or advance for expenses pursuant to a provision authorized by section 490.858, subsection 1.

c. Order indemnification or advance for expenses if the court determines, in view of all the relevant circumstances, that it is fair and reasonable to do one of the following:

(1) To indemnify the director.

(2) To advance expenses to the director, even if the director has not met the relevant standard of conduct set forth in section 490.851, subsection 1, failed to comply with section 490.853 or was adjudged liable in a proceeding referred to in section 490.851, subsection 4, paragraph *"a"* or *"b"*, but if the director was adjudged so liable the director's indemnification shall be limited to reasonable expenses incurred in connection with the proceeding.

2. If the court determines that the director is entitled to indemnification under subsection 1, paragraph *"a"*, or to indemnification or advance for expenses under subsection 1, paragraph *"b"*, it shall also order the corporation to pay the director's reasonable expenses incurred in connection with obtaining court-ordered indemnification or advance for expenses. If the court determines that the director is entitled to indemnification or advance for expenses under subsection 1, paragraph *"c"*, it may also order the corporation to pay the director's reasonable expenses to obtain court-ordered indemnification or advance for expenses.

89 Acts, ch 288, §102; 2002 Acts, ch 1154, §48, 125

Referred to in §490.851, 490.853, 490.856, 491.3, 491.16, 497.34, 498.36, 499.59A, 508C.16, 524.801

490.855 Determination and authorization of indemnification.

1. A corporation shall not indemnify a director under section 490.851 unless authorized for a specific proceeding after a determination has been made that indemnification is permissible because the director has met the relevant standard of conduct set forth in section 490.851.

2. The determination shall be made by any of the following:

a. If there are two or more qualified directors, by the board of directors by a majority vote of all the qualified directors, a majority of whom shall for such purpose constitute a quorum, or by a majority of the members of a committee of two or more qualified directors appointed by such a vote.

b. By special legal counsel selected in one of the following manners:

(1) Selected in the manner prescribed in paragraph *"a"*.

(2) If there are fewer than two qualified directors, selected by the board of directors, in which selection directors who are not qualified directors may participate.

c. By the shareholders, but shares owned by or voted under the control of a director who at the time is not a qualified director shall not be voted on the determination.

3. Authorization of indemnification shall be made in the same manner as the determination that indemnification is permissible, except that if there are fewer than two qualified directors or if the determination is made by special legal counsel, authorization of indemnification shall be made by those entitled to select special legal counsel under subsection 2, paragraph *"b"*, subparagraph (2).

89 Acts, ch 288, §103; 2002 Acts, ch 1154, §49, 125; 2013 Acts, ch 31, §37, 82
Referred to in §490.143, 490.853, 490.858, 491.3, 491.16, 497.34, 498.36, 499.59A, 508C.16, 524.801

490.856 Indemnification of officers.

1. A corporation may indemnify and advance expenses under this part to an officer of the corporation who is a party to the proceeding because the person is an officer, according to all of the following:

a. To the same extent as to a director.

b. If the person is an officer but not a director, to such further extent as may be provided by the articles of incorporation, the bylaws, a resolution of the board of directors, or contract, except for either of the following:

(1) Liability in connection with a proceeding by or in the right of the corporation other than for reasonable expenses incurred in connection with the proceeding.

(2) Liability arising out of conduct that constitutes any of the following:

(a) Receipt by the officer of a financial benefit to which the officer is not entitled.

(b) An intentional infliction of harm on the corporation or the shareholders.

(c) An intentional violation of criminal law.

2. The provisions of subsection 1, paragraph *"b"*, shall apply to an officer who is also a director if the basis on which the officer is made a party to a proceeding is an action taken or a failure to take an action solely as an officer.

3. An officer of a corporation who is not a director is entitled to mandatory indemnification under section 490.852, and may apply to a court under section 490.854 for indemnification or an advance for expenses, in each case to the same extent to which a director may be entitled to indemnification or advance for expenses under those provisions.

89 Acts, ch 288, §104; 2002 Acts, ch 1154, §50, 125; 2003 Acts, ch 44, §85
Referred to in §490.850, 491.3, 491.16, 497.34, 498.36, 499.59A, 508C.16, 524.801

490.857 Insurance.

A corporation may purchase and maintain insurance on behalf of an individual who is a director or officer of the corporation, or who, while a director or officer of the corporation, serves at the corporation's request as a director, officer, partner, trustee, employee, or agent of another domestic or foreign corporation, partnership, joint venture, trust, employee benefit plan, or other entity, against liability asserted against or incurred by that individual in that capacity or arising from the individual's status as a director or officer, whether or not the corporation would have power to indemnify or advance expenses to that individual against the same liability under this part.

89 Acts, ch 288, §105; 2002 Acts, ch 1154, §51, 125
Referred to in §491.3, 491.16, 497.34, 498.36, 499.59A, 508C.16, 524.801

490.858 Variation by corporate action — application of part.

1. A corporation may, by a provision in its articles of incorporation or bylaws or in a resolution adopted or a contract approved by its board of directors or shareholders, obligate itself in advance of the act or omission giving rise to a proceeding to provide indemnification in accordance with section 490.851 or advance funds to pay for or reimburse expenses in accordance with section 490.853. Any such obligatory provision shall be deemed to satisfy the requirements for authorization referred to in section 490.853, subsection 3, and in section 490.855, subsection 3. Any such provision that obligates the corporation to provide indemnification to the fullest extent permitted by law shall be deemed to obligate the

corporation to advance funds to pay for or reimburse expenses in accordance with section 490.853 to the fullest extent permitted by law, unless the provision specifically provides otherwise.

2. A right of indemnification or to advances for expenses created by this division or under subsection 1 and in effect at the time of an act or omission shall not be eliminated or impaired with respect to such act or omission by an amendment of the articles of incorporation or bylaws or a resolution of the directors or shareholders, adopted after the occurrence of such act or omission, unless, in the case of a right created under subsection 1, the provision creating such right and in effect at the time of such act or omission explicitly authorizes such elimination or impairment after such act or omission has occurred.

3. Any provision pursuant to subsection 1 shall not obligate the corporation to indemnify or advance expenses to a director of a predecessor of the corporation, pertaining to conduct with respect to the predecessor, unless otherwise specifically provided. Any provision for indemnification or advance for expenses in the articles of incorporation, bylaws, or a resolution of the board of directors or shareholders of a predecessor of the corporation in a merger or in a contract to which the predecessor is a party, existing at the time the merger takes effect, shall be governed by section 490.1106, subsection 1, paragraph "*c*".

4. Subject to subsection 2, a corporation may, by a provision in its articles of incorporation, limit any of the rights to indemnification or advance for expenses created by or pursuant to this part.

5. This part does not limit a corporation's power to pay or reimburse expenses incurred by a director or an officer in connection with the director's or officer's appearance as a witness in a proceeding at a time when the director or officer is not a party.

6. This part does not limit a corporation's power to indemnify, advance expenses to, or provide or maintain insurance on behalf of an employee or agent.

89 Acts, ch 288, §106; 2002 Acts, ch 1154, §52, 125; 2013 Acts, ch 31, §38, 39, 82
Referred to in §490.854, 491.3, 491.16, 497.34, 498.36, 499.59A, 508C.16, 524.801

490.859 Exclusivity of part.

A corporation may provide indemnification or advance expenses to a director or an officer only as permitted by this part.

2002 Acts, ch 1154, §53, 125
Referred to in §491.3, 491.16, 497.34, 498.36, 499.59A, 508C.16, 524.801

PART F

490.860 Part definitions.

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

1. "*Control*", including the term "*controlled by*", means any of the following:

a. Having the power, directly or indirectly, to elect or remove a majority of the members of the board of directors or other governing body of an entity, whether through the ownership of voting shares or interests, by contract, or otherwise.

b. Being subject to a majority of the risk of loss from the entity's activities or entitled to receive a majority of the entity's residual returns.

2. "*Director's conflicting interest transaction*" means a transaction effected or proposed to be effected by the corporation, or by an entity controlled by the corporation to which, or respecting which, any of the following applies:

a. To which, at the relevant time, the director is a party.

b. Respecting which, at the relevant time, the director had knowledge and a material financial interest known to the director.

c. Respecting which, at the relevant time, the director knew that a related person was a party or had a material financial interest.

3. "*Fair to the corporation*" means, for purposes of section 490.861, subsection 2, paragraph "*c*", that the transaction as a whole was beneficial to the corporation, taking into appropriate account whether it was all of the following:

a. Fair in terms of the director's dealings with the corporation.

b. Comparable to what might have been obtainable in an arm's length transaction, given the consideration paid or received by the corporation.

4. *"Material financial interest"* means a financial interest in a transaction that would reasonably be expected to impair the objectivity of the director's judgment when participating in action on the authorization of the transaction.

5. *"Related person"* means any of the following:

a. The director's spouse.

b. A child, stepchild, grandchild, parent, stepparent, grandparent, sibling, step sibling, half sibling, aunt, uncle, niece, or nephew, or spouse of any thereof, of the director or of the director's spouse.

c. An individual living in the same home as the director.

d. An entity, other than the corporation or an entity controlled by the corporation, controlled by the director or any person specified in this subsection.

e. A domestic or foreign person who is any of the following:

(1) A business or nonprofit corporation, other than the corporation or an entity controlled by the corporation, of which the director is a director.

(2) An unincorporated entity of which the director is a general partner or a member of the governing body.

(3) An individual, trust, or estate for whom or of which the director is a trustee, guardian, personal representative, or like fiduciary.

f. A person that is, or an entity that is controlled by, an employer of the director.

6. *"Relevant time"* means any of the following:

a. The time at which directors' action respecting the transaction is taken in compliance with section 490.862.

b. If the transaction is not brought before the board of directors of the corporation, or its committee, for action under section 490.862, the time at which the corporation, or an entity controlled by the corporation, becomes legally obligated to consummate the transaction.

7. *"Required disclosure"* means disclosure of all of the following:

a. The existence and nature of the director's conflicting interest.

b. All facts known to the director respecting the subject matter of the transaction that a director free of such conflicting interest would reasonably believe to be material in deciding whether to proceed with the transaction.

2013 Acts, ch 31, §40, 82; 2014 Acts, ch 1092, §106
Referred to in §490.862, 490.863, 490.870, 491.16A

490.861 Judicial action.

1. A transaction effected or proposed to be effected by the corporation, or by an entity controlled by the corporation, shall not be the subject of equitable relief, or give rise to an award of damages or other sanctions against a director of the corporation, in a proceeding by a shareholder or by or in the right of the corporation, on the ground that the director has an interest respecting the transaction, if it is not a director's conflicting interest transaction.

2. A director's conflicting interest transaction may not be the subject of equitable relief, or give rise to an award of damages or other sanctions against a director of the corporation, in a proceeding by a shareholder or by or in the right of the corporation, on the ground that the director has an interest respecting the transaction, if any of the following apply:

a. Directors' action respecting the transaction was taken in compliance with section 490.862 at any time.

b. Shareholders' action respecting the transaction was taken in compliance with section 490.863 at any time.

c. The transaction, judged according to the circumstances at the relevant time, is established to have been fair to the corporation.

2013 Acts, ch 31, §41, 82
Referred to in §490.831, 490.860, 490.862, 490.863, 491.16A

490.862 Directors' action.

1. Directors' action respecting a director's conflicting interest transaction is effective for purposes of section 490.861, subsection 2, paragraph *"a"*, if the transaction has been authorized by the affirmative vote of a majority, but no fewer than two, of the qualified directors who voted on the transaction, after required disclosure by the conflicted director of information not already known by such qualified directors, or after modified disclosure in compliance with subsection 2, provided that all of the following apply:

a. The qualified directors have deliberated and voted outside the presence of and without the participation by any other director.

b. Where the action has been taken by a committee, all members of the committee were qualified directors, and any of the following apply:

(1) The committee was composed of all the qualified directors on the board of directors.

(2) The members of the committee were appointed by the affirmative vote of a majority of the qualified directors on the board.

2. Notwithstanding subsection 1, when a transaction is a director's conflicting interest transaction only because a related person described in section 490.860, subsection 5, paragraph *"e"* or *"f"*, is a party to or has a material financial interest in the transaction, the conflicted director is not obligated to make required disclosure to the extent that the director reasonably believes that doing so would violate a duty imposed under law, a legally enforceable obligation of confidentiality, or a professional ethics rule, provided that the conflicted director discloses to the qualified directors voting on the transaction all of the following:

a. All information required to be disclosed that is not so violative.

b. The existence and nature of the director's conflicting interest.

c. The nature of the conflicted director's duty not to disclose the confidential information.

3. A majority, but no fewer than two, of all the qualified directors on the board of directors, or on the committee, constitutes a quorum for purposes of action that complies with this section.

4. Where directors' action under this section does not satisfy a quorum or voting requirement applicable to the authorization of the transaction by reason of the articles of incorporation, the bylaws, or a provision of law, independent action to satisfy those authorization requirements must be taken by the board of directors or a committee, in which action directors who are not qualified directors may participate.

2013 Acts, ch 31, §42, 82

Referred to in §490.143, 490.831, 490.860, 490.861, 490.870, 490.1301, 490.1340, 491.16A

490.863 Shareholders' action.

1. *a.* Shareholders' action respecting a director's conflicting interest transaction is effective for purposes of section 490.861, subsection 2, paragraph *"b"*, if a majority of the votes cast by the holders of all qualified shares are in favor of the transaction after all of the following occur:

(1) Notice to shareholders describing the action to be taken respecting the transaction.

(2) Provision to the corporation of the information referred to in subsection 2.

(3) Communication to the shareholders entitled to vote on the transaction of the information that is the subject of required disclosure, to the extent the information is not known by them.

b. In the case of shareholders' action at a meeting, the shareholders entitled to vote shall be determined as of the record date for notice of the meeting.

2. A director who has a conflicting interest respecting the transaction shall, before the shareholders' vote, inform the secretary or other officer or agent of the corporation authorized to tabulate votes, in writing, of the number of shares that the director knows are not qualified shares under subsection 3, and the identity of the holders of those shares.

3. For purposes of this section, all of the following apply:

a. *"Holder"* means and *"held by"* refers to shares held by both a record shareholder, as defined in section 490.1301, subsection 8, and a beneficial shareholder, as defined in section 490.1301, subsection 2.

b. *"Qualified shares"* means all shares entitled to be voted with respect to the transaction except for shares that the secretary or other officer or agent of the corporation authorized to tabulate votes either knows, or under subsection 2 is notified, are held by any of the following:

(1) A director who has a conflicting interest respecting the transaction.

(2) A related person of the director, excluding a person described in section 490.860, subsection 5, paragraph *"f"*.

4. A majority of the votes entitled to be cast by the holders of all qualified shares constitutes a quorum for purposes of compliance with this section. Subject to the provisions of subsection 5, shareholders' action that otherwise complies with this section is not affected by the presence of holders, or by the voting, of shares that are not qualified shares.

5. If a shareholders' vote does not comply with subsection 1 solely because of a director's failure to comply with subsection 2, and if the director establishes that the failure was not intended to influence and did not in fact determine the outcome of the vote, the court may take such action respecting the transaction and the director, and may give such effect, if any, to the shareholders' vote, as the court considers appropriate in the circumstances.

6. Where shareholders' action under this section does not satisfy a quorum or voting requirement applicable to the authorization of the transaction by reason of the articles of incorporation, the bylaws, or a provision of law, independent action to satisfy those authorization requirements must be taken by the shareholders, in which action shares that are not qualified shares may participate.

2013 Acts, ch 31, §43, 82; 2013 Acts, ch 140, §71
Referred to in §490.831, 490.861, 490.870, 490.1340, 491.16A

490.864 through 490.869 Reserved.

PART G

490.870 Business opportunities.

1. A director's taking advantage, directly or indirectly, of a business opportunity may not be the subject of equitable relief, or give rise to an award of damages or other sanctions against the director, in a proceeding by or in the right of the corporation on the ground that such opportunity should have first been offered to the corporation, if before becoming legally obligated respecting the opportunity the director brings it to the attention of the corporation and any of the following apply:

a. Action by qualified directors disclaiming the corporation's interest in the opportunity is taken in compliance with the procedures set forth in section 490.862, as if the decision being made concerned a director's conflicting interest transaction.

b. Shareholders' action disclaiming the corporation's interest in the opportunity is taken in compliance with the procedure set forth in section 490.863, as if the decision being made concerned a director's conflicting interest transaction; except that, rather than making the required disclosure as defined in section 490.860, in each case the director shall have made prior disclosure to those acting on behalf of the corporation of all material facts concerning the business opportunity that are then known to the director.

2. In any proceeding seeking equitable relief or other remedy based upon an alleged improper taking advantage of a business opportunity by a director, the fact that the director did not employ the procedure described in subsection 1 before taking advantage of the opportunity shall not create an inference that the opportunity should have been first presented to the corporation or alter the burden of proof otherwise applicable to establish that the director breached a duty to the corporation in the circumstances.

2008 Acts, ch 1015, §3; 2013 Acts, ch 31, §44, 82
Referred to in §490.143, 490.831, 491.16A

490.871 through 490.900 Reserved.

DIVISION IX

SPECIAL CLASSES

490.901 Foreign-trade zone corporation.

A corporation may be organized under the laws of this state for the purpose of establishing, operating, and maintaining a foreign-trade zone as defined in 19 U.S.C. §81(a). A corporation organized for the purposes set forth in this section has all powers necessary or convenient for applying for a grant of authority to establish, operate, and maintain a foreign-trade zone under 19 U.S.C. §81(a) et seq., and regulations promulgated under that law, and for establishing, operating, and maintaining a foreign-trade zone pursuant to that grant of authority.

89 Acts, ch 288, §107

490.902 Foreign insurance companies becoming domestic.

The secretary of state, upon a corporation complying with this section and upon the filing of articles of incorporation and upon receipt of the fees as provided in this chapter, shall issue an acknowledgment of receipt of document as of the date of the filing of the articles of incorporation with the secretary of state. The acknowledgment of receipt of document shall state on its face that it is issued in accordance with this section. The secretary of state shall then notify the appropriate officer of the state or country of the corporation's last domicile that the corporation is now a domestic corporation domiciled in this state. This section applies to life insurance companies, and to insurance companies doing business under chapter 515.

89 Acts, ch 288, §108; 96 Acts, ch 1170, §8

Referred to in §508.12, 515.78, 515E.3A

490.903 through 490.1000 Reserved.

DIVISION X

AMENDMENT OF ARTICLES OF INCORPORATION AND BYLAWS

PART A

490.1001 Amendment of articles of incorporation — authority to amend.

1. A corporation may amend its articles of incorporation at any time to add or change a provision that is required or permitted in the articles of incorporation as of the effective date of the amendment or to delete a provision that is not required to be contained in the articles of incorporation.

2. A shareholder of the corporation does not have a vested property right resulting from any provision in the articles of incorporation, including provisions relating to management, control, capital structure, dividend entitlement, or purpose or duration of the corporation.

89 Acts, ch 288, §109; 2002 Acts, ch 1154, §54, 125

490.1002 Amendment before issuance of shares.

If a corporation has not yet issued shares, its board of directors, or its incorporators if it has no board of directors, may adopt one or more amendments to the corporation's articles of incorporation.

89 Acts, ch 288, §110; 2002 Acts, ch 1154, §55, 125

490.1003 Amendment by board of directors and shareholders.

If a corporation has issued shares, an amendment to the articles of incorporation shall be adopted in the following manner:

1. The proposed amendment must be adopted by the board of directors.

2. *a.* Except as provided in sections 490.1005, 490.1007, and 490.1008, after adopting the proposed amendment, the board of directors must submit the amendment to the shareholders for their approval. The board of directors must also transmit to the shareholders a recommendation that the shareholders approve the amendment, unless any of the following apply:

(1) The board of directors makes a determination that because of conflicts of interest or other special circumstances it should not make such a recommendation.

(2) Section 490.826 applies.

b. If paragraph *"a"*, subparagraph (1) or (2), applies, the board must transmit to the shareholders the basis for so proceeding.

3. The board of directors may condition its submission of the amendment to the shareholders on any basis.

4. If the amendment is required to be approved by the shareholders, and the approval is to be given at a meeting, the corporation must notify each shareholder, whether or not entitled to vote, of the meeting of shareholders at which the amendment is to be submitted for approval. The notice must state that the purpose, or one of the purposes, of the meeting is to consider the proposed amendment and must contain or be accompanied by a copy of the amendment.

5. Unless the articles of incorporation, bylaws, or the board of directors acting pursuant to subsection 3 requires a greater vote or greater number of shares to be present, approval of the amendment requires the approval of the shareholders at a meeting at which a quorum consisting of at least a majority of the votes entitled to be cast on the amendment exists, and, if any class or series of shares is entitled to vote as a separate group on the amendment, except as provided in section 490.1004, subsection 3, the approval of each such separate voting group at a meeting at which a quorum of the voting group consisting of at least a majority of the votes entitled to be cast on the amendment by that voting group exists.

89 Acts, ch 288, §111; 2002 Acts, ch 1154, §56, 125; 2002 Acts, ch 1175, §90; 2013 Acts, ch 31, §45, 82

Referred to in §490.1007

490.1004 Voting on amendments by voting groups.

1. If a corporation has more than one class of shares outstanding, the holders of the outstanding shares of a class are entitled to vote as a separate voting group, if shareholder voting is otherwise required by this chapter, on a proposed amendment to the articles of incorporation if the amendment would do any of the following:

a. Effect an exchange or reclassification of all or part of the shares of the class into shares of another class.

b. Effect an exchange or reclassification, or create the right of exchange, of all or part of the shares of another class into shares of the class.

c. Change the rights, preferences, or limitations of all or part of the shares of the class.

d. Change the shares of all or part of the class into a different number of shares of the same class.

e. Create a new class of shares having rights or preferences with respect to distributions or to dissolution that are prior or superior to the shares of the class.

f. Increase the rights, preferences, or number of authorized shares of any class that, after giving effect to the amendment, have rights or preferences with respect to distributions or to dissolution that are prior or superior to the shares of the class.

g. Limit or deny an existing preemptive right of all or part of the shares of the class.

h. Cancel or otherwise affect rights to distributions that have accumulated but not yet been authorized on all or part of the shares of the class.

2. If a proposed amendment would affect a series of a class of shares in one or more of the ways described in subsection 1, the holders of shares of that series are entitled to vote as a separate voting group on the proposed amendment.

3. If a proposed amendment that entitles the holders of two or more classes or series of shares to vote as separate voting groups under this section would affect those two or more classes or series in the same or a substantially similar way, the holders of shares of all the classes or series so affected must vote together as a single voting group on the proposed

amendment, unless otherwise provided in the articles of incorporation or required by the board of directors.

4. A class or series of shares is entitled to the voting rights granted by this section although the articles of incorporation provide that the shares are nonvoting shares.

89 Acts, ch 288, §112; 2002 Acts, ch 1154, §57, 125
Referred to in §490.1003, 490.1104

490.1005 Amendment by board of directors.

Unless the articles of incorporation provide otherwise, a corporation's board of directors may adopt amendments to the corporation's articles of incorporation without shareholder approval for any of the following purposes:

1. To extend the duration of the corporation if it was incorporated at a time when limited duration was required by law.

2. To delete the names and addresses of the initial directors.

3. To delete the name and address of the initial registered agent or registered office, if a statement of change is on file with the secretary of state.

4. If the corporation has only one class of shares outstanding:

a. To change each issued and unissued authorized share of the class into a greater number of whole shares of that class.

b. To increase the number of authorized shares of the class to the extent necessary to permit the issuance of shares as a share dividend.

5. To change the corporate name by substituting the word "corporation", "incorporated", "company", "limited", or the abbreviation "corp.", "inc.", "co.", or "ltd.", for a similar word or abbreviation in the name, or by adding, deleting, or changing a geographical attribution for the name.

6. To reflect a reduction in authorized shares, as a result of the operation of section 490.631, subsection 2, when the corporation has acquired its own shares and the articles of incorporation prohibit the reissue of the acquired shares.

7. To delete a class of shares from the articles of incorporation, as a result of the operation of section 490.631, subsection 2, when there are no remaining shares of the class because the corporation has acquired all shares of the class and the articles of incorporation prohibit the reissue of the acquired shares.

8. To make any change expressly permitted by section 490.602, subsection 1 or 2, to be made without shareholder approval.

89 Acts, ch 288, §113; 2002 Acts, ch 1154, §58, 125; 2007 Acts, ch 140, §7
Referred to in §490.1003, 490.1102, 490.1104

490.1005A Public corporation — amendment by board of directors.

1. The board of directors of a public corporation subject to section 490.806A, subsection 1, shall adopt an amendment to its articles of incorporation which includes all of the following:

a. A statement that the public corporation is subject to section 490.806A, subsection 1.

b. Any necessary changes to the articles of incorporation required to implement the requirements of section 490.806A, subsection 1, including by staggering the terms of the board of directors as described in that subsection.

2. Any amendment to the articles of incorporation as provided in subsection 1 of this section shall be made without shareholder approval.

3. This section is repealed on January 1, 2022.

2011 Acts, ch 2, §8, 10; 2018 Acts, ch 1015, §7
Referred to in §490.806A
NEW subsection 3

490.1006 Articles of amendment.

After an amendment to the articles of incorporation has been adopted and approved in the manner required by this chapter and by the articles of incorporation, the corporation shall deliver to the secretary of state, for filing, articles of amendment, which shall set forth all of the following:

1. The name of the corporation.

2. The text of each amendment adopted, or the information required by section 490.120, subsection 12, paragraph *"e"*.

3. If an amendment provides for an exchange, reclassification, or cancellation of issued shares, provisions for implementing the amendment, if not contained in the amendment itself, which may be made dependent upon facts objectively ascertainable outside the articles of amendment in accordance with section 490.120, subsection 12.

4. If an amendment:

a. Required approval by the shareholders, a statement that the amendment was duly approved by the shareholders in the manner required by this chapter and by the articles of incorporation.

b. Is being filed pursuant to section 490.120, subsection 12, a statement to that effect.

89 Acts, ch 288, §114; 2002 Acts, ch 1154, §59, 125; 2007 Acts, ch 140, §8
Referred to in §490.1007

490.1007 Restated articles of incorporation.

1. A corporation's board of directors may restate its articles of incorporation at any time with or without shareholder approval, to consolidate all amendments into a single document.

2. If the restated articles include one or more new amendments that require shareholder approval, the amendments must be adopted and approved as provided in section 490.1003.

3. A corporation that restates its articles of incorporation shall deliver to the secretary of state for filing articles of restatement setting forth the name of the corporation and the text of the restated articles of incorporation together with a certificate that states that the restated articles consolidate all amendments into a single document and, if a new amendment is included in the restated articles, that also include the statements required under section 490.1006.

4. Duly adopted restated articles of incorporation supersede the original articles of incorporation and all amendments to the original articles of incorporation.

5. The secretary of state may certify restated articles of incorporation as the articles of incorporation currently in effect, without including the certificate information required by subsection 3.

89 Acts, ch 288, §115; 2002 Acts, ch 1154, §60, 125
Referred to in §490.1003

490.1008 Amendment pursuant to reorganization.

1. A corporation's articles of incorporation may be amended without action by the board of directors or shareholders to carry out a plan of reorganization ordered or decreed by a court of competent jurisdiction under the authority of law of the United States.

2. The individual or individuals designated by the court shall deliver to the secretary of state for filing articles of amendment setting forth all of the following:

a. The name of the corporation.

b. The text of each amendment approved by the court.

c. The date of the court's order or decree approving the articles of amendment.

d. The title of the reorganization proceeding in which the order or decree was entered.

e. A statement that the court had jurisdiction of the proceeding under federal statute.

3. This section does not apply after entry of a final decree in the reorganization proceeding even though the court retains jurisdiction of the proceeding for limited purposes unrelated to consummation of the reorganization plan.

89 Acts, ch 288, §116; 2002 Acts, ch 1154, §61, 125
Referred to in §490.1003

490.1009 Effect of amendment.

An amendment to the articles of incorporation does not affect a cause of action existing against or in favor of the corporation, a proceeding to which the corporation is a party, or the existing rights of persons other than shareholders of the corporation. An amendment changing a corporation's name does not abate a proceeding brought by or against the corporation in its former name.

89 Acts, ch 288, §117; 2002 Acts, ch 1154, §62, 125

490.1010 through 490.1019 Reserved.

PART B

490.1020 Amendment of bylaws by board of directors or shareholders.

1. A corporation's shareholders may amend or repeal the corporation's bylaws.

2. A corporation's board of directors may amend or repeal the corporation's bylaws unless either of the following apply:

a. The articles of incorporation or section 490.1021 reserve that power exclusively to the shareholders in whole or in part.

b. The shareholders in amending, repealing, or adopting a bylaw expressly provide that the board of directors shall not amend, repeal, or reinstate that bylaw.

89 Acts, ch 288, §118; 2002 Acts, ch 1154, §63, 125

490.1021 Bylaw increasing quorum or voting requirement for directors.

1. A bylaw that increases a quorum or voting requirement for the board of directors may be amended or repealed as follows:

a. If adopted by the shareholders, only by the shareholders, unless the bylaws otherwise provide.

b. If adopted by the board of directors, either by the shareholders or by the board of directors.

2. A bylaw adopted or amended by the shareholders that increases a quorum or voting requirement for the board of directors may provide that it can be amended or repealed only by a specified vote of either the shareholders or the board of directors.

3. Action by the board of directors under subsection 1 to amend or repeal a bylaw that changes the quorum or voting requirement for the board of directors must meet the same quorum requirement and be adopted by the same vote required to take action under the quorum and voting requirement then in effect or proposed to be adopted, whichever is greater.

89 Acts, ch 288, §119; 2002 Acts, ch 1154, §64, 125

Referred to in §490.1020

490.1022 Bylaw increasing quorum or voting requirement for directors. Repealed by 2002 Acts, ch 1154, §123, 125.

490.1023 through 490.1100 Reserved.

DIVISION XI

MERGER, SHARE EXCHANGE, AND CONVERSION

Referred to in §15E.208

490.1101 Definitions.

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

1. *"Converted entity"* means a corporation or other entity into which a converting entity converts pursuant to sections 490.1111 through 490.1114.

2. *"Converting entity"* means a corporation or other entity that converts into an other entity or corporation pursuant to section 490.1111.

3. *"Governing statute"* of a corporation or other entity means the statute that governs the corporation or other entity's internal affairs.

4. *"Interests"* means the proprietary interests in an other entity.

5. *"Merger"* means a business combination pursuant to section 490.1102.

6. *"Organizational documents"* means the basic document or documents that create, or determine the internal governance of, an other entity.

7. *"Other entity"* means any association or legal entity, other than a domestic or

foreign corporation, organized to conduct business, including, without limitation, limited partnerships, general partnerships, limited liability partnerships, limited liability companies, joint ventures, joint stock companies, and business trusts.

8. *"Party to a merger"* or *"party to a share exchange"* means any domestic or foreign corporation or other entity that will accomplish one of the following during a merger:

a. Merge under a plan of merger.

b. Acquire shares or interests of another corporation or an other entity in a share exchange.

c. Have all of its shares or interests or all of one or more classes or series of its shares or interests acquired in a share exchange.

9. *"Share exchange"* means a business combination pursuant to section 490.1103.

10. *"Survivor"* in a merger means the corporation or other entity into which one or more other corporations or other entities are merged. A survivor of a merger may preexist the merger or be created by the merger.

89 Acts, ch 288, §121; 97 Acts, ch 117, §3; 97 Acts, ch 171, §12; 2002 Acts, ch 1154, §65, 125; 2008 Acts, ch 1162, §117, 155

490.1102 Merger.

1. One or more domestic corporations may merge with a domestic or foreign corporation or other entity pursuant to a plan of merger.

2. A foreign corporation, or domestic or foreign other entity, may be a party to the merger, or may be created by the terms of the plan of merger, only if both of the following are satisfied:

a. The merger is permitted by the laws under which the corporation or other entity is organized or by which it is governed.

b. In effecting the merger, the corporation or other entity complies with such laws and with its articles of incorporation or organizational documents.

3. The plan of merger must include all of the following:

a. The name of each corporation or other entity that will merge and the name of the corporation or other entity that will be the survivor of the merger.

b. The terms and conditions of the merger.

c. The manner and basis of converting the shares of each merging corporation and interests of each merging other entity into shares, or other securities, interests, obligations, rights to acquire shares or other securities, cash, other property, or any combination of the foregoing.

d. The articles of incorporation of any corporation, or the organizational documents of any other entity, to be created by the merger, or if a new corporation or other entity is not to be created by the merger, any amendments to the survivor's articles of incorporation or organizational documents.

e. Any other provisions required by the laws under which any party to the merger is organized or by which it is governed, or by the articles of incorporation or organizational documents of any such party.

4. The terms of a plan of merger may be made dependent on facts objectively ascertainable outside the plan in accordance with section 490.120, subsection 12.

5. The plan of merger may also include a provision that the plan may be amended prior to filing the articles of merger with the secretary of state, provided that if the shareholders of a domestic corporation that is a party to the merger are required or permitted to vote on the plan, the plan must provide that subsequent to approval of the plan by such shareholders the plan shall not be amended to change any of the following:

a. Change the amount or kind of shares or other securities, interests, obligations, rights to acquire shares or other securities, cash, or other property to be received by the shareholders of or owners of interests in any party to the merger upon conversion of their shares or interests under the plan.

b. Change the articles of incorporation of any corporation, or the organizational documents of any other entity, that will survive or be created as a result of the merger, except for changes permitted by section 490.1005 or by comparable provisions of the laws under which the foreign corporation or other entity is organized or governed.

c. Change any of the other terms or conditions of the plan if the change would adversely affect such shareholders in any material respect.

89 Acts, ch 288, §122; 97 Acts, ch 117, §4; 2002 Acts, ch 1154, §66, 125; 2007 Acts, ch 140, §9

Referred to in §490.1101, 499.69A, 508B.2, 515G.2

490.1103 Share exchange.

1. Either of the following may occur through a share exchange:

a. A domestic corporation may acquire all of the shares of one or more classes or series of shares of another domestic or foreign corporation, or all of the interests of one or more classes or series of interests of a domestic or foreign other entity, in exchange for shares or other securities, interests, obligations, rights to acquire shares or other securities, cash, other property, or any combination of the foregoing, pursuant to a plan of share exchange.

b. All of the shares of one or more classes or series of shares of a domestic corporation may be acquired by another domestic or foreign corporation or other entity, in exchange for shares or other securities, interests, obligations, rights to acquire shares or other securities, cash, other property, or any combination of the foregoing, pursuant to a plan of share exchange.

2. A foreign corporation, or a domestic or foreign other entity, may be a party to the share exchange only if both of the following conditions are met:

a. The share exchange is permitted by the laws under which the corporation or other entity is organized or by which it is governed.

b. In effecting the share exchange, the corporation or other entity complies with such laws and with its articles of incorporation or organizational documents.

3. The plan of share exchange must include all of the following:

a. The name of each corporation or other entity whose shares or interests will be acquired and the name of the corporation or other entity that will acquire those shares or interests.

b. The terms and conditions of the share exchange.

c. The manner and basis of exchanging shares of a corporation or interests in an other entity whose shares or interests will be acquired under the share exchange into shares or other securities, interests, obligations, rights to acquire shares or other securities, cash, other property, or any combination of the foregoing.

d. Any other provisions required by the laws under which any party to the share exchange is organized or by the articles of incorporation or organizational documents of any such party.

4. The terms of a share exchange may be made dependent on facts objectively ascertainable outside the plan in accordance with section 490.120, subsection 12.

5. The plan of share exchange may also include a provision that the plan may be amended prior to filing of the articles of share exchange with the secretary of state, provided that if the shareholders of a domestic corporation that is a party to the share exchange are required or permitted to vote on the plan, the plan must provide that subsequent to approval of the plan by such shareholders the plan shall not be amended to change either of the following:

a. The amount or kind of shares or other securities, interests, obligations, rights to acquire shares or other securities, cash, or other property to be issued by the corporation or to be received by the shareholders of or owners of interests in any party to the share exchange in exchange for their shares or interests under the plan.

b. Any of the terms or conditions of the plan if the change would adversely affect such shareholders in any material respect.

6. This section does not limit the power of a domestic corporation to acquire shares of another corporation or interests in an other entity in a transaction other than a share exchange.

89 Acts, ch 288, §123; 2002 Acts, ch 1154, §67, 125; 2007 Acts, ch 140, §10

Referred to in §490.1101

490.1104 Action on a plan of merger or share exchange.

In the case of a domestic corporation that is a party to a merger or share exchange:

1. The plan of merger or share exchange must be adopted by the board of directors.

2. *a.* Except as provided in subsection 7 and in section 490.1105, after adopting the plan

of merger or share exchange the board of directors must submit the plan to the shareholders for their approval. The board of directors must also transmit to the shareholders a recommendation that the shareholders approve the plan, unless any of the following apply:

(1) The board of directors makes a determination that because of conflicts of interest or other special circumstances it should not make such a recommendation.

(2) Section 490.826 applies.

b. If paragraph *"a"*, subparagraph (1) or (2), applies, the board must transmit to the shareholders the basis for so proceeding.

3. The board of directors may condition its submission of the plan of merger or share exchange to the shareholders on any basis.

4. If the plan of merger or share exchange is required to be approved by the shareholders, and if the approval is to be given at a meeting, the corporation must notify each shareholder, whether or not entitled to vote, of the meeting of shareholders at which the plan is to be submitted for approval. The notice must state that the purpose, or one of the purposes, of the meeting is to consider the plan and must contain or be accompanied by a copy or summary of the plan. If the corporation is to be merged into an existing corporation or other entity, the notice shall also include or be accompanied by a copy or summary of the articles of incorporation or organizational documents of that corporation or other entity. If the corporation is to be merged into a corporation or other entity that is to be created pursuant to the merger, the notice shall include or be accompanied by a copy or summary of the articles of incorporation or organizational documents of the new corporation or other entity.

5. Unless the articles of incorporation, bylaws, or the board of directors require a greater vote or a greater number of votes to be present, the approval of the plan of merger or share exchange shall require the approval of the shareholders at a meeting at which a quorum consisting of at least a majority of the votes entitled to be cast on the plan exists, and, if any class or series of shares is entitled to vote as a separate group on the plan of merger or share exchange, the approval of each such separate voting group at a meeting at which a quorum of the voting group consisting of at least a majority of the votes entitled to be cast on the merger or share exchange by that voting group is present.

6. Separate voting by voting groups is required for each of the following:

a. On a plan of merger, by each class or series of shares that are to be converted, pursuant to the provisions of the plan of merger, into shares or other securities, interests, obligations, rights to acquire shares or other securities, cash, other property, or any combination of the foregoing, or would have a right to vote as a separate group on a provision in the plan that, if contained in a proposed amendment to articles of incorporation, would require action by separate voting groups under section 490.1004.

b. On a plan of share exchange, by each class or series of shares included in the exchange, with each class or series constituting a separate voting group.

c. On a plan of merger or share exchange, if the voting group is entitled under the articles of incorporation to vote as a voting group to approve a plan of merger or share exchange.

7. Unless the articles of incorporation otherwise provide, approval by the corporation's shareholders of a plan of merger or share exchange is not required if all of the following conditions are satisfied:

a. The corporation will survive the merger or is the acquiring corporation in a share exchange.

b. Except for amendments permitted by section 490.1005, its articles of incorporation will not be changed.

c. Each shareholder of the corporation whose shares were outstanding immediately before the effective date of the merger or share exchange will hold the same number of shares, with identical preferences, limitations, and relative rights, immediately after the effective date of change.

d. The issuance in the merger or share exchange of shares or other securities convertible into or rights exercisable for shares does not require a vote under section 490.621, subsection 6.

8. If, as a result of a merger or share exchange, one or more shareholders of a domestic corporation would become subject to personal liability for the obligations or liabilities of any

other person or other entity, approval of the plan of merger shall require the execution, by each such shareholder, of a separate written consent to become subject to such personal liability.

89 Acts, ch 288, §124; 2002 Acts, ch 1154, §68, 125; 2013 Acts, ch 31, §46, 82
Referred to in §490.1302, 508B.2, 515G.2, 524.1402

490.1105 Merger between parent and subsidiary or between subsidiaries.

1. A domestic parent corporation that owns shares of a domestic or foreign subsidiary corporation that carry at least ninety percent of the voting power of each class and series of the outstanding shares of the subsidiary that have voting power may merge the subsidiary into itself or into another such subsidiary, or merge itself into the subsidiary, without the approval of the board of directors or shareholders of the subsidiary unless the articles of incorporation of any of the corporations otherwise provide, and unless, in the case of a foreign subsidiary, approval by the subsidiary's board of directors or shareholders is required by the laws under which the subsidiary is organized.

2. If under subsection 1 approval of a merger by the subsidiary's shareholders is not required, the parent corporation shall, within ten days after the effective date of the merger, notify each of the subsidiary's shareholders that the merger has become effective.

3. Except as provided in subsections 1 and 2, a merger between a parent and subsidiary shall be governed by the provisions of this division, applicable to mergers generally.

89 Acts, ch 288, §125; 2002 Acts, ch 1154, §69, 125
Referred to in §490.1104, 490.1110, 490.1301, 490.1302, 490.1320, 490.1322, 524.1408

490.1106 Articles of merger or share exchange.

1. After a plan of merger or share exchange has been adopted and approved as required by this chapter, articles of merger or share exchange shall be signed on behalf of each party to the merger or share exchange by any officer or other duly authorized representative. The articles shall set forth the following:

a. The names of the parties to the merger or share exchange and the date on which the merger or share exchange occurred or is to be effective.

b. If the articles of incorporation of the survivor of a merger are amended, or if a new corporation is created as a result of a merger, the amendments to the survivor's articles of incorporation or the articles of incorporation of the new corporation.

c. If the plan of merger or share exchange required approval by the shareholders of a domestic corporation that was a party to the merger or share exchange, a statement that the plan was duly approved by the shareholders and, if voting by any separate voting group was required, by each such separate voting group, in the manner required by this chapter and the articles of incorporation.

d. If the plan of merger or share exchange did not require approval by the shareholders of a domestic corporation that was a party to the merger or share exchange, a statement to that effect.

e. As to each foreign corporation and each other entity that was a party to the merger or share exchange, a statement that the plan and the performance of its terms were duly authorized by all action required by the laws under which the corporation or other entity is organized or by which it is governed, and by its articles of incorporation or organizational documents.

2. Articles of merger or share exchange shall be delivered to the secretary of state for filing by the survivor of the merger or the acquiring corporation in a share exchange and shall take effect on the effective date of the merger or share exchange.

89 Acts, ch 288, §126; 2002 Acts, ch 1154, §70, 125; 2013 Acts, ch 31, §47, 82
Referred to in §490.858, 499.69A

490.1107 Effect of merger or share exchange.

1. When a merger becomes effective, certain acts shall occur as follows:

a. The corporation or other entity that is designated in the plan of merger as the survivor continues or comes into existence, as the case may be.

b. The separate existence of every corporation or other entity that is merged into the survivor ceases.

c. All property owned by, and every contract right possessed by, each corporation or other entity that merges into the survivor is vested in the survivor without reversion or impairment.

d. All liabilities of each corporation or other entity that is merged into the survivor are vested in the survivor.

e. The name of the survivor may, but need not be, substituted in any pending proceeding for the name of any party to the merger whose separate existence ceased in the merger.

f. The articles of incorporation or organizational documents of the survivor are amended to the extent provided in the plan of merger.

g. The articles of incorporation or organizational documents of a survivor that is created by the merger become effective.

h. The shares of each corporation that is a party to the merger, and the interests in another entity that is a party to a merger, that are to be converted under the plan of merger into shares, interests, obligations, rights to acquire securities, other securities, cash, other property, or any combination of the foregoing, are converted, and the former holders of such shares or interests are entitled only to the rights provided to them in the plan of merger or to any rights they may have under division XIII.

2. When a share exchange becomes effective, the shares of each domestic corporation that are to be exchanged for shares or other securities, interests, obligations, rights to acquire shares or securities, other securities, cash, other property, or any combination of the foregoing, are entitled only to the rights provided to them in the plan of share exchange or to any rights they may have under division XIII.

3. Any shareholder of a domestic corporation that is a party to a merger or share exchange who, prior to the merger or share exchange, was liable for the liabilities or obligations of such corporation, shall not be released from such liabilities or obligations by reason of the merger or share exchange.

4. Upon a merger becoming effective, a foreign corporation, or a foreign other entity, that is the survivor of the mergers, is deemed to do both of the following:

a. Appoint the secretary of state as its agent for service of process in a proceeding to enforce the rights of shareholders of each domestic corporation that is a party to the merger who exercise appraisal rights.

b. Agree that it will promptly pay the amount, if any, to which such shareholders are entitled under division XIII.

89 Acts, ch 288, §127; 2002 Acts, ch 1154, §71, 125

490.1108 Abandonment of a merger or share exchange.

1. Unless otherwise provided in a plan of merger or share exchange or in the laws under which a foreign corporation or a domestic or foreign other entity that is a party to a merger or a share exchange is organized or by which it is governed, after the plan has been adopted and approved as required by this division, and at any time before the merger or share exchange has become effective, it may be abandoned by any party to the merger or share exchange without action by the party's shareholders or owners of interests, in accordance with any procedures set forth in the plan of merger or share exchange or, if no such procedures are set forth in the plan, in the manner determined by the board of directors of a corporation, or the managers of any other entity, subject to any contractual rights of other parties to the merger or share exchange.

2. If a merger or share exchange is abandoned under subsection 1 after articles of merger or share exchange have been filed with the secretary of state but before the merger or share exchange has become effective, a statement that the merger or share exchange has been abandoned in accordance with this section, signed on behalf of a party to the merger or share exchange by an officer or other duly authorized representative, shall be delivered to the secretary of state for filing prior to the effective date of the merger or share exchange. Upon filing, the statement shall take effect and the merger or share exchange shall be deemed abandoned and shall not become effective.

89 Acts, ch 288, §128; 2002 Acts, ch 1154, §72, 125; 2013 Acts, ch 31, §48, 82

490.1108A Consideration of acquisition proposals — community interests.

1. A director, in determining what is in the best interest of the corporation when considering a tender offer or proposal of acquisition, merger, consolidation, or similar proposal, may consider any or all of the following community interest factors, in addition to consideration of the effects of any action on shareholders:

a. The effects of the action on the corporation's employees, suppliers, creditors, and customers.

b. The effects of the action on the communities in which the corporation operates.

c. The long-term as well as short-term interests of the corporation and its shareholders, including the possibility that these interests may be best served by the continued independence of the corporation.

2. If on the basis of the community interest factors described in subsection 1, the board of directors determines that a proposal or offer to acquire or merge the corporation is not in the best interests of the corporation, it may reject the proposal or offer. If the board of directors determines to reject any such proposal or offer, the board of directors has no obligation to facilitate, to remove any barriers to, or to refrain from impeding, the proposal or offer. Consideration of any or all of the community interest factors is not a violation of the business judgment rule or of any duty of the director to the shareholders, or a group of shareholders, even if the director reasonably determines that a community interest factor or factors outweigh the financial or other benefits to the corporation or a shareholder or group of shareholders.

2002 Acts, ch 1154, §73, 125

Referred to in §508B.13

490.1109 Qualified merger — corporation and cooperative association.

A corporation and a cooperative association organized under chapter 499 may merge as provided in section 499.69A.

97 Acts, ch 17, §1

490.1110 Business combinations with interested shareholders.

1. Notwithstanding any other provision of this chapter, a corporation shall not engage in any business combination with an interested shareholder for a period of three years following the time that the shareholder became an interested shareholder, unless any of the following apply:

a. Prior to the time the shareholder became an interested shareholder, the board of directors of the corporation approved either the business combination or the transaction which resulted in the shareholder becoming an interested shareholder.

b. Upon consummation of the transaction which resulted in the shareholder becoming an interested shareholder, the interested shareholder owned at least eighty-five percent of the voting stock of the corporation outstanding at the time the transaction commenced, excluding, for purposes of determining the number of shares outstanding, those shares owned by persons who are directors and officers, and by employee stock plans in which employee participants do not have the right to determine confidentially whether shares held subject to the plan will be tendered in a tender or exchange offer.

c. At or subsequent to the time the shareholder became an interested shareholder, the business combination is approved by the board of directors and authorized at an annual or special meeting of shareholders by the affirmative vote of at least sixty-six and two-thirds percent of the outstanding voting stock which is not owned by the interested shareholder. Such approval shall not be by written consent.

2. *a.* This section does not apply in any of the following circumstances:

(1) The corporation does not have a class of voting stock that is listed on a national securities exchange, authorized for quotation on the national association of securities dealers automated quotations – national market system, or held of record by more than two thousand shareholders, unless any of the foregoing results from action taken, directly or indirectly, by an interested shareholder or from a transaction in which a person becomes an interested shareholder.

(2) The corporation's original articles of incorporation contain a provision expressly electing not to be governed by this section.

(3) The corporation, by action of its board of directors, adopts an amendment to its bylaws by no later than September 29, 1997, expressly electing not to be governed by this section, which amendment shall not be further amended by the board of directors.

(4) (a) The corporation, by action of its shareholders, adopts an amendment to its articles of incorporation or bylaws expressly electing not to be governed by this section, provided that, in addition to any other vote required by law, such amendment to the articles of incorporation or bylaws must be approved by the affirmative vote of a majority of the shares entitled to vote. An amendment adopted pursuant to this subparagraph is effective immediately in the case of a corporation that has never had a class of voting stock that falls within any of the three categories set out in subparagraph (1) and has not elected by a provision in its original articles of incorporation or any amendment to such articles to be governed by this section. In all other cases, an amendment adopted pursuant to this subparagraph is not effective until twelve months after the adoption of the amendment and does not apply to any business combination between the corporation and any person who became an interested shareholder of the corporation on or prior to such adoption.

(b) An amendment to the bylaws adopted pursuant to this subparagraph shall not be further amended by the board of directors.

(5) A shareholder becomes an interested shareholder inadvertently and both of the following apply:

(a) As soon as practicable the shareholder divests itself of ownership of sufficient shares so that the shareholder ceases to be an interested shareholder.

(b) The shareholder would not, at any time within the three-year period immediately prior to a business combination between the corporation and such shareholder, have been an interested shareholder but for the inadvertent acquisition of ownership.

(6) (a) The business combination is proposed prior to the consummation or abandonment of and subsequent to the earlier of the public announcement or the notice required in this subparagraph of a proposed transaction which satisfies all of the following:

(i) Constitutes a transaction described in subparagraph division (b).

(ii) Is with or by a person who either was not an interested shareholder during the previous three years or who became an interested shareholder with the approval of the corporation's board of directors or who became an interested shareholder during the time period described in subparagraph (7).

(iii) Is approved or not opposed by a majority of the members of the board of directors then in office who were directors prior to any person becoming an interested shareholder during the previous three years, or who were recommended for election or elected to succeed such directors by a majority of such directors.

(b) A proposed transaction under subparagraph division (a) is limited to the following:

(i) A merger of the corporation, other than a merger pursuant to section 490.1105.

(ii) A sale, lease, exchange, mortgage, pledge, transfer, or other disposition, in one or more transactions and whether as part of a dissolution or otherwise, of assets of the corporation or of any direct or indirect majority-owned subsidiary of the corporation, other than to a direct or indirect wholly owned subsidiary of the corporation or to the corporation itself, which has an aggregate market value equal to fifty percent or more of either the aggregate market value of all of the assets of the corporation determined on a consolidated basis, or the aggregate market value of all the outstanding stock of the corporation.

(iii) A proposed tender or exchange offer for fifty percent or more of the outstanding voting stock of the corporation.

(c) The corporation shall give no less than twenty days' notice to all interested shareholders prior to the consummation of any of the transactions described in subparagraph division (b), subparagraph subdivision (i) or (ii).

(7) The business combination is with an interested shareholder who becomes an interested shareholder of the corporation at a time when the corporation is not subject to this section pursuant to subparagraph (1), (2), (3), or (4).

b. Notwithstanding paragraph *"a"*, subparagraphs (1) through (4), a corporation may elect

under its original articles of incorporation or any amendment to such articles to be subject to this section. However, such amendment shall not apply to restrict a business combination between the corporation and an interested shareholder of the corporation if the interested shareholder became such prior to the effective date of the amendment.

3. As used in this section, unless the context otherwise requires:

a. "Affiliate" means a person that directly, or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, another person.

b. "Associate", when used to indicate a relationship with a person, means any of the following:

(1) A corporation, partnership, unincorporated association, or other entity of which the person is a director, officer, or partner or is, directly or indirectly, the owner of twenty percent or more of any class of voting stock.

(2) A trust or other estate in which the person has at least a twenty percent beneficial interest or as to which such person serves as trustee or in a similar fiduciary capacity.

(3) A relative or spouse of the person, or any relative of the spouse, who has the same residence as the person.

c. "Business combination", with respect to a corporation and an interested shareholder of such corporation, means any of the following:

(1) A merger or consolidation of the corporation or any direct or indirect majority-owned subsidiary of the corporation with the interested shareholder, or with any other corporation, partnership, unincorporated association, or other entity if the merger or consolidation is caused by the interested shareholder and as a result of such merger the surviving entity is not subject to subsection 1.

(2) A sales, lease, exchange, mortgage, pledge, transfer, or other disposition, in one transaction or a series of transactions, except proportionately as a shareholder of such corporation, to or with the interested shareholder, whether as part of a dissolution or otherwise, of assets of the corporation or of any direct or indirect majority-owned subsidiary of the corporation which assets have an aggregate market value equal to ten percent or more of either the aggregate market value of all the assets of the corporation determined on a consolidated basis or the aggregate market value of all the outstanding stock of the corporation.

(3) A transaction which results in the issuance or transfer by the corporation or by any direct or indirect majority-owned subsidiary of the corporation of any stock of the corporation or of such subsidiary to the interested shareholder, except for the following:

(a) Pursuant to the exercise, exchange, or conversion of securities exercisable for, exchangeable for, or convertible into stock of the corporation or such subsidiary which securities were outstanding prior to the time that the interested shareholder became an interested shareholder.

(b) Pursuant to a merger under section 490.1105.

(c) Pursuant to a distribution paid or made, or the exercise, exchange, or conversion of securities exercisable for, exchangeable for, or convertible into stock of such corporation or any such subsidiary, which stock is distributed pro rata to all holders of a class or series of stock of the corporation subsequent to the time the interested shareholder became an interested shareholder.

(d) Pursuant to an exchange offer by the corporation to purchase stock made on the same terms to all holders of the stock.

(e) Any issuance or transfer of stock by the corporation, provided, however, that in no case under subparagraph divisions (c) and (d) and this subparagraph division shall there be an increase in the interested shareholder's proportionate share of the stock of any class or series of the corporation or of the voting stock of the corporation.

(4) A transaction involving the corporation or any direct or indirect majority-owned subsidiary of the corporation which has the effect, directly or indirectly, of increasing the proportionate share of the stock of any class or series, or securities convertible into the stock of any class or series, of the corporation or of any such subsidiary which is owned by the interested shareholder, except as a result of immaterial changes due to fractional share

adjustments or as a result of any purchase or redemption of any shares of stock not caused, directly or indirectly, by the interested shareholder.

(5) The receipt by the interested shareholder of the benefit, directly or indirectly, except proportionately as a shareholder of such corporation, of any loans, advances, guarantees, pledges, or other financial benefits, other than those expressly permitted in subparagraphs (1) through (4), provided by or through the corporation or any direct or indirect majority-owned subsidiary.

d. *"Control"*, including the terms *"controlling"*, *"controlled by"*, and *"under common control with"*, means the ability, directly or indirectly, to direct or cause the direction of the management and policies of a person, whether through the ownership of voting stock, by contract, or otherwise. A person who is the owner of twenty percent or more of the outstanding voting stock of any corporation, partnership, unincorporated association, or other entity is presumed to have control of such entity, in the absence of proof by a preponderance of the evidence to the contrary. Notwithstanding this paragraph, a presumption of control shall not apply where a person holds voting stock, in good faith and not for the purpose of circumventing this section, as an agent, bank, broker, nominee, custodian, or trustee for one or more owners who do not individually or as a group have control of such entity.

e. *"Interested shareholder"* means any person, other than the corporation and any direct or indirect majority-owned subsidiary of the corporation, that is the owner of ten percent or more of the outstanding voting stock of the corporation, or is an affiliate or associate of the corporation and was the owner of ten percent or more of the outstanding voting stock of the corporation at any time within the three-year period immediately prior to the date on which it is sought to be determined whether such person is an interested shareholder, and the affiliates and associates of such person. *"Interested shareholder"* does not include a person whose ownership of shares in excess of the ten percent limitation is the result of action taken solely by the corporation, provided that such person is an interested shareholder if, after such action by the corporation, the person acquires additional shares of voting stock of the corporation, other than as a result of further corporate action not caused, directly or indirectly, by such person. For purposes of determining whether a person is an interested shareholder, the outstanding voting stock of the corporation does not include any other unissued stock of the corporation which may be issuable pursuant to any agreement, arrangement, or understanding, or upon exercise of conversion rights, warrants, or options, or otherwise.

f. *"Owner"*, including the terms *"own"* and *"owned"* when used with respect to any stock, means a person that individually or with or through any of such person's affiliates or associates satisfies any of the following:

(1) Beneficially owns such stock, directly or indirectly.

(2) Has the right to do either of the following:

(a) Acquire such stock, whether such right is exercisable immediately or only after the passage of time, pursuant to any agreement, arrangement, or understanding, or upon the exercise of conversion rights, exchange rights, warrants, or options, or otherwise. However, a person is not deemed the owner of stock tendered pursuant to a tender or exchange offer made by such person or any of such person's affiliates or associates until such tendered stock is accepted for purchase or exchange.

(b) Vote such stock pursuant to any agreement, arrangement, or understanding. However, a person is not deemed the owner of any stock because of such person's right to vote such stock if the agreement, arrangement, or understanding to vote such stock arises solely from the revocable proxy or consent given in response to a proxy or consent solicitation made to ten or more persons.

(3) Has any agreement, arrangement, or understanding for the purpose of acquiring, holding, voting, or disposing of such stock with any other person who beneficially owns, or whose affiliates or associates beneficially own, directly or indirectly, such stock. However, an agreement, arrangement, or understanding for the purpose of voting such stock does not include voting pursuant to a revocable proxy or consent under subparagraph (2), subparagraph division (b).

g. *"Person"* means any individual, corporation, partnership, unincorporated association, or other entity.

h. *"Stock"* means, with respect to any corporation, capital stock and, with respect to any other entity, any equity interest.

i. *"Voting stock"* means, with respect to any corporation, stock of any class or series entitled to vote generally in the election of directors and, with respect to any entity that is not a corporation, any equity interest entitled to vote generally in the election of the governing body of such entity.

4. The articles of incorporation or bylaws shall not require, for any vote of shareholders required by this section, a greater vote of shareholders than that specified in this section.

97 Acts, ch 117, §5; 97 Acts, ch 188, §52; 98 Acts, ch 1100, §66; 2002 Acts, ch 1154, §74, 75, 125; 2009 Acts, ch 41, §263; 2012 Acts, ch 1023, §88, 89

490.1111 Conversion.

1. An other entity may convert to a domestic corporation, and a domestic corporation may convert to an other entity pursuant to this section and sections 490.1112 through 490.1114 and a plan of conversion, if all of the following apply:

a. The other entity's governing statute authorizes the conversion.

b. The conversion is not prohibited by the law of the jurisdiction that enacted the governing statute.

c. The other entity complies with its governing statute in effecting the conversion.

2. A plan of conversion must be in a record and must include all of the following:

a. The name and form of the converting entity before conversion.

b. The name and form of the converted entity after conversion.

c. The terms and conditions of the conversion, including the manner and basis for converting interests in the converting entity into any combination of money, interests in the converted entity, and other consideration.

d. The organizational documents or articles of incorporation and bylaws of the converted entity.

2008 Acts, ch 1162, §118, 155
Referred to in §490.1101, 490.1302

490.1112 Action on plan of conversion by converting domestic corporation.

1. In the case of a domestic corporation that is being converted into an other entity all of the following apply:

a. The plan of conversion must be adopted by the domestic corporation's board of directors.

b. After adopting the plan of conversion, the domestic corporation's board of directors must submit the plan to the domestic corporation's shareholders for their approval. The board of directors must also transmit to the shareholders a recommendation that the shareholders approve the plan, unless the board of directors makes a determination that because of conflicts of interest or other special circumstances it should not make such a recommendation, in which case the board of directors must transmit to the shareholders the basis for that determination.

c. The domestic corporation must notify each shareholder of the domestic corporation, whether or not entitled to vote, of the meeting of shareholders at which the plan is to be submitted for approval. The notice must state that the purpose, or one of the purposes, of the meeting is to consider the plan of conversion and must contain or be accompanied by a copy or summary of the plan of conversion. The notice shall include or be accompanied by a copy of the organizational documents as they will be in effect immediately after the conversion.

d. The domestic corporation's board of directors may condition its submission of the plan of conversion to the domestic corporation's shareholders on any basis.

e. Unless the articles of incorporation, bylaws, or the board of directors of the domestic corporation require a greater vote or a greater number of votes to be present, the approval of the plan of conversion shall require the approval of the domestic corporation's shareholders at a meeting at which a quorum consisting of at least a majority of the votes entitled to be cast

on the plan exists, and, if any classes or series of shares is entitled to vote as a separate group on the plan of conversion, the approval of each such separate voting group at a meeting at which a quorum of the voting group consisting of at least a majority of the votes entitled to be cast on the conversion by that voting group is present.

f. If any provision of the articles of incorporation, bylaws, or an agreement of the domestic corporation to which any of the directors or shareholders of the domestic corporation are parties, adopted or entered into before the effective date of this section, applies to a merger of the corporation and the document does not refer to a conversion of the corporation, the provision shall be deemed to apply to a conversion of the corporation until such provision is subsequently amended.

g. If as a result of the conversion as provided in this subsection, one or more shareholders of the domestic corporation would become subject to owner liability for the debts, obligations, or liabilities of any other person or entity, approval of the plan of conversion shall require the execution, by each such shareholder of the domestic corporation, of a separate written consent to become so subject to such owner liability.

2. After a conversion is approved as provided in subsection 1, and at any time before a filing is made under section 490.1113, a domestic corporation that is being converted may amend its plan of conversion or abandon the planned conversion as follows:

a. As provided in the plan of conversion.

b. Except as prohibited by the plan of conversion, by the same consent as was required to approve the plan of conversion.

2008 Acts, ch 1162, §119, 155; 2009 Acts, ch 41, §147
Referred to in §490.1101, 490.1111, 490.1302

490.1113 Filings required for conversion — effective date.

1. After a plan of conversion is approved, all of the following apply:

a. A domestic corporation that is being converted into an other entity shall deliver to the secretary of state for filing articles of conversion, which must include all of the following:

(1) A statement that the domestic corporation has been converted into an other entity.

(2) The name and form of the other entity and the jurisdiction of its governing statute.

(3) The date the conversion is effective under the governing statute of the converted entity.

(4) A statement that the conversion was approved as required by this chapter.

(5) A statement that the conversion was approved as required by the governing statute of the converted entity.

(6) If the converted entity is a foreign other entity not authorized to transact business in this state, the street and mailing address of an office which the secretary of state may use for the purposes of section 490.1114, subsection 3.

b. If the converting entity is not a converting domestic corporation, the converting entity shall deliver to the secretary of state for filing articles of incorporation, which must include, in addition to the information required by section 490.202, all of the following:

(1) A statement that the domestic corporation was converted from an other entity.

(2) The name and form of the other entity and the jurisdiction of its governing statute.

(3) A statement that the conversion was approved in a manner that complied with the other entity's governing statute.

2. A conversion becomes effective according to the following:

a. If the converted entity is a domestic corporation, when the articles of incorporation are filed.

b. If the converted entity is not a domestic corporation, as provided by the governing statute of the converted other entity.

2008 Acts, ch 1162, §120, 155
Referred to in §490.1101, 490.1111, 490.1112, 490.1302

490.1114 Effect of conversion.

1. A domestic corporation or other entity that has been converted pursuant to this division is for all purposes the same domestic corporation or other entity that existed before the conversion.

2. When a conversion takes effect, all of the following apply:

a. All property owned by the converting entity remains vested in the converted entity.

b. All debts, liabilities, and other obligations of the converting entity continue as obligations of the converted entity.

c. An action or proceeding pending by or against the converting entity may be continued as if the conversion had not occurred.

d. The shares or interests of the converting entity are reclassified into shares, interests, other securities, obligations, rights to acquire shares, interests or other securities, or into cash or other property in accordance with the plan of conversion; and the shareholders or interest holders of the converting entity are entitled only to the rights provided to them under the terms of the conversion and to any appraisal rights they may have under the organic law of the converting entity.

e. Except as prohibited by other law, all of the rights, privileges, immunities, powers, and purposes of the converting entity remain vested in the converted entity.

f. Except as otherwise provided in the plan of conversion, the terms and conditions of the plan of conversion take effect.

g. Except as otherwise agreed, the conversion does not dissolve a converting domestic corporation for the purposes of division XIV.

3. A converted entity that is a foreign other entity consents to the jurisdiction of the courts of this state to enforce any obligation owed by the converting corporation, if before the conversion the converting corporation was subject to suit in this state on the obligation. A converted other entity that is a foreign other entity and not authorized to transact business in this state appoints the secretary of state as its agent for service of process for purposes of enforcing an obligation under this subsection. Service on the secretary of state under this subsection is made in the same manner and with the same consequences as in section 490.504.

2008 Acts, ch 1162, §121, 155; 2013 Acts, ch 90, §146
Referred to in §490.1101, 490.1111, 490.1113, 490.1302

490.1115 through 490.1200 Reserved.

DIVISION XII

DISPOSITION OF ASSETS

490.1201 Disposition of assets not requiring shareholder approval.

Approval of the shareholders of a corporation is not required to do any of the following, unless the articles of incorporation otherwise provide:

1. To sell, lease, exchange, or otherwise dispose of any or all of the corporation's assets in the usual and regular course of business.

2. To mortgage, pledge, dedicate to the repayment of indebtedness, whether with or without recourse, or otherwise encumber any or all of the corporation's assets, whether or not in the usual and regular course of business.

3. To transfer any or all of the corporation's assets to one or more corporations or other entities, all of the shares or interests of which are owned by the transferring corporation.

4. To distribute assets pro rata to the holders of one or more classes or series of the corporation's shares.

89 Acts, ch 288, §129; 2002 Acts, ch 1154, §76, 125
Referred to in §490.1202

490.1202 Shareholder approval of certain dispositions.

1. A sale, lease, exchange, or other disposition of assets, other than a disposition described in section 490.1201, requires approval of the corporation's shareholders if the disposition would leave the corporation without a significant continuing business activity. If a corporation retains a business activity that represented at least twenty-five percent of total assets at the end of the most recently completed fiscal year, and twenty-five percent of either income from

continuing operations before taxes or revenues from continuing operations for that fiscal year, in each case of the corporation and its subsidiaries on a consolidated basis, the corporation will conclusively be deemed to have retained a significant continuing business activity; but no presumption that the disposition will leave the corporation without a significant continuing business activity shall arise from the fact that the corporation's continuing business activity does not equal or exceed any of these percentages.

2. *a.* A disposition that requires approval of the shareholders under subsection 1 shall be initiated by a resolution by the board of directors authorizing the disposition. After adoption of such a resolution, the board of directors shall submit the proposed disposition to the shareholders for their approval. The board of directors shall also transmit to the shareholders a recommendation that the shareholders approve the proposed disposition, unless any of the following apply:

(1) The board of directors makes a determination that because of conflicts of interest or other special circumstances it should not make such a recommendation.

(2) Section 490.826 applies.

b. If paragraph *"a"*, subparagraph (1) or (2), applies, the board shall transmit to the shareholders the basis for so proceeding.

3. The board of directors may condition its submission of a disposition to the shareholders under subsection 2 on any basis.

4. If a disposition is required to be approved by the shareholders under subsection 1, and if the approval is to be given at a meeting, the corporation shall notify each shareholder, whether or not entitled to vote, of the meeting of shareholders at which the disposition is to be submitted for approval. The notice shall state that the purpose, or one of the purposes, of the meeting is to consider the disposition and shall contain a description of the disposition, including the terms and conditions of the disposition and the consideration to be received by the corporation.

5. Unless the articles of incorporation, bylaws, or the board of directors acting pursuant to subsection 3 require a greater vote or a greater number of votes to be present, the approval of a disposition by the shareholders shall require the approval of the shareholders at a meeting at which a quorum consisting of at least a majority of the votes entitled to be cast on the disposition exists.

6. After a disposition has been approved by the shareholders under subsection 2, and at any time before the disposition has been consummated, it may be abandoned by the corporation without action by the shareholders, subject to any contractual rights of other parties to the disposition.

7. A disposition of assets in the course of dissolution under division XIV is not governed by this section.

8. The assets of a direct or indirect consolidated subsidiary shall be deemed the assets of the parent corporation for the purposes of this section.

89 Acts, ch 288, §130; 2002 Acts, ch 1154, §77, 125; 2013 Acts, ch 31, §49, 82

Referred to in §490.1302

490.1203 through 490.1300 Reserved.

DIVISION XIII

APPRAISAL RIGHTS

Referred to in §490.1107, 499.69A, 524.1309, 524.1406, 524.1417

PART A

RIGHT TO APPRAISAL AND PAYMENT FOR SHARES

490.1301 Definitions.

In this division, unless the context otherwise requires:

1. *"Affiliate"* means a person that directly or indirectly through one or more intermediaries controls, is controlled by, or is under common control with another person or is a senior executive thereof. For purposes of section 490.1302, subsection 2, paragraph *"d"*, a person is deemed to be an affiliate of its senior executives.

2. *"Beneficial shareholder"* means a person who is the beneficial owner of shares held in a voting trust or by a nominee on the beneficial owner's behalf.

3. *"Corporation"* means the issuer of the shares held by a shareholder demanding appraisal. In addition, for matters covered in sections 490.1322 through 490.1331, *"corporation"* includes the surviving entity in a merger.

4. *"Fair value"* means the value of the corporation's shares determined according to the following:

a. Immediately before the effectuation of the corporate action to which the shareholder objects.

b. Using customary and current valuation concepts and techniques generally employed for similar businesses in the context of the transaction requiring appraisal.

c. Without discounting for lack of marketability or minority status except, if appropriate, for amendments to the articles pursuant to section 490.1302, subsection 1, paragraph *"e"*.

5. *"Interest"* means interest from the effective date of the corporate action until the date of payment, at the rate of interest on judgments in this state on the effective date of the corporate action.

6. *"Interested transaction"* means a corporate action described in section 490.1302, subsection 1, other than a merger pursuant to section 490.1105, involving an interested person in which any of the shares or assets of the corporation are being acquired or converted. As used in this definition, all of the following apply:

a. "Beneficial owner" means any person who, directly or indirectly, through any contract, arrangement, or understanding, other than a revocable proxy, has or shares the power to vote, or to direct the voting of, shares; except that a member of a national securities exchange is not deemed to be a beneficial owner of securities held directly or indirectly by it on behalf of another person solely because the member is the record holder of the securities if the member is precluded by the rules of the exchange from voting without instruction on contested matters or matters that may affect substantially the rights or privileges of the holders of the securities to be voted. When two or more persons agree to act together for the purpose of voting their shares of the corporation, each member of the group formed thereby is deemed to have acquired beneficial ownership, as of the date of the agreement, of all voting shares of the corporation beneficially owned by any member of the group.

b. "Excluded shares" means shares acquired pursuant to an offer for all shares having voting power if the offer was made within one year prior to the corporate action for consideration of the same kind and of a value equal to or less than that paid in connection with the corporate action.

c. "Interested person" means a person, or an affiliate of a person, who at any time during the one-year period immediately preceding approval by the board of directors of the corporate action was or had any of the following:

(1) Was the beneficial owner of twenty percent or more of the voting power of the corporation, other than as owner of excluded shares.

(2) Had the power, contractually or otherwise, other than as owner of excluded shares, to cause the appointment or election of twenty-five percent or more of the directors to the board of directors of the corporation.

(3) Was a senior executive or director of the corporation or a senior executive of any affiliate thereof, and that senior executive or director will receive, as a result of the corporate action, a financial benefit not generally available to other shareholders as such, other than any of the following:

(a) Employment, consulting, retirement, or similar benefits established separately and not as part of or in contemplation of the corporate action.

(b) Employment, consulting, retirement, or similar benefits established in contemplation of, or as part of, the corporate action that are not more favorable than those existing before the corporate action or, if more favorable, that have been approved on behalf of the corporation in the same manner as is provided in section 490.862.

(c) In the case of a director of the corporation who will, in the corporate action, become a director of the acquiring entity in the corporate action or one of its affiliates, rights and benefits as a director that are provided on the same basis as those afforded by the acquiring entity generally to other directors of such entity or such affiliate.

7. *"Preferred shares"* means a class or series of shares whose holders have preference over any other class or series with respect to distributions.

8. *"Record shareholder"* means the person in whose name shares are registered in the records of the corporation or the beneficial owner of shares to the extent of the rights granted by a nominee certificate on file with the corporation.

9. *"Senior executive"* means the chief executive officer, chief operating officer, chief financial officer, and anyone in charge of a principal business unit or function.

10. *"Shareholder"* means both a record shareholder and a beneficial shareholder.

89 Acts, ch 288, §131; 2000 Acts, ch 1211, §2; 2002 Acts, ch 1154, §78, 125; 2012 Acts, ch 1023, §157; 2013 Acts, ch 31, §50, 82; 2014 Acts, ch 1001, §1

Referred to in §490.863, 490.1430

490.1302 Shareholders' right to appraisal.

1. A shareholder is entitled to appraisal rights, and to obtain payment of the fair value of the shareholder's shares, in the event of any of the following corporate actions:

a. Consummation of a merger to which the corporation is a party if either of the following apply:

(1) Shareholder approval is required for the merger by section 490.1104 and the shareholder is entitled to vote on the merger, except that appraisal rights shall not be available to any shareholder of the corporation with respect to shares of any class or series that remain outstanding after consummation of the merger.

(2) The corporation is a subsidiary and the merger is governed by section 490.1105.

b. Consummation of a share exchange to which the corporation is a party as the corporation whose shares will be acquired, if the shareholder is entitled to vote on the exchange, except that appraisal rights shall not be available to any shareholder of the corporation with respect to any class or series of shares of the corporation that is not exchanged.

c. Consummation of a disposition of assets pursuant to section 490.1202 if the shareholder is entitled to vote on the disposition.

d. An amendment of the articles of incorporation with respect to a class or series of shares that reduces the number of shares of a class or series owned by the shareholder to a fraction of a share if the corporation has the obligation or right to repurchase the fractional share so created.

e. Any other amendment to the articles of incorporation, merger, share exchange, or disposition of assets to the extent provided by the articles of incorporation, bylaws, or a resolution of the board of directors.

f. Consummation of a conversion of the corporation to an other entity pursuant to sections 490.1111 through 490.1114.

2. Notwithstanding subsection 1, the availability of the appraisal rights under subsection 1, paragraphs *"a"* through *"d"*, shall be limited in accordance with the following provisions:

a. Appraisal rights shall not be available for the holders of shares of any class or series of shares which is any of the following:

(1) A covered security under section 18(b)(1)(A) or (B) of the federal Securities Act of 1933, as amended.

(2) Traded in an organized market and has at least two thousand shareholders and a market value of at least twenty million dollars, exclusive of the value of such shares held by the corporation's subsidiaries, senior executives, directors, and beneficial shareholders owning more than ten percent of such shares.

(3) Issued by an open-end management investment company registered with the United States securities and exchange commission under the federal Investment Company Act of 1940, 15 U.S.C. §80a-1 et seq., and may be redeemed at the option of the holder at net asset value.

b. The applicability of paragraph *"a"* shall be determined according to the following:

(1) The record date fixed to determine the shareholders entitled to receive notice of the meeting of shareholders to act upon the corporate action requiring appraisal rights.

(2) The day before the effective date of such corporate action if there is no meeting of shareholders.

c. Paragraph *"a"* shall not be applicable and appraisal rights shall be available pursuant to subsection 1 for the holders of any class or series of shares who are required by the terms of the corporate action requiring appraisal rights to accept for such shares anything other than cash or shares of any class or any series of shares of any corporation, or any other proprietary interest of any other entity, that satisfies the standards set forth in paragraph *"a"*, at the time the corporate action becomes effective.

d. Paragraph *"a"* shall not be applicable and appraisal rights shall be available pursuant to subsection 1 for the holders of any class or series of shares where the corporate action is an interested transaction.

3. Notwithstanding any other provision of this section, the articles of incorporation as originally filed or any amendment thereto may limit or eliminate appraisal rights for any class or series of preferred shares, but any such limitation or elimination contained in an amendment to the articles of incorporation that limits or eliminates appraisal rights for any of such shares that are outstanding immediately prior to the effective date of such amendment or that the corporation is or may be required to issue or sell thereafter pursuant to any conversion, exchange, or other right existing immediately before the effective date of such amendment, shall not apply to any corporate action that becomes effective within one year of that date if such action would otherwise afford appraisal rights.

89 Acts, ch 288, §132; 2002 Acts, ch 1154, §79, 125; 2008 Acts, ch 1162, §122, 155; 2013 Acts, ch 31, §51 – 55, 82; 2013 Acts, ch 140, §72; 2015 Acts, ch 30, §158

Referred to in §490.1301, 490.1320, 490.1321, 490.1322, 490.1340

490.1303 Assertion of rights by nominees and beneficial owners.

1. A record shareholder may assert appraisal rights as to fewer than all the shares registered in the record shareholder's name but owned by a beneficial shareholder only if the record shareholder objects with respect to all shares of the class or series owned by the beneficial shareholder and notifies the corporation in writing of the name and address of each beneficial shareholder on whose behalf appraisal rights are being asserted. The rights of a record shareholder who asserts appraisal rights for only part of the shares held of record in the record shareholder's name under this subsection shall be determined as if the shares as to which the record shareholder objects and the record shareholder's other shares were registered in the names of different record shareholders.

2. A beneficial shareholder may assert appraisal rights as to shares of any class or series held on behalf of the shareholder only if the shareholder does both of the following:

a. Submits to the corporation the record shareholder's written consent to the assertion

of such rights no later than the date referred to in section 490.1322, subsection 2, paragraph *"b"*, subparagraph (2).

b. Does so with respect to all shares of the class or series that are beneficially owned by the beneficial shareholder.

89 Acts, ch 288, §133; 2002 Acts, ch 1154, §80, 125; 2002 Acts, ch 1175, §91

490.1304 through 490.1319 Reserved.

PART B

PROCEDURE FOR EXERCISE OF APPRAISAL RIGHTS

490.1320 Notice of appraisal rights.

1. Where any proposed corporate action specified in section 490.1302, subsection 1, is to be submitted to a vote at a shareholders' meeting, the meeting notice must state that the corporation has concluded that the shareholders are, are not, or may be entitled to assert appraisal rights under this division. If the corporation concludes that appraisal rights are or may be available, a copy of this division must accompany the meeting notice sent to those record shareholders entitled to exercise appraisal rights.

2. In a merger pursuant to section 490.1105, the parent corporation must notify in writing all record shareholders of the subsidiary who are entitled to assert appraisal rights that the corporate action became effective. Such notice must be sent within ten days after the corporate action became effective and include the materials described in section 490.1322.

3. Where any corporate action specified in section 490.1302, subsection 1, is to be approved by written consent of the shareholders pursuant to section 490.704, all of the following apply:

a. Written notice that appraisal rights are, are not, or may be available must be sent to each record shareholder from whom a consent is solicited at the time consent of such shareholder is first solicited and, if the corporation has concluded that appraisal rights are or may be available, must be accompanied by a copy of this division.

b. Written notice that appraisal rights are, are not, or may be available must be delivered together with the notice to nonconsenting and nonvoting shareholders required by section 490.704, subsections 5 and 6, may include the materials described in section 490.1322 and, if the corporation has concluded that appraisal rights are or may be available, must be accompanied by a copy of this division.

4. Where corporate action described in section 490.1302, subsection 1, is proposed, or a merger pursuant to section 490.1105 is effected, the notice referred to in subsection 1 or 3, if the corporation concludes that appraisal rights are or may be available, and in subsection 2 shall be accompanied by all of the following:

a. The annual financial statements specified in section 490.1620, subsection 1, of the corporation that issued the shares that may be subject to appraisal, which shall be as of a date ending not more than sixteen months before the date of the notice and shall comply with section 490.1620, subsection 2; provided that, if such annual financial statements are not reasonably available, the corporation shall provide reasonably equivalent financial information.

b. The latest available quarterly financial statements of such corporation, if any.

5. The right to receive the information described in subsection 4 may be waived in writing by a shareholder before or after the corporate action.

89 Acts, ch 288, §134; 2002 Acts, ch 1154, §81, 125; 2013 Acts, ch 31, §56, 82; 2016 Acts, ch 1073, §139

Referred to in §490.1331

490.1321 Notice of intent to demand payment.

1. If a corporate action specified in section 490.1302, subsection 1, is submitted to a vote

at a shareholders' meeting, a shareholder who wishes to assert appraisal rights with respect to any class or series of shares must do all of the following:

a. Deliver to the corporation before the vote is taken written notice of the shareholder's intent to demand payment if the proposed action is effectuated.

b. Not vote, or cause or permit to be voted, any shares of such class or series in favor of the proposed action.

2. If a corporate action specified in section 490.1302, subsection 1, is to be approved by less than unanimous written consent, a shareholder who wishes to assert appraisal rights with respect to any class or series of shares must not sign a consent in favor of the proposed action with respect to that class or series of shares.

3. A shareholder who fails to satisfy the requirements of subsection 1 or 2, is not entitled to payment under this part.

89 Acts, ch 288, §135; 2002 Acts, ch 1154, §82, 125; 2013 Acts, ch 31, §57, 82
Referred to in §490.1322

490.1322 Appraisal notice and form.

1. If proposed corporate action requiring appraisal rights under section 490.1302, subsection 1, becomes effective, the corporation must send a written appraisal notice and the form required by subsection 2, paragraph *"a"*, to all shareholders who satisfied the requirements of section 490.1321, subsection 1, or section 490.1321, subsection 2. In the case of a merger under section 490.1105, the parent must deliver an appraisal notice and form to all record shareholders who may be entitled to assert appraisal rights.

2. The appraisal notice must be delivered no earlier than the date the corporate action specified in section 490.1302, subsection 1, became effective and no later than ten days after such date and must do all of the following:

a. Supply a form that does all of the following:

(1) Specifies the first date of any announcement to shareholders made prior to the date the corporate action became effective of the principal terms of the proposed corporate action, if any.

(2) If such announcement was made, requires the shareholder asserting appraisal rights to certify whether beneficial ownership of those shares for which appraisal rights are asserted was acquired before that date.

(3) Requires the shareholder asserting appraisal rights to certify that such shareholder did not vote for or consent to the transaction.

b. State all of the following:

(1) Where the form must be sent and where certificates for certificated shares must be deposited and the date by which those certificates must be deposited, which date shall not be earlier than the date for receiving the required form under subparagraph (2).

(2) A date by which the corporation must receive the form, which date shall not be fewer than forty nor more than sixty days after the date the appraisal notice is sent under subsection 1, and state that the shareholder shall have waived the right to demand appraisal with respect to the shares unless the form is received by the corporation by such specified date.

(3) The corporation's estimate of the fair value of the shares.

(4) That, if requested in writing, the corporation will provide, to the shareholder so requesting, within ten days after the date specified in subparagraph (2) the number of shareholders who return the forms by the specified date and the total number of shares owned by them.

(5) The date by which the notice to withdraw under section 490.1323 must be received, which date must be within twenty days after the date specified in subparagraph (2).

c. Be accompanied by a copy of this division.

89 Acts, ch 288, §136; 91 Acts, ch 211, §8; 2002 Acts, ch 1154, §83, 125; 2013 Acts, ch 31, §58 – 61, 82
Referred to in §490.1301, 490.1303, 490.1320, 490.1323, 490.1324, 490.1325, 490.1331

490.1323 Perfection of rights — right to withdraw.

1. A shareholder who receives notice pursuant to section 490.1322 and who wishes to

exercise appraisal rights must sign and return the form sent by the corporation and, in the case of certificated shares, deposit the shareholder's certificates in accordance with the terms of the notice by the date referred to in the notice pursuant to section 490.1322, subsection 2, paragraph *"b"*, subparagraph (2). In addition, if applicable, the shareholder must certify on the form whether the beneficial owner of such shares acquired beneficial ownership of the shares before the date required to be set forth in the notice pursuant to section 490.1322, subsection 2, paragraph *"a"*. If a shareholder fails to make this certification, the corporation may elect to treat the shareholder's shares as after-acquired shares under section 490.1325. In addition, a shareholder who wishes to exercise appraisal rights must execute and return the form and, in a case of certificated shares, deposit the shareholder's certificates in accordance with the terms of the notice by the date referred to in the notice pursuant to section 490.1322, subsection 2, paragraph *"b"*, subparagraph (2). Once a shareholder deposits that shareholder's certificates or, in the case of uncertificated shares, returns the signed forms, that shareholder loses all rights as a shareholder, unless the shareholder withdraws pursuant to subsection 2.

2. A shareholder who has complied with subsection 1 may nevertheless decline to exercise appraisal rights and withdraw from the appraisal process by so notifying the corporation in writing by the date set forth in the appraisal notice pursuant to section 490.1322, subsection 2, paragraph *"b"*, subparagraph (5). A shareholder who fails to so withdraw from the appraisal process shall not thereafter withdraw without the corporation's written consent.

3. A shareholder who does not sign and return the form and, in the case of certificated shares, deposit the shareholder's share certificates where required, each by the date set forth in the notice described in section 490.1322, subsection 2, shall not be entitled to payment under this division.

89 Acts, ch 288, §137; 2002 Acts, ch 1154, §84, 125; 2003 Acts, ch 44, §86; 2013 Acts, ch 31, §62, 82

Referred to in §490.1301, 490.1322, 490.1324

490.1324 Payment.

1. Except as provided in section 490.1325, within thirty days after the form required by section 490.1322, subsection 2, paragraph *"b"*, subparagraph (2), is due, the corporation shall pay in cash to those shareholders who complied with section 490.1323, subsection 1, the amount the corporation estimates to be the fair value of their shares, plus interest.

2. The payment to each shareholder pursuant to subsection 1 must be accompanied by all of the following:

a. (1) The annual financial statements specified in section 490.1620, subsection 1, of the corporation that issued the shares to be appraised, which shall be of a date ending not more than sixteen months before the date of payment and shall comply with section 490.1620, subsection 2; provided that, if such annual financial statements are not reasonably available, the corporation shall provide reasonably equivalent financial information.

(2) The latest available quarterly financial statements of such corporation, if any.

b. A statement of the corporation's estimate of the fair value of the shares, which estimate must equal or exceed the corporation's estimate given pursuant to section 490.1322, subsection 2, paragraph *"b"*, subparagraph (3).

c. A statement that shareholders described in subsection 1 have the right to demand further payment under section 490.1326 and that if any such shareholder does not do so within the time period specified therein, such shareholder shall be deemed to have accepted the payment to the shareholder pursuant to subsection 1 in full satisfaction of the corporation's obligations under this chapter.

89 Acts, ch 288, §138; 2002 Acts, ch 1154, §85, 125; 2003 Acts, ch 44, §87; 2013 Acts, ch 31, §63, 82

Referred to in §490.1301, 490.1325, 490.1326, 490.1331

490.1325 After-acquired shares.

1. A corporation may elect to withhold payment required by section 490.1324 from any shareholder who was required to, but did not certify that beneficial ownership of all of the

shareholder's shares for which appraisal rights are asserted was acquired before the date set forth in the appraisal notice sent pursuant to section 490.1322, subsection 2, paragraph *"a"*.

2. If the corporation elects to withhold payment under subsection 1, it must within thirty days after the form required by section 490.1322, subsection 2, paragraph *"b"*, subparagraph (2), is due, notify all shareholders who are described in subsection 1 regarding all of the following:

a. Of the information required by section 490.1324, subsection 2, paragraph *"a"*.

b. Of the corporation's estimate of fair value pursuant to section 490.1324, subsection 2, paragraph *"b"*.

c. That they may accept the corporation's estimate of fair value, plus interest, in full satisfaction of their demands or demand appraisal under section 490.1326.

d. That those shareholders who wish to accept such offer must notify the corporation of their acceptance of the corporation's offer within thirty days after receiving the offer.

e. That those shareholders who do not satisfy the requirements for demanding appraisal under section 490.1326 shall be deemed to have accepted the corporation's offer.

3. Within ten days after receiving the shareholder's acceptance pursuant to subsection 2, the corporation must pay in cash the amount it offered under subsection 2, paragraph *"b"*, to each shareholder who agreed to accept the corporation's offer in full satisfaction of the shareholder's demand.

4. Within forty days after sending the notice described in subsection 2, the corporation must pay in cash the amount it offered to pay under subsection 2, paragraph *"b"*, to each shareholder described in subsection 2, paragraph *"e"*.

89 Acts, ch 288, §139; 91 Acts, ch 211, §9; 2002 Acts, ch 1154, §86, 125; 2013 Acts, ch 31, §64, 82

Referred to in §490.1301, 490.1323, 490.1324, 490.1326, 490.1330, 490.1331

490.1326 Procedure if shareholder dissatisfied with payment or offer.

1. A shareholder paid pursuant to section 490.1324 who is dissatisfied with the amount of the payment must notify the corporation in writing of that shareholder's estimate of the fair value of the shares and demand payment of that estimate plus interest, less any payment under section 490.1324. A shareholder offered payment under section 490.1325 who is dissatisfied with that offer must reject the offer and demand payment of the shareholder's stated estimate of the fair value of the shares plus interest.

2. A shareholder who fails to notify the corporation in writing of that shareholder's demand to be paid the shareholder's stated estimate of the fair value plus interest under subsection 1 within thirty days after receiving the corporation's payment or offer of payment under section 490.1324 or 490.1325, respectively, waives the right to demand payment under this section and shall be entitled only to the payment made or offered pursuant to those respective sections.

89 Acts, ch 288, §140; 91 Acts, ch 211, §10; 97 Acts, ch 171, §13; 2002 Acts, ch 1154, §87, 125

Referred to in §490.1301, 490.1324, 490.1325, 490.1330, 490.1331

490.1327 and 490.1328 Repealed by 2002 Acts, ch 1154, §123, 125.

490.1329 Reserved.

PART C

490.1330 Court action.

1. If a shareholder makes a demand for payment under section 490.1326 that remains unsettled, the corporation shall commence a proceeding within sixty days after receiving the payment demand and petition the court to determine the fair value of the shares and accrued interest. If the corporation does not commence the proceeding within the sixty-day period,

it shall pay in cash to each shareholder the amount the shareholder demanded pursuant to section 490.1326 plus interest.

2. The corporation shall commence the proceeding in the district court of the county where the corporation's principal office or, if none, its registered office, in this state is located. If the corporation is a foreign corporation without a registered office in this state, it shall commence the proceeding in the county in this state where the principal office or registered office of the domestic corporation merged with the foreign corporation was located at the time of the transaction.

3. The corporation shall make all shareholders, whether or not residents of this state, whose demands remain unsettled, parties to the proceeding as in an action against their shares and all parties must be served with a copy of the petition. Nonresidents may be served by registered or certified mail or by publication as provided by law.

4. The jurisdiction of the court in which the proceeding is commenced under subsection 2 is plenary and exclusive. The court may appoint one or more persons as appraisers to receive evidence and recommend a decision on the question of fair value. The appraisers shall have the powers described in the order appointing them, or in any amendment to it. The shareholders demanding appraisal rights are entitled to the same discovery rights as parties in other civil proceedings. There shall be no right to a jury trial.

5. Each shareholder made a party to the proceeding is entitled to judgment for either of the following:

a. The amount, if any, by which the court finds the fair value of the shareholder's shares, plus interest, exceeds the amount paid by the corporation to the shareholder for such shares.

b. The fair value, plus interest, of the shareholder's shares for which the corporation elected to withhold payment under section 490.1325.

89 Acts, ch 288, §143; 2000 Acts, ch 1211, §1; 2002 Acts, ch 1154, §88, 125; 2014 Acts, ch 1001, §2

Referred to in §490.1301, 490.1331

490.1331 Court costs and expenses.

1. The court in an appraisal proceeding commenced under section 490.1330 shall determine all court costs of the proceeding, including the reasonable compensation and expenses of appraisers appointed by the court. The court shall assess the court costs against the corporation, except that the court may assess court costs against all or some of the shareholders demanding appraisal, in amounts the court finds equitable, to the extent the court finds such shareholders acted arbitrarily, vexatiously, or not in good faith with respect to the rights provided by this division.

2. The court in an appraisal proceeding may also assess the expenses for the respective parties, in amounts the court finds equitable, for any of the following:

a. Against the corporation and in favor of any or all shareholders demanding appraisal if the court finds the corporation did not substantially comply with the requirements of section 490.1320, 490.1322, 490.1324, or 490.1325.

b. Against either the corporation or a shareholder demanding appraisal, in favor of any other party, if the court finds that the party against whom the expenses are assessed acted arbitrarily, vexatiously, or not in good faith with respect to the rights provided by this chapter.

3. If the court in an appraisal proceeding finds that the expenses incurred by any shareholder were of substantial benefit to other shareholders similarly situated, and that such expenses should not be assessed against the corporation, the court may direct that such expenses be paid out of the amounts awarded the shareholders who were benefited.

4. To the extent the corporation fails to make a required payment pursuant to section 490.1324, 490.1325, or 490.1326, the shareholder may sue directly for the amount owed and, to the extent successful, shall be entitled to recover from the corporation expenses of the suit.

89 Acts, ch 288, §144; 2002 Acts, ch 1154, §89, 125; 2013 Acts, ch 31, §65, 82

Referred to in §490.1301

490.1332 through 490.1339 Reserved.

490.1340 Other remedies limited.

1. The legality of a proposed or completed corporate action described in section 490.1302, subsection 1, shall not be contested, nor may the corporate action be enjoined, set aside, or rescinded, in a legal or equitable proceeding by a shareholder after the shareholders have approved the corporate action.

2. Subsection 1 does not apply to a corporate action that meets any of the following conditions:

a. Was not authorized and approved in accordance with the applicable provisions of any of the following:

(1) Division X, XI, or XII of this chapter.

(2) The articles of incorporation or bylaws.

(3) The resolution of the board of directors authorizing the corporate action.

b. Was procured as a result of fraud, a material misrepresentation, or an omission of a material fact necessary to make statements made, in light of the circumstances in which they were made, not misleading.

c. Is an interested transaction, unless it has been recommended by the board of directors in the same manner as is provided in section 490.862 and has been approved by the shareholders in the same manner as is provided in section 490.863 as if the interested transaction were a director's conflicting interest transaction.

d. Is approved by less than unanimous consent of the voting shareholders pursuant to section 490.704, if all of the following apply:

(1) The challenge to the corporate action is brought by a shareholder who did not consent and as to whom notice of the approval of the corporate action was not effective at least ten days before the corporate action was effected.

(2) The proceeding challenging the corporate action is commenced within ten days after notice of the approval of the corporate action is effective as to the shareholder bringing the proceeding.

2013 Acts, ch 31, §66, 82

490.1341 through 490.1400 Reserved.

DIVISION XIV

DISSOLUTION

Referred to in §15E.207, 490.640, 490.1114, 490.1202

PART A

Referred to in §15E.208

490.1401 Dissolution by incorporators or initial directors.

A majority of the incorporators or initial directors of a corporation that has not issued shares or has not commenced business may dissolve the corporation by delivering to the secretary of state for filing articles of dissolution that set forth all of the following:

1. The name of the corporation.
2. The date of its incorporation.
3. Either of the following:

a. That none of the corporation's shares has been issued.

b. That the corporation has not commenced business.

4. That no debt of the corporation remains unpaid.
5. That the net assets of the corporation remaining after winding up have been distributed to the shareholders, if shares were issued.
6. That a majority of the incorporators or initial directors authorized the dissolution.

89 Acts, ch 288, §145

490.1402 Dissolution by board of directors and shareholders.

1. A corporation's board of directors may propose dissolution for submission to the shareholders.

2. For a proposal to dissolve to be adopted both of the following must apply:

a. (1) The board of directors must recommend dissolution to the shareholders unless any of the following apply:

(a) The board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation.

(b) Section 490.826 applies.

(2) If paragraph "*a*", subparagraph (1), subparagraph division (a) or (b), applies, it must communicate the basis for so proceeding.

b. The shareholders entitled to vote must approve the proposal to dissolve as provided in subsection 5.

3. The board of directors may condition its submission of the proposal for dissolution on any basis.

4. The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider dissolving the corporation.

5. Unless the articles of incorporation, bylaws, or the board of directors acting pursuant to subsection 3 requires a greater vote, a greater number of shares to be present, or a vote by voting groups, adoption of the proposal to dissolve shall require the approval of the shareholders at a meeting at which the quorum consisting of at least a majority of the votes entitled to be cast exists.

89 Acts, ch 288, §146; 2002 Acts, ch 1154, §90, 125; 2013 Acts, ch 31, §67, 82; 2015 Acts, ch 30, §159

Referred to in §490.1434

490.1403 Articles of dissolution.

1. At any time after dissolution is authorized, the corporation may dissolve by delivering to the secretary of state for filing articles of dissolution setting forth all of the following:

a. The name of the corporation.

b. The date dissolution was authorized.

c. If dissolution was approved by the shareholders, a statement that the proposal to dissolve was duly approved by the shareholders in the manner required by this chapter and by the articles of incorporation.

2. A corporation is dissolved upon the effective date of its articles of dissolution.

3. For purposes of this division, "*dissolved corporation*" means a corporation whose articles of dissolution have become effective and includes a successor entity to which the remaining assets of the corporation are transferred subject to its liabilities for purposes of liquidation.

89 Acts, ch 288, §147; 2002 Acts, ch 1154, §91, 125

Referred to in §490.1404, 490.1434

490.1404 Revocation of dissolution.

1. A corporation may revoke its dissolution within one hundred twenty days of the effective date of its articles of dissolution.

2. Revocation of dissolution must be authorized in the same manner as the dissolution was authorized unless that authorization permitted revocation by action of the board of directors alone, in which event the board of directors may revoke the dissolution without shareholder action.

3. After the revocation of dissolution is authorized, the corporation may revoke the dissolution by delivering to the secretary of state for filing articles of revocation of dissolution, together with a copy of its articles of dissolution, that set forth all of the following:

a. The name of the corporation.

b. The effective date of the dissolution that was revoked.

c. The date that the revocation of dissolution was authorized.

d. If the corporation's board of directors or incorporators revoked the dissolution, a statement to that effect.

e. If the corporation's board of directors revoked a dissolution authorized by the shareholders, a statement that revocation was permitted by action by the board of directors alone pursuant to that authorization.

f. If shareholder action was required to revoke the dissolution, the information required by section 490.1403, subsection 1, paragraph "*c*".

4. Revocation of dissolution is effective upon the effective date of the articles of revocation of dissolution.

5. When the revocation of dissolution is effective, it relates back to and takes effect as of the effective date of the dissolution as if the dissolution had never occurred.

89 Acts, ch 288, §148; 2002 Acts, ch 1154, §92, 125; 2003 Acts, ch 44, §88
Referred to in §524.1306

490.1405 Effect of dissolution.

1. A dissolved corporation continues its corporate existence but shall not carry on any business except that appropriate to wind up and liquidate its business and affairs, including any of the following:

a. Collecting its assets.

b. Disposing of its properties that will not be distributed in kind to its shareholders.

c. Discharging or making provision for discharging its liabilities.

d. Distributing its remaining property among its shareholders according to their interests.

e. Doing every other act necessary to wind up and liquidate its business and affairs.

2. Dissolution of a corporation does not do any of the following:

a. Transfer title to the corporation's property.

b. Prevent transfer of its shares or securities, although the authorization to dissolve may provide for closing the corporation's share transfer records.

c. Subject its directors or officers to standards of conduct different from those prescribed in division VIII.

d. Change quorum or voting requirements for its board of directors or shareholders; change provisions for selection, resignation, or removal of its directors or officers or both; or change provisions for amending its bylaws.

e. Prevent commencement of a proceeding by or against the corporation in its corporate name.

f. Abate or suspend a proceeding pending by or against the corporation on the effective date of dissolution.

g. Terminate the authority of the registered agent of the corporation.

89 Acts, ch 288, §149
Referred to in §490.1421, 490.1433, 490.1434

490.1406 Known claims against dissolved corporation.

1. A dissolved corporation may dispose of the known claims against it by notifying its known claimants in writing of the dissolution at any time after its effective date.

2. The written notice must do all of the following:

a. Describe information that must be included in a claim.

b. Provide a mailing address where a claim may be sent.

c. State the deadline, which may not be fewer than one hundred twenty days from the effective date of the written notice, by which the dissolved corporation must receive the claim.

d. State that the claim will be barred if not received by the deadline.

3. A claim against the dissolved corporation is barred if either of the following occur:

a. A claimant who was given written notice under subsection 2 does not deliver the claim to the dissolved corporation by the deadline.

b. A claimant whose claim was rejected by the dissolved corporation does not commence a proceeding to enforce the claim within ninety days from the effective date of the rejection notice.

4. For purposes of this section, *"claim"* does not include a contingent liability or a claim based on an event occurring after the effective date of dissolution.

89 Acts, ch 288, §150; 2002 Acts, ch 1154, §93, 125
Referred to in §490.1407, 490.1409, 490.1421, 490.1433, 490.1434

490.1407 Other claims against dissolved corporation.

1. A dissolved corporation may also publish notice of its dissolution and request that persons with claims against the dissolved corporation present them in accordance with the notice.

2. The notice must meet all of the following requirements:

a. Be published one time in a newspaper of general circulation in the county where the dissolved corporation's principal office or, if none in this state, its registered office is or was last located.

b. Describe the information that must be included in a claim and provide a mailing address where the claim may be sent.

c. State that a claim against the dissolved corporation will be barred unless a proceeding to enforce the claim is commenced within three years after the publication of the notice.

3. If the dissolved corporation publishes a newspaper notice in accordance with subsection 2, the claim of each of the following claimants is barred unless the claimant commences a proceeding to enforce the claim against the dissolved corporation within three years after the publication date of the newspaper notice:

a. A claimant who was not given written notice under section 490.1406.

b. A claimant whose claim was timely sent to the dissolved corporation but not acted on.

c. A claimant whose claim is contingent or based on an event occurring after the effective date of dissolution.

4. A claim that is not barred by section 490.1406, subsection 2, or subsection 3 of this section, may be enforced in either of the following ways:

a. Against the dissolved corporation, to the extent of its undistributed assets.

b. Except as provided in section 490.1408, subsection 4, if the assets have been distributed in liquidation, against a shareholder of the dissolved corporation to the extent of the shareholder's pro rata share of the claim or the corporate assets distributed to the shareholder in liquidation, whichever is less, but a shareholder's total liability for all claims under this section shall not exceed the total amount of assets distributed to the shareholder in liquidation.

89 Acts, ch 288, §151; 2002 Acts, ch 1154, §94, 125
Referred to in §490.1408, 490.1409, 490.1421, 490.1433, 490.1434

490.1408 Court proceedings.

1. A dissolved corporation that has published a notice under section 490.1407 may file an application with the district court of the county where the dissolved corporation's principal office or, if none in this state, its registered office is located for a determination of the amount and form of security to be provided for payment of claims that are contingent or have not been made known to the dissolved corporation or that are based on an event occurring after the effective date of dissolution but that, based on the facts known to the dissolved corporation, are reasonably estimated to arise after the effective date of dissolution. Provision need not be made for any claim that is or is reasonably anticipated to be barred under section 490.1407, subsection 3.

2. Within ten days after the filing of the application, notice of the proceeding shall be given by the dissolved corporation to each claimant holding a contingent claim whose contingent claim is shown on the records of the dissolved corporation.

3. The court may appoint a guardian ad litem to represent all claimants whose identities are unknown in any proceeding brought under this section. The reasonable fees and expenses of such guardian, including all reasonable expert witness fees, shall be paid by the dissolved corporation.

4. Provision by the dissolved corporation for security in the amount and the form ordered by the court under subsection 1, shall satisfy the dissolved corporation's obligations with

respect to claims that are contingent, have not been made known to the dissolved corporation or are based on an event occurring after the effective date of dissolution, and such claims shall not be enforced against a shareholder who received assets in liquidation.

2002 Acts, ch 1154, §95, 125
Referred to in §490.1407, 490.1409

490.1409 Director duties.

1. Directors shall cause the dissolved corporation to discharge or make reasonable provision for the payment of claims and make distributions of assets to shareholders after payment or provision for claims.

2. Directors of a dissolved corporation which has disposed of claims under section 490.1406, 490.1407, or 490.1408 shall not be liable for breach of subsection 1, with respect to claims against the dissolved corporation that are barred or satisfied under section 490.1406, 490.1407, or 490.1408.

2002 Acts, ch 1154, §96, 125
Referred to in §490.833

490.1410 through 490.1419 Reserved.

PART B

Referred to in §249A.40

490.1420 Grounds for administrative dissolution.

The secretary of state may commence a proceeding under section 490.1421 to administratively dissolve a corporation if any of the following apply:

1. The corporation has not delivered a biennial report to the secretary of state in a form that meets the requirements of section 490.1622, within sixty days after it is due, or has not paid any fee, tax, or penalty due to the secretary of state under this chapter or law other than this chapter, within sixty days after it is due.

2. The corporation is without a registered agent or registered office in this state for sixty days or more.

3. The corporation does not notify the secretary of state within sixty days that its registered agent or registered office has been changed, that its registered agent has resigned, or that its registered office has been discontinued.

4. The corporation's period of duration stated in its articles of incorporation expires.

89 Acts, ch 288, §152; 96 Acts, ch 1170, §9, 10; 97 Acts, ch 171, §14; 2010 Acts, ch 1100, §18
Referred to in §490.1421

490.1421 Procedure for and effect of administrative dissolution.

1. If the secretary of state determines that one or more grounds exist under section 490.1420 for dissolving a corporation, the secretary of state shall serve the corporation with written notice of the secretary of state's determination under section 490.504.

2. If the corporation does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the secretary of state that each ground determined by the secretary of state does not exist within sixty days after service of the notice is perfected under section 490.504, the secretary of state shall administratively dissolve the corporation by signing a certificate of dissolution that recites the ground or grounds for dissolution and its effective date. The secretary of state shall file the original of the certificate and serve a copy on the corporation under section 490.504.

3. A corporation administratively dissolved continues its corporate existence but shall not carry on any business except that necessary to wind up and liquidate its business and affairs under section 490.1405 and notify claimants under sections 490.1406 and 490.1407.

4. The administrative dissolution of a corporation does not terminate the authority of its registered agent.

5. The secretary of state's administrative dissolution of a corporation pursuant to this section appoints the secretary of state the corporation's agent for service of process in any

proceeding based on a cause of action which arose during the time the corporation was authorized to transact business in this state. Service of process on the secretary of state under this subsection is service on the corporation. Upon receipt of process, the secretary of state shall serve a copy of the process on the corporation as provided in section 490.504. This subsection does not preclude service on the corporation's registered agent, if any.

89 Acts, ch 288, §153; 96 Acts, ch 1170, §11
Referred to in §490.1420, 490.1422

490.1422 Reinstatement following administrative dissolution.

1. A corporation administratively dissolved under section 490.1421 may apply to the secretary of state for reinstatement at any time after the effective date of dissolution. The application must meet all of the following requirements:

a. Recite the name of the corporation at its date of dissolution and the effective date of its administrative dissolution.

b. State that the ground or grounds for dissolution have been eliminated.

c. If the application is received more than five years after the effective date of dissolution, state a corporate name that satisfies the requirements of section 490.401.

d. State the federal tax identification number of the corporation.

2. *a.* The secretary of state shall refer the federal tax identification number contained in the application for reinstatement to the departments of revenue and workforce development. The departments of revenue and workforce development shall report to the secretary of state the tax status of the corporation. If either department reports to the secretary of state that a filing delinquency or liability exists against the corporation, the secretary of state shall not cancel the certificate of dissolution until the filing delinquency or liability is satisfied.

b. (1) If the secretary of state determines that the application contains the information required by subsection 1, and that a delinquency or liability reported pursuant to paragraph "*a*" has been satisfied, and that the information is correct, the secretary of state shall cancel the certificate of dissolution and prepare a certificate of reinstatement that recites the secretary of state's determination and the effective date of reinstatement, file the certificate of reinstatement, and deliver a copy to the corporation under section 490.504.

(2) If the corporate name in subsection 1, paragraph "*c*", is different than the corporate name in subsection 1, paragraph "*a*", the certificate of reinstatement shall constitute an amendment to the articles of incorporation insofar as it pertains to the corporate name. A corporation shall not relinquish the right to retain its corporate name if the reinstatement is effective within five years of the effective date of the corporation's dissolution.

3. When the reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative dissolution as if the administrative dissolution had never occurred.

89 Acts, ch 288, §154; 92 Acts, ch 1244, §46; 93 Acts, ch 17, §1; 93 Acts, ch 126, §7, 8; 94 Acts, ch 1053, §1; 96 Acts, ch 1170, §12, 13; 2003 Acts, ch 145, §286; 2006 Acts, ch 1089, §9 – 12; 2010 Acts, ch 1040, §2
Referred to in §249A.40, 488.108, 490.401, 504.401, 504.403

490.1423 Appeal from denial of reinstatement.

1. If the secretary of state denies a corporation's application for reinstatement following administrative dissolution, the secretary of state shall serve the corporation under section 490.504 with a written notice that explains the reason or reasons for denial.

2. The corporation may appeal the denial of reinstatement to the district court within thirty days after service of the notice of denial is perfected. The corporation appeals by petitioning the court to set aside the dissolution and attaching to the petition copies of the secretary of state's certificate of dissolution, the corporation's application for reinstatement, and the secretary of state's notice of denial.

3. The court may summarily order the secretary of state to reinstate the dissolved corporation or may take other action the court considers appropriate.

4. The court's final decision may be appealed as in other civil proceedings.

89 Acts, ch 288, §155

490.1424 through 490.1429 Reserved.

PART C

490.1430 Grounds for judicial dissolution.

1. The district court may dissolve a corporation in any of the following ways:

a. A proceeding by the attorney general, if it is established that any of the following apply:

(1) The corporation obtained its articles of incorporation through fraud.

(2) The corporation has continued to exceed or abuse the authority conferred upon it by law.

b. A proceeding by a shareholder if it is established that any of the following conditions exist:

(1) The directors are deadlocked in the management of the corporate affairs, the shareholders are unable to break the deadlock, and either irreparable injury to the corporation is threatened or being suffered, or the business and affairs of the corporation can no longer be conducted to the advantage of the shareholders generally, because of the deadlock.

(2) The directors or those in control of the corporation have acted, are acting, or will act in a manner that is illegal, oppressive, or fraudulent.

(3) The shareholders are deadlocked in voting power and have failed, for a period that includes at least two consecutive annual meeting dates, to elect successors to directors whose terms have expired.

(4) The corporate assets are being misapplied or wasted.

c. A proceeding by a creditor if it is established that any of the following apply:

(1) The creditor's claim has been reduced to judgment, the execution on the judgment returned unsatisfied, and the corporation is insolvent.

(2) The corporation has admitted in writing that the creditor's claim is due and owing and the corporation is insolvent.

d. A proceeding by the corporation to have its voluntary dissolution continued under court supervision.

e. A proceeding by a shareholder if the corporation has abandoned its business and has failed within a reasonable time to liquidate and distribute its assets and dissolve.

2. Subsection 1, paragraph *"b"*, shall not apply in the case of a corporation that, on the date of the filing of the proceeding, has shares which are any of the following:

a. Listed on the New York stock exchange, the American stock exchange, or on any exchange owned or operated by the NASDAQ stock market, l.l.c., or listed or quoted on a system owned or operated by the national association of securities dealers, inc.

b. Not so listed or quoted, but are held by at least three hundred shareholders and the shares outstanding have a market value of at least twenty million dollars, exclusive of the value of such shares held by the corporation's subsidiaries, senior executives, directors, and beneficial shareholders owning more than ten percent of such shares.

3. As used in this section, *"beneficial shareholder"* has the meaning specified in section 490.1301, subsection 2.

89 Acts, ch 288, §156; 2013 Acts, ch 31, §68, 82

Referred to in §490.304, 490.1431, 490.1433, 490.1434

490.1431 Procedure for judicial dissolution.

1. Venue for a proceeding by the attorney general to dissolve a corporation lies in Polk county. Venue for a proceeding brought by any other party named in section 490.1430 lies in the county where a corporation's principal office or, if none in this state, its registered office is or was last located.

2. It is not necessary to make shareholders parties to a proceeding to dissolve a corporation unless relief is sought against them individually.

3. A court in a proceeding brought to dissolve a corporation may issue injunctions, appoint a receiver or custodian pendente lite with all powers and duties the court directs, take other

action required to preserve the corporate assets wherever located, and carry on the business of the corporation until a full hearing can be held.

4. Within ten days of the commencement of a proceeding to dissolve a corporation under section 490.1430, subsection 1, paragraph *"b"*, the corporation must send to all shareholders, other than the petitioner, a notice stating that the shareholders are entitled to avoid the dissolution of the corporation by electing to purchase the petitioner's shares under section 490.1434, and a copy of section 490.1434.

89 Acts, ch 288, §157; 2002 Acts, ch 1154, §97, 125; 2013 Acts, ch 31, §69, 82

490.1432 Receivership or custodianship.

1. Unless an election to purchase has been filed under section 490.1434, a court in a judicial proceeding brought to dissolve a corporation may appoint one or more receivers to wind up and liquidate, or one or more custodians to manage, the business and affairs of the corporation. The court shall hold a hearing, after notifying all parties to the proceeding and any interested persons designated by the court, before appointing a receiver or custodian. The court appointing a receiver or custodian has jurisdiction over the corporation and all its property wherever located.

2. The court may appoint an individual or a domestic or foreign corporation authorized to transact business in this state as a receiver or custodian. The court may require the receiver or custodian to post bond, with or without sureties, in an amount the court directs.

3. The court shall describe the powers and duties of the receiver or custodian in its appointing order, which may be amended from time to time. Among other powers:

a. The receiver may do either or both of the following:

(1) Dispose of all or any part of the assets of the corporation wherever located, at a public or private sale, if authorized by the court.

(2) Sue and defend in the receiver's own name as receiver of the corporation in all courts of this state.

b. The custodian may exercise all of the powers of the corporation, through or in place of its board of directors or officers, to the extent necessary to manage the affairs of the corporation in the best interests of its shareholders and creditors.

4. The court during a receivership may redesignate the receiver a custodian, and during a custodianship may redesignate the custodian a receiver, if doing so is in the best interests of the corporation, its shareholders, and creditors.

5. The court from time to time during the receivership or custodianship may order compensation paid and expenses paid or reimbursed to the receiver or custodian from the assets of the corporation or proceeds from the sale of the assets.

89 Acts, ch 288, §158; 2013 Acts, ch 31, §70, 82

490.1433 Decree of dissolution.

1. If after a hearing the court determines that one or more grounds for judicial dissolution described in section 490.1430 exist, it may enter a decree dissolving the corporation and specifying the effective date of the dissolution, and the clerk of the court shall deliver a certified copy of the decree to the secretary of state, who shall file it.

2. After entering the decree of dissolution, the court shall direct the winding up and liquidation of the corporation's business and affairs in accordance with section 490.1405 and the notification of claimants in accordance with sections 490.1406 and 490.1407.

89 Acts, ch 288, §159
Referred to in §602.8102(68)

490.1434 Election to purchase in lieu of dissolution.

1. In a proceeding under section 490.1430, subsection 1, paragraph *"b"*, to dissolve a corporation, the corporation may elect or, if it fails to elect, one or more shareholders may elect to purchase all shares owned by the petitioning shareholder at the fair value of the shares. An election pursuant to this section shall be irrevocable unless the court determines that it is equitable to set aside or modify the election.

2. An election to purchase pursuant to this section may be filed with the court at any

time within ninety days after the filing of the petition under section 490.1430, subsection 1, paragraph *"b"*, or at such later time as the court in its discretion may allow. If the election to purchase is filed by one or more shareholders, the corporation shall, within ten days thereafter, give written notice to all shareholders, other than the petitioner. The notice must state the name and number of shares owned by the petitioner and the name and number of shares owned by each electing shareholder and must advise the recipients of their right to join the election to purchase shares in accordance with this section. Shareholders who wish to participate must file notice of their intention to join in the purchase no later than thirty days after the effective date of the notice to them. All shareholders who have filed an election or notice of their intention to participate in the election to purchase thereby become parties to the proceeding and shall participate in the purchase in proportion to their ownership of shares as of the date the first election was filed, unless they otherwise agree or the court otherwise directs. After an election has been filed by the corporation or one or more shareholders, the proceeding under section 490.1430, subsection 1, paragraph *"b"*, shall not be discontinued or settled, nor shall the petitioning shareholder sell or otherwise dispose of the shareholder's shares, unless the court determines that it would be equitable to the corporation and the shareholders, other than the petitioner, to permit such discontinuance, settlement, sale, or other disposition.

3. If, within sixty days of the filing of the first election, the parties reach agreement as to the fair value and terms of purchase of the petitioner's shares, the court shall enter an order directing the purchase of the petitioner's shares upon the terms and conditions agreed to by the parties.

4. If the parties are unable to reach an agreement as provided for in subsection 3, the court, upon application of any party, shall stay the section 490.1430, subsection 1, paragraph *"b"*, proceedings and determine the fair value of the petitioner's shares as of the day before the date on which the petition under section 490.1430, subsection 1, paragraph *"b"*, was filed or as of such other date as the court deems appropriate under the circumstances.

5. Upon determining the fair value of the shares, the court shall enter an order directing the purchase upon such terms and conditions as the court deems appropriate, which may include payment of the purchase price in installments, where necessary in the interests of equity, provision for security to assure payment of the purchase price and any additional costs, fees, and expenses as may have been awarded, and, if the shares are to be purchased by shareholders, the allocation of shares among them. In allocating petitioner's shares among holders of different classes of shares, the court shall attempt to preserve the existing distribution of voting rights among holders of different classes insofar as practicable and may direct that holders of a specific class or classes shall not participate in the purchase. Interest may be allowed at the rate and from the date determined by the court to be equitable, but if the court finds that the refusal of the petitioning shareholder to accept an offer of payment was arbitrary or otherwise not in good faith, no interest shall be allowed. If the court finds that the petitioning shareholder has probable grounds for relief under section 490.1430, subsection 1, paragraph *"b"*, subparagraph (2) or (4), it may award to the petitioning shareholder reasonable fees and expenses of counsel and of any experts employed by the shareholder.

6. Upon entry of an order under subsection 3 or 5, the court shall dismiss the petition to dissolve the corporation under section 490.1430, and the petitioning shareholder shall no longer have any rights or status as a shareholder of the corporation, except the right to receive the amounts awarded to the shareholder by the order of the court which shall be enforceable in the same manner as any other judgment.

7. The purchase ordered pursuant to subsection 5 shall be made within ten days after the date the order becomes final, unless before that time the corporation files with the court a notice of its intention to adopt articles of dissolution pursuant to sections 490.1402 and 490.1403, which articles must then be adopted and filed within fifty days thereafter. Upon filing of such articles of dissolution, the corporation shall be dissolved in accordance with the provisions of sections 490.1405 through 490.1407, and the order entered pursuant to subsection 5 shall no longer be of any force or effect, except that the court may award the petitioning shareholder reasonable fees and expenses in accordance with the provisions of the

last sentence of subsection 5 and the petitioner may continue to pursue any claims previously asserted on behalf of the corporation.

8. Any payment by the corporation pursuant to an order under subsection 3 or 5, other than an award of fees and expenses pursuant to subsection 5, is subject to the provisions of section 490.640.

2002 Acts, ch 1154, §98, 125; 2013 Acts, ch 31, §71, 82
Referred to in §490.1431, 490.1432
Effective date of notice, see §490.141

490.1435 through 490.1439 Reserved.

PART D

490.1440 Deposit with state treasurer.

Assets of a dissolved corporation that should be transferred to a creditor, claimant, or shareholder of the corporation who cannot be found or who is not competent to receive them shall be reduced to cash and deposited with the treasurer of state or other appropriate state official for safekeeping. When the creditor, claimant, or shareholder furnishes satisfactory proof of entitlement to the amount deposited, the treasurer of state or other appropriate state official shall pay the creditor, claimant, or shareholder or that person's representative that amount.

89 Acts, ch 288, §160
Referred to in §489.1112, 524.1305, 524.1310, 533.404, 556.6

490.1441 through 490.1500 Reserved.

DIVISION XV

FOREIGN CORPORATIONS

Referred to in §490.120, 524.1805

PART A

490.1501 Authority to transact business required.

1. A foreign corporation shall not transact business in this state until it obtains a certificate of authority from the secretary of state.

2. The following activities, among others, do not constitute transacting business within the meaning of subsection 1:

a. Maintaining, defending, or settling any proceeding.

b. Holding meetings of the board of directors or shareholders or carrying on other activities concerning internal corporate affairs.

c. Maintaining bank accounts.

d. Maintaining offices or agencies for the transfer, exchange, and registration of the corporation's own securities or maintaining trustees or depositories with respect to those securities.

e. Selling through independent contractors.

f. Soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside this state before they become contracts.

g. Creating or acquiring indebtedness, mortgages, and security interests in real or personal property.

h. Securing or collecting debts or enforcing mortgages and security interests in property securing the debts.

i. Owning, without more, real or personal property.

j. Conducting an isolated transaction that is completed within thirty days and that is not one in the course of repeated transactions of a like nature.

k. Transacting business in interstate commerce.

3. The list of activities in subsection 2 is not exhaustive.

89 Acts, ch 288, §161

490.1502 Consequences of transacting business without authority.

1. A foreign corporation transacting business in this state without a certificate of authority shall not maintain a proceeding in any court in this state until it obtains a certificate of authority.

2. The successor to a foreign corporation that transacted business in this state without a certificate of authority and the assignee of a cause of action arising out of that business shall not maintain a proceeding based on that cause of action in any court in this state until the foreign corporation or its successor obtains a certificate of authority.

3. A court may stay a proceeding commenced by a foreign corporation, its successor, or assignee until it determines whether the foreign corporation or its successor requires a certificate of authority. If it so determines, the court may further stay the proceeding until the foreign corporation or its successor obtains the certificate.

4. A foreign corporation is liable for a civil penalty of not to exceed a total of one thousand dollars if it transacts business in this state without a certificate of authority. The attorney general may collect all penalties due under this subsection.

5. Notwithstanding subsections 1 and 2, the failure of a foreign corporation to obtain a certificate of authority does not impair the validity of its corporate acts or prevent it from defending any proceeding in this state.

89 Acts, ch 288, §162

490.1503 Application for certificate of authority.

1. A foreign corporation may apply for a certificate of authority to transact business in this state by delivering an application to the secretary of state for filing. The application must set forth all of the following:

a. The name of the foreign corporation or, if its name is unavailable for use in this state, a corporate name that satisfies the requirements of section 490.1506.

b. The name of the state or country under whose law it is incorporated.

c. Its date of incorporation and period of duration.

d. The street address of its principal office.

e. The address of its registered office in this state and the name of its registered agent at that office.

f. The names and usual business addresses of its current directors and officers.

2. The foreign corporation shall deliver the completed application to the secretary of state, and also deliver to the secretary of state a certificate of existence or a document of similar import duly authenticated by the secretary of state or other official having custody of corporate records in the state or country under whose law it is incorporated which is dated no earlier than ninety days prior to the date the application is filed with the secretary of state.

89 Acts, ch 288, §163; 96 Acts, ch 1170, §14

Referred to in §490.1504, 490.1510

490.1504 Amended certificate of authority.

1. A foreign corporation authorized to transact business in this state must obtain an amended certificate of authority from the secretary of state if it changes any of the following:

a. Its corporate name.

b. The period of its duration.

c. The state or country of its incorporation.

2. The requirements of section 490.1503 for obtaining an original certificate of authority apply to obtaining an amended certificate under this section.

89 Acts, ch 288, §164

Referred to in §490.1506

490.1505 Effect of certificate of authority.

1. A certificate of authority authorizes the foreign corporation to which it is issued to transact business in this state subject, however, to the right of the state to revoke the certificate as provided in this chapter.

2. A foreign corporation with a valid certificate of authority has the same but no greater rights and has the same but no greater privileges as, and except as otherwise provided in this chapter is subject to the same duties, restrictions, penalties, and liabilities now or later imposed on, a domestic corporation of like character.

3. This chapter does not authorize this state to regulate the organization or internal affairs of a foreign corporation authorized to transact business in this state.

89 Acts, ch 288, §165

490.1506 Corporate name of foreign corporation.

1. If the corporate name of a foreign corporation does not satisfy the requirements of section 490.401, the foreign corporation, to obtain or maintain a certificate of authority to transact business in this state, may do either of the following:

a. Add the word "corporation", "incorporated", "company", or "limited", or the abbreviation "corp.", "inc.", "co.", or "ltd.", to its corporate name for use in this state.

b. Use a fictitious name to transact business in this state if its real name is unavailable and it delivers to the secretary of state for filing a copy of the resolution of its board of directors, certified by its secretary, adopting the fictitious name.

2. Except as authorized by subsections 3 and 4, the corporate name, including a fictitious name, of a foreign corporation must be distinguishable upon the records of the secretary of state from all of the following:

a. The corporate name of a corporation incorporated or authorized to transact business in this state.

b. A name reserved, registered, or protected as provided in section 490.402 or 490.403.

c. The fictitious name of another foreign corporation authorized to transact business in this state.

d. The corporate name of a not-for-profit corporation incorporated or authorized to transact business in this state.

3. A foreign corporation may apply to the secretary of state for authorization to use in this state the name of another corporation incorporated or authorized to transact business in this state that is not distinguishable upon the secretary of state's records from the name applied for. The secretary of state shall authorize use of the name applied for if either of the following apply:

a. The other corporation consents to the use in writing and submits an undertaking in form satisfactory to the secretary of state to change its name to a name that is distinguishable upon the records of the secretary of state from the name of the applying corporation.

b. The applicant delivers to the secretary of state a certified copy of a final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.

4. A foreign corporation may use in this state the name, including the fictitious name, of another domestic or foreign corporation that is used in this state if the other corporation is incorporated or authorized to transact business in this state and the foreign corporation has filed documentation satisfactory to the secretary of state of the occurrence of any of the following:

a. The foreign corporation has merged with the other corporation.

b. The foreign corporation has been formed by reorganization of the other corporation.

c. The foreign corporation has acquired all or substantially all of the assets, including the corporate name, of the other corporation.

5. If a foreign corporation authorized to transact business in this state changes its corporate name to one that does not satisfy the requirements of section 490.401, it shall not transact business in this state under the changed name until it adopts a name satisfying

the requirements of section 490.401 and obtains an amended certificate of authority under section 490.1504.

89 Acts, ch 288, §166; 96 Acts, ch 1170, §15; 2006 Acts, ch 1089, §13
Referred to in §490.403, 490.1503

490.1507 Registered office and registered agent of foreign corporation.

A foreign corporation authorized to transact business in this state must continuously maintain in this state both of the following:

1. A registered office that may be the same as any of its places of business.
2. A registered agent, who may be any of the following:

a. An individual who resides in this state and whose business office is identical with the registered office.

b. A domestic corporation or not-for-profit domestic corporation whose business office is identical with the registered office.

c. A foreign corporation or foreign not-for-profit corporation authorized to transact business in this state whose business office is identical with the registered office.

89 Acts, ch 288, §167

490.1508 Change of registered office or registered agent of foreign corporation.

1. A foreign corporation authorized to transact business in this state may change its registered office or registered agent by delivering to the secretary of state for filing a statement of change that sets forth:

a. Its name.

b. If the current registered office is to be changed, the street address of its new registered office.

c. If the current registered agent is to be changed, the name of its new registered agent and the new agent's written consent, either on the statement or attached to it, to the appointment.

d. That after the change or changes are made, the street addresses of its registered office and the business office of its registered agent will be identical.

2. If the street address of a registered agent's business office changes, the agent may change the street address of the registered office of any foreign corporation for which the person is the registered agent by notifying the corporation in writing of the change, and signing and delivering to the secretary of state for filing a statement of change that complies with the requirements of subsection 1 and recites that the corporation has been notified of the change.

3. A corporation may also change its registered office or registered agent in its biennial report as provided in section 490.1622.

89 Acts, ch 288, §168; 96 Acts, ch 1170, §16; 97 Acts, ch 171, §15; 2013 Acts, ch 31, §72, 82
Referred to in §490.1530, 490.1622

490.1509 Resignation of registered agent of foreign corporation.

1. The registered agent of a foreign corporation may resign the agency appointment by signing and delivering to the secretary of state for filing the signed original statement of resignation. The statement of resignation may include a statement that the registered office is also discontinued. The registered agent shall send a copy of the statement of resignation by certified mail to the corporation at its principal office and to the registered office, if not discontinued. The registered agent shall certify to the secretary of state that the copies have been sent to the corporation, including the date the copies were sent.

2. The agency appointment is terminated, and the registered office discontinued if so provided, on the date on which the statement was filed.

89 Acts, ch 288, §169; 96 Acts, ch 1170, §17
Referred to in §490.120, 490.125, 490.1530

490.1510 Service on foreign corporation.

1. The registered agent of a foreign corporation authorized to transact business in this state is the corporation's agent for service of process, notice, or demand required or permitted by law to be served on the foreign corporation.

2. A foreign corporation may be served by registered or certified mail, return receipt requested, addressed to the secretary of the foreign corporation at its principal office shown in its application for a certificate of authority or in its most recent biennial report if the foreign corporation meets any of the following conditions:

a. Has no registered agent or its registered agent cannot with reasonable diligence be served.

b. Has withdrawn from transacting business in this state under section 490.1520.

c. Has had its certificate of authority revoked under section 490.1531.

3. *a.* A foreign corporation that does not have a current certificate of authority to transact business in this state under section 490.1503 may be served, with respect to an in rem action, in the manner provided in subsections 2 and 4, addressed to the secretary of the foreign corporation at its principal office as found either in the records of the jurisdiction of incorporation or in public records filed by it with an agency of the United States or any state having regulatory authority over the foreign corporation's business and affairs.

b. For purposes of paragraph *"a"*, *"in rem action"* means an action, statutory notice, or demand involving the title to real estate or tangible personal property sited in Iowa; the partition or the foreclosure of a lien or mortgage against real estate; or the determination of the priorities of liens or claims against such real estate or personal property.

4. Service is perfected under subsection 2 or 3 at the earliest of:

a. The date the foreign corporation receives the mail.

b. The date shown on the return receipt, if signed on behalf of the foreign corporation.

c. Five days after its deposit in the United States mail, as evidenced by the postmark, if mailed postpaid and correctly addressed.

5. A foreign corporation may also be served in any other manner permitted by law.

89 Acts, ch 288, §170; 97 Acts, ch 171, §16; 2011 Acts, ch 56, §1, 2

Referred to in §490.1531, 490.1532

490.1511 through 490.1519 Reserved.

PART B

490.1520 Withdrawal of foreign corporation.

1. A foreign corporation authorized to transact business in this state shall not withdraw from this state until it obtains a certificate of withdrawal from the secretary of state.

2. A foreign corporation authorized to transact business in this state may apply for a certificate of withdrawal by delivering an application to the secretary of state for filing. The application must set forth all of the following:

a. The name of the foreign corporation and the name of the state or country under whose law it is incorporated.

b. That it is not transacting business in this state and that it surrenders its authority to transact business in this state.

c. That it revokes the authority of its registered agent to accept service on its behalf and appoints the secretary of state as its agent for service of process in any proceeding based on a cause of action arising during the time it was authorized to transact business in this state.

d. A mailing address to which the secretary of state may mail a copy of any process served on the secretary of state under paragraph *"c"*.

3. After the withdrawal of the corporation is effective, service of process on the secretary of state under this section is service on the foreign corporation. Upon receipt of process, the secretary of state shall mail a copy of the process to the foreign corporation at the mailing address set forth under subsection 2.

89 Acts, ch 288, §171; 96 Acts, ch 1170, §18

Referred to in §490.1510

490.1521 and 490.1522 Reserved.

490.1523 Transfer of authority.

1. A foreign business corporation authorized to transact business in this state that converts to a foreign nonprofit corporation or to any form of foreign unincorporated entity that is required to obtain a certificate of authority or make a similar type of filing with the secretary of state if it transacts business in this state shall file with the secretary of state an application for transfer of authority signed by any officer or other duly authorized representative. The application shall set forth all of the following:

a. The name of the corporation.

b. The type of unincorporated entity to which it has been converted and the jurisdiction whose laws govern its internal affairs.

c. Any other information that would be required in a filing under the laws of this state by an unincorporated entity of the type the corporation has become seeking authority to transact business in this state.

2. The application for transfer of authority shall be delivered to the secretary of state for filing and shall take effect at the effective time provided in section 490.123.

3. Upon the effectiveness of the application for transfer of authority, the authority of the corporation under this chapter to transact business in this state shall be transferred without interruption to the converted entity which shall thereafter hold such authority subject to the provisions of the laws of this state applicable to that type of unincorporated entity.

2013 Acts, ch 31, §73, 82

490.1524 through 490.1529 Reserved.

PART C

490.1530 Grounds for revocation.

The secretary of state may commence a proceeding under section 490.1531 to revoke the certificate of authority of a foreign corporation authorized to transact business in this state if:

1. The foreign corporation does not deliver its biennial report to the secretary of state in a form that meets the requirements of section 490.1622 within sixty days after it is due.

2. The foreign corporation is without a registered agent or registered office in this state for sixty days or more.

3. The foreign corporation does not inform the secretary of state under section 490.1508 or 490.1509 that its registered agent or registered office has changed, that its registered agent has resigned, or that its registered office has been discontinued within sixty days of the change, resignation, or discontinuance.

4. An incorporator, director, officer, or agent of the foreign corporation signed a document that person knew was false in any material respect with intent that the document be delivered to the secretary of state for filing.

5. The secretary of state receives a duly authenticated certificate from the secretary of state or other official having custody of corporate records in the state or country under whose law the foreign corporation is incorporated stating that it has been dissolved or disappeared as the result of a merger.

89 Acts, ch 288, §172; 90 Acts, ch 1205, §27; 96 Acts, ch 1170, §19; 97 Acts, ch 171, §17
Referred to in §490.1531

490.1531 Procedure for and effect of revocation.

1. If the secretary of state determines that one or more grounds exist under section 490.1530 for revocation of a certificate of authority, the secretary of state shall serve the foreign corporation with written notice of the secretary's determination under section 490.1510.

2. If the foreign corporation does not correct each ground for revocation or demonstrate to the reasonable satisfaction of the secretary of state that each ground determined by the secretary of state does not exist within sixty days after service of the notice is perfected under section 490.1510, the secretary of state may revoke the foreign corporation's certificate

of authority by signing a certificate of revocation that recites the ground or grounds for revocation and its effective date. The secretary of state shall file the original of the certificate and serve a copy on the foreign corporation under section 490.1510.

3. The authority of a foreign corporation to transact business in this state ceases on the date shown on the certificate revoking its certificate of authority.

4. The secretary of state's revocation of a foreign corporation's certificate of authority appoints the secretary of state the foreign corporation's agent for service of process in any proceeding based on a cause of action which arose during the time the foreign corporation was authorized to transact business in this state. Service of process on the secretary of state under this subsection is service on the foreign corporation. Upon receipt of process, the secretary of state shall mail a copy of the process to the secretary of the foreign corporation at its principal office shown in its most recent biennial report or in any subsequent communication received from the corporation stating the current mailing address of its principal office, or, if none is on file, in its application for a certificate of authority.

5. Revocation of a foreign corporation's certificate of authority does not terminate the authority of the registered agent of the corporation.

89 Acts, ch 288, §173; 97 Acts, ch 171, §18
Referred to in §490.1510, 490.1530

490.1532 Appeal from revocation.

1. A foreign corporation may appeal the secretary of state's revocation of its certificate of authority to the district court within thirty days after service of the certificate of revocation is perfected under section 490.1510. The foreign corporation appeals by petitioning the court to set aside the revocation and attaching to the petition copies of its certificate of authority and the secretary of state's certificate of revocation.

2. The court may summarily order the secretary of state to reinstate the certificate of authority or may take any other action the court considers appropriate.

3. The court's final decision may be appealed as in other civil proceedings.

89 Acts, ch 288, §174

490.1533 through 490.1600 Reserved.

DIVISION XVI

RECORDS AND REPORTS

PART A

490.1601 Corporate records.

1. A corporation shall keep as permanent records minutes of all meetings of its shareholders and board of directors, a record of all actions taken by the shareholders or board of directors without a meeting, and a record of all actions taken by a committee of the board of directors in place of the board of directors on behalf of the corporation.

2. A corporation shall maintain appropriate accounting records.

3. A corporation or its agent shall maintain a record of its shareholders in a form that permits preparation of a list of the names and addresses of all shareholders in alphabetical order by class of shares showing the number and class of shares held by each.

4. A corporation shall maintain its records in the form of a document, including an electronic record, or in another form capable of conversion into paper form within a reasonable time.

5. A corporation shall keep a copy of the following records at its principal office:

a. Its articles or restated articles of incorporation, all amendments to them currently in effect, and any notices to shareholders referred to in section 490.120, subsection 12, paragraph "*e*", regarding facts on which a filed document is dependent.

b. Its bylaws or restated bylaws and all amendments to them currently in effect.

c. Resolutions adopted by its board of directors creating one or more classes or series of shares, and fixing their relative rights, preferences, and limitations, if shares issued pursuant to those resolutions are outstanding.

d. The minutes of all shareholders' meetings, and records of all action taken by shareholders without a meeting, for the past three years.

e. All written communications to shareholders generally within the past three years, including the financial statements furnished for the past three years under section 490.1620.

f. A list of the names and business addresses of its current directors and officers.

g. Its most recent biennial report delivered to the secretary of state under section 490.1622.

89 Acts, ch 288, §175; 97 Acts, ch 171, §19; 2007 Acts, ch 140, §11, 12; 2013 Acts, ch 31, §74, 82

Referred to in §490.141, 490.840, 490.1602

490.1602 Inspection of records by shareholders.

1. A shareholder of a corporation is entitled to inspect and copy, during regular business hours at the corporation's principal office, any of the records of the corporation described in section 490.1601, subsection 5, if the shareholder gives the corporation signed written notice of the shareholder's demand at least five business days before the date on which the shareholder wishes to inspect and copy.

2. For any meeting of shareholders for which the record date for determining shareholders entitled to vote at the meeting is different than the record date for notice of the meeting, any person who becomes a shareholder subsequent to the record date for notice of the meeting and is entitled to vote at the meeting is entitled to obtain from the corporation upon request the notice and any other information provided by the corporation to shareholders in connection with the meeting, unless the corporation has made such information generally available to shareholders by posting it on its internet site or by other generally recognized means. Failure of a corporation to provide such information does not affect the validity of action taken at the meeting.

3. A shareholder of a corporation is entitled to inspect and copy, during regular business hours at a reasonable location specified by the corporation, any of the following records of the corporation if the shareholder meets the requirements of subsection 4 and gives the corporation a signed written notice of the shareholder's demand at least five business days before the date on which the shareholder wishes to inspect and copy any of the following:

a. Excerpts from minutes of any meeting of the board of directors or a committee of the board of directors while acting in place of the board of directors on behalf of the corporation, minutes of any meeting of the shareholders, and records of action taken by the shareholders, board of directors, or a committee of the board without a meeting, to the extent not subject to inspection under subsection 1.

b. Accounting records of the corporation.

c. The record of shareholders.

4. A shareholder may inspect and copy the records described in subsection 3 only if all of the following apply:

a. The shareholder's demand is made in good faith and for a proper purpose.

b. The shareholder describes with reasonable particularity the shareholder's purpose and the records the shareholder desires to inspect.

c. The records are directly connected with the shareholder's purpose.

5. The right of inspection granted by this section shall not be abolished or limited by a corporation's articles of incorporation or bylaws.

6. This section does not affect any of the following:

a. The right of a shareholder to inspect records under section 490.720 or, if the shareholder is in litigation with the corporation, to the same extent as any other litigant.

b. The power of a court, independently of this chapter, to compel the production of corporate records for examination.

7. For purposes of this section, *"shareholder"* includes a beneficial owner whose shares are held in a voting trust or by a nominee on the shareholder's behalf.

89 Acts, ch 288, §176; 2013 Acts, ch 31, §75, 82

Referred to in §490.720, 490.1603, 490.1604

490.1603 Scope of inspection right.

1. A shareholder's agent or attorney has the same inspection and copying rights as the shareholder represented.

2. The right to copy records under section 490.1602 includes, if reasonable, the right to receive copies by xerographic or other means, including copies through an electronic transmission if available and so requested by the shareholder.

3. The corporation may comply at its expense with a shareholder's demand to inspect the record of shareholders under section 490.1602 by providing the shareholder with a list of shareholders that was compiled no earlier than the date of the shareholder's demand.

4. The corporation may impose a reasonable charge, covering the costs of labor and material, for copies of any documents provided to the shareholder. The charge shall not exceed the estimated cost of production, reproduction, or transmission of the records.

89 Acts, ch 288, §177; 2002 Acts, ch 1154, §99, 125; 2013 Acts, ch 31, §76, 82

490.1604 Court-ordered inspection.

1. If a corporation does not allow a shareholder who complies with section 490.1602, subsection 1, to inspect and copy any records required by that subsection to be available for inspection, the district court of the county where the corporation's principal office or, if none in this state, its registered office is located may summarily order inspection and copying of the records demanded at the corporation's expense upon application of the shareholder.

2. If a corporation does not within a reasonable time allow a shareholder to inspect and copy any other records, the shareholder who complies with section 490.1602 may apply to the district court in the county where the corporation's principal office or, if none in this state, its registered office is located for an order to permit inspection and copying of the records demanded. The court shall dispose of an application under this subsection on an expedited basis.

3. If the court orders inspection and copying of the records demanded, it shall also order the corporation to pay the shareholder's costs, including reasonable counsel fees, incurred to obtain the order unless the corporation proves that it refused inspection in good faith because it had a reasonable basis for doubt about the right of the shareholder to inspect the records demanded.

4. If the court orders inspection and copying of the records demanded, it may impose reasonable restrictions on the use or distribution of the records by the demanding shareholder.

89 Acts, ch 288, §178; 2013 Acts, ch 31, §77, 82

490.1605 Inspection of records by directors.

1. A director of a corporation is entitled to inspect and copy the books, records, and documents of the corporation at any reasonable time to the extent reasonably related to the performance of the director's duties as a director, including duties as a member of a committee, but not for any other purpose or in any manner that would violate any duty to the corporation.

2. The district court of the county where the corporation's principal office, or if none in this state, its registered office, is located may order inspection and copying of the books, records, and documents at the corporation's expense, upon application of a director who has been refused such inspection rights, unless the corporation establishes that the director is not entitled to such inspection rights. The court shall dispose of an application under this subsection on an expedited basis.

3. If an order is issued, the court may include provisions protecting the corporation from undue burden or expense, and prohibiting the director from using information obtained upon exercise of the inspection rights in a manner that would violate a duty to the corporation, and

may also order the corporation to reimburse the director for the director's costs, including reasonable counsel fees, incurred in connection with the application.

2002 Acts, ch 1154, §100, 125

490.1606 Exception to notice requirement.

1. Whenever notice would otherwise be required to be given under any provision of this chapter to a shareholder, such notice need not be given if any of the following apply:

a. Notices to the shareholders of two consecutive annual meetings, and all notices of meetings during the period between such two consecutive annual meetings, have been sent to such shareholder at such shareholder's address as shown on the records of the corporation and have been returned undeliverable or could not be delivered.

b. All, but not less than two, payments of dividends on securities during a twelve-month period, or two consecutive payments of dividends on securities during a period of more than twelve months, have been sent to such shareholder at such shareholder's address as shown on the records of the corporation and have been returned undeliverable or could not be delivered.

2. If any such shareholder shall deliver to the corporation a written notice setting forth such shareholder's then-current address, the requirement that notice be given to such shareholder shall be reinstated.

2002 Acts, ch 1154, §101, 125; 2013 Acts, ch 31, §78, 82

490.1607 through 490.1619 Reserved.

PART B

490.1620 Financial statements for shareholders.

1. Except as provided in subsection 4, a corporation shall prepare and make available to its shareholders, as provided in subsection 3, annual financial statements, which may be consolidated or combined statements of the corporation and one or more of its subsidiaries, as appropriate, that include a balance sheet as of the end of the fiscal year, an income statement for that year, and a statement of changes in shareholders' equity for the year unless that information appears elsewhere in the financial statements. If financial statements are prepared for the corporation on the basis of generally accepted accounting principles, the annual financial statements must also be prepared on that basis.

2. If the annual financial statements are reported upon by a public accountant, the report must accompany them. If not, the statements must be accompanied by a statement of the president or the person responsible for the corporation's accounting records which does all of the following:

a. States such person's reasonable belief whether the statements were prepared on the basis of generally accepted accounting principles and, if not, describing the basis of preparation.

b. Describes any respects in which the statements were not prepared on a basis of accounting consistent with the statements prepared for the preceding year.

3. Within one hundred twenty days after the close of each fiscal year, the corporation shall deliver the annual financial statements described in subsections 1 and 2 to any person who was a shareholder of the corporation at the end of such fiscal year. Thereafter, on written request from a shareholder to whom the statements were not delivered, the corporation shall deliver to the shareholder the latest financial statements. The corporation may fulfill its obligation to deliver the financial statements under this subsection by any of the following methods:

a. By any means authorized under section 490.141.

b. By making the financial statements available to a shareholder via internet access without charge notwithstanding the lack of consent otherwise required by section 490.141, subsection 10, paragraph *"b"*, and by notifying the shareholder of instructions for access.

c. If the corporation is a public corporation, by delivering the specified financial

statements, or otherwise making them available, in any manner permitted by the applicable rules and regulations of the United States securities and exchange commission.

d. If the corporation is not a public corporation, by filing annual financial reports in compliance with state or federal law, provided that such reports meet all the following requirements:

(1) Contain a balance sheet as of the end of the fiscal year and an income statement for that fiscal year.

(2) Are required by state or federal law to be filed with a state or federal agency within one hundred twenty days after the close of each fiscal year.

(3) Are available to the public, including via internet access, without charge.

4. A corporation with fewer than one hundred shareholders as of the end of the corporation's fiscal year, or that operates on a cooperative basis as defined under 26 U.S.C. §1381, shall be excused from complying with this section if the corporation prepares annual financial statements, which may be consolidated or combined statements of the corporation and one or more of its subsidiaries, as appropriate, that include a balance sheet as of the end of the fiscal year and an income statement for that fiscal year. Upon written request from a shareholder, the corporation shall, at its expense, deliver to the shareholder the requested financial statements as provided in subsection 3, paragraph *"a"* or *"b"*. If the annual financial statements are reported upon by a public accountant, the report must accompany them.

89 Acts, ch 288, §179; 2013 Acts, ch 31, §79, 82; 2014 Acts, ch 1024, §4

Referred to in §490.1320, 490.1324, 490.1601

490.1621 Other reports to shareholders. Repealed by 2002 Acts, ch 1154, §123, 125.

490.1622 Biennial report for secretary of state.

1. Each domestic corporation, and each foreign corporation authorized to transact business in this state, shall deliver to the secretary of state for filing a biennial report that sets forth all of the following:

a. The name of the corporation and the state or country under whose law it is incorporated.

b. The address of its registered office and the name of its registered agent at that office in this state, together with the consent of any new registered agent.

c. The address of its principal office.

d. The names and addresses of the president, secretary, treasurer, and one member of the board of directors.

2. Information in the biennial report must be current as of the date the report is delivered to the secretary of state for filing. The report shall be executed on behalf of the corporation and signed as provided in section 490.120 or by any other person authorized by the board of directors of the corporation.

3. The first biennial report shall be delivered to the secretary of state between January 1 and April 1 of the first even-numbered year following the calendar year in which a domestic corporation was incorporated or a foreign corporation was authorized to transact business. Subsequent biennial reports must be delivered to the secretary of state between January 1 and April 1 of the following even-numbered calendar years. A filing fee for the biennial report shall be determined by the secretary of state. For purposes of this section, each biennial report shall contain information related to the two-year period immediately preceding the calendar year in which the report is filed.

4. If a biennial report does not contain the information required by this section, the secretary of state shall promptly notify the reporting domestic or foreign corporation in writing and return the report to it for correction.

5. The secretary of state may provide for the change of registered office or registered agent on the form prescribed by the secretary of state for the biennial report, provided that the form contains the information required in section 490.502 or 490.1508. If the secretary of state determines that a biennial report does not contain the information required by this section but otherwise meets the requirements of section 490.502 or 490.1508 for the purpose of changing the registered office or registered agent, the secretary of state shall file the statement of

change of registered office or registered agent, effective as provided in section 490.123, before returning the biennial report to the corporation as provided in this section. A statement of change of registered office or agent pursuant to this subsection shall be executed by a person authorized to execute the biennial report.

89 Acts, ch 288, §181; 96 Acts, ch 1170, §20, 21; 97 Acts, ch 171, §20; 2010 Acts, ch 1100, §19

Referred to in §490.120, 490.125, 490.128, 490.502, 490.1420, 490.1508, 490.1530, 490.1601

490.1623 through 490.1700 Reserved.

DIVISION XVII

TRANSITION PROVISIONS

490.1701 Application to existing corporations.

1. Except as provided in this subsection or chapter 504, Code 1989, or current chapter 504, this chapter does not apply to or affect entities subject to chapter 504, Code 1989, or current chapter 504. Such entities continue to be governed by all laws of this state applicable to them before December 31, 1989, as those laws are amended. This chapter does not derogate or limit the powers to which such entities are entitled.

2. *a.* Unless otherwise provided, this chapter does not apply to an entity subject to chapter 174, 497, 498, 499, 499A, 524, or 533 or a corporation organized on the mutual plan under chapter 491, or a telephone company organized as a corporation under chapter 491 qualifying pursuant to an internal revenue service letter ruling under Internal Revenue Code §501(c)(12) as a nonprofit corporation entitled to distribute profits in a manner similar to a chapter 499 corporation, unless such entity voluntarily elects to adopt the provisions of this chapter and complies with the procedure prescribed by subsection 3 of this section.

b. A corporation organized under chapter 496C may voluntarily elect to adopt the provisions of this chapter by complying with the provisions prescribed by subsection 3.

3. The procedure for the voluntary election referred to in subsection 2 is as follows:

a. The corporation shall amend or restate its articles of incorporation to indicate that the corporation adopts this chapter and to designate the address of its initial registered office and the name of its registered agent at that office and, if the name of the corporation is not in compliance with the requirements of this chapter, to change the name of the corporation to one complying with the requirements of this chapter.

b. (1) The instrument shall be delivered to the secretary of state for filing and recording in the secretary of state's office. If the corporation was organized under chapter 524 or 533, the instrument shall also be filed and recorded in the office of the county recorder. The corporation shall at the time it files the instrument with the secretary of state deliver also to the secretary of state for filing in the secretary of state's office any biennial report which is then due.

(2) If the county of the initial registered office as stated in the instrument for a corporation organized under chapter 524 or 533 is one which is other than the county where the principal place of business of the corporation, as designated in its articles of incorporation, was located, the corporation shall forward to the county recorder of the county in which the principal place of business of the corporation was located a copy of the instrument and the corporation shall forward to the recorder of the county in which the initial registered office of the corporation is located, in addition to a copy of the original instrument, a copy of the articles of incorporation of the corporation together with all amendments to them as then on file in the secretary of state's office. The corporation shall, through an officer or director, certify to the secretary of state that a copy has been sent to each applicable county recorder, including the date each copy was sent.

c. Upon the filing of the instrument by a corporation all of the following apply:

(1) All of the provisions of this chapter apply to the corporation.

(2) The secretary of state shall issue a certificate as to the filing of the instrument and deliver the certificate to the corporation or its representative.

(3) The secretary of state shall not file the instrument with respect to a corporation unless at the time of filing the corporation is validly existing and in good standing in that office under the chapter under which it is incorporated. The corporation shall be considered validly existing and in good standing for the purpose of this chapter for a period of three months following the expiration date of the corporation, provided all biennial reports due have been filed and all fees due in connection with the biennial reports have been paid.

d. The provisions of this chapter becoming applicable to a corporation voluntarily electing to be governed by this chapter do not affect any right accrued or established, or any liability or penalty incurred, under the chapter under which it is incorporated prior to the filing by the secretary of state in the secretary of state's office of the instrument manifesting the election by the corporation to adopt the provisions of this chapter as provided in this subsection.

4. Except as specifically provided in this chapter, this chapter applies to all domestic corporations in existence on December 31, 1989, that were incorporated under any general statute of this state providing for incorporation of corporations for profit if power to amend or repeal the statute under which the corporation was incorporated was reserved.

5. A corporation subject to this chapter which does not have a registered office or registered agent or both designated on the records of the secretary of state is subject to all of the following provisions:

a. The office of the corporation set forth in its first biennial report filed under this chapter shall be deemed its registered office until December 31, 1990, or until it files a designation of registered office with the secretary of state, whichever is earlier.

b. The person signing the first biennial report of the corporation filed under this chapter shall be deemed the registered agent until December 31, 1990, or a statement designating a registered agent has been filed with the secretary of state, whichever is earlier.

c. Section 490.502 does not apply to the corporation until December 31, 1990, or until the corporation files a designation of registered office and registered agent at that office with the secretary of state, whichever is earlier.

6. A corporation subject to this chapter is not subject to chapter 491, 492, 493, or 495.

89 Acts, ch 288, §182; 93 Acts, ch 126, §9; 97 Acts, ch 107, §6; 97 Acts, ch 171, §21 – 24; 2002 Acts, ch 1017, §5, 8; 2003 Acts, ch 66, §1, 2; 2003 Acts, ch 108, §91; 2004 Acts, ch 1049, §191; 2004 Acts, ch 1175, §394; 2006 Acts, ch 1010, §126; 2006 Acts, ch 1089, §14; 2012 Acts, ch 1017, §89; 2012 Acts, ch 1023, §157

Referred to in §496C.14, 496C.19, 515G.3

490.1702 Application to qualified foreign corporations.

A foreign corporation authorized to transact business in this state on December 31, 1989, is subject to this chapter but is not required to obtain a new certificate of authority to transact business under this chapter.

89 Acts, ch 288, §183

490.1703 Savings provisions.

1. Except as provided in subsection 2, the repeal of a statute by 1989 Iowa Acts, ch. 288, and the amendment or repeal of a statute by 2002 Iowa Acts, ch. 1154, does not affect:

a. The operation of the statute or any action taken under it before its amendment or repeal.

b. Any ratification, right, remedy, privilege, obligation, or liability acquired, accrued, or incurred under the statute before its amendment or repeal.

c. Any violation of the statute, or any penalty, forfeiture, or punishment incurred because of the violation, before its amendment or repeal.

d. Any proceeding, reorganization, or dissolution commenced under the statute before its amendment or repeal, and the proceeding, reorganization, or dissolution may be completed in accordance with the statute as if it had not been amended or repealed.

2. If a penalty or punishment imposed for violation of a statute repealed by 1989 Iowa Acts, ch. 288, is reduced by 1989 Iowa Acts, ch. 288, the penalty or punishment if not already imposed shall be imposed in accordance with this chapter.

3. In the event that any provision of this chapter is deemed to modify, limit, or supersede the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. §7001 et seq., the provisions of this chapter shall control to the maximum extent permitted by section 102(a)(2) of that federal Act.

89 Acts, ch 288, §184; 90 Acts, ch 1168, §53; 2003 Acts, ch 66, §3; 2013 Acts, ch 31, §80, 82; 2014 Acts, ch 1026, §143

490.1704 Preemptive rights for existing corporations. Repealed by 2006 Acts, ch 1089, §16.

490.1705 Reinstatement of corporations existing prior to December 31, 1989. Repealed by 2006 Acts, ch 1030, §86; 2006 Acts, ch 1089, §16.

CHAPTER 490A

LIMITED LIABILITY COMPANIES

Repealed by its own terms effective December 31, 2010; 2008 Acts, ch 1162, §153, 155; see chapter 489
Chapter 489 governs limited liability companies formed on or after January 1, 2009; and all limited liability companies on and after January 1, 2011; option for companies formed under this chapter to come under chapter 489 prior to that date; see §489.1304

CHAPTER 491

CORPORATIONS FOR PECUNIARY PROFIT

Referred to in §28E.29, 261B.3A, 468.327, 468.506, 490.1701, 499.5, 499.43B, 504.1108, 508B.2, 514.23, 515.1, 515.11A, 515G.2, 515G.3, 518.1, 518A.1, 519.2, 521.2, 521.17, 521A.14, 524.2001, 552A.2, 669.14

Applicable to domestic corporations incorporated prior to July 1, 1971; §491.1
Reorganization option for cooperative associations, §499.43B

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SUBCHAPTER I

GENERAL PROVISIONS

491.1 Who may incorporate.

Any number of persons may become incorporated under this chapter prior to July 1, 1971, for the transaction of any lawful business, but the incorporation confers no power or privilege not possessed by natural persons, except as provided in this chapter. All domestic corporations shall be organized under chapter 490, except as expressly provided otherwise in chapter 490.

[C51, §673; R60, §1150; C73, §1058; C97, §1607; C24, 27, 31, 35, 39, §**8339;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.1]

83 Acts, ch 101, §106; 89 Acts, ch 83, §65; 89 Acts, ch 288, §186

Referred to in §521A.14

Incorporation of mutual insurance holding companies resulting from reorganization of domestic mutual insurance companies, see §521A.14

Consolidation or merger of domestic mutual insurance companies, see §521.2

491.2 Single person.

Except as otherwise provided by law, a single person may incorporate under the provisions of this chapter, thereby entitling that person to all the privileges and immunities provided herein, but if the person adopts the name of an individual or individuals as that of the corporation, the person must add thereto the word “incorporated”.

[C51, §702; R60, §1179; C73, §1088; C97, §1608; C24, 27, 31, 35, 39, §**8340;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.2]

491.3 Powers.

Among the powers of such corporations are the following:

1. To have perpetual succession.
2. To sue and be sued by its corporate name.
3. To have a common seal, which it may alter at pleasure.
4. To render the interests of the stockholders transferable.
5. To exempt the private property of its members from liability for corporate debts, except as otherwise declared.
6. To make contracts and acquire and transfer property, possessing the same powers in such respects as natural persons.
7. To establish bylaws, and make all rules and regulations necessary for the management of its affairs.
8. A corporation organized under or subject to this chapter may make indemnification as provided in sections 490.850 through 490.859.

[C51, §674; R60, §1151; C73, §1059; C97, §1609; C24, 27, 31, 35, 39, §**8341;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.3]

83 Acts, ch 71, §2; 90 Acts, ch 1205, §29; 2002 Acts, ch 1154, §102, 125; 2015 Acts, ch 29, §63; 2015 Acts, ch 30, §160

491.4 Index book. Repealed by 94 Acts, ch 1055, §16.

491.5 Articles adopted and filed — recording.

1. Before commencing any business except their own organization, they must adopt articles of incorporation, which must be signed and acknowledged by the incorporators. Said articles shall then be forwarded to the secretary of state. Upon the filing of such articles, the secretary of state shall issue a certificate of incorporation and record said articles in a book kept for that purpose.
2. Such articles shall contain:

a. Name of corporation and its principal place of business.

b. The objects for which it is formed.

c. The amount of authorized capital stock, the classes of stock and number of shares authorized, with the par value and conditions of each class of such shares, and the time when and conditions under which it is to be paid in.

d. The time of commencement and existence of the corporation.

e. The names and addresses of the incorporators and the officers or persons its affairs are to be conducted by, and the times when and manner in which such officers will be elected.

f. Whether private property is to be exempt from corporate debts.

g. The manner in which the articles may be amended.

h. Any provision eliminating or limiting the personal liability of a director to the corporation or its shareholders or members for money damages as provided in section 490.202, subsection 2, paragraph *"d"*, except that section 490.202, subsection 2, paragraph *"d"*, subparagraph (1), subparagraph division (c), shall have no application.

i. Any provision permitting or making obligatory indemnification of a director as provided in section 490.202, subsection 2, paragraph *"e"*, except that section 490.202, subsection 2, paragraph *"e"*, subparagraph (3), shall have no application.

[C51, §675; R60, §1152; C73, §1060; C97, §1610; S13, §1610; C24, 27, 31, 35, 39, §**8343;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.5]

87 Acts, ch 212, §2; 88 Acts, ch 1170, §3; 94 Acts, ch 1055, §4; 2003 Acts, ch 66, §5, 6; 2012 Acts, ch 1023, §151, 157

Referred to in §491.10, 491.107

491.6 Filing or refusal to file.

When articles of incorporation are presented to the secretary of state for the purpose of being filed, if the secretary is satisfied that they are in proper form to meet the requirements of law, that their object is a lawful one and not against public policy, that their plan for doing business, if any be provided for, is honest and lawful, the secretary shall file them; but if the secretary is of the opinion that they are not in proper form to meet the requirements of the

law, or that their object is an unlawful one, or against public policy, or that their plan for doing business is dishonest or unlawful, the secretary shall refuse to file them.

[S13, §1610; C24, 27, 31, 35, 39, §**8344;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.6]

Referred to in §491.10, 491.107

491.7 Question of legality submitted.

Should a question of doubt arise as to the legality of the articles, the secretary of state shall submit them to the attorney general whose duty it shall be to forthwith examine and return them with an opinion in writing touching the point or points concerning which inquiry has been made of the attorney general.

[S13, §1610; C24, 27, 31, 35, 39, §**8345;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.7]

Referred to in §491.10, 491.107

491.8 Action on opinion.

If such opinion is in favor of the legality of the articles, and no other objections are apparent, they shall then, upon payment of the proper fee, be filed and otherwise dealt with as the law provides. If, however, such opinion be against their legality they shall not be filed.

[S13, §1610; C24, 27, 31, 35, 39, §**8346;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.8]

Referred to in §491.10, 491.107

491.9 Submission to executive council.

Upon the rejection of any articles of incorporation by the secretary of state, except for the reason that they have been held by the attorney general to be illegal, they shall, if the person or persons presenting them so request, be submitted to the executive council, which shall, as soon as practicable, consider the said articles and if the council determines that the articles are in proper form, of honest purpose, not against public policy, nor otherwise objectionable, it shall so advise the secretary of state in writing, whereupon the secretary shall, upon the payment of the proper fees, file the same and proceed otherwise as the law directs; but if the council sustains the previous action of the secretary of state in rejecting said articles, such decision by the council shall be reported to the secretary of state in writing, and the secretary shall then return said articles to the person or persons presenting them with such explanation as shall be proper in the case.

[C13, §1610; C24, 27, 31, 35, 39, §**8347;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.9]

Referred to in §491.10, 491.107

491.10 Interpretative clause.

Nothing in sections 491.5 to 491.9 shall be construed as repealing or modifying any statute now in force in respect to the approval of articles of incorporation relating to insurance companies or investment companies.

[S13, §1610; C24, 27, 31, 35, 39, §**8348;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.10]

2012 Acts, ch 1017, §90

491.11 Incorporation fee.

Corporations organized for a period of years shall pay the secretary of state, before a certificate of incorporation is issued, a fee of fifty dollars.

[C97, §1610; S13, §1610; C24, 27, 31, 35, 39, §**8349;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.11]

93 Acts, ch 126, §10

Referred to in §491.28, 491.107

491.12 Exemption from fee. Repealed by 93 Acts, ch 126, §35.

491.13 Place of business.

1. Any corporation organized under the laws of this state shall fix upon and designate in its articles of incorporation its principal place of business which must be in this state, and if outside the limits of a city then its post office address must be given. The place of business so designated shall not be changed except through an amendment to its articles of incorporation.

2. When a corporation changes its principal place of business from one county to another,

an amendment for this purpose shall be filed with the secretary of state, recorded in the office of the recorder of deeds of the county of the previous place of business, and then said amendment together with the articles of incorporation and all amendments thereto shall be filed with the recorder of deeds of the county to which said corporation's principal place of business is changed.

[C97, §1612; S13, §1612; C24, 27, 31, 35, 39, §**8353;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.13]

2018 Acts, ch 1041, §127
Code editor directive applied

491.14 Custody of office — business maintained.

Its place of business shall be in charge of an agent of the corporation and shall be the place where it shall hold its stockholders' meetings, keep a record of its proceedings and its stock and transfer books. The board of directors may designate by resolution some other place in the county where business of the corporation is transacted as the place for holding a stockholders' meeting if notice is mailed to the stockholders at least twenty days prior to each meeting informing the stockholders of the place, date, and hour of the stockholders' meeting.

[C97, §1612; S13, §1612; C24, 27, 31, 35, 39, §**8354;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.14]

491.15 Service of original notice — secretary of state.

Any corporation organized under the laws of this state that does not maintain an office in the county of its organization may file with the secretary of state a certified copy of a resolution of the board of directors of said corporation giving name and address in Iowa of a resident agent on whom the service of original notice of civil suit in the courts of this state may be served, or file with the secretary of state a written instrument duly signed and acknowledged authorizing the secretary of state to acknowledge service of notice or process for and in behalf of such corporation in this state and consenting that service of notice or process may be made upon the secretary of state. Failing which, or in the event such agent may not be found within the state, service of such process may then be made upon said corporation through the secretary of state by sending the original and two copies thereof to the secretary, and the secretary shall immediately upon its receipt acknowledge service thereon in behalf of the defendant corporation by writing thereon, giving the date thereof, and shall immediately return such notice or process by certified mail to the clerk of the court in which the suit is pending, addressed by the clerk's official title, and shall also forthwith mail a copy with a copy of the secretary's acknowledgment of service written thereon, by certified mail addressed to the corporation at the address of its principal place of business as shown by the records in the secretary of state's office, and shall retain the second copy for the secretary's files.

[C97, §1612; S13, §1612; C24, 27, 31, 35, 39, §**8355, 8356;** C46, 50, §491.15, 491.16; C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.15]

491.16 Indemnification of officers, directors, employees, and agents — insurance.

Sections 490.850 through 490.859 apply to corporations organized under or subject to this chapter.

[C71, 73, 75, 77, 79, 81, §491.16]

83 Acts, ch 71, §3; 90 Acts, ch 1205, §30; 2002 Acts, ch 1154, §103, 125

491.16A Directors and officers — duties and liabilities.

Sections 490.830, 490.831, and 490.833, sections 490.840 through 490.842, sections 490.860 through 490.863, and section 490.870 apply to corporations organized under or subject to this chapter.

2003 Acts, ch 66, §7; 2018 Acts, ch 1136, §5
Section amended

491.17 and 491.18 Repealed by 2014 Acts, ch 1074, §4.

491.19 Commencement of business.

The corporation may commence business as soon as the articles of incorporation are filed with the secretary of state.

[C51, §679; R60, §1156; C73, §1064; C97, §1614; C24, 27, 31, 35, 39, §**8359;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.19]

2014 Acts, ch 1074, §1

491.20 Amendments — fees.

1. Amendments to articles of incorporation making changes in any of the provisions of the articles may be made at any annual meeting of the stockholders or special meeting called for that purpose, and they shall be valid only when approved by the shareholders and filed with the secretary of state. If no increase is made in the amount of capital stock, a certificate fee of one dollar and a recording fee of fifty cents per page must be paid. Where capital stock is increased the certificate fee shall be omitted but there shall be paid a recording fee of fifty cents per page and in addition a filing fee which in case of corporations existing for a period of years shall be one dollar per thousand of such increase and in case of corporations empowered to exist perpetually shall be one dollar and ten cents per thousand of such increase. Corporations providing for perpetual existence by amendment to its articles shall, at the time of filing such amendment, pay to the secretary of state a fee of one hundred dollars together with a recording fee of fifty cents per page, and, for all authorized capital stock in excess of ten thousand dollars, an additional fee of one dollar ten cents per thousand.

2. *a.* Its articles of incorporation to the contrary notwithstanding, if three-fourths of the voting stock of any corporation organized under the provisions of this chapter, with assets of the value of one million dollars or more, is owned by individuals owning not more than one share each of the voting stock thereof, said articles may be amended at any regular or special meeting of stockholders, when a notice in writing of the substance of the proposed amendment has been mailed by ordinary mail to each voting stockholder of such corporation not more than ninety nor less than sixty days prior to said meeting, by the affirmative vote of two-thirds of the voting stock represented at said meeting when said amendment is approved by the affirmative vote of two-thirds of the members of the board of directors at a meeting prior to the mailing of said notice.

b. If such corporation is renewed under the provisions of section 491.25, the voting stock of dissenting stockholders or any portion thereof may be purchased by the corporation at its option as provided in section 491.25.

[C51, §680; R60, §1157; C73, §1065; C97, §1615; S13, §1615; C24, 27, 31, 35, 39, §**8360;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.20]

2014 Acts, ch 1074, §2; 2015 Acts, ch 29, §64

Referred to in §491.24, 491.26, 491.107

491.21 Signing and acknowledging of amendments.

Such amendments need only be signed and acknowledged by such officers of the corporation as may be designated by the stockholders to perform such act.

[C97, §1615; S13, §1615; C24, 27, 31, 35, 39, §**8361;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.21]

491.22 Individual property liable.

A failure to substantially comply with the foregoing requirements in relation to organization and publicity shall render the individual property of the stockholders liable for the corporate debts; but corporators and stockholders in railway and street railway companies shall be liable only for the amount of stock held by them therein.

[C51, §689; R60, §1166, 1338; C73, §1068; C97, §1616; C24, 27, 31, 35, 39, §**8362;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.22]

491.23 Dissolution — filing a statement with secretary of state.

A corporation may be dissolved prior to the period fixed in the articles of incorporation, by unanimous consent, or in accordance with the provisions of its articles, if a statement swearing to the dissolution, signed by the officers of such corporation, is filed with the secretary of state. A fee of one dollar shall apply to the filing of the statement.

[C51, §682, 683; R60, §1159, 1160; C73, §1066, 1067; C97, §1617; C24, 27, 31, 35, 39, §**8363;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.23]

94 Acts, ch 1055, §5; 2014 Acts, ch 1074, §3; 2015 Acts, ch 30, §161

491.24 Duration.

Corporations for the construction and operation, or the operation alone, of steam railways, interurban railways, and street railways, or for the transaction of the business of life insurance, may be formed to endure fifty years; those for other purposes, not to exceed twenty years; provided, however, that in addition to the power herein granted to incorporate for a period of years, corporations hereafter organized or now existing may have perpetual existence by so providing in the articles of incorporation or by amendment thereto pursuant to section 491.20.

[C51, §681; R60, §1158; C73, §1069; C97, §1618; S13, §1618; C24, 27, 31, 35, 39, §**8364;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.24]

491.25 Renewal — conditions.

1. Corporations existing for a period of years may be renewed from time to time for the same or shorter periods, or may be renewed to exist perpetually, upon compliance with the provisions of this section and other applicable statutes.

2. The right of renewal is vested in the stockholders and shall be exercised by a resolution thereof adopted at any regular meeting or at any special meeting called for that purpose. Such resolution must be adopted by a majority of all the votes cast at such meeting, or by such other vote as is authorized or required in the company's existing articles of incorporation.

3. If the renewal instrument in proper form and the necessary fees are tendered to the secretary of state for filing three months or less either prior or subsequent to the corporation's expiration date, the renewal shall take effect immediately upon the expiration of the corporation's previous period of existence, and in such case, the corporate existence shall be considered as having been extended without interruption. If the renewal is filed more than three months before or after the expiration date, the renewal shall take effect upon the date such renewal with necessary fees is accepted and filed by the secretary of state; and in cases where filed more than three months after the expiration date, shall not be in legal effect a renewal unless the procedure provided for and the additional fees provided for in section 491.28 are fully complied with and paid.

4. In all cases of renewal, those stockholders voting for such renewal must purchase at its real value the stock voted against the renewal, and shall have three years from the date such action for renewal was taken in which to purchase and pay for the stock voting against the renewal, which purchase price shall bear interest at the rate of five percent per annum from the date of the renewal action until paid.

[C51, §681; R60, §1158; C73, §1069; C97, §1618; S13, §1618; C24, 27, 31, 35, 39, §**8365, 8366;** C46, 50, §491.25, 491.26; C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.25]

2015 Acts, ch 29, §65

Referred to in §491.20, 491.26

491.26 Stock of dissenting holders.

The provisions of section 491.25 shall not apply to any renewal voted before July 4, 1951, but all rights of any corporation described or referred to in the last two paragraphs of section 491.20 to purchase stock of dissenting stockholders or any portion thereof are preserved to said corporation both before and after this section becomes operative.

[S13, §1618; C24, 27, 31, 35, 39, §**8366;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.26]

491.27 Execution of renewal — record required.

After the action of the stockholders for the renewal of any corporation, a certificate, showing the proceedings resulting in the renewal, sworn to by the president and secretary of the corporation, or by other officers as may be designated by the stockholders, together with the articles of incorporation, which may be the original articles of incorporation or amended and substituted articles, shall be filed with the secretary of state and be recorded by the secretary in a book kept for that purpose.

[S13, §1618; C24, 27, 31, 35, 39, §**8367;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.27]
94 Acts, ch 1055, §6

491.28 Filing with secretary of state — fees — certificate of renewal.

1. Upon filing with the secretary of state the said certificate and articles of incorporation, and upon the payment to the secretary of state of the fees prescribed by section 491.11 for newly organized corporations, the secretary of state shall issue a proper certificate for the renewal of the corporation.

2. Whenever, after timely notice has been received that its articles of incorporation will expire and the corporate existence of any corporation has expired and not been renewed within the period prescribed by statute, said corporation thereafter files with the secretary of state amended and substituted articles of incorporation for the purpose of renewing and extending its corporate existence, the secretary of state shall cause said corporation to file satisfactory proof that no judgments against said corporation or the stockholders thereof are outstanding which may be liens against said corporation and that there is no pending litigation involving said corporation or the corporate existence of said corporation. Upon the filing of said proof the secretary of state may acknowledge and file for record the amended and substituted articles of said corporation and issue a certificate of renewal upon the payment of the renewal fees required by statute, however, the secretary of state shall charge and collect an additional ten percent of said renewal fees for each month or major fraction thereof said corporation was delinquent in renewal of its corporate existence as a penalty, but in no instance shall such additional delinquency fee be less than one hundred dollars and not more than one thousand dollars. Said certificate of renewal when issued shall have the same force and effect as though issued upon proper and timely application by said corporation and it shall date from the expiration of the corporate period which it succeeds.

[S13, §1618; C24, 27, 31, 35, 39, §**8368;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.28]
2018 Acts, ch 1041, §127
Referred to in §491.25
Code editor directive applied

491.29 Erroneous certificate — correction.

In all cases wherein the secretary of state has prior to April 10, 1931 issued to a corporation organized or purporting to have been organized under the laws of this state a certificate renewing and extending its corporate existence from an erroneous date or for a period of time in excess of that provided by law, the secretary of state shall, upon the surrender of such certificate, issue to such corporation a new certificate, extending and renewing the corporate existence thereof from the correct date or for the period of time provided by law.

[C31, 35, §8368-d1; C39, §**8368.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.29]

491.30 and 491.31 Repealed by 93 Acts, ch 126, §35.

491.32 Notice of renewal — publication. Repealed by 2014 Acts, ch 1074, §4.

491.33 Foreign insurance companies becoming domestic.

The secretary of state upon a corporation complying with the provisions of this section and upon the filing of articles of incorporation and upon receipt of the fees as provided in this chapter shall issue a certificate of incorporation as of the date of the corporation's original incorporation in its state of original incorporation. The certificate of incorporation shall state on its face that it is issued in accordance with the provisions of this section. The secretary of state shall then notify the appropriate officer of the state or country of the corporation's

last domicile that the corporation is now a domestic corporation domiciled in this state. This section applies to life insurance companies, and to insurance companies doing business under chapter 515.

[C75, 77, 79, 81, §491.33; 81 Acts, ch 161, §1]

94 Acts, ch 1055, §7

Referred to in §508.12, 515.78

491.34 and 491.35 Reserved.

491.36 Foreign-trade zone corporation.

A corporation may be organized under the laws of this state for the purpose of establishing, operating, and maintaining a foreign-trade zone as defined in 19 U.S.C. §81a. A corporation organized for the purposes set forth in this section has all powers necessary or convenient for applying for a grant of authority to establish, operate, and maintain a foreign-trade zone under the provisions of 19 U.S.C. §81a, et seq., and rules promulgated thereunder, and for establishing, operating, and maintaining a foreign-trade zone pursuant to that grant of authority.

[C81, §491.36]

2010 Acts, ch 1061, §66

491.37 Reserved.

491.38 Consolidation of interstate bridge companies.

Any corporation heretofore or hereafter organized under the laws of this state for the purpose of constructing or operating, or constructing and operating, a bridge, one extremity of which shall rest in an adjacent state, may merge or consolidate the stock, property, rights, franchises, privileges, assets and liabilities of such corporation with the stock, property, rights, franchises, privileges, assets and liabilities of a corporation organized for a similar purpose under the laws of such adjacent state, upon such terms not in conflict with law as may be mutually agreed upon, and thereafter such merged or consolidated corporations shall be one corporation with such name as may be agreed upon, and shall have all of the property, rights, privileges, assets and franchises, and be subject to all of the liabilities, of the merging or consolidating corporations.

[C31, 35, §8375-d1; C39, §**8375.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.38]

2013 Acts, ch 90, §147

491.39 Legislative control.

The articles of incorporation, bylaws, rules and regulations of corporations hereafter organized under the provisions of either Title XII, subtitles 2 through 5, or Title XIII, subtitle 1 or 2, or whose organization may be adopted or amended thereunder, shall at all times be subject to legislative control, and may be at any time altered, abridged or set aside by law, and every franchise obtained, used, or enjoyed by such corporation may be regulated, withheld, or be subject to conditions imposed upon the enjoyment thereof, whenever the general assembly shall deem necessary for the public good.

[C73, §1090; C97, §1619; C24, 27, 31, 35, 39, §**8376;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.39]

Iowa Constitution, Art. I, §21; Art. VIII, §12

United States Constitution, Article I, §10

491.40 Fraud — penalty for.

Intentional fraud in failing to comply substantially with the articles of incorporation, or in deceiving the public or individuals in relation to their means or their liabilities, shall be a fraudulent practice. Any person who has sustained injury from such fraud may also recover damages therefor against those guilty of participating in such fraud.

[C51, §686; R60, §1163; C73, §1071; C97, §1620; C24, 27, 31, 35, 39, §**8377;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.40]

Referred to in §491.41, 491.42

Fraudulent practices, see §714.8 – 714.14

491.41 Diversion of funds — unlawful dividends.

The diversion of the funds of the corporation to other objects than those mentioned in its articles and in the notice published, if any person be injured thereby, and the payment of dividends which leaves insufficient funds to meet the liabilities thereof, shall be such fraud as will subject those guilty thereof to the penalties of section 491.40; and such dividends, or their equivalent, in the hands of stockholders, shall be subject to such liabilities. If the directors or other officers or agents of any corporation shall declare and pay any dividend when such corporation is known by them to be insolvent, or any dividend the payment of which would render it insolvent, or which would diminish the amount of its capital stock, all directors, officers, or agents knowingly consenting thereto shall be jointly and severally liable for all the debts of such corporation then existing, but dividends made in good faith before knowledge of the occurring of losses shall not come within the provisions of this section.

[C51, §687, 688; R60, §1164, 1165; C73, §1072, 1073; C97, §1621; C24, 27, 31, 35, 39, §**8378;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.41]

Referred to in §491.42

491.42 Forfeiture.

Any intentional violation by the board of directors or the managing officers of the corporation of the provisions of sections 491.40 and 491.41 shall work a forfeiture of the corporate privileges, to be enforced as provided by law.

[C51, §690; R60, §1167; C73, §1074; C97, §1622; C24, 27, 31, 35, 39, §**8379;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.42]

491.43 Keeping false accounts.

The intentional keeping of false books or accounts shall be a fraudulent practice on the part of any officer, agent, or employee of the corporation guilty thereof, or of anyone whose duty it is to see that such books or accounts are correctly kept.

[C51, §691; R60, §1168; C73, §1075; C97, §1623; C24, 27, 31, 35, 39, §**8381;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.43]

Fraudulent practices, see §714.8 – 714.14

491.44 and 491.45 Reserved.

491.46 Books to show names of stockholders.

The books of the corporation shall be kept to show the amount of capital stock actually paid in, the number of shares of stock issued, the original stockholders, and all transfers of shares of stock, and there shall be entered upon the books of the corporation the name of the person by and to whom stock is transferred, the numbers or other designations of the shares of stock and the date of transfer. This section does not create any rights or impose any duties inconsistent with the provisions of chapter 554.

[C51, §692; R60, §1169; C73, §1078; C97, §1626; C24, 27, 31, 35, 39, §**8385;** C46, 50, §491.47; C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.46]

Referred to in §491.50

491.47 Names exhibited at meetings.

It shall be the duty of the officer or agent of any corporation organized under the laws of the state of Iowa, or any foreign corporation qualified to do business in the state of Iowa and holding a meeting of its stockholders in the state of Iowa, who has charge of the stock records of such corporation to prepare and make, at least ten days before the holding of such meeting, a complete list of the stockholders entitled to vote thereat, arranged in alphabetical order. Such list shall be open and available at the place where said meeting is to be held for said ten days to the examination of any stockholder, and shall be kept at the time and place of meeting during the whole time thereof, and subject to the inspection of any stockholder who may be present at said meeting. The original or duplicate stock ledger of the corporation shall be the only evidence as to who are the stockholders entitled to examine such list or the books of the corporation or to vote in person or by proxy at such meeting. Failure to comply with the requirements of this section shall not affect the validity of any action taken at such

meeting. An officer or agent having charge of the transfer books who shall fail to prepare the list of stockholders, or keep the same on file for a period of ten days, or produce and keep the same open for inspection at the meeting, as provided in this section, shall be liable to any stockholder suffering damage on account of such failure, to the extent of such damage.

[C24, 27, 31, 35, 39, §**8384;** C46, 50, §491.46; C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.47]

Referred to in §491.50

491.48 Stock certificates — signing.

A corporation organized and existing under the laws, either general or special, of this state, may designate in its articles or bylaws the officer or officers who shall be empowered to sign stock certificates issued by the corporation. If the articles or bylaws provide for the signature of a registrar or the signature or countersignature of a transfer agent on stock certificates issued by it, the corporation may likewise provide in the articles or bylaws that in lieu of the actual signature of the officer or officers authorized to sign stock certificates, the facsimile thereof may be either engraved or printed thereon.

[C31, 35, §8385-d1; C39, §**8385.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.48]

491.49 Reserved.

491.50 Examination by stockholder.

1. Any person who shall be a stockholder of record of any corporation organized under the laws of the state of Iowa or any foreign corporation authorized to transact business in the state of Iowa and maintaining its books and records in the state of Iowa shall have the right to examine in person or by duly authorized agent or attorney at any reasonable time or times and for any proper purpose the stock records, minutes and records of stockholders' meetings, and the books and records of account and to make extracts therefrom.

2. The provisions of sections 491.46 and 491.47 and this section shall not apply to savings associations, deposit, loan, and investment records of banks, trust companies, or insurance companies organized under the laws of the state of Iowa, and to whom the provisions of this chapter would otherwise be applicable.

[C51, §692; R60, §1169; C73, §1078; C97, §1626; C24, 27, 31, 35, 39, §**8385, 8386;** C46, 50, §491.47, 491.50; C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.50]

2012 Acts, ch 1017, §91

491.51 through 491.53 Reserved.

491.54 Liability of collateral holder.

No holder of stock as collateral security shall be liable for assessments on the same.

[C97, §1626; C24, 27, 31, 35, 39, §**8390;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.54]

491.55 Right to vote stock — attachment.

1. Every executor, administrator, guardian, or trustee shall represent the stock in the person's hands at all corporate meetings, and may vote the same as a stockholder.

2. Every person who shall pledge the person's stock, in the absence of a written agreement to the contrary, may represent the same at all such meetings and vote accordingly.

3. The owner of corporate stock levied upon by attachment or other proceeding shall have the right to vote the same at all corporate meetings, until such time as the owner shall have been divested of title thereto by execution sale.

4. Nothing contained in this section shall in any manner conflict with any provision in the articles of incorporation, or the bylaws of the corporation issuing the stock.

[S13, §1641-a; C24, 27, 31, 35, 39, §**8391;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.55]

2018 Acts, ch 1041, §127

Code editor directive applied

491.56 Expiration and closing of business.

Corporations whose charters expire by limitation or the voluntary act of the stockholders may nevertheless continue to act for the purpose of winding up their affairs.

[C51, §694; R60, §1171; C73, §1080; C97, §1629; C24, 27, 31, 35, 39, §**8392;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.56]

491.57 Sinking fund and loaning thereof.

For the purpose of repairs, rebuilding, enlarging, or to meet contingencies, or for the purpose of creating a sinking fund, the corporation may set apart a sum which it may loan, and take proper securities therefor.

[C51, §699; R60, §1176; C73, §1081; C97, §1630; C24, 27, 31, 35, 39, §**8393;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.57]

491.58 Liability of stockholders.

Neither anything in this chapter contained, nor any provisions in the articles of corporation, shall exempt the stockholders from individual liability to the amount of the unpaid installments on the stock owned by them, or transferred by them for the purpose of defrauding creditors; and execution against the company may, to that extent, be levied upon the private property of any such individual.

[C51, §695; R60, §1172; C73, §1082; C97, §1631; C24, 27, 31, 35, 39, §**8394;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.58]

2012 Acts, ch 1017, §92

491.59 Levy on private property.

In none of the cases contemplated in this chapter can the private property of the stockholders be levied upon for the payment of corporate debts while corporate property can be found with which to satisfy the same; but it will be sufficient proof that no property can be found, if an execution has issued on a judgment against the corporation, and a demand has been thereon made of some one of the last acting officers of the body for property on which to levy, and the officer neglects to point out any such property.

[C97, §1631; C24, 27, 31, 35, 39, §**8395;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.59]

Referred to in §491.61

491.60 Suit by creditor — measure of recovery.

In suits by creditors to recover unpaid installments upon shares of stock against any person who has in any manner obtained such stock of the corporation, the stockholder shall be liable for the difference between the amount paid by the stockholder to the corporation for said stock and the face value thereof.

[C97, §1631; C24, 27, 31, 35, 39, §**8396;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.60]

491.61 Corporate property exhausted.

Before any stockholder can be charged with the payment of a judgment rendered for a corporate debt, an action shall be brought against the stockholder, in any stage of which the stockholder may point out corporate property subject to levy; and, upon the stockholder's satisfying the court of the existence of such property, by affidavit or otherwise, the cause may be continued, or execution against the stockholder stayed, until the property can be levied upon and sold, and the court may subsequently render judgment for any balance which there may be after disposing of the corporate property; but if a demand of property has been made as contemplated in section 491.59, the costs of said action shall, in any event, be paid by the company or the defendant therein, but the stockholder shall not be permitted to controvert the validity of the judgment rendered against the corporation, unless it was rendered through fraud and collusion.

[C51, §696, 697; R60, §1173, 1174; C73, §1083, 1084; C97, §1632; C24, 27, 31, 35, 39, §**8397;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.61]

491.62 Indemnity — contribution.

When the property of a stockholder is taken for a corporate debt, the stockholder may maintain an action against the corporation for indemnity, and against any of the other stockholders for contribution.

[C51, §698; R60, §1175; C73, §1085; C97, §1633; C24, 27, 31, 35, 39, §**8398;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.62]

491.63 Franchise sold on execution.

The franchise of a corporation may be levied upon under execution and sold, but the corporation shall not become thereby dissolved, and no dissolution of the original corporation shall affect the franchise, and the purchaser becomes vested with all the powers of the corporation therefor. Such franchise shall be sold without appraisement.

[C51, §700; R60, §1177; C73, §1086; C97, §1634; C24, 27, 31, 35, 39, §**8399;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.63]

491.64 Production of books.

In proceedings by or against a corporation or a stockholder to charge the stockholder's private property, or the dividends received by the stockholder, the court may, upon motion of either party, upon cause shown for that purpose, compel the officers or agents of the corporation to produce the books and records of the corporation.

[C51, §701; R60, §1178; C73, §1087; C97, §1635; C24, 27, 31, 35, 39, §**8400;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.64]

Similar provision, R.C.P. 1.512 et seq.

491.65 Estoppel.

No person or persons acting as a corporation shall be permitted to set up the want of a legal organization as a defense to an action against them as a corporation, nor shall any person sued on a contract made with such an acting corporation, or sued for an injury to its property, or a wrong done to its interests, be permitted to set up a want of such legal organization in the person's defense.

[C51, §704; R60, §1181; C73, §1089; C97, §1636; C24, 27, 31, 35, 39, §**8401;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.65]

491.66 Dissolution — receivership.

Courts of equity shall have full power, on good cause shown, to dissolve or close up the business of any corporation, and to appoint a receiver therefor, who shall be a resident of the state of Iowa. An action therefor may be instituted by the attorney general in the name of the state, reserving, however, to the stockholders and creditors all rights now possessed by them.

[C97, §1640; C24, 27, 31, 35, 39, §**8402;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.66]

491.67 Reserved.

491.68 False statements or pretenses.

Every director, officer, or agent of any corporation or joint-stock association, who knowingly concurs in making, publishing, or posting, either generally or privately to the stockholders or other persons, any written report, exhibit, or statement of its affairs or pecuniary condition, or book or notice containing any material statement which is false, or any untrue or willfully or fraudulently exaggerated report, prospectus, account, statement of operations, values, business, profits, expenditures, or prospects, or any other paper or document intended to produce or give, or having a tendency to produce or give, the shares of stock in such corporation a greater value or a less apparent or market value than they really possess, is guilty of a fraudulent practice.

[S13, §1641-g; C24, 27, 31, 35, 39, §**8404;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.68]

Fraudulent practices, see §714.8 – 714.14

491.69 through 491.100 Reserved.

SUBCHAPTER II

CORPORATION MERGER OR CONSOLIDATION

491.101 Definitions.

1. *"Merger"* means the uniting of two or more corporations into one corporation in such manner that the corporation resulting from the merger retains its corporate existence and absorbs the other constituent corporation or corporations which thereby lose their or its corporate existence.

2. *"Consolidation"* means the uniting of two or more corporations into a single new corporation, all of the constituent corporations thereby ceasing to exist as separate entities.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.101]

491.101A Poison pill defense authorized.

The terms and conditions of stock rights or options issued by the corporation may include, without limitation, restrictions or conditions that preclude or limit the exercise, transfer, or receipt of such rights or options by a person, or group of persons, owning or offering to acquire a specified number or percentage of the outstanding common shares or other securities of the corporation, or a transferee of the offeror, or that invalidate or void such stock rights or options held by an offeror or a transferee of the offeror.

89 Acts, ch 288, §187

491.101B Consideration of community interests in consideration of acquisition proposals.

1. A director, in determining what is in the best interest of the corporation when considering a tender offer or proposal of acquisition, merger, consolidation, or similar proposal, may consider any or all of the following community interest factors, in addition to consideration of the effects of any action on shareholders:

a. The effects of the action on the corporation's employees, suppliers, creditors, and customers.

b. The effects of the action on the communities in which the corporation operates.

c. The long-term as well as short-term interests of the corporation and its shareholders, including the possibility that these interests may be best served by the continued independence of the corporation.

2. If on the basis of the community interest factors described in subsection 1, the board of directors determines that a proposal or offer to acquire or merge the corporation is not in the best interests of the corporation, it may reject the proposal or offer. If the board of directors determines to reject any such proposal or offer, the board of directors has no obligation to facilitate, to remove any barriers to, or to refrain from impeding, the proposal or offer. Consideration of any or all of the community interest factors is not a violation of the business judgment rule or of any duty of the director to the shareholders, or a group of shareholders, even if the director reasonably determines that a community interest factor or factors outweigh the financial or other benefits to the corporation or a shareholder or group of shareholders.

89 Acts, ch 288, §188

491.102 Procedure for merger.

1. Any two or more corporations whether heretofore or hereafter organized may merge into one of such corporations in the manner provided in this section.

2. The board of directors of each corporation shall, by resolution adopted by a majority vote of the members of each such board, approve a plan of mergers setting forth:

a. The names of the corporations proposing to merge, and the name of the corporation into which they propose to merge, which is hereinafter designated as the surviving corporation.

b. The terms and conditions of the proposed merger.

c. The manner and basis of converting the shares of each merging corporation into shares or other securities or obligations of the surviving corporation.

d. A statement of any changes in the articles of incorporation of the surviving corporation to be effected by such merger.

e. Such other provisions with respect to the proposed merger as are deemed necessary or desirable.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.102]

2012 Acts, ch 1023, §90

Referred to in §508B.2, 515G.2, 521.2

491.103 Procedure for consolidation.

1. Any two or more corporations whether heretofore or hereafter organized may consolidate into a new corporation in the manner provided in this section.

2. The board of directors of each corporation shall, by a resolution adopted by a majority vote of the members of each such board, approve a plan of consolidation setting forth:

a. The names of the corporations proposing to consolidate, and the name of the new corporation into which they propose to consolidate, which is hereinafter designated as the new corporation.

b. The terms and conditions of the proposed consolidation.

c. The manner and basis of converting the shares of each corporation into shares, or other securities, or obligations of the new corporation.

d. With respect to the new corporation, all of the statements required to be set forth in articles of incorporation for corporations organized under this chapter.

e. Such other provisions with respect to the proposed consolidation as are deemed necessary or desirable.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.103]

2012 Acts, ch 1023, §91

Referred to in §508B.2, 515G.2, 521.2

491.104 Meetings of shareholders.

The board of directors of each corporation, upon approving such plan of merger or plan of consolidation, shall, by resolution, direct that the plan be submitted to a vote at a meeting of shareholders, which may be either an annual or a special meeting. Written or printed notice shall be delivered not less than twenty days before such meeting, either personally or by mail, to each shareholder of record entitled to vote at such meeting. Such notice shall state the place, day, hour and purpose of the meeting, and a copy or a summary of the plan of merger or plan of consolidation, as the case may be, shall be included in or enclosed with such notice.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.104]

Referred to in §508B.2, 515G.2, 521.2

491.105 Approval by shareholders.

At each such meeting, a vote of the shareholders entitled to vote thereat shall be taken on the proposed plan of merger or consolidation. The plan of merger or consolidation shall be approved upon receiving the affirmative vote of the holders of at least two-thirds of the outstanding shares entitled to vote at such meeting, of each of such corporations, unless any class of shares of any such corporations is entitled to vote as a class in respect thereof in which event, as to such corporation, the plan of merger or consolidation shall be approved upon receiving the affirmative vote of the holders of at least a majority of the outstanding shares of each such class of shares entitled to vote as a class in respect thereof and two-thirds of the total outstanding shares entitled to vote at such meeting. Any class of shares of any such corporation shall be entitled to vote as a class if the plan of merger or consolidation, as the case may be, contains any provision which, if contained in a proposed amendment to articles of incorporation, would entitle such class of shares to vote as a class.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.105]

Referred to in §508B.2, 515G.2, 521.2

491.106 Articles of merger or consolidation.

Upon such approval, articles of merger or articles of consolidation shall be executed in duplicate by each corporation by its president or a vice president, and verified by that person, attested by its secretary or an assistant secretary, and shall be acknowledged and shall set forth:

1. The plan of merger or the plan of consolidation.
2. As to each corporation, the number of shares outstanding, and the number of shares entitled to vote, and, if the shares of any class are entitled to vote as a class, the designation of each such class and the number of outstanding shares thereof entitled to vote.
3. As to each corporation, the number of shares voted for and against such plan respectively, and, if the shares of any class are entitled to vote as a class, the number of shares of each such class voted for and against such plan, respectively.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.106]

491.107 Filing articles of merger or consolidation.

1. A duly executed and acknowledged copy of the articles of merger or consolidation shall be forwarded to the secretary of state for filing and recording as provided in section 491.5.
2. The procedure set forth in sections 491.6 to 491.9 of this chapter shall be applicable to the filing of articles of consolidation or merger.
3. If as the result of a consolidation a new Iowa corporation is formed then the fees provided for in section 491.11 shall be applicable. If as the result of a merger an existing Iowa corporation becomes the survivor the articles of merger shall be deemed an amendment to its articles of incorporation and section 491.20 shall be applicable.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.107]
94 Acts, ch 1055, §8; 2018 Acts, ch 1041, §127
Code editor directive applied

491.108 Effective date of merger or consolidation.

Upon the payment of all fees and charges and upon the filing of the articles of consolidation or merger with the secretary of state the secretary of state shall issue to the corporation or its representative a certificate of consolidation or a certificate of merger and upon the issuance of said certificate the merger or consolidation shall be effected.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.108]

491.109 Notice. Repealed by 2014 Acts, ch 1074, §4.

491.110 Effect of merger or consolidation.

When such merger or consolidation has been effected:

1. The several corporations parties to the plan of merger or consolidation shall be a single corporation, which, in the case of a merger, shall be that corporation designated in the plan of merger as the surviving corporation, and, in the case of a consolidation, shall be the new corporation provided for in the plan of consolidation.
2. The separate existence of all corporations parties to the plan of merger or consolidation, except the surviving or new corporation, shall cease.
3. Such surviving or new corporation shall have all the rights, privileges, immunities and powers and shall be subject to all the duties and liabilities of a corporation organized under this chapter.
4. Such surviving or new corporation shall thereupon and thereafter possess all the rights, privileges, immunities and franchises, as well of a public as of a private nature, of each of the merging or consolidating corporations; and all property, real, personal and mixed, and all debts due on whatever account, including subscriptions to shares, and all other choses in action, and all and every other interest, of or belonging to or due to each of the corporations so merged or consolidated, shall be taken and deemed to be transferred to and vested in such single corporation without further act or deed; and the title to any real estate, or any interest therein, vested in any of such corporations shall not revert or be in any way impaired by reason of such merger or consolidation.

5. Such surviving or new corporation shall thenceforth be responsible and liable for all the liabilities and obligations of each of the corporations so merged or consolidated; and any claim existing or action or proceeding pending by or against any of such corporations may be prosecuted to judgment as if such merger or consolidation had not taken place, or such surviving or new corporation may be substituted in its place. Neither the rights of creditors nor any liens upon the property of any such corporation shall be impaired by such merger or consolidation.

6. In the case of a merger, the articles of incorporation of the surviving corporation shall be deemed to be amended to the extent, if any, that changes in its articles of incorporation are stated in the articles of merger; and, in the case of a consolidation, the statements set forth in the articles of consolidation and which are required or permitted to be set forth in the articles of incorporation of corporations organized under this chapter shall be deemed to be the articles of incorporation of the new corporation.

7. The aggregate amount of the net assets of the merging or consolidating corporations which was available for the payment of dividends immediately prior to such merger or consolidation, to the extent that the amount thereof is not transferred to stated capital by the issuance of shares or otherwise, shall continue to be available for the payment of dividends by such surviving or new corporation.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.110]

491.111 Merger or consolidation of domestic and foreign corporations.

1. One or more foreign corporations and one or more domestic corporations whether heretofore or hereafter organized may be merged or consolidated in the following manner, provided such merger or consolidation is permitted by the laws of the state under which each such foreign corporation is organized:

a. Each domestic corporation shall comply with the provisions of this chapter with respect to the merger or consolidation, as the case may be, of domestic corporations and each foreign corporation shall comply with the applicable provisions of the laws of the state under which it is organized.

b. If the surviving or new corporation, as the case may be, is to be governed by the laws of any state other than this state, it shall comply with the provisions of the statutes of the state of Iowa with respect to foreign corporations if it is to do business in this state, and in every case it shall file with the secretary of state of this state:

(1) An agreement that it may be served with process in this state in any proceeding for the enforcement of any obligation of any domestic corporation which is a party to such merger or consolidation and in any proceeding for the enforcement of the rights of a dissenting shareholder of any such domestic corporation against the surviving or new corporation.

(2) The appointment of a resident agent as provided for in section 490.501.

(3) An agreement that it will promptly pay to the dissenting shareholders of any such domestic corporation the amount, if any, to which they shall be entitled under the provisions of this subchapter with respect to the rights of dissenting shareholders.

2. Insofar as the state of Iowa is concerned, the effect of such merger or consolidation shall be the same as in the case of the merger or consolidation of domestic corporations, if the surviving or new corporation is to be governed by the laws of this state. If the surviving or new corporation is to be governed by the laws of any state other than this state, the effect of such merger or consolidation shall be the same as in the case of the merger or consolidation of domestic corporations except insofar as the laws of such other state provide otherwise.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.111]

93 Acts, ch 126, §11; 2012 Acts, ch 1023, §157; 2017 Acts, ch 54, §76

491.112 Rights of dissenting shareholders.

1. If a shareholder of a corporation which is a party to a merger or consolidation shall file with such corporation, prior to or at the meeting of shareholders at which the plan of merger or consolidation is submitted to a vote, a written objection to such plan of merger or consolidation, and shall not vote in favor thereof, and such shareholder, within twenty days after the merger or consolidation is effected, shall make written demand on the surviving or

new corporation for payment of the fair value of the shareholder's shares as of the day prior to the date on which the vote was taken approving the merger or consolidation, the surviving or new corporation shall pay to such shareholder, upon surrender of the certificate or certificates representing said shares, such fair value thereof. Such demand shall state the number and class of the shares owned by such dissenting shareholder. Any shareholder failing to make demand within the twenty-day period shall be conclusively presumed to have consented to the merger or consolidation and shall be bound by the terms thereof.

2. If within thirty days after the date on which such merger or consolidation was effected the value of such shares is agreed upon between the dissenting shareholder and the surviving or new corporation payment therefor shall be made within ninety days after the date on which such merger or consolidation was effected, upon the surrender of the certificate or certificates representing said shares. Upon payment of the agreed value the dissenting shareholder shall cease to have any interest in such shares or in the corporation.

3. If within such period of thirty days the shareholder and the surviving or new corporation do not so agree, then the dissenting shareholder may, within sixty days after the expiration of the thirty-day period, file a petition in any court of competent jurisdiction within the state and judicial subdivision thereof in which the registered office or the principal place of business of the surviving or new corporation is situated, asking for a finding and determination of the fair value of such shares, and shall be entitled to judgment against the surviving or new corporation for the amount of such fair value as of the day prior to the date on which such vote was taken approving such merger or consolidation, together with interest thereon at the rate of five percent per annum to the date of such judgment. The action shall be prosecuted as an equitable action and the practice and procedure shall conform to the practice and procedure in equity cases. The judgment shall be payable only upon and simultaneously with the surrender to the surviving or new corporation of the certificate or certificates representing said shares. Upon payment of the judgment, the dissenting shareholder shall cease to have any interest in such shares, or in the surviving or new corporation. Such shares may be held and disposed of by the surviving or new corporation as it may see fit. Unless the dissenting shareholder shall file such petition within the time herein limited, such shareholder and all persons claiming under the shareholder shall be conclusively presumed to have approved and ratified the merger or consolidation and shall be bound by the terms thereof.

4. The right of a dissenting shareholder to be paid the fair value of the shareholder's shares as herein provided shall cease if and when the corporation shall abandon the merger or consolidation.

5. Shares acquired by the corporation pursuant to the payment of the agreed value thereof or to the payment of judgment entered therefor as in this section provided may be held and disposed of by the corporation as it shall see fit.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.112]

2016 Acts, ch 1011, §121

491.113 Issuance of stock.

All stock issued in connection with such merger or consolidation shall be issued pursuant to the provisions of chapter 492 and nothing in this amendment shall be construed as eliminating the requirements of said chapter.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.113]

491.114 Amana stock.

Notwithstanding anything contained in this chapter and chapters 492 and 502, a corporation organized under the laws of the state of Iowa having assets of the value of one million dollars or more, the articles of which provide that an individual may not vote more than one share of the common voting shares of stock of the corporation, and which give to children of the owners of shares of the common voting stock the right to purchase one common voting share of stock in the corporation upon attaining majority or within a fixed period thereafter, and which authorize the issuance, sale and delivery of not to exceed one share of the common voting stock to any one individual, may issue, sell and deliver its

shares of common voting stock, whether held by it as treasury stock or whether issued as an original issue, for the following considerations and upon the following terms and conditions, and with the following limitations:

1. Such common voting stock may be issued, sold and delivered by the corporation either for cash or upon credit or time payments or installment payments or for a consideration evidenced in part or in whole by the written agreement of the purchaser thereof to pay for the same, payment of said purchase price to be secured by a lien on said stock.

2. No such stock shall be issued, sold and delivered for a price less than the par value thereof at the time of such issuance, sale and delivery.

3. Not more than one share of said stock shall be so issued, sold and delivered to any one individual, but when issued, sold and delivered, said stock may be voted by the owner thereof, if the articles of incorporation or bylaws of such corporation, whether now in effect or hereafter adopted or amended, so provide, although a part or all of the price to be paid therefor may be owing to the corporation under said written agreement of the purchaser to pay for the same.

[C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.114]

CHAPTER 492

CAPITAL STOCK

Referred to in §490.1701, 491.113, 491.114, 515.11A, 524.2001, 669.14

492.1	Endorsement of amount paid.	492.8	Elements considered in fixing amount.
492.2	Effect of violation.	492.9	Certificate of issuance of stock.
492.3	Penalties.	492.10	Cancellation of stock — reimbursement.
492.4	Certain corporations excepted.	492.11	Dissolution — distribution of assets.
492.5	Par value required.	492.12	Violation.
492.6	Payment in property other than cash.		
492.7	Executive council to fix amount.		

492.1 Endorsement of amount paid.

No certificate or shares of stock shall be issued, delivered, or transferred by any corporation, officer or agent thereof, or by the owner of such certificate or shares without having endorsed on the face thereof what amount or portion of the par value has been paid to the corporation issuing the same, and whether such payment has been in money or property.

[C97, §1627; S13, §1627; C24, 27, 31, 35, 39, §**8408;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §492.1]

Referred to in §492.2, 492.3, 492.4

492.2 Effect of violation.

Any certificate of stock issued, delivered, or transferred in violation of section 492.1 when the corporation has not received payment therefor at par in money or property at a valuation approved by the executive council, shall be void, and the issuance, delivery, or transfer of each certificate shall be considered a separate transaction.

[C24, 27, 31, 35, 39, §**8409;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §492.2]

Referred to in §492.3, 492.4

492.3 Penalties.

Any person violating the provisions of sections 492.1 and 492.2, or knowingly making a false statement on such certificate, shall be guilty of a fraudulent practice.

[C97, §1627; S13, §1627; C24, 27, 31, 35, 39, §**8410;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §492.3]

Referred to in §492.4

492.4 Certain corporations excepted.

Sections 492.1 to 492.3 shall not apply to railway or quasi-public corporations organized before October 1, 1897.

[S13, §1627; C24, 27, 31, 35, 39, §**8411;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §492.4]

492.5 Par value required.

No corporation organized under the laws of this state shall issue any certificate of a share of capital stock, or any substitute therefor, until the corporation has received the par value thereof.

[S13, §1641-b; C24, 27, 31, 35, 39, §**8412;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §492.5]

2012 Acts, ch 1017, §93

Referred to in §492.10, 492.11, 492.12, 495.1

492.6 Payment in property other than cash.

If it is proposed to pay for said capital stock in property or in any other thing than money, the corporation proposing the same must, before issuing capital stock in any form, apply to the executive council of the state for leave so to do. Such application shall state the amount of capital stock proposed to be issued for a consideration other than money, and set forth specifically the property or other thing to be received in payment for such stock, providing that the foregoing provision shall not apply to trust companies or insurance companies organized under the laws of this state.

Any insurance company proposing to issue capital stock for property or any thing other than money, before issuing the capital stock in any form, shall apply to the commissioner of insurance for leave so to do. Such application to the commissioner of insurance shall state the amount of capital stock proposed to be issued for a consideration other than money and set forth specifically the property or other thing to be received in payment for such stock.

[S13, §1641-b; C24, 27, 31, 35, 39, §**8413;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §492.6]

Referred to in §492.10, 492.11, 492.12, 493.4, 495.1

492.7 Executive council to fix amount.

The executive council or the commissioner of insurance as the case may be, shall make investigation, under such rules as it may prescribe, and ascertain the real value of the property or other thing which the corporation is to receive for the stock. It shall enter its finding, fixing the value at which the corporation may receive the same in payment for capital stock; and no corporation shall issue capital stock for the said property or thing in a greater amount than the value so fixed.

[S13, §1641-b; C24, 27, 31, 35, 39, §**8414;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §492.7]

Referred to in §492.10, 492.11, 492.12, 493.4, 495.1

492.8 Elements considered in fixing amount.

For the purpose of encouraging the construction of new steam or electric railways, and manufacturing industries within this state, the labor performed in effecting the organization and promotion of such corporation, and the reasonable discount allowed or reasonable commission paid in negotiating and effecting the sale of bonds for the construction and equipment of such railroad or manufacturing plant, shall be taken into consideration by said council as elements of value in fixing the amount of capital stock that may be issued.

[S13, §1641-b; C24, 27, 31, 35, 39, §**8415;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §492.8]

Referred to in §492.10, 492.11, 492.12, 493.4, 495.1

492.9 Certificate of issuance of stock.

It shall be the duty of every corporation to file a certificate under oath with the secretary of state, within thirty days after the issuance of any capital stock, stating the date of issue, the amount issued, the sum received therefor, if payment be made in money, or the property or

thing taken, if such be the method of payment. If the corporation fails to file said certificate of issuance of stock within the thirty-day period herein provided, it may thereafter file the same upon first paying to the secretary of state a penalty of ten dollars when the said certificate is offered for filing. Provided further that the penalty herein provided for is first paid and provided the said report contains the specific information required by this section as to the issuance of any capital stock not previously reported, then the first annual report filed by such corporation following such failure to comply with the provisions of this section, shall be received by the secretary of state as a compliance with this section.

[S13, §1641-c; C24, 27, 31, 35, 39, §**8416;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §492.9]

93 Acts, ch 126, §12; 2012 Acts, ch 1017, §94

Referred to in §495.1, 591.14

492.10 Cancellation of stock — reimbursement.

The capital stock of any corporation issued in violation of the terms and provisions of sections 492.5 to 492.8 shall be void, and in a suit brought by the attorney general on behalf of the state in any court having jurisdiction, a decree of cancellation shall be entered; and if the corporation has received any money or thing of value for the said stock, such money or thing of value shall be returned to the individual, firm, company, or corporation from whom it was received, and if represented by labor or other service of intangible nature, the value thereof shall constitute a claim against the corporation issuing stock in exchange therefor.

[S13, §1641-d; C24, 27, 31, 35, 39, §**8417;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §492.10]

492.11 Dissolution — distribution of assets.

Any corporation violating the provisions of sections 492.5 to 492.8 shall, upon the application of the attorney general, in behalf of the state, made to any court of competent jurisdiction, be dissolved, its affairs wound up, and its assets distributed among the stockholders other than those who have received the stock so unlawfully issued.

[S13, §1641-e; C24, 27, 31, 35, 39, §**8418;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §492.11]

492.12 Violation.

Any officer, agent or representative of a corporation who violates any of the provisions of sections 492.5 to 492.8 shall be guilty of a simple misdemeanor.

[S13, §1641-f; C24, 27, 31, 35, 39, §**8419;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §492.12]

CHAPTER 493

STOCK WITHOUT PAR VALUE

Referred to in §490.1701, 524.2001, 669.14

493.1	Authorization.	493.7	Certificates of stock.
493.2	Par value — method of stating.	493.8	Number of shares.
493.3	Amount of stock.	493.9	Change in stock.
493.4	Sale value.	493.10	Convertibility.
493.5	Liability of holder.	493.11	Incorporation fee — computation.
493.6	Status of stock.	493.12	Applicability of statutes.

493.1 Authorization.

Any corporation, heretofore or hereafter organized for pecuniary profit under the laws of this state, except state banks, trust companies, and insurance companies, may create one or more classes of stock without any nominal or par value, with such rights, preferences, privileges, voting powers, limitations, restrictions and qualifications thereon not inconsistent

with law as shall be expressed in its articles of incorporation, or any amendment thereto. Stock without par value which is preferred as to dividends, or as to its distributive share of the assets of the corporation upon dissolution, may be made subject to redemption at such times and prices as may be determined in such articles of incorporation, or any amendment thereto. In the case of stock without par value which is preferred as to its distributive share of the assets of the corporation upon dissolution, the amount of such preference shall be stated in the articles of incorporation, or any amendment thereto.

[C31, 35, §8419-c1; C39, §**8419.01;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §493.1]
2012 Acts, ch 1017, §95

493.2 Par value — method of stating.

In any case, in which the par value of the shares of stock of a corporation shall be required to be stated in the articles of incorporation, or any amendment thereto, or in any other place, it shall be stated in respect to shares without par value that such shares are without par value, and when the amount of such stock authorized, issued or outstanding shall be required to be stated, the number of shares thereof authorized, issued or outstanding, as the case may be, shall be stated, and it shall also be stated that such shares are without par value.

[C31, 35, §8419-c2; C39, §**8419.02;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §493.2]

493.3 Amount of stock.

For the purpose of any rule of law or of any statutory provision relating to the amount of capital stock issued and represented by shares of stock without par value except as otherwise provided in this chapter such amounts shall be taken to be the amount of money or the actual value of the consideration, as fixed by the directors or otherwise, in accordance with law, as the case may be, for which such shares of stock shall have been issued. In any such case in which stock having a par value shall have been issued with stock without par value for a specified combined consideration, in determining the amount of the capital stock issued and represented by shares of stock without par value the then book value of such stock having a par value shall first be deducted from the amount of the money or actual value of the consideration determined as aforesaid, and the excess thereof, if any, shall be taken to be the amount of capital stock represented by the shares of stock without par value so issued.

[C31, 35, §8419-c3; C39, §**8419.03;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §493.3]

493.4 Sale value.

Subject to any limitations and restrictions set forth in the articles of incorporation, or amendment thereto, any such corporation may issue its authorized capital stock without par value for such consideration as may be prescribed in the articles of incorporation, or amendment thereto, or, if not prescribed, then for such consideration as may be fixed by resolution passed by the stockholders of such corporation at any annual meeting thereof, or at any special meeting thereof duly called for that purpose, or by the board of directors acting under authority of such stockholders given in like manner. In the absence of fraud in the transaction, the judgment of the board of directors in fixing and determining such sale value shall be conclusive as to the creditors and stockholders. Nothing in this chapter shall be so construed as to repeal the law as it now appears in sections 492.6, 492.7, and 492.8.

[C31, 35, §8419-c4; C39, §**8419.04;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §493.4]
Referred to in §493.5

493.5 Liability of holder.

Any and all shares without par value issued for the consideration as prescribed or fixed in section 493.4 shall be deemed fully paid and nonassessable and the holder of such shares shall not be liable to the corporation or to its creditors in respect thereto.

[C31, 35, §8419-c5; C39, §**8419.05;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §493.5]

493.6 Status of stock.

Except as to any preferences, rights, limitations, privileges and restrictions, lawfully granted or imposed with respect to any stock or class thereof, shares of stock without

nominal or par value shall be deemed to be an aliquot part of the aggregate capital of the corporation issuing the same and equal to every other share of stock of the same class.

[C31, 35, §8419-c6; C39, §**8419.06;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §493.6]

493.7 Certificates of stock.

Each stock certificate issued for shares without nominal or par value shall have plainly written or printed upon its face the number of shares which it represents, and the number of such shares the corporation is authorized to issue, and no such certificate shall state any nominal or par value of such shares or express any rate of dividend to which it shall be entitled in terms of percentage of any par or other value.

[C31, 35, §8419-c7; C39, §**8419.07;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §493.7]

493.8 Number of shares.

The number of authorized shares of stock without par value may be increased or reduced in the manner and subject to the conditions provided by law for the increase or reduction of the capital stock of a similar corporation having shares with par value. All other statutory provisions relating to stock having a par value shall also apply to stock without par value, so far as the same may be legally, necessarily or practically applicable to, and not inconsistent with, the provisions of this chapter.

[C31, 35, §8419-c8; C39, §**8419.08;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §493.8]

493.9 Change in stock.

Any such corporation may, by appropriate amendments to its articles of incorporation, adopted by a two-thirds affirmative vote of each class of stock then issued and outstanding and affected by such amendment, change its common or preferred stock having a par value to an equal, greater or less number of shares of stock having no par value, and, in connection therewith, may fix the amount of capital represented by such shares of stock without par value.

[C31, 35, §8419-c9; C39, §**8419.09;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §493.9]

2013 Acts, ch 30, §117; 2014 Acts, ch 1026, §113

493.10 Convertibility.

The articles of incorporation, or any amendment thereto, of any such corporation may provide that shares of stock of any class shall be convertible into shares of stock of any other class upon such terms and conditions as may be therein stated.

[C31, 35, §8419-c10; C39, §**8419.10;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §493.10]

493.11 Incorporation fee — computation.

For the purpose of computing the statutory fee for incorporating or for any other statutory provision based on the par value of shares of stock, but for no other purpose, each share of stock without par value shall be considered equivalent to a share having a nominal or par value of one hundred dollars.

[C31, 35, §8419-c11; C39, §**8419.11;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §493.11]

493.12 Applicability of statutes.

Except as otherwise provided by this chapter, such corporations issuing shares without par value, under the provisions hereof, shall be and remain subject to the laws of this state, now or hereafter in force, relating to the formation, regulation, consolidation, or merger, rights, powers and privileges of corporations organized for pecuniary profit, and all other laws applicable thereto.

All Acts or parts of Acts providing for the incorporation, organization, administration and management of the affairs of corporations organized for pecuniary profit and having shares of stock with a par value are hereby made applicable to corporations having shares of stock without par value, except where the same are inconsistent with the provisions of this chapter.

[C31, 35, §8419-c12; C39, §**8419.12;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §493.12]

CHAPTERS 493A and 494

RESERVED

CHAPTER 495

FOREIGN PUBLIC UTILITY CORPORATIONS

Referred to in §490.1701, 669.14

495.1	Capital stock and permit.	495.4	Sale of capital stock.
495.2	Holding companies.	495.5	Violations — stock void.
495.3	Biennial report — fee.	495.6	Dissolution — receiver.

495.1 Capital stock and permit.

Sections 492.5 to 492.9 are applicable to any foreign corporation which directly or indirectly owns, uses, operates, controls, or is concerned in the operation of any public gasworks, electric light plant, heating plant, waterworks, interurban or street railway located within the state, or the carrying on of any gas, electric light, electric power, heating business, waterworks, interurban or street railway business within the state, or that owns or controls, directly or indirectly, any of the capital stock of any corporation which owns, uses, operates or is concerned in the operation of any public gasworks, electric light plant, electric power plant, heating plant, waterworks, interurban or street railway located within the state, or any foreign corporation that exercises any control in any way or in any manner over any of such works, plants, interurban or street railways or the business carried on by such works, plants, interurban or street railways by or through the ownership of the capital stock of any corporation or corporations or in any other manner whatsoever, and the ownership, operation, or control of any such works, plants, interurban or street railways or the business carried on by any of such works or plants or the ownership or control of the capital stock in any corporation owning or operating any of such works, plants, interurban or street railways by any foreign corporation in violation of this chapter is unlawful.

[S13, §1641-1; C24, 27, 31, 35, 39, §**8433;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §495.1]

93 Acts, ch 126, §13

495.2 Holding companies.

The provisions of this chapter are hereby made applicable to all corporations, including so-called "holding companies" which by or through the ownership of the capital stock in any other corporation or corporations or a series of corporations owning or controlling the capital stock of each other can or may exercise control over the capital stock of any corporation which owns, uses, operates, or is concerned in the operation of any public gasworks, electric light plant, electric power plant, heating plant, waterworks, interurban or street railway located in the state, or the business carried on by such works or plants.

[S13, §1641-m; C24, 27, 31, 35, 39, §**8434;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §495.2]

495.3 Biennial report — fee.

All corporations subject to the provisions of this chapter are hereby required to pay the fee and to make the biennial report in the form and manner and at the time as specified in chapter 490.

[S13, §1641-n; C24, 27, 31, 35, 39, §**8435;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §495.3]

2000 Acts, ch 1022, §3

495.4 Sale of capital stock.

The provisions of this chapter are hereby made applicable to the sale of its own capital stock by any corporation subject to the provisions of this chapter, whether said capital stock has been heretofore issued by said corporation or not, including the sale of so-called "treasury stock" or stock of the corporation in the hands of a trustee or where the corporation participates in any way or manner in the benefits of said sales, and also to the sale of any of the obligations of any corporation subject to the provisions of this chapter, the payment of which is secured by the deposit or pledge of any of the capital stock of said corporation.

[S13, §1641-o; C24, 27, 31, 35, 39, §**8436;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §495.4]

495.5 Violations — stock void.

Shares of capital stock of any corporation owned or controlled in violation of this chapter shall be void and the holder of such shares shall not be entitled to exercise the powers of a shareholder of the corporation or permitted to participate in or be entitled to any of the benefits accruing to shareholders of the corporation. This chapter shall be construed so as to prevent evasion and to accomplish the intents and purposes of this chapter.

[S13, §1641-p; C24, 27, 31, 35, 39, §**8437;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §495.5]

93 Acts, ch 126, §14

495.6 Dissolution — receiver.

Courts of equity shall have full power to dissolve, close up, or dispose of any business or property owned, operated, or controlled in violation of the provisions of this chapter; to dissolve any corporation owning or controlling the capital stock of any other corporation in violation of the provisions of this chapter and to close up or dispose of the business or property of said corporation; and if the court finds that, in order to carry out the purposes of this chapter, it is necessary so to do, it may dissolve the corporation issuing the stock which is owned in violation of the provisions of this chapter, close up the business of said corporation and dispose of its property, and the court may also appoint a receiver who shall be a resident of Iowa for any business or for any corporation which has violated the provisions thereof or of the corporation issuing the stock which is held in violation thereof. Any action to enforce the provisions of this chapter may be instituted by the attorney general in the name of the state of Iowa or by a citizen in the name of the state of Iowa at the citizen's own proper cost and expense, reserving, however, to the stockholders owning capital stock not held in violation of this chapter all rights possessed by them.

[S13, §1641-q; C24, 27, 31, 35, 39, §**8438;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §495.6]

CHAPTER 496

RESERVED

CHAPTER 496A

BUSINESS CORPORATIONS

Repealed effective December 31, 1989, by 89 Acts, ch 288, §195, 196; see chapter 490; transition and savings provisions, §490.1701 – 490.1703

CHAPTER 496B

ECONOMIC DEVELOPMENT CORPORATIONS

Referred to in §502.201, 524.901, 669.14

496B.1 Title of Act.
496B.2 Definitions.
496B.3 Authorized corporations.
496B.4 Offices.
496B.5 Purposes.
496B.6 Powers.
496B.7 Stock — limitations.
496B.8 Stockholders' privileges.
496B.9 Loan procedures.
496B.10 Duration of membership.
496B.11 Powers of shareholders.
496B.12 Articles amended.
496B.13 Board of directors.
496B.14 Earned surplus set aside.
496B.15 Deposit of funds.
496B.16 Reports to department of economic development. Repealed by 2006 Acts, ch 1100, §7.
496B.17 Certificate to do business.
496B.18 Repealed by 79 Acts, ch 120, §18.
496B.19 Dissolution.
496B.20 State credit not available.

496B.1 Title of Act.

This chapter shall be known and may be cited as the "*Iowa Economic Development Act*".

[C66, 71, 73, 75, 77, 79, 81, §496B.1]

496B.2 Definitions.

As used in this chapter, unless the context otherwise requires, the term:

1. "*Authority*" means the economic development authority created in section 15.105, or any entity which succeeds to the functions of the authority.

2. "*Board of directors*" means members of the board of directors of a development corporation constituted under section 496B.13 in office from time to time.

3. "*Development corporation*" means any corporation organized pursuant to this chapter and for the purpose of developing businesses, industries, and enterprises in the state of Iowa by the loaning of money thereto and investing money therein, and otherwise organizing for the purposes in section 496B.5.

4. "*Financial institution*" means any bank, trust company, savings association, insurance company or related corporation, partnership, foundation or other institution licensed to do business in the state of Iowa and engaged primarily in lending or investing funds.

5. "*Loan limit*" means, for any member, the maximum amount permitted to be outstanding at any one time on loans made by any such member to a development corporation, as determined herein.

6. "*Member*" means any financial institution which shall undertake to lend money to a development corporation upon its call and in accordance with the provision of section 496B.9.

[C66, 71, 73, 75, 77, 79, 81, §496B.2]

2011 Acts, ch 118, §82, 83, 89; 2012 Acts, ch 1017, §96

Referred to in §16.1

496B.3 Authorized corporations.

There is hereby authorized to be incorporated under the Iowa business corporation Act, chapter 490, development corporations which meet and comply with the requirements of this chapter. Such corporations shall be subject to and have the powers and privileges conferred by the provisions of this chapter and those provisions of the Iowa business corporation Act, chapter 490, which are not inconsistent with and to the extent not restricted or limited by the provisions of this chapter. No corporation shall be deemed incorporated pursuant to and under the provisions of this chapter unless the same is approved by the authority and unless its articles of incorporation provide that it is incorporated pursuant to this chapter. To assure a broad base from which development corporations may obtain loans from members, the authority at its discretion may limit the number of development corporations organized and existing pursuant to this chapter to one or more such corporations.

[C66, 71, 73, 75, 77, 79, 81, §496B.3]

2001 Acts, ch 24, §63; 2011 Acts, ch 118, §85, 89

496B.4 Offices.

A development corporation may have offices in such places within the state of Iowa as may be fixed by the board of directors.

[C66, 71, 73, 75, 77, 79, 81, §496B.4]

496B.5 Purposes.

The purposes of a development corporation shall be limited to those provided in this section and shall be to promote, stimulate, develop and advance the business prosperity and economic welfare of the state of Iowa and its citizens; to encourage and assist through loans, investments, or other business transactions, the location of new business and industry in the state; to rehabilitate and assist existing business and industry in this state; to stimulate and assist in the expansion of any kind of business activity which would tend to promote business development and maintain the economic stability of this state, provide maximum opportunities for employment, encourage thrift, and improve the standard of living of the citizens of this state; to cooperate and act in conjunction with other organizations, public or private, in the promotion and advancement of industrial, commercial, agricultural, and recreational development in this state; and to provide financing for the promotion, development, and conduct of all kinds of business activity in this state.

[C66, 71, 73, 75, 77, 79, 81, §496B.5]

Referred to in §496B.2

496B.6 Powers.

Any development corporation shall, subject to the restrictions and limits herein contained, have the following powers:

1. To make contracts and incur liabilities for any of the purposes of the development corporation; provided that no development corporation shall incur any secondary liability by way of guaranty or endorsement of the obligations of any person, firm, corporation, joint stock company, association, or trust, or in any other manner.

2. To borrow money either from its members or pursuant to lending arrangements entered into under the authority granted in subsection 7 of this section, or both from its members and pursuant to said lending arrangements, and to issue therefor its bonds, debentures, notes, or other evidences of indebtedness, whether secured or unsecured, and when necessary to secure the same by mortgage, pledge, deed of trust, or other lien on its property, franchises, rights, and privileges of every kind and nature, or any part thereof or interest therein, without securing shareholder or member approval; provided, that no loan to a development corporation shall be secured in any manner unless all outstanding loans to such corporation, and for which loan or loans no subordination agreement has been entered into between the respective loan maker and the development corporation, shall be secured equally and ratably in proportion to the unpaid balance of such loans and in the same manner.

3. To make loans to any person, firm, corporation, joint stock company, association, or trust and to establish and regulate the terms and conditions with respect to any such loans, and the charges for interest and service connected therewith.

4. To acquire the goodwill, business, rights, real and personal property, and other assets, or any part thereof, or interest therein, of any persons, firms, corporations, associations, or trusts, and to assume, undertake, or pay the obligations, debts, and liabilities of any such person, firm, corporation, association, or trust; to acquire, construct or reconstruct, alter, repair, maintain, operate, sell, convey, transfer, lease, or otherwise dispose of industrial plants and business establishments.

5. To cooperate with and avail itself of the facilities of the authority and to cooperate with and assist and otherwise encourage organizations in the various communities of the state of Iowa in the promotion, assistance, and development of business prosperity and economic welfare of such communities or of this state or any part thereof.

6. To do all acts and things necessary or convenient to carry out the powers expressly granted in this chapter and such other powers not in conflict herewith granted under the Iowa business corporation Act, chapter 490.

7. To enter into lending arrangements with state and federal agencies or instrumentalities whereby the development corporation may participate in lending operations or secure guarantees or qualify under applicable laws to further state or federal lending programs by becoming a participant therein.

[C66, 71, 73, 75, 77, 79, 81, §496B.6]

2001 Acts, ch 24, §64; 2011 Acts, ch 118, §85, 89

496B.7 Stock — limitations.

Capital stock shall be issued only on receipt by each development corporation of cash in such amount not less than the par value thereof as may be determined by the board of directors. No shareholder of any development corporation shall be entitled as of right to purchase or subscribe for any unissued or treasury shares of the corporation, and no such shareholder shall be entitled as of right to purchase or subscribe for any bonds, notes, certificates of indebtedness, debentures, or other obligations convertible into shares of the development corporation.

[C66, 71, 73, 75, 77, 79, 81, §496B.7]

496B.8 Stockholders' privileges.

Notwithstanding any rule at common law or any provision of any general or special law or any provision in their respective articles of incorporation, agreements of association, or trust indentures:

1. Any person, as defined in the Iowa business corporation Act, chapter 490, is hereby authorized to acquire, purchase, hold, sell, assign, transfer, mortgage, pledge, or otherwise dispose of any bond, security or other evidences of indebtedness created by, or the shares of the capital stock of, development corporations, and while owners of said shares to exercise all the rights, powers and privileges of ownership, including the right to vote thereon, all without the approval of any regulatory agency of this state.

2. Any financial institution is hereby authorized to become a member of a development corporation and to make loans to such corporation.

3. Any financial institution which does not become a member of a development corporation shall not be permitted to acquire any shares of the capital stock of such development corporation.

4. Each financial institution which becomes a member of a development corporation is hereby authorized to acquire, purchase, hold, sell, assign, mortgage, pledge, or otherwise dispose of any bonds, securities or other evidences of indebtedness created by, or the shares of the capital stock of, the development corporation of which it is a member, and while owners of such shares to exercise all rights, powers and privileges of ownership, including the right to vote thereon, all without the approval of any regulatory agency of this state; provided that the amount of the capital stock of any development corporation which may be acquired by any member pursuant to the authority granted herein shall not exceed ten percent of the loan limit of such member. The amount of capital stock of a development corporation which any member is authorized to acquire pursuant to the authority granted herein is in addition to the amount of capital stock in other corporations which such member may otherwise be authorized to acquire.

[C66, 71, 73, 75, 77, 79, 81, §496B.8]

89 Acts, ch 180, §2; 2001 Acts, ch 24, §64

496B.9 Loan procedures.

A financial institution may request membership in a development corporation by making application to the board of directors thereof on such form and in such manner as such board of directors may require, and membership shall become effective upon acceptance of such application by said board. Each member of any development corporation shall make loans to such development corporation as and when called upon by that corporation to do so on such terms and conditions as shall be approved from time to time by the board of directors subject to the following:

1. All loan limits shall be established at the thousand dollar amount nearest the amount computed in accordance with the provisions of this section.

2. No loan to a development corporation shall be made if immediately thereafter the total amount of the obligations of the development corporation calling for the loan would exceed ten times the amount then paid in on the outstanding capital stock of such corporation.

3. The total amount outstanding at any one time on loans to a development corporation made by a member thereof when added to the amount of the investment in the capital stock of such corporation and held by such member, shall not exceed the lesser of:

a. Twenty percent of the total amount then outstanding on loans to such development corporation by all members thereof, including in said total amount outstanding amounts validly called for loan but not yet loaned.

b. (1) The limit, to be determined as of the time such member becomes a member, on the basis of the audited balance sheet of such member at the close of its fiscal year immediately preceding its application for membership, as follows:

(a) Banks and trust companies — two percent of the paid-in capital, surplus, and undivided profits.

(b) Stock life insurance companies — one percent of capital and unassigned surplus.

(c) Mutual life insurance companies — one percent of the unassigned surplus.

(d) All other insurance companies — one-tenth of one percent of the assets.

(e) Other financial institutions — such limits as may be approved by the board of directors of the development corporation.

(2) Provided that the lending limit of any one member shall not exceed two hundred fifty thousand dollars.

4. Each call for loan shall be prorated among the members in substantially the same proportion that the adjusted loan limit of each member bears to the aggregate of the adjusted loan limits of all members. The adjusted loan limit of a member shall be the amount of such member's loan limit, reduced by the balance of outstanding obligations of the corporation to such member and the investment in capital stock of the corporation held by such member at the time of such call.

5. All loans to a development corporation by a member shall be evidenced by registered bonds, debentures, notes, or other evidences of indebtedness of the development corporation, which shall be freely transferable by the registered holder thereof on the books of the corporation.

[C66, 71, 73, 75, 77, 79, 81, §496B.9]

2012 Acts, ch 1017, §97; 2012 Acts, ch 1023, §157

Referred to in §496B.2

496B.10 Duration of membership.

Membership in any development corporation shall be for the duration of the respective development corporation; provided, however, that upon written notice given to the development corporation five years in advance a member thereof may withdraw from membership in such corporation at the expiration date of such notice. Provided that a financial institution may at any time withdraw from membership without such notice in the event of its merger with another financial institution, after commencement of proceedings for voluntary or involuntary dissolution, receivership, or reorganization pursuant to or by operation of federal or state law or in the event of conversion from a state financial institution to a federal financial institution or the reverse. If there shall be a legislative amendment of this chapter affecting the rights and obligations of the members and shareholders or otherwise affecting the articles of incorporation of such corporation which shall not have been approved by the members and shareholders within the time set forth and in the manner provided in this chapter, any member not approving such amendment may immediately withdraw from membership upon giving written notice to the corporation not later than ninety days from the effective date of the amendment. A member shall not be obligated to make any loans to a development corporation pursuant to calls made subsequent to the withdrawal of said member therefrom.

[C66, 71, 73, 75, 77, 79, 81, §496B.10]

496B.11 Powers of shareholders.

The shareholders and the members of the development corporation shall have the following powers of such corporation:

1. Those powers granted in the Iowa business corporation Act, chapter 490, which are not inconsistent with the provisions of this chapter.
2. To determine the number and elect directors as provided herein.
3. To amend the articles of incorporation as provided herein.
4. To dissolve the corporation as provided herein.
5. To exercise such other of the powers of the corporation as may be conferred on the shareholders and the members by the bylaws. As to all matters requiring action by the shareholders and the members of the corporation, such shareholders and such members shall vote separately thereon by classes and, except as may be otherwise herein provided, approval of such matters shall require the affirmative vote of a majority of the votes to which the shareholders present or represented at the meeting are entitled, and the affirmative vote of a majority of the votes to which the members present or represented at the meeting are entitled. Each shareholder shall have one vote, in person or by proxy, for each share of capital stock held by the shareholder, and each member shall have one vote, in person or by proxy, except that any member having a loan limit of more than one thousand dollars shall have one additional vote, in person or by proxy, for each additional one thousand dollars which such member is authorized to have outstanding on loans to the corporation at any one time as determined herein.

[C66, 71, 73, 75, 77, 79, 81, §496B.11]
2001 Acts, ch 24, §62

496B.12 Articles amended.

1. The articles of incorporation of any development corporation may be amended by the votes of the shareholders and the members thereof voting separately by classes.
2. Any amendment shall require approval by the affirmative vote of two-thirds of the votes to which the shareholders shall be entitled and two-thirds of the votes to which the members shall be entitled. No amendment, however, shall be made which:

a. Is inconsistent with this chapter.
b. Authorizes any additional class or classes of shares of capital stock.
c. Eliminates or curtails the authority of the authority with respect to the corporation.

3. Without the consent of each of the members affected, no amendment shall be made which does any of the following:

a. Increases the obligation of a member to make loans to the corporation.
b. Makes any change in the principal amount, interest rate, maturity date, or in the security or credit position of any outstanding loan of a member to the corporation.
c. Affects a member's right to withdraw from membership, as provided herein.
d. Affects a member's voting rights in the corporation.

4. Within thirty days after any meeting at which amendment of any such articles has been adopted, articles of amendment signed and sworn to by the president, secretary, and majority of the directors, setting forth such amendment and the due adoption thereof, shall be submitted to the director of the authority who shall examine them, and if the director finds that they conform to the requirements of this chapter, shall so certify and endorse the director's approval thereof. Thereupon, the articles of amendment shall be filed in the office of the secretary of state in the manner set forth and as provided in the Iowa business corporation Act, chapter 490, and no such amendment shall take effect until such articles of amendment shall have been approved and filed as aforesaid.
5. Within sixty days after the effective date of any legislative amendment affecting the rights and obligations of the members and shareholders or otherwise affecting the articles of incorporation, the approval of such legislative amendments shall be voted on by the shareholders and the members of the development corporation at a meeting duly called for that purpose. If such legislative amendment is not approved by the affirmative vote of two-thirds of the votes to which such shareholders shall be entitled and two-thirds of the votes to which such members shall be entitled, any such member voting against the

approval of such legislative amendment shall have the right to withdraw from membership as provided in this chapter.

6. Within thirty days after any meeting at which a legislative amendment affecting the articles of incorporation of a development corporation has been voted on, a certificate filed and sworn to by the secretary or other recording officer of such corporation setting forth the action taken at such meeting with respect to such amendment shall be submitted to the director of the authority and upon receipt of such approval shall be filed in the office of the secretary of state.

[C66, 71, 73, 75, 77, 79, 81, §496B.12]

2001 Acts, ch 24, §62; 2011 Acts, ch 118, §85, 89; 2012 Acts, ch 1021, §95

496B.13 Board of directors.

The board of directors shall consist of such number not less than fifteen as shall be determined in the first instance by the incorporators and thereafter annually by the members and the shareholders at each annual meeting or at any special meeting held in lieu of the annual meeting. At each annual meeting or at any special meeting held in lieu of the annual meeting, the members of each corporation shall elect two-thirds of the board of directors and the shareholders shall elect the remaining directors. The directors shall hold office until the next annual meeting of the corporation or special meeting held in lieu of the annual meeting after their election, and until their successors are elected and qualify unless sooner removed in accordance with the provisions of the bylaws. Any vacancy in the office of a director elected by the members shall be filled by the directors elected by the members, and any vacancy in the office of a director elected by the shareholders shall be filled by the directors elected by the shareholders.

Notwithstanding any provisions of law to the contrary, officers and directors of insurance companies and other financial institutions may be members of the board of directors of any corporation organized for the purposes of this chapter to which the insurance company or other financial institution may make a loan or may make an investment.

[C66, 71, 73, 75, 77, 79, 81, §496B.13]

Referred to in §496B.2

496B.14 Earned surplus set aside.

Each year each development corporation shall set apart as earned surplus not less than ten percent of its net earnings for the preceding fiscal year until such surplus shall be equal in value to one-half of the amount paid in on the capital stock then outstanding. Whenever the amount of surplus established herein shall become impaired, it shall be built up again to the required amount in the manner provided for its original accumulation. Net earnings and surplus shall be determined by the board of directors, after providing for such reserves as said directors deem desirable, and the directors' determination made in good faith shall be conclusive on all persons.

[C66, 71, 73, 75, 77, 79, 81, §496B.14]

496B.15 Deposit of funds.

No development corporation shall deposit any of its funds in any financial institution unless such institution has been designated as a depository by a vote of a majority of the directors present at any authorized meeting of the board of directors exclusive of any director who is an officer or director of the depository so designated. No development corporation shall receive money on deposit.

[C66, 71, 73, 75, 77, 79, 81, §496B.15]

496B.16 Reports to department of economic development. Repealed by 2006 Acts, ch 1100, §7.

496B.17 Certificate to do business.

Upon the approval of the authority as required in this chapter and the issuance of a certificate as provided in the Iowa business corporation Act, chapter 490, a development

corporation shall then be authorized to commence business and to issue stock thereof to the extent authorized in its articles of incorporation.

[C66, 71, 73, 75, 77, 79, 81, §496B.17]

2001 Acts, ch 24, §64; 2011 Acts, ch 118, §85, 89

496B.18 Repealed by 79 Acts, ch 120, §18.

496B.19 Dissolution.

A development corporation may be dissolved upon the affirmative vote of two-thirds of the votes to which the shareholders thereof shall be entitled and two-thirds of the votes to which the members shall be entitled. Upon any dissolution of a development corporation, none of the corporation's assets shall be distributed to the shareholders until all sums due the members of the corporation as creditors thereof have been paid in full.

[C66, 71, 73, 75, 77, 79, 81, §496B.19]

496B.20 State credit not available.

Under no circumstances is the credit of the state of Iowa pledged herein.

[C66, 71, 73, 75, 77, 79, 81, §496B.20]

CHAPTER 496C

PROFESSIONAL CORPORATIONS

Referred to in §10B.4, 10B.7, 147.136A, 169.4A, 489.1115, 490.1701, 542.7, 547.1, 669.14

496C.1 Short title.
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496C.3 Applicability of Iowa business corporation Act.
496C.4 Purposes and powers.
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496C.7 Practice by professional corporation.
496C.8 Professional regulation.
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496C.18 Merger or consolidation.
496C.19 Dissolution or liquidation.
496C.20 Foreign professional corporation.
496C.21 Biennial report.
496C.22 Corporations organized under other laws.

496C.1 Short title.

This chapter shall be known and may be cited as the *"Iowa Professional Corporation Act"*.

[C71, 73, 75, 77, 79, 81, §496C.1]

496C.2 Definitions.

For words used in this chapter, unless the context otherwise requires, the definitions contained in the Iowa business corporation Act, chapter 490, apply, and:

1. *"Employees"* or *"agents"* does not include clerks, stenographers, secretaries, bookkeepers, technicians, or other persons who are not usually and ordinarily considered by custom and practice to be practicing a profession, nor any other person who performs all that person's duties for the professional corporation under the direct supervision and control of one or more officers, employees, or agents of the professional corporation who are duly licensed in this state to practice a profession which the corporation is authorized to practice in this state. This chapter shall not be construed to require any such persons to be licensed to practice a profession if they are not required to be licensed under any other law of this state.

2. *"Foreign professional corporation"* means a corporation organized under laws other

than the laws of this state for a purpose for which a professional corporation may be organized under this chapter.

3. *"Licensed"* includes registered, certified, admitted to practice, or otherwise legally authorized under the laws of this state.

4. *"Profession"* means the profession of certified public accountancy, architecture, chiropractic, dentistry, physical therapy, practice as a physician assistant, psychology, marital and family therapy or mental health counseling, provided that the marital and family therapist or mental health counselor is licensed under chapters 147 and 154D, social work, provided that the social worker is licensed pursuant to chapter 147 and section 154C.3, subsection 1, paragraph *"c"*, professional engineering, land surveying, landscape architecture, law, medicine and surgery, optometry, osteopathic medicine and surgery, accounting practitioner, podiatry, real estate brokerage, speech pathology, audiology, veterinary medicine, pharmacy, and the practice of nursing.

5. *"Professional corporation"* means a corporation subject to this Act, except a foreign professional corporation.

6. *"Regulating board"* means any board, commission, court, or governmental authority which, under the laws of this state, is charged with the licensing, registration, certification, admission to practice, or other legal authorization of the practitioners of any profession.

7. *"Voluntary transfer"* includes any sale, voluntary assignment, gift, pledge, or encumbrance; any voluntary change of legal or equitable ownership or beneficial interest; or any voluntary change of persons having voting rights with respect to any shares, except as proxies; but does not include any transfer of an individual's shares or other property to a guardian or conservator appointed for such individual or the individual's property.

[C71, 73, 75, 77, 79, 81, §496C.2]

90 Acts, ch 1205, §31; 2007 Acts, ch 13, §2; 2008 Acts, ch 1088, §141; 2010 Acts, ch 1131, §5; 2018 Acts, ch 1066, §3, 5

Subsection 4 amended

496C.3 Applicability of Iowa business corporation Act.

The Iowa business corporation Act, chapter 490, shall be construed as part of this chapter and shall apply to professional corporations, including, but not limited to, their organization, reports, fees, authority, powers, rights, and the regulation and conduct of their affairs. The provisions of the Iowa business corporation Act, chapter 490, on foreign corporations shall apply to foreign professional corporations. The provisions of this chapter shall prevail over any inconsistent provisions of the Iowa business corporation Act, chapter 490, or any other law.

[C71, 73, 75, 77, 79, 81, §496C.3]

2001 Acts, ch 24, §62

496C.4 Purposes and powers.

1. A professional corporation shall be organized only for the purpose of engaging in the practice of one specific profession, or two or more specific professions which could lawfully be practiced in combination by a licensed individual or a partnership of licensed individuals, and for the additional purpose of doing all lawful things which may be incidental to or necessary or convenient in connection with the practice of the profession or professions. The articles of incorporation shall state in substance that the purposes for which the corporation is organized are to engage in the general practice of a specified profession or professions, or one or more specified branches or divisions thereof, and to do all lawful things which may be incidental to or necessary or convenient in connection with the practice of the profession or professions. Each professional corporation, unless otherwise provided in its articles of incorporation or unless expressly prohibited by this chapter, shall have all powers granted to corporations by the Iowa business corporation Act, chapter 490.

2. *a.* For purposes of this section, medicine and surgery, osteopathic medicine and surgery, and practice as a physician assistant shall be deemed to be professions which could lawfully be practiced in combination by licensed individuals or a partnership of licensed individuals.

b. Nothing in this section shall be construed to expand the scope of practice of a physician assistant or modify the requirement in section 148C.4 that a physician assistant perform medical services under the supervision of a licensed physician.

c. For purposes of this section, marital and family therapy, mental health counseling, psychology, and social work shall be deemed to be professions which could lawfully be practiced in combination by licensed individuals or a partnership of licensed individuals.

[C71, 73, 75, 77, 79, 81, §496C.4]

2001 Acts, ch 24, §64; 2010 Acts, ch 1131, §6; 2018 Acts, ch 1066, §4, 5

Referred to in §496C.7, 496C.16

Subsection 2, NEW paragraph c

496C.5 Corporate name.

The corporate name of a professional corporation, the corporate name of a foreign professional corporation or its name as modified for use in this state, and any fictitious name or trade name adopted by a professional corporation or foreign professional corporation shall contain the words "professional corporation" or the abbreviation "P. C.", and except for the addition of such words or abbreviation, shall be a name which could lawfully be used by a licensed individual or by a partnership of licensed individuals in the practice in this state of a profession which the corporation is authorized to practice. Each regulating board may by rule or regulation adopt additional requirements as to the corporate names and fictitious or trade names of professional corporations and foreign professional corporations which are authorized to practice a profession which is within the jurisdiction of the regulating board.

[C71, 73, 75, 77, 79, 81, §496C.5]

90 Acts, ch 1205, §32

496C.6 Who may incorporate.

One or more individuals having capacity to contract, each of whom is licensed to practice in this state a profession which the professional corporation is to be authorized to practice, may act as incorporators of a professional corporation.

[C71, 73, 75, 77, 79, 81, §496C.6]

496C.7 Practice by professional corporation.

1. Notwithstanding any other statute or rule of law, a professional corporation may practice a profession, but may do so in this state only through shareholders, directors, officers, employees, and agents who are licensed to practice the same profession in this state.

2. In its practice of a profession, no professional corporation shall do any act which could not lawfully be done by individuals licensed to practice the profession which the professional corporation is authorized to practice.

3. *a.* This section shall not prohibit persons practicing medicine and surgery, persons practicing osteopathic medicine and surgery, or persons practicing as physician assistants from practicing their respective professions in lawful combination pursuant to section 496C.4.

b. Nothing in this section shall be construed to expand the scope of practice of a physician assistant or modify the requirement in section 148C.4 that a physician assistant perform medical services under the supervision of a licensed physician.

[C71, 73, 75, 77, 79, 81, §496C.7]

2010 Acts, ch 1131, §7

496C.8 Professional regulation.

No professional corporation shall be required to register with or to obtain any license, registration, certificate, or other legal authorization from any regulating board in order to practice a profession. Except as provided in this section, nothing in this chapter shall restrict or limit in any manner the authority or duties of any regulating board with respect to individuals practicing any profession which is within the jurisdiction of the regulating board, even if the individual is a shareholder, director, officer, employee, or agent of a professional corporation or foreign professional corporation and practices the individual's profession through such corporation.

[C71, 73, 75, 77, 79, 81, §496C.8]

496C.9 Relationship and liability to persons served.

1. This chapter does not modify any law applicable to the relationship between an individual practicing a profession and a person receiving professional services, including but not limited to any liability arising out of such practice and any law respecting privileged communications.

2. This chapter does not modify or affect the ethical standards or standards of conduct of any profession, including but not limited to any standards prohibiting or limiting the practice of the profession by a corporation or prohibiting or limiting the practice of two or more professions in combination. All such standards shall apply to the shareholders, directors, officers, employees, and agents through whom a professional corporation practices any profession in this state, to the same extent that the standards apply to an individual practitioner.

3. Unless otherwise provided in the articles of incorporation, the liability of the shareholders of a professional corporation, as shareholders, shall be limited in the same manner and to the same extent as in the case of a corporation organized under the Iowa business corporation Act, chapter 490.

[C71, 73, 75, 77, 79, 81, §496C.9]
2001 Acts, ch 24, §64; 2018 Acts, ch 1041, §127
Code editor directive applied

496C.10 Issuance of shares.

1. Shares of a professional corporation may be issued, and treasury shares may be disposed of, only to individuals who are licensed to practice in this state, or in any other state or territory of the United States or in the District of Columbia, a profession which the corporation is authorized to practice.

2. Unless otherwise provided in the articles of incorporation or bylaws, the affirmative vote or consent in writing of all of the outstanding shareholders entitled to vote, or such lesser proportion as may be provided in the articles or bylaws, is necessary in order to authorize the issuance of any shares or the disposal of any treasury shares, and to fix the consideration for shares or treasury shares.

3. No shares of a professional corporation shall at any time be issued in, transferred into, or held in joint tenancy, tenancy in common, or any other form of joint ownership or co-ownership.

4. The Iowa securities law, chapter 502, shall not be applicable to nor govern any transaction relating to any shares of a professional corporation.

[C71, 73, 75, 77, 79, 81, §496C.10]
2018 Acts, ch 1026, §154
Section amended

496C.11 Transfer of shares.

1. No shareholder or other person shall make any voluntary transfer of any shares in a professional corporation to any person, except to the professional corporation or to an individual who is licensed to practice in this state a profession which the corporation is authorized to practice.

2. Unless otherwise provided in the articles of incorporation or bylaws, the affirmative vote or consent in writing of all of the outstanding shareholders entitled to vote, or such lesser proportion as may be provided in the articles or bylaws, is necessary in order to authorize any voluntary transfer of any shares of a professional corporation.

3. The articles of incorporation or bylaws may contain any additional provisions restricting the transfer of shares.

[C71, 73, 75, 77, 79, 81, §496C.11]
2018 Acts, ch 1041, §127
Code editor directive applied

496C.12 Convertible securities — stock rights and options.

No professional corporation shall create or issue any securities convertible into shares of the professional corporation. The provisions of this chapter with respect to the issuance

and transfer of shares and disposal of treasury shares apply to the creation, issuance, and transfer of any rights or options entitling the holder to purchase from a professional corporation any shares of the corporation, including treasury shares. Rights or options shall not be transferable, whether voluntarily, involuntarily, by operation of law, or in any other manner. Upon the death of the holder, or whenever the holder ceases to be licensed to practice in this state a profession which the corporation is authorized to practice, the rights or options shall expire.

[C71, 73, 75, 77, 79, 81, §496C.12]

496C.13 Voting trust — proxy.

No shareholder of a professional corporation shall create or enter into a voting trust or any other agreement conferring upon any other person the right to vote or otherwise represent any shares of a professional corporation, and no such voting trust or agreement is valid or effective. Any proxy of a shareholder of a professional corporation shall be an individual licensed to practice in this state a profession which the corporation is authorized to practice. Any provision in any proxy instrument denying the right of the shareholder to revoke the proxy at any time or for any period of time is not valid or effective. This section does not otherwise limit the right of a shareholder to vote by proxy, but the articles of incorporation or bylaws may further limit or deny the right to vote by proxy.

[C71, 73, 75, 77, 79, 81, §496C.13]

496C.14 Required purchase by professional corporation of its own shares.

1. *a.* Notwithstanding any other statute or rule of law, a professional corporation shall purchase its own shares as provided in this section; and the shareholders of a professional corporation and their executors, administrators, legal representatives, and successors in interest shall sell and transfer the shares held by them as provided in this section.

b. The corporation may validly purchase its own shares even though its net assets are less than its stated capital, or even though by so doing its net assets would be reduced below its stated capital.

c. Upon the death of a shareholder, the professional corporation shall immediately purchase all shares held by the deceased shareholder.

2. In order to remain a shareholder of a professional corporation, a shareholder shall at all times be licensed to practice in this state a profession which the corporation is authorized to practice. Whenever any shareholder does not have or ceases to have this qualification, the corporation shall immediately purchase all shares held by that shareholder.

3. Whenever any person other than the shareholder of record becomes entitled to have shares of a corporation transferred into that person's name or to exercise voting rights, except as a proxy, with respect to shares of the corporation, the corporation shall immediately purchase such shares. Without limiting the generality of the foregoing, this section shall be applicable whether the event occurs as a result of the appointment of a guardian or conservator for a shareholder or the shareholder's property, transfer of shares by operation of law, involuntary transfer of shares, judicial proceedings, execution, levy, bankruptcy proceedings, receivership proceedings, foreclosure or enforcement of a pledge or encumbrance, or any other situation or occurrence. However, this section does not apply to any voluntary transfer of shares as defined in this chapter.

4. Shares purchased by the corporation under the provisions of this section shall be transferred to the corporation as of the close of business on the date of the death or other event which requires purchase. The shareholder and the shareholder's executors, administrators, legal representatives, or successors in interest shall promptly do all things which may be necessary or convenient to cause transfer to be made as of the transfer date. However, the shares shall promptly be transferred on the stock transfer books of the corporation as of the transfer date, notwithstanding any delay in transferring or surrendering the shares or certificates representing the shares, and the transfer shall be valid and effective for all purposes as of the close of business on the transfer date. The purchase price for such shares shall be paid as provided in this chapter, but the transfer of shares to the corporation

as provided in this section shall not be delayed or affected by any delay or default in making payment.

5. Notwithstanding subsections 1 through 4, purchase by the corporation is not required upon the occurrence of any event other than death of a shareholder if the corporation is dissolved or voluntarily elects to adopt the provisions of the Iowa business corporation Act, as provided in section 490.1701, subsection 2, within sixty days after the occurrence of the event. The articles of incorporation or bylaws may provide that purchase is not required upon the death of a shareholder if the corporation is dissolved within sixty days after the death. Notwithstanding subsections 1 through 4, purchase by the corporation is not required upon the death of a shareholder if the corporation voluntarily elects to adopt the provisions of the Iowa business corporation Act, as provided in section 490.1701, subsection 2, within sixty days after death.

6. Unless otherwise provided in the articles of incorporation or bylaws or in an agreement among all shareholders of the professional corporation:

a. The purchase price for shares shall be their book value as of the end of the month immediately preceding the death or other event which requires purchase. Book value shall be determined from the books and records of the professional corporation in accordance with the regular method of accounting used by the corporation, uniformly and consistently applied. Adjustments to book value shall be made, if necessary, to take into account work in process and accounts receivable. Any final determination of book value made in good faith by any independent certified public accountant or firm of certified public accountants employed by the corporation for the purpose shall be conclusive on all persons.

b. The purchase price shall be paid in cash as follows:

(1) Upon the death of a shareholder, thirty percent of the purchase price shall be paid within ninety days after death, and the balance shall be paid in three equal annual installments on the first three anniversaries of the death.

(2) Upon the happening of any other event referred to in this section, one-tenth of the purchase price shall be paid within ninety days after the date of such event, and the balance shall be paid in three equal annual installments on the first three anniversaries of the date of the event.

c. Interest from the date of death or other event shall be payable annually on principal payment dates, at the rate of six percent per annum on the unpaid balance of the purchase price.

d. All persons who are shareholders of the professional corporation on the date of death or other event, and their executors, administrators, and legal representatives, shall, to the extent the corporation fails to meet its obligations hereunder, be jointly liable for the payment of the purchase price and interest in proportion to their percentage of ownership of the corporation's shares, disregarding shares of the deceased or withdrawing shareholder.

e. The part of the purchase price remaining unpaid after the initial payment shall be evidenced by a negotiable promissory note, which shall be executed by the corporation and all shareholders liable for payment. Any person liable on the note shall have the right to prepay the note in full or in part at any time.

f. If the person making any payment is not reasonably able to determine which of two or more persons is entitled to receive a payment, or if the payment is payable to a person who is unknown, or who is under disability and there is no person legally competent to receive the payment, or who cannot be found after the exercise of reasonable diligence by the person making the payment, it shall be deposited with the treasurer of state and shall be subject to the provisions of the Iowa business corporation Act, chapter 490, with respect to funds deposited with the treasurer of state upon the voluntary or involuntary dissolution of a corporation.

g. Notwithstanding the provisions of this section, no part of the purchase price shall be required to be paid until the certificates representing such shares have been surrendered to the corporation.

h. Notwithstanding the provisions of this section, payment of any part of the purchase price for shares of a deceased shareholder shall not be required until the executor or administrator of the deceased shareholder provides any indemnity, release, or other

document from any taxing authority, which is reasonably necessary to protect the corporation against liability for estate, inheritance, and death taxes.

7. The articles of incorporation or bylaws or an agreement among all shareholders of a professional corporation may provide for a different purchase price, a different method of determining the purchase price, a different interest rate or no interest, and other terms, conditions, and schedules of payment.

8. The articles of incorporation or bylaws or an agreement among all shareholders of a professional corporation may provide for the optional or mandatory purchase of its own shares by the corporation in other situations, subject to any applicable law regarding such purchase.

[C71, 73, 75, 77, 79, 81, §496C.14]

2001 Acts, ch 24, §62; 2003 Acts, ch 66, §8; 2009 Acts, ch 133, §165

496C.15 Certificates representing shares.

Each certificate representing shares of a professional corporation shall state in substance that the certificate represents shares in a professional corporation and is not transferable except as expressly provided in this chapter and in the articles of incorporation and bylaws of the corporation.

[C71, 73, 75, 77, 79, 81, §496C.15]

496C.16 Management.

All directors of a professional corporation and all officers of a professional corporation, except assistant officers, shall at all times be individuals who are licensed to practice in this state a profession, or a lawful combination of professions pursuant to section 496C.4, which the corporation is authorized to practice. However, upon the occurrence of any event that requires the corporation either to be dissolved or to elect to adopt the provisions of the Iowa business corporation Act, chapter 490, as provided in section 496C.19, provided the corporation ceases to practice the profession that the corporation is authorized to practice, as provided in section 496C.19, then individuals who are not licensed to practice in this state a profession that the corporation is authorized to practice may be appointed as officers and directors for the sole purpose of carrying out the dissolution of the corporation or, if applicable, the voluntary election of the corporation to adopt the provisions of the Iowa business corporation Act, as provided in section 496C.19.

[C71, 73, 75, 77, 79, 81, §496C.16]

2003 Acts, ch 66, §9; 2004 Acts, ch 1086, §79; 2010 Acts, ch 1131, §8

496C.17 Bylaws.

The initial bylaws of a professional corporation shall be adopted by its board of directors. The power to alter, amend, or repeal the bylaws or adopt new bylaws is reserved to and vested in the shareholders unless granted to the board of directors by the articles of incorporation.

[C71, 73, 75, 77, 79, 81, §496C.17]

496C.18 Merger or consolidation.

No professional corporation shall merge or consolidate with any other corporation except another professional corporation subject to this chapter. Merger or consolidation shall not be permitted unless the surviving or new corporation is a professional corporation which complies with all requirements of this chapter.

[C71, 73, 75, 77, 79, 81, §496C.18]

496C.19 Dissolution or liquidation.

Violation of any provision of this chapter by a professional corporation or any of its shareholders, directors, or officers shall be cause for its involuntary dissolution, or liquidation of its assets and business by the district court, as provided in the Iowa business corporation Act, chapter 490. Upon the death of the last remaining shareholder of a professional corporation, or whenever the last remaining shareholder is not licensed or ceases to be licensed to practice in this state a profession which the corporation is authorized

to practice, or whenever any person other than the shareholder of record becomes entitled to have all shares of the last remaining shareholder of the corporation transferred into that person's name or to exercise voting rights, except as a proxy, with respect to such shares, the corporation shall not practice any profession and it shall either be promptly dissolved or shall promptly elect to adopt the provisions of the Iowa business corporation Act, as provided in section 490.1701, subsection 2. However, if prior to such dissolution all outstanding shares of the corporation are acquired by one or more persons licensed to practice in this state a profession which the corporation is authorized to practice, the corporation need not be dissolved and may practice the profession as provided in this chapter.

[C71, 73, 75, 77, 79, 81, §496C.19]

2001 Acts, ch 24, §64; 2003 Acts, ch 66, §10

Referred to in §496C.16

496C.20 Foreign professional corporation.

1. A foreign professional corporation may practice a profession in this state if it complies with the provisions of the Iowa business corporation Act, chapter 490, on foreign corporations. The secretary of state may prescribe forms for such purpose.

2. A foreign professional corporation may practice a profession in this state only through shareholders, directors, officers, employees, and agents who are licensed to practice the profession in this state. The provisions of this chapter with respect to the practice of a profession by a professional corporation apply to a foreign professional corporation.

3. The certificate of authority of a foreign professional corporation may be revoked by the secretary of state as provided in the Iowa business corporation Act, chapter 490, if the foreign professional corporation fails to comply with any provision of this chapter.

4. This chapter shall not be construed to prohibit the practice of a profession in this state by an individual who is a shareholder, director, officer, employee, or agent of a foreign professional corporation if the individual could lawfully practice the profession in this state in the absence of any relationship to a foreign professional corporation. This subsection shall apply regardless of whether or not the foreign professional corporation is authorized to practice a profession in this state.

[C71, 73, 75, 77, 79, 81, §496C.20]

2001 Acts, ch 24, §62; 2018 Acts, ch 1026, §155

Section amended

496C.21 Biennial report.

1. Each biennial report of a professional corporation or foreign professional corporation shall, in addition to the information required by the Iowa business corporation Act, chapter 490, set forth:

a. The name and address of one shareholder.

b. In the case of a professional corporation, a statement under oath whether or not all shareholders, directors, and officers, except assistant officers, of the corporation are licensed to practice in this state a profession which the corporation is authorized to practice, and whether or not all employees and agents of the corporation who practice a profession in this state on behalf of the corporation are licensed to practice the profession in this state.

c. In the case of a foreign professional corporation, a statement under oath whether or not all shareholders, directors, officers, employees, and agents who practice a profession in this state on behalf of the corporation are licensed to practice the profession in this state.

d. Additional information necessary or appropriate to enable the secretary of state or regulating board to determine whether the professional corporation or foreign professional corporation is complying with this chapter.

2. Information shall be set forth on forms prescribed and furnished by the secretary of state.

3. A corporation subject to the provisions of this chapter shall pay the biennial filing fee and make the biennial report in a form and manner and at the time specified in chapter 490.

[C71, 73, 75, 77, 79, 81, §496C.21]

83 Acts, ch 144, §5; 97 Acts, ch 171, §25; 2000 Acts, ch 1022, §4, 5; 2001 Acts, ch 24, §64; 2012 Acts, ch 1023, §157

496C.22 Corporations organized under other laws.

1. This chapter shall not apply to or interfere with the practice of any profession by or through any corporation hereafter organized under any other law of this state or any other state or country if such practice is lawful under any other statute or rule of law of this state.

2. Any corporation subject to the provisions of the Iowa business corporation Act, chapter 490, may voluntarily elect to adopt this chapter and become subject to its provisions by amending its articles of incorporation to be consistent with all provisions of this chapter and by stating in its amended articles of incorporation that the corporation has voluntarily elected to adopt this chapter.

3. Any corporation organized under any law of any other state or country may become subject to the provisions of this chapter by complying with all provisions of this chapter with respect to foreign professional corporations.

[C71, 73, 75, 77, 79, 81, §496C.22]

2001 Acts, ch 24, §62; 2018 Acts, ch 1041, §127

Code editor directive applied

SUBTITLE 3

ASSOCIATIONS

Referred to in §491.39

CHAPTER 497

COOPERATIVE ASSOCIATIONS

Referred to in §10B.1, 10B.4, 10B.7, 476C.1, 489.102, 490.1701, 498.32, 499.43A, 499.60, 499.71, 500.3, 501.104, 501.601, 501A.102, 501A.1104, 502.102, 502.201, 547.1, 552A.2, 556.1, 558.72, 669.14

Applicable only to associations originally chartered before July 4, 1935, §499.1
Option to come under chapter 499, §499.43A
Merger or consolidation with other entities; §499.71, 501A.1101 – 501A.1104
Option to come under chapter 501; §501.601
Option to come under chapter 501A; §501A.1104

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497.1 Purposes of cooperative.

Any number of persons, not less than five, may associate themselves as a cooperative association, society, company, or exchange, for the purpose of conducting any agricultural, dairy, ethanol production, mercantile, mining, manufacturing, or mechanical business on the cooperative plan. For the purposes of this chapter, the words "*association*", "*company*", "*corporation*", "*exchange*", "*society*", or "*union*", shall be construed to mean the same.

[SS15, §1641-r1; C24, 27, 31, 35, 39, §**8459;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §497.1]

92 Acts, ch 1099, §7

Referred to in §497.3, 502.102

497.2 Articles of incorporation.

They shall sign and acknowledge written articles which shall contain the name of said association and the names and residences of the persons forming the same. Such articles shall also contain a statement of the purposes of the association, and shall designate the city or village where its principal place of business shall be located. Such articles shall also state the amount of capital stock, the number of shares, and the par value of each.

[SS15, §1641-r2; C24, 27, 31, 35, 39, §**8460;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §497.2]

Referred to in §497.3

497.3 Filing — certificate of incorporation.

The original articles of incorporation of associations organized under this chapter shall be filed with the secretary of state, and be by the secretary recorded in a book kept for that purpose; and if such articles comply with the provisions of sections 497.1 and 497.2, the secretary shall issue a certificate of incorporation to the association. No publication of notice of the incorporation of such an association shall be required.

[SS15, §1641-r3; C24, 27, 31, 35, 39, §**8461;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §497.3]

94 Acts, ch 1055, §9

497.4 Fee.

For filing the articles of incorporation of associations organized under this chapter, there shall be paid to the secretary of state ten dollars, and for the filing of an amendment to such articles, five dollars; provided that when the capital stock of such corporation shall be less than five hundred dollars, such fee for filing either the articles of incorporation or amendments thereto shall be one dollar. In all cases there shall be paid a recording fee of fifty cents per page.

[SS15, §1641-r4; C24, 27, 31, 35, 39, §**8462;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §497.4]

94 Acts, ch 1055, §10

497.5 Board of directors.

Every such association shall be managed by a board of not less than five directors, who shall be elected by and from the stockholders at such time and for such term of office as the bylaws may prescribe, and shall hold office for the time for which elected and until their successors are elected and qualify.

[SS15, §1641-r5; C24, 27, 31, 35, 39, §**8463;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §497.5]

497.6 Removal.

A majority of the stockholders shall have the power at any regular or special stockholders' meeting, legally called, to remove any director or officer for cause, and fill the vacancy, and thereupon the director or officer so removed, shall cease to be a director or officer of said corporation.

[SS15, §1641-r5; C24, 27, 31, 35, 39, §**8464;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §497.6]

497.7 Officers.

The officers of every such association shall be a president, one or more vice presidents, a secretary, and a treasurer, who shall be elected annually by the directors, and each of said officers must be a director of the association. The offices of secretary and treasurer may be combined, and when so combined the person filling the office shall be secretary-treasurer.

[SS15, §1641-r5; C24, 27, 31, 35, 39, §**8465;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §497.7]

497.8 Amending articles.

The association may amend its articles of incorporation by a majority vote of its stockholders at any regular stockholders' meeting, or at any special stockholders' meeting called for that purpose, on ten days' notice to all stockholders. Said power to amend shall include the power to increase or diminish the amount of capital stock and the number of shares; provided the amount of the capital stock shall not be diminished below the amount of paid-up capital at the time the amendment is adopted.

[SS15, §1641-r6; C24, 27, 31, 35, 39, §**8466;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §497.8]

497.9 Record of amendments.

Within thirty days after the adoption of an amendment to its articles of incorporation, an association shall cause a copy of the amendment adopted to be recorded in the office of the secretary of state.

[SS15, §1641-r6; C24, 27, 31, 35, 39, §**8467;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §497.9]

94 Acts, ch 1055, §11

497.10 Powers.

An association created under this chapter shall have power to conduct any agricultural, dairy, mercantile, mining, manufacturing, or mechanical business, on the cooperative plan, and may buy, sell, and deal in the products of any other cooperative company heretofore or hereafter organized under the provisions hereof.

[SS15, §1641-r7; C24, 27, 31, 35, 39, §**8468;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §497.10]

497.11 Ownership of shares and voting power limited.

No stockholder in any such association shall own shares of a greater aggregate par value than five thousand dollars, except as hereinafter provided, nor shall a stockholder be entitled to more than one vote.

[SS15, §1641-r8; C24, 27, 31, 35, 39, §**8469;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §497.11]

497.12 Stockholding.

At any regular meeting, or any regularly called special meeting, at which at least a majority of all of its stockholders shall be present, or represented, an association organized under this chapter, may by a majority vote of the stockholders present or represented, subscribe for shares and invest its reserve fund, not to exceed twenty-five percent of its capital, in the capital stock of any other cooperative association.

[SS15, §1641-r9; C24, 27, 31, 35, 39, §**8470;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §497.12]

497.13 Issue of shares as payment.

Whenever an association created under this chapter shall purchase the business of another association, person, or persons, it may pay for the same in whole or in part by issuing to the selling association or person shares of its capital stock to an amount, which at fair market value as determined by the executive council, would equal the fair market value of the business so purchased as determined by the executive council as in cases of other corporations.

[SS15, §1641-r10; C24, 27, 31, 35, 39, §**8471;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §497.13]

Payment in property other than money, §492.6 et seq.

497.14 May act as trustee.

In case the cash value of such purchased business exceeds one thousand dollars, the directors of the association are authorized to hold the shares in excess of one thousand dollars in trust for the vendor, and dispose of the same to such persons, and within such times, as may be mutually satisfactory to the parties in interest, and to pay the proceeds thereof as currently received to the former owner of said business.

[SS15, §1641-r11; C24, 27, 31, 35, 39, §**8472;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §497.14]

497.15 Paid-up stock — right to vote.

Certificates of stock shall not be issued to any subscriber until fully paid, but the bylaws of the association may allow subscribers to vote as stockholders; provided part of the stock subscribed for has been paid in cash.

[SS15, §1641-r11; C24, 27, 31, 35, 39, §**8473;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §497.15]

497.16 Voting by mail.

At any regularly called general or special meeting of the stockholders, a written vote received by mail from any absent stockholder, and signed by that stockholder, may be read in such meeting, and shall be equivalent to a vote of each of the stockholders so signing, provided the stockholder has been previously notified in writing by the secretary of the exact motion or resolution upon which such vote is taken, and a copy of same is forwarded with and attached to the vote so mailed by the stockholder.

[SS15, §1641-r12; C24, 27, 31, 35, 39, §**8474;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §497.16]

497.17 Reserve fund.

The board of directors, subject to revision by the association at any general or special meeting, shall each year set aside not less than ten percent of the net profits for a reserve fund, until an amount has accumulated therein equal to fifty percent of the paid-up capital stock.

[SS15, §1641-r13; C24, 27, 31, 35, 39, §**8475;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §497.17]

497.18 Educational fund — dividends.

The board may each year, out of remaining net profits, subject to the approval of the association at any general or special meeting:

1. Provide an educational fund to be used in teaching cooperation, not exceeding five percent of the net profits.
2. Declare and pay a dividend on the stock, not exceeding ten percent.

[SS15, §1641-r13; C24, 27, 31, 35, 39, §**8476;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §497.18]

497.19 Additional dividends.

The remainder of said net profits shall be distributed by uniform dividends upon the amount of purchases of shareholders, and upon the wages and salaries of employees. In producing associations, such as creameries, canneries, elevators, factories, and the like, dividends shall be on raw material delivered instead of on goods purchased. In case the association is both a selling and a producing concern, the dividends may be on both raw material delivered and goods purchased by patrons.

[SS15, §1641-r13; C24, 27, 31, 35, 39, §**8477;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §497.19]

497.20 When dividends distributed.

The profits or net earnings of such associations shall be distributed to those entitled thereto, at such times as the bylaws shall prescribe, which shall be as often as once in twelve months.

[SS15, §1641-r14; C24, 27, 31, 35, 39, §**8478;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §497.20]

497.21 Dissolution.

If such association, for five consecutive years, shall fail to declare a dividend upon the shares of its paid-up capital, five or more stockholders, by petition, setting forth such fact, may apply to the district court of the county wherein is situated its principal place of business

in this state, for its dissolution. If, upon hearing, the allegations of the petition are found to be true, the court may adjudge a dissolution of the association.

[SS15, §1641-r14; C24, 27, 31, 35, 39, §**8479;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §497.21]

497.22 Biennial report — penalty.

Section 504.1613 applies to a cooperative association organized under this chapter in the same manner as that section applies to a corporation organized under chapter 504. In addition to the information required to be set forth in the biennial report under section 504.1613, the cooperative association shall also set forth the total amount of business transacted, number of members, total expense of operation, total amount of indebtedness, and total profits or losses for each calendar or fiscal year of the two-year period which ended immediately preceding the first day of January of the year in which the report is filed.

A cooperative association which fails to comply with this section before April 1 of the year in which the report is due is subject to a penalty of ten dollars.

[SS15, §1641-r15; C24, 27, 31, 35, 39, §**8480;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §497.22]

97 Acts, ch 171, §26; 2004 Acts, ch 1049, §184, 191, 192

Referred to in §497.23, 497.25

497.23 Exemption from report.

Any corporation organized under the provisions of this chapter after the first day of January shall be exempt from the provisions of section 497.22 for the year in which incorporated, after which it shall, however, be subject to all of the provisions of said section.

[C27, 31, 35, §8480-a1; C39, §**8480.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §497.23]

497.24 List of delinquents.

In the month of April of each year the secretary of state shall prepare a list of all delinquent corporations and file the same in the secretary of state's office.

[C27, 31, 35, §8480-a2; C39, §**8480.2;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §497.24]

497.25 Notice to delinquents.

On or before the first day of May of the year the report is due the secretary of state shall mail to each delinquent association a notice of such delinquency and of the penalties provided in section 497.22.

[C27, 31, 35, §8480-a3; C39, §**8480.3;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §497.25]

97 Acts, ch 171, §27

497.26 Cancellation.

If the biennial report required is not filed and penalties paid on or before the last day of June the secretary of state shall, on the first day of July following, cancel the name of any delinquent corporation from the list of live corporations in the secretary of state's office, and enter such cancellation on the proper records.

[C27, 31, 35, §8480-a4; C39, §**8480.4;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §497.26]

2000 Acts, ch 1022, §6

497.27 Effect of cancellation.

When so canceled the corporate rights of any such corporation shall be forfeited and its corporate period terminated on the date such cancellation shall have been entered on the records of the secretary of state's office.

[C27, 31, 35, §8480-a5; C39, §**8480.5;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §497.27]

497.28 Reinstatement of corporation.

Any corporation whose corporate rights have been canceled and forfeited in the manner provided herein may, however, before September 1 following such cancellation, make application to the secretary of state for reinstatement and upon being furnished good and sufficient reasons for not having filed its report the secretary shall, upon the filing of

such report and the payment of the penalty, reinstate said corporation and the decree of cancellation shall be annulled and the corporation shall be entitled to continue to act as a corporation for the unexpired portion of its corporate period as fixed by its articles of incorporation and the limitations prescribed by law.

[C27, 31, 35, §8480-a6; C39, §**8480.6;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §497.28]

497.29 Chapter extended to former companies.

All cooperative corporations, companies, or associations heretofore organized and doing business under prior statutes, or which have attempted to so organize and do business, shall have the benefit of all the provisions of this chapter and be bound thereby, on filing with the secretary of state, amended and substituted articles of incorporation drawn in accordance with the provisions of this chapter and a written declaration, signed and sworn to by the president and secretary to the effect that said cooperative company or association has by a majority vote of its stockholders decided to accept the benefits of and to be bound by the provisions hereof.

[SS15, §1641-r16; C24, 27, 31, 35, 39, §**8481;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §497.29]

94 Acts, ch 1055, §12

497.30 Use of term "cooperative" restricted.

No corporation or association organized after July 4, 1915, shall be entitled to use the term "cooperative" as part of its corporate or other business name or title, unless it has complied with the provisions of this chapter, and any corporation or association violating the provisions of this section may be enjoined from doing business under such name at the instance of any stockholder of any association legally organized under the provisions of this chapter.

[SS15, §1641-r17; C24, 27, 31, 35, 39, §**8482;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §497.30]

497.31 Use of funds.

None of the funds of any association organized under the provisions of this chapter shall be used in the payment of any promotion; as commissions, salaries or expenses of any kind, character, or nature whatsoever.

[SS15, §1641-r18; C24, 27, 31, 35, 39, §**8483;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §497.31]

497.32 Private property exempt.

The private property of the stockholders shall be exempt from execution for the debts of the corporation.

[SS15, §1641-r19; C24, 27, 31, 35, 39, §**8484;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §497.32]

497.33 Personal liability.

Except as otherwise provided in this chapter, a director, officer, employee, or member of the corporation is not liable on the corporation's debts or obligations and a director, officer, member, or other volunteer is not personally liable in that capacity, for a claim based upon any action taken, or any failure to take action in the discharge of the person's duties, except for the amount of a financial benefit received by the person to which the person is not entitled, an intentional infliction of harm on the corporation or its members, or an intentional violation of criminal law.

87 Acts, ch 212, §6; 2003 Acts, ch 66, §11; 2004 Acts, ch 1086, §80

497.34 Indemnification.

A cooperative association operating under this chapter may indemnify any present or former director, officer, employee, member, or volunteer in the manner and in the instances authorized in sections 490.850 through 490.859, provided that where sections 490.850 through 490.859 provide for action by shareholders the sections are applicable to action by

voting members of the cooperative association, and where sections 490.850 through 490.859 refer to the corporation organized under chapter 490 the sections are applicable to the cooperative association organized under this chapter, and where sections 490.850 through 490.859 refer to the director the sections are applicable to a director, officer, employee, member, or volunteer of the cooperative association organized under this chapter.

88 Acts, ch 1170, §6; 94 Acts, ch 1023, §62; 2002 Acts, ch 1154, §104, 125

497.35 Statement to estate of stockholder.

The board of directors, upon receiving actual notice of a stockholder's death, shall provide a statement to the administrator or executor of the stockholder's estate, or to the attorney representing the stockholder's estate. The statement shall describe agricultural products owned by the stockholder which are in the possession of the association.

This section shall not require an association to conduct a search of the status of its stockholders. The association shall exercise reasonable diligence in determining to whom the statement must be delivered. The statement shall be delivered to the administrator, executor, or attorney, within thirty days following a determination as to whom the statement must be delivered. A statement is not required to be prepared or delivered, if the association is not notified of the stockholder's death within one year after the date of death, or by the date that the stockholder's estate is closed, whichever is later.

91 Acts, ch 230, §1

CHAPTER 498

NONPROFIT COOPERATIVE ASSOCIATIONS

Referred to in §10B.1, 10B.4, 10B.7, 489.102, 490.1701, 499.43A, 499.60, 499.71, 501.104, 501.601, 501A.102, 501A.1104, 502.102, 502.201, 547.1, 552A.2, 556.1, 558.72, 669.14

Applicable only to associations originally chartered before July 4, 1935; see chapter 499
Permissible reorganization under later law; §499.43A
Merger or consolidation with other entities; §499.71, 501A.1101 – 501A.1104
Option to come under chapter 501; §501.601
Option to come under chapter 501A; §501A.1104

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498.1 Nature.

Associations organized under the provisions of this chapter are declared to be not for pecuniary profit.

[C27, 31, 35, §8485-b1; C39, §**8485.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §498.1]

498.2 Purposes of cooperative — limitation.

Any number of persons, not less than five, may associate themselves as a cooperative association, without capital stock, for the purpose of conducting any agricultural, livestock, horticultural, dairy, ethanol production, mercantile, mining, manufacturing, or mechanical business, or the constructing and operating of telephone and high tension electric transmission lines on the cooperative plan and of acting as a cooperative selling agency. Cooperative livestock shipping associations organized under this chapter shall do business with members only.

[C24, 27, 31, 35, 39, §**8486;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §498.2]

92 Acts, ch 1099, §8

Referred to in §502.102

498.3 Terms defined — products of nonmembers.

For the purpose of this chapter, the words "*association*", "*exchange*", "*society*", or "*union*", shall be construed to mean the same and are defined to mean a corporate body composed of actual producers or consumers of the given commodity handled by the association, whose business is conducted for the mutual benefit of its members and not for the profit of stockholders, and control of which is vested in its members upon the basis of one vote to each member. Associations shall not deal in the products of nonmembers to an amount greater in value than such as are handled by it for members.

[C24, 27, 31, 35, 39, §**8487;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §498.3]

498.4 Articles — personal liability.

They shall sign and acknowledge written articles, which shall contain the name of the association and the names and residences of the incorporators. Such articles shall also contain a statement of the purposes of the association, the amount of the membership fee, and shall designate the city or village where its principal place of business shall be located, and the manner in which such articles may be amended, and any limitation which the members propose to place upon their personal liability for the debts of the association.

[C24, 27, 31, 35, 39, §**8488;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §498.4]

498.5 Filing — certificate of incorporation.

The original articles of incorporation shall be filed for record with the secretary of state. Upon approval of such articles, the secretary of state shall issue a certificate of incorporation.

[C24, 27, 31, 35, 39, §**8489;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §498.5]

498.6 Fees.

For filing the articles of incorporation of associations organized under this chapter, there shall be paid to the secretary of state five dollars, and for the filing of an amendment to such articles, two dollars. In all cases there shall be paid a recording fee of fifty cents per page.

[C24, 27, 31, 35, 39, §**8490;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §498.6]

498.7 Amendments.

Within thirty days after the adoption of any amendment to its articles of incorporation, the association shall cause a copy of such amendment to be recorded in the office of the secretary of state.

[C24, 27, 31, 35, 39, §**8491;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §498.7]

498.8 Board of directors — removals.

Every such association shall be managed by a board of not less than five directors, who shall be elected by and from the members at such time and for such term of office as the articles may prescribe. They shall hold office until their successors are elected and qualify;

but a majority of the members shall have the power at any regular or special meeting of the association legally called, to remove any director or officer for cause, and fill the vacancy.

[C24, 27, 31, 35, 39, §**8492;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §498.8]

498.9 Officers.

The officers of every such association shall be a president, one or more vice presidents, a secretary, and treasurer, who shall be elected annually by the directors, from amongst their own number. The offices of secretary and treasurer may be held by the same person.

[C24, 27, 31, 35, 39, §**8493;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §498.9]

498.10 Admission of members.

Under the terms and conditions prescribed in its bylaws, an association may admit as members persons engaged in the production of the products, or in the use or consumption of the supplies, to be handled by or through the association, including the lessors and landlords of lands used for the production of such products, who receive as rent part of the crop raised on the leased premises.

[C24, 27, 31, 35, 39, §**8494;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §498.10]

498.11 Membership certificates.

Membership certificates in due form shall be issued to all charter members and to such others as shall subsequently be admitted by the association in accordance with its articles and bylaws.

[C24, 27, 31, 35, 39, §**8495;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §498.11]

498.12 Certificates nontransferable — surrender.

No such certificate shall be transferable by the member to any other person, but shall be surrendered to the association in case of the member's voluntary withdrawal.

[C24, 27, 31, 35, 39, §**8496;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §498.12]
Referred to in §498.14

498.13 Automatic cancellation — revocation.

It shall become void upon the member's death, or may be revoked by the directors upon proof duly made that the member has ceased to be a producer of products handled by or through the association, in the case of producing or selling associations or has ceased to be the user of products handled by or through the association in case of stores and supply associations, or for failure to observe its bylaws or the member's contractual obligations to it.

[C24, 27, 31, 35, 39, §**8497;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §498.13]
Referred to in §498.14

498.14 Conditions printed on certificates.

The conditions of membership specified in sections 498.12 and 498.13 shall be printed upon the face of every membership certificate.

[C24, 27, 31, 35, 39, §**8498;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §498.14]

498.15 Combinations of local associations.

Likewise, associations may be formed under this chapter whose membership shall consist of other associations formed under the provisions of this chapter, the purpose being to federate local associations into central cooperative associations for the more economical and efficient performance of their marketing or other operations.

[C24, 27, 31, 35, 39, §**8499;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §498.15]

498.16 Powers of central associations.

Such central associations may enter into contracts, agreements and arrangements with their member associations. Each member association in such federated associations shall have an official representative chosen by its own board of directors, who shall cast one vote and no more at all business meetings of the federated association.

[C24, 27, 31, 35, 39, §**8500;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §498.16]

498.17 Voting power.

Each member of an association shall be entitled to one vote and no more upon all questions affecting the control and management of the affairs of the association and in the selection of its board of directors.

[C24, 27, 31, 35, 39, §**8501;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §498.17]

498.18 Proxies — voting by mail.

No vote by proxy shall be permitted, but a written vote received by mail from any absent member, and signed by that member, may be read and counted at any regular or special meeting of the association, provided that the secretary shall notify all members in writing of the exact motion or resolution upon which such vote is to be taken, and a copy of same shall be forwarded with and attached to the vote so mailed by the member.

[C24, 27, 31, 35, 39, §**8502;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §498.18]

498.19 Power to compel sales and purchases — liquidated damages.

The association may require members to sell all or a stipulated part of their specifically enumerated products exclusively through the association or to buy specifically enumerated supplies exclusively through the association, but in such case, a reasonable period during each year shall be specified during which any member, by giving notice in prescribed form, may be released from such obligation thereafter. Where it is desired to enter into the exclusive arrangement provided in this section, the association shall execute a contract with each such member setting forth what goods or wares are to be handled and upon what terms. In order to protect itself in the necessary outlay, which it may make for the maintenance of its services, the association may stipulate that some regular charge shall be paid by the member for each unit of goods covered by such contract whether actually handled by the association or not, and in order to reimburse the association for any loss or damage which it or its members may sustain through the member's failure to deliver the member's products to or to procure the member's supplies from the association.

In case it is difficult or impracticable to determine the actual amount of damage suffered by the association or its members through such failure to comply with the terms of such a contract, the association and the member may agree upon a sum to be paid as liquidated damages for the breach of the member's contract, said amount to be stated in the contract.

[C24, 27, 31, 35, 39, §**8503;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §498.19]

498.20 Financial power.

Every association may borrow money necessary for the conduct of its business, and may issue notes, bonds, or debentures therefor, and may give security in the form of mortgage or otherwise for the repayment thereof.

[C24, 27, 31, 35, 39, §**8504;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §498.20]

498.21 Personal liability.

Members of such association may limit their personal liability to the amount of their membership fee as provided in their articles of incorporation.

[C24, 27, 31, 35, 39, §**8505;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §498.21]

498.22 Cost of service — dues.

Associations formed under this chapter shall perform services on a basis of the lowest practicable cost, and may provide for meeting the cost thereof through dues, assessments, or service charges, which shall be prescribed in the bylaws. Such charges shall be set high enough to provide a margin of safety above current operating costs and fixed charges upon borrowed capital.

[C24, 27, 31, 35, 39, §**8506;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §498.22]

498.23 Reserve and educational funds — patronage dividends.

Out of any surplus remaining in any given year, the directors shall each year set aside not less than ten percent of such savings for the accumulation of a reserve fund until such

reserve shall equal at least forty percent of the invested capital of the association, not less than one percent nor more than five percent for a permanent educational fund from which expenditures shall be made annually at the discretion of the directors for the purpose of teaching cooperation, and the remainder to be returned to the members as a patronage dividend prorated on a uniform basis to each member upon the value of business done by that member through the association.

[C24, 27, 31, 35, 39, §**8507;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §498.23]

498.24 Biennial report — penalty.

Section 504.1613 applies to a cooperative association organized under this chapter in the same manner as that section applies to a corporation organized under chapter 504. In addition to the information required to be set forth in the biennial report under section 504.1613, the cooperative association shall also set forth the total amount of business transacted, number of members, total expense of operation, total amount of indebtedness, and total profits or losses for each calendar or fiscal year of the two-year period which ended immediately preceding the first day of January of the year in which the report is filed.

A cooperative association which fails to comply with this section before April 1 of the year in which the report is due is subject to a penalty of ten dollars.

[C24, 27, 31, 35, 39, §**8508;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §498.24]

97 Acts, ch 171, §28; 2004 Acts, ch 1049, §185, 191, 192

Referred to in §498.25, 498.27

498.25 Exemption from report.

Any corporation organized under the provisions of this chapter after the first day of January shall be exempt from the provisions of section 498.24 for the year in which incorporated, after which it shall, however, be subject to all of the provisions of said section.

[C27, 31, 35, §8508-a1; C39, §**8508.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §498.25]

498.26 List of delinquents.

In the month of April of each year the secretary of state shall prepare a list of all delinquent corporations and file the same in the secretary of state's office.

[C27, 31, 35, §8508-a2; C39, §**8508.2;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §498.26]

498.27 Notice to delinquents.

On or before the first day of May of the year the report is due the secretary of state shall mail to each delinquent association a notice of such delinquency and of the penalties provided in section 498.24.

[C27, 31, 35, §8508-a3; C39, §**8508.3;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §498.27]

97 Acts, ch 171, §29

498.28 Cancellation.

If the biennial report required is not filed and penalties paid on or before the last day of June the secretary of state shall, on the first day of July following, cancel the name of any delinquent corporation from the list of live corporations in the secretary of state's office, and enter such cancellation on the proper records.

[C27, 31, 35, §8508-a4; C39, §**8508.4;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §498.28]

2000 Acts, ch 1022, §7

498.29 Effect of cancellation.

When so canceled the corporate rights of any such corporation shall be forfeited and its corporate period terminated on the date such cancellation shall have been entered on the records of the secretary of state's office.

[C27, 31, 35, §8508-a5; C39, §**8508.5;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §498.29]

498.30 Reinstatement of corporation.

Any corporation whose corporate rights have been canceled and forfeited in the manner provided herein may, however, before September 1 following such cancellation, make

application to the secretary of state for reinstatement and upon being furnished good and sufficient reasons for not having filed its report the secretary shall, upon the filing of such report and the payment of the penalty, reinstate said corporation and the decree of cancellation shall be annulled and the corporation shall be entitled to continue to act as a corporation for the unexpired portion of its corporate period as fixed by its articles of incorporation and the limitations prescribed by law.

[C27, 31, 35, §8508-a6; C39, §**8508.6;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §498.30]

498.31 Chapter extended to former associations.

All corporations, or associations heretofore organized and doing business under prior statutes, or which have attempted so to organize and do business cooperatively, shall have the benefit of all the provisions of this chapter and be bound thereby, on filing with the secretary of state amended and substituted articles of incorporation drawn in accordance with the provisions of this chapter and a written declaration signed and sworn to by the president and secretary, to the effect that said company or association has, by a majority vote of its stockholders, decided to accept the benefits of and to be bound by the provisions of this chapter.

[C24, 27, 31, 35, 39, §**8509;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §498.31]

498.32 Use of term "cooperative" — injunction.

No corporation or association hereafter organized shall be entitled to use the term "cooperative" as part of its corporate or other business name or title, unless it has complied with the provisions of this chapter or of chapter 497, and any corporation or association violating the provisions of this chapter may be enjoined from doing business under such name at the instance of any stockholder of any association legally organized under the provisions of this chapter.

[C24, 27, 31, 35, 39, §**8510;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §498.32]

498.33 Use of funds — promotion expenses.

None of the funds of any association shall be used for purposes of any promotion as commissions, salaries, or expenses of any kind, character, or nature whatsoever, except that in the case of associations operating in more than one county, if the par value of securities to be sold is in excess of one hundred thousand dollars, a sum not to exceed five percent of the par value of bonds or debentures sold may be used by committees elected by the members for selling or soliciting for the sale of such securities or for hiring responsible salaried solicitors for that purpose.

[C24, 27, 31, 35, 39, §**8511;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §498.33]

498.34 Duration of incorporation — renewal.

Associations formed under the provisions of this chapter shall continue for a period of twenty-five years, unless earlier dissolved by order of its members or by other processes as by law provided, and the term of its existence may be renewed by the filing of new articles of association, as by law provided.

[C24, 27, 31, 35, 39, §**8512;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §498.34]

498.35 Personal liability.

Except as otherwise provided in this chapter, a director, officer, employee, or member of the association is not liable on the association's debts or obligations and a director, officer, member, or other volunteer is not personally liable in that capacity, for a claim based upon any action taken, or any failure to take action in the discharge of the person's duties, except for the amount of a financial benefit received by the person to which the person is not entitled, an intentional infliction of harm on the association or its members, or an intentional violation of criminal law.

87 Acts, ch 212, §7; 2003 Acts, ch 66, §12

498.36 Indemnification.

A cooperative association operating under this chapter may indemnify any present or former director, officer, employee, member, or volunteer in the manner and in the instances authorized in sections 490.850 through 490.859, provided that where sections 490.850 through 490.859 provide for action by shareholders the sections are applicable to action by voting members of the cooperative association, and where sections 490.850 through 490.859 refer to the corporation organized under chapter 490 the sections are applicable to the cooperative association organized under this chapter, and where sections 490.850 through 490.859 refer to the director the sections are applicable to a director, officer, employee, member, or volunteer of the cooperative association organized under this chapter.

88 Acts, ch 1170, §7; 94 Acts, ch 1023, §63; 2002 Acts, ch 1154, §105, 125

498.37 Statement to estate of stockholder.

The board of directors, upon receiving actual notice of a member's death, shall provide a statement to the administrator or executor of the member's estate, or to the attorney representing the member's estate. The statement shall describe agricultural products owned by the member which are in the possession of the association.

This section shall not require an association to conduct a search of the status of its members. The association shall exercise reasonable diligence in determining to whom the statement must be delivered. The statement shall be delivered to the administrator, executor, or attorney, within thirty days following a determination as to whom the statement must be delivered. A statement is not required to be prepared or delivered, if the association is not notified of the member's death within one year after the date of death, or by the date that the member's estate is closed, whichever is later.

91 Acts, ch 230, §2

CHAPTER 499

COOPERATIVE ASSOCIATIONS

Referred to in §10.1, 10B.1, 10B.4, 10B.7, 357A.1, 427.1(27)(a), 427.1(27)(b), 427.1(27)(c), 427.1(27)(e), 476.1, 476C.1, 489.102, 490.629, 490.1109, 490.1701, 501.104, 501.601, 501A.102, 501A.501, 501A.1104, 502.102, 502.201, 547.1, 552A.2, 556.1, 556.5, 558.72, 669.14

Applicable to associations formed from and after July 4, 1935; §499.1
Option to come under chapter 501; §501.601
Option to come under chapter 501A; §501A.1104

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SUBCHAPTER I
GENERAL PROVISIONS

499.1 Applicable.

This chapter applies only to cooperative associations as defined in section 499.2. All such associations formed from and after July 4, 1935, must be organized under this chapter.

[C35, §8512-g1; C39, §**8512.01;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §499.1]

499.2 Definitions.

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

1. *"Agricultural associations"* are those formed to produce, grade, blend, preserve, process, store, warehouse, market, sell, or handle an agricultural product, or a by-product of an agricultural product; to produce ethanol; to purchase, produce, sell, or supply machinery, petroleum products, equipment, fertilizer, supplies, business services, or educational service to or for those engaged as bona fide producers of agricultural products; to finance any such activities; or to engage in any cooperative activity connected with or for any number of these purposes.

2. *"Agricultural products"* include horticultural, viticultural, forestry, dairy, livestock, poultry, bee and any other farm products.

3. *"Alternative voting method"* means a method of voting other than a written ballot, including voting by electronic, telephonic, internet, or other means that reasonably allows members the opportunity to vote.

4. *"Association"* means a corporation formed under this chapter.

5. A *"cooperative association"* is one which deals with or functions for its members at least to the extent required by section 499.3; and which distributes its net earnings among its members in proportion to their dealings with it, except for limited dividends or other items permitted in this chapter; and in which each voting member has one vote and no more.

6. *"Local deferred patronage dividends"* of an association means that portion of each member's deferred patronage dividends described in section 499.30 which the board of directors of the association has determined arise from earnings of the association other than earnings which have been allocated to the association but which have not been paid in cash to the association by other cooperative organizations of which the association is a member. However, if the board of directors fails to make a determination with respect to a deceased member's deferred patronage dividends prior to the member's death, then *"local deferred patronage dividends"* means that portion of the member's deferred patronage dividends which is proportional to the deferred patronage dividends described in section 499.30 less the amount of undistributed net earnings which have been allocated to the association by other cooperative organizations of which the association is a member, compared to all deferred patronage dividends of the association.

7. *"Local deferred patronage preferred stock"* of an association means preferred stock, if any, of an association which has been issued in exchange for local deferred patronage dividends. If preferred stock has been issued in exchange for deferred patronage dividends prior to the time the board of directors of the association has determined the portion of each member's deferred patronage dividend which represents local deferred patronage dividends, then the board of directors may reasonably determine what portion of the preferred stock was issued in exchange for local deferred patronage dividends and the portion which was issued for other deferred patronage dividends.

8. *"Member"* refers not only to members of nonstock associations but also to common stockholders of stock associations, unless the context of a particular provision otherwise indicates.

[C35, §8512-g2; C39, §**8512.02;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §499.2]

86 Acts, ch 1196, §1; 88 Acts, ch 1026, §1; 92 Acts, ch 1099, §9; 2011 Acts, ch 23, §1; 2011 Acts, ch 34, §115

Referred to in §499.1, 502.102

499.3 Dealing with nonmembers.

1. A nonstock livestock shipping association shall not handle livestock of any nonmembers.

2. Any association may restrict the amount of business done with nonmembers and may limit its dealings or any class thereof to members only.

[C35, §8512-g3; C39, §**8512.03;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §499.3]

2001 Acts, ch 12, §1, 6; 2016 Acts, ch 1011, §121

Referred to in §499.2, 499.49

499.4 Use of term "cooperative" restricted.

A person including a corporation hereafter organized, which is not an association as defined in this chapter or a cooperative as defined in chapter 501 or 501A, shall not use the word "cooperative" or any abbreviation thereof in its name or advertising or in any connection with its business, except foreign associations admitted under section 499.54. The attorney general or any association or any member thereof may sue and enjoin such use.

This chapter does not control the use of fictitious names; however, if a cooperative association or a foreign cooperative association uses a fictitious name in this state, it shall deliver to the secretary of state for filing a copy of the resolution of its board of directors, certified by its secretary, adopting the fictitious name.

[C35, §8512-g4; C39, §**8512.04;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §499.4]

97 Acts, ch 23, §56; 2001 Acts, ch 12, §2, 6; 2005 Acts, ch 135, §114

499.5 Permissible organizers.

1. Five or more individuals, or two or more associations, may organize an association.

2. All individual incorporators of agricultural associations must be engaged in producing agricultural products, which phrase includes landlords and tenants as specified in section 499.13.

3. A nonprofit water utility organized under chapter 357A or 504 may elect to become an association under this chapter upon majority vote of its members by filing with the secretary of state a statement confirming the election and appropriate articles of incorporation. However, the association is subject to the service limitation provisions contained in sections 357.1A and 357A.2.

4. A telephone company organized as a corporation under chapter 491 and qualifying pursuant to an internal revenue service letter ruling under Internal Revenue Code §501(c)(12) as a nonprofit corporation entitled to distribute profits in a manner similar to an association under this chapter may reorganize as an association under this chapter upon the affirmative vote of two-thirds of the votes cast by the shares entitled to vote in an election at a meeting at which a majority of all shares entitled to vote cast a vote.

[C35, §8512-g5; C39, §**8512.05;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §499.5]

88 Acts, ch 1172, §3; 90 Acts, ch 1164, §1; 96 Acts, ch 1044, §1; 2004 Acts, ch 1049, §191; 2004 Acts, ch 1175, §393

499.5A Water utilities — members of federated associations.

Notwithstanding section 499.13, a water utility organized under this chapter, a municipal water utility, or a water district organized under chapter 357, 357A, or 504 may be a member of a federated association.

88 Acts, ch 1172, §4; 94 Acts, ch 1137, §2; 2004 Acts, ch 1049, §191; 2004 Acts, ch 1175, §393

499.6 Purposes.

A cooperative association may be organized under this chapter for any lawful purpose or purposes.

[C35, §8512-g6; C39, §**8512.06;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §499.6]

88 Acts, ch 1026, §2; 88 Acts, ch 1172, §5

499.7 Powers.

Except as expressly limited in its articles, each association has the following powers:

1. To conduct business, carry on operations, establish and operate offices, and exercise all powers granted by this chapter in or outside this state.

2. To borrow any amounts of money, and give any form of obligation or security therefor.

3. To make advances to patrons or members, or members of member-associations, and take any form of obligation or security therefor.

4. To acquire, hold, transfer or pledge any obligation or security representing funds actually advanced or used for any cooperative activity; or stock, memberships, bonds or obligations of any cooperative organization dealing in any product handled by the association, or any by-product thereof.

5. To make any contract, endorsement or guaranty it deems desirable incident to its transfer or pledge of any obligation or security.

6. To acquire, own or dispose of any real or personal property deemed convenient for its business, including patents, trademarks and copyrights.

7. To exercise any power, right or privilege suitable or necessary for, or incident to, promoting or accomplishing any of its powers, purposes or activities, or granted to ordinary corporations, save such as are inconsistent with this chapter.

8. To exercise any of its powers anywhere. No association organized under this chapter shall engage in the business of banking.

[C35, §8512-g7; C39, §**8512.07;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §499.7]

88 Acts, ch 1026, §3

499.8 Contracts authorized.

An agricultural association may contract with any member for the member's exclusive sale to or through it, of all or any part of the member's agricultural products or other designated commodities. Such contracts may permit the association to take and sell the property without acquiring title thereto, and pay the member the sale price less costs and expenses of selling, which may include the member's pro rata portion of the association's annual outlay for overhead, interest, preferred dividends, reserves or other specified charges. Such contracts must be for a specified time, not less than one year. Each contract shall fix a period of at least ten days during each year after the first, within which either party may terminate it without affecting any liability previously accrued.

[C35, §8512-g8; C39, §**8512.08;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §499.8]

Referred to in §499.9

499.9 Penalties — performance — injunction — arbitration.

1. *a.* Contracts permitted by section 499.8 may provide that the member pay the association any sum, fixed in amount or by a specified method of computation, for each violation thereof; also all the association's expenses of any suit thereon, including bond premiums and attorney's fees. All such provisions shall be enforced as written, whether at law or in equity, and shall be deemed proper measurement of actual damages, and not penalties or forfeitures.

b. The association may obtain specific performance of any such contract, or enjoin its threatened or continued breach, despite the adequacy of any legal or other remedy.

c. If the association files a verified petition, showing an actual or threatened breach of any such contract and seeking any remedy therefor, the court shall, without notice or delay but on such bond as it deems proper, issue a temporary injunction against such breach or its continuance.

2. The parties to such contracts may agree to arbitrate any controversy subsequently arising thereunder, and fix the number of arbitrators and method of their appointment. Such agreements shall be valid and irrevocable, except on such grounds as invalidate contracts generally. If they specify no method for appointing arbitrators, or if either party fails to follow such method, or if for any reason arbitrators are not named or vacancies filled, either party may apply to the district court to designate the necessary arbitrator, who shall then

act under the agreement with the same authority as if named in it. Unless otherwise agreed, there shall be but one arbitrator.

[C35, §8512-g9; C39, §**8512.09;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §499.9]

2015 Acts, ch 29, §66

499.10 Cooperative agreements.

Any association may make any agreement or arrangement with any other association or cooperative organization for the cooperative or more economical carrying on of any of its business. Any number of such associations or organizations may unite to employ or use, or may separately employ or use, the same methods, means or agencies for conducting their respective businesses.

[C35, §8512-g10; C39, §**8512.10;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §499.10]

499.11 Legality declared.

No association, contract, method or act which complies with this chapter shall be deemed a conspiracy or combination in restraint of trade or an illegal monopoly, or an attempt to lessen business or fix prices arbitrarily, or to accomplish any improper or illegal purpose.

[C35, §8512-g11; C39, §**8512.11;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §499.11]

499.12 Exemption of private property.

The private property of the members or stockholders shall be exempt from execution for the debts of the corporation.

[C35, §8512-g12; C39, §**8512.12;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §499.12]

499.13 Membership — eligibility.

A membership or share of common stock shall not be issued to, or held by, any person unless the person is eligible for membership in the association under its articles. A person may be eligible only if the person is engaged in producing a product marketed by the association, the person customarily consumes or uses the supplies or commodities that the association handles, or the person uses the services that the association renders. A farm tenant or landlord who receives a share of agricultural products as rent may be eligible for membership in an agricultural association as a producer. A cooperative association engaged in any directly or indirectly related activity may be eligible for membership. An association may be formed which includes among its members cooperative associations or restricts its membership to cooperative associations.

[C35, §8512-g13; C39, §**8512.13;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §499.13]

97 Acts, ch 17, §2

Referred to in §499.5, 499.5A

499.14 Membership in nonstock associations.

Membership in associations without capital stock may be acquired by eligible parties in the manner provided in the articles, which shall specify the rights of members, the issuing price of memberships, if any, and what, if any, fixed dividends accrue thereon. If the articles so provide, membership shall be of two classes, voting and nonvoting. Voting members shall be agricultural producers, and all other members shall be nonvoting members. Nonvoting members shall have all the rights of membership except the right to vote.

[C35, §8512-g14; C39, §**8512.14;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §499.14]

2001 Acts, ch 12, §3, 6

499.14A Electric cooperative association memberships.

An electric cooperative association may have one or more classes of members. Qualifications, requirements, methods of acceptance, terms, conditions, termination, and other incidents of membership shall be set forth in the articles of incorporation of the association.

93 Acts, ch 94, §1; 2001 Acts, ch 12, §4, 6

499.15 Certificates of membership or stock.

The association may issue certificates of membership or stock, each of which states the fixed dividend, if any, and the restrictions or limitations upon its ownership, voting, transfer, redemption, or cancellation.

[C35, §8512-g15; C39, §**8512.15;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §499.15]
2007 Acts, ch 23, §1

499.16 Subscriptions — stock or membership.

If permitted by the association's articles of incorporation, any eligible subscriber for common stock or membership may vote and be treated as a member after making part payment of the amount, if any, required to be paid for the common stock or membership in cash, giving the subscriber's note for the balance, and satisfying any other requirement for the subscription as set forth in the articles. A subscription may be forfeited as provided in section 499.32. Stock or membership shall not be issued until payment of the amount, if any, required to be paid for the stock or membership is fully made. A subscriber shall not hold office until the association has issued the subscriber stock or membership.

[C35, §8512-g16; C39, §**8512.16;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §499.16]
97 Acts, ch 17, §3; 2001 Acts, ch 12, §5, 6; 2007 Acts, ch 23, §2
Referred to in §499.30

499.17 Transfer of stock or membership.

No common stock shall be transferable, unless the articles expressly provide for transfer to others eligible for membership. Such provision may require that the transfer be preceded by an offer to the association, or be otherwise restricted. No nonstock membership shall be transferable, and if the association issues certificates of membership or stock to a member, the certificates shall be surrendered to the association on the member's voluntary withdrawal.

[C35, §8512-g17; C39, §**8512.17;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §499.17]
2007 Acts, ch 23, §3

499.18 Expulsion of members.

The directors may expel any member if the member has attempted to transfer that member's membership or stock in violation of its terms, or has willfully violated any article or bylaw which provides for such penalty.

[C35, §8512-g18; C39, §**8512.18;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §499.18]

499.19 Cancellation of membership or stock.

If a common stockholder or member dies, or becomes ineligible, or is expelled, that person's stock or membership shall forthwith be canceled. In cases of expulsion the association shall pay the stockholder or member its value as shown by the books on the date of cancellation, but not more than its original issuing price, within sixty days thereafter. In cases of death or ineligibility, it shall pay such value to the stockholder or member or the stockholder's or member's personal representative within two years thereafter, without interest.

[C35, §8512-g19; C39, §**8512.19;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §499.19]

499.20 Withdrawal of members.

The articles may permit and regulate voluntary withdrawal of members and the resulting cancellation of their common stock and memberships.

[C35, §8512-g20; C39, §**8512.20;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §499.20]

499.21 Obligations not affected.

The death, expulsion or withdrawal of a member shall not impair the member's contracts, debts, or obligations to the association.

[C35, §8512-g21; C39, §**8512.21;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §499.21]

499.22 Capital stock.

An association with capital stock may divide the shares into common and preferred stock. Par value stock shall not be issued for less than par. The general corporation laws shall

govern the consideration for which no-par stock is issued. If the articles so provide, common stock may be issued in two classes, voting and nonvoting. Voting stock shall be issued to all agricultural producers and nonvoting stock to all other members. Voting stock or nonvoting stock may be issued to a cooperative association as provided in the articles of incorporation of the association issuing the stock. Nonvoting stock shall have all privileges of membership except the right to vote. Preferred stock held by nonmembers shall not exceed in amount that held by members.

[C35, §8512-g22; C39, §**8512.22;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §499.22]
97 Acts, ch 17, §4; 98 Acts, ch 1100, §67

499.23 Dividends on common stock.

Unless the articles provide that common stock shall receive no dividends, the directors may declare noncumulative dividends thereon at such rate as they may fix, not exceeding eight percent per annum.

[C35, §8512-g23; C39, §**8512.23;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §499.23]

499.24 Preferred stock.

Preferred stock shall bear cumulative or noncumulative dividends as fixed by the articles. It shall have no vote. It shall be issued and be transferable without regard to eligibility or membership, and be redeemable on terms specified in the articles and as provided for in this chapter. The directors shall determine the time and amount of its issue.

[C35, §8512-g24; C39, §**8512.24;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §499.24]
2011 Acts, ch 27, §1

499.25 Issuing preferred stock in purchases.

An association may discharge all or any part of obligations incurred in purchasing any business, property or stock, or an interest therein, by issuing its authorized preferred stock in an amount not exceeding the fair market value of the thing purchased. Issuance of such stock shall be upon the fair market value of the property purchased, as determined through an appraisal made by the directors or a competent appraiser employed by the directors. Such preferred stock shall be valid as though paid for in cash.

[C35, §8512-g25; C39, §**8512.25;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §499.25]
90 Acts, ch 1164, §2

499.26 Service charges.

Unless the articles otherwise provide, the bylaws or the directors may prescribe charges to be made to each member for services rendered the member or upon products bought from or sold to the member, and the time and manner of their collection.

[C35, §8512-g26; C39, §**8512.26;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §499.26]

499.27 Meetings.

1. Regular meetings of members shall be held at least once each year, the first of which shall be on the date specified in its articles. Unless otherwise provided in the articles or bylaws, subsequent meetings shall be on the same date in each succeeding year.

2. Unless otherwise provided in the articles, the directors may call special meetings of members, and must do so upon written demand of twenty percent of the members.

3. Unless the member waives it in writing, each member shall have ten days' written notice of the time and place of all meetings, and of the purpose of all special meetings. Such notice shall be given to the member in person or by mail directed to the member's address as shown on the books of the association, or if the articles so provide, by publication in a regular publication of general circulation among its members, or a newspaper of general circulation published at the principal place of business of the association.

[C35, §8512-g27; C39, §**8512.27;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §499.27]
2015 Acts, ch 29, §114
Referred to in §10.9

499.28 Number of votes.

No member may own more than one membership or share of common stock. Each voting member shall be entitled to one vote and no more at all corporate meetings.

[C35, §8512-g28; C39, §**8512.28;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §499.28]

499.29 Manner of voting.

A vote shall not be cast by proxy. The vote of a member-association shall be cast only by its representative duly authorized in writing. A member may cast that member's vote in advance of the meeting by mail ballot or, if the association's articles or bylaws permit, by an alternative voting method upon any proposition of which the member has been previously notified in writing.

[C35, §8512-g29; C39, §**8512.29;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §499.29]

96 Acts, ch 1115, §1; 2011 Acts, ch 23, §2

499.30 Distribution of earnings.

The directors shall annually dispose of the earnings of the association in excess of its operating expenses as follows:

1. To provide a reasonable reserve for depreciation, obsolescence, bad debts, or contingent losses or expenses.

2. *a.* (1) To the extent that the cooperative association is operating on a pooling basis, the board of directors of the cooperative association shall determine the portion of the remaining earnings derived from the pool that will be added to the surplus. The cooperative association is operating on a pooling basis, if the association markets, sells, or handles an agricultural product and all of the following apply:

(a) The product is a pool composed by commingling units of the same kind of product which are contributed to the cooperative association by its members.

(b) The earnings of the association are computed without deducting a charge for products delivered by members of the association who are contributing units to be commingled in the product pool.

(2) The board of directors may provide an advance payment to the members of the association contributing units of the product to be commingled in the product pool during the contribution period.

b. To the extent that the cooperative association is not operating on a pooling basis as provided in this subsection, at least ten percent of the remaining earnings must be added to surplus until surplus equals either thirty percent of the total of all capital paid in for stock or memberships, plus all unpaid patronage dividends, plus certificates of indebtedness payable upon liquidation, earnings from nonmember business, and earnings arising from the earnings of other cooperative organizations of which the association is a member, or one thousand dollars, whichever is greater. No additions shall be made to surplus when it exceeds either fifty percent of the total, or one thousand dollars, whichever is greater, without the approval of the membership by a majority of votes cast.

3. Not less than one percent nor more than five percent of earnings in excess of reserves may be placed in an educational fund, to be used as the directors deem suitable for teaching or promoting cooperation.

4. After disposing of earnings as provided in subsections 1 and 2, the cooperative association shall pay any fixed dividends on stock or memberships.

5. Notwithstanding an association's articles of incorporation, for each taxable year of the association, the association shall allocate all remaining net earnings to the account of each member, including subscribers described in section 499.16, ratably in proportion to the business the member did with the association during that year. The directors shall determine, or the articles of incorporation or bylaws of the association may specify, the percentage or the amount of the allocation to be currently paid in cash. However, for a cooperative association other than a public utility as defined in section 476.1, the amount to be currently payable in cash shall not exceed twenty percent of the allocation during any period when unpaid local deferred patronage dividends of deceased members for prior years are outstanding. Notwithstanding the twenty percent allocation limitation, the directors of

a cooperative association or the articles of incorporation or bylaws of the association may specify any percentage or amount to be currently paid in cash to the estates of deceased natural persons who were members. All the remaining allocation not paid in cash shall be transferred to a revolving fund as provided in section 499.33 and credited to the members and subscribers. The credits in the revolving fund are referred to in this chapter as deferred patronage dividends.

[C35, §8512-g30; C39, §**8512.30;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §499.30]

86 Acts, ch 1196, §2, 3; 94 Acts, ch 1058, §1; 95 Acts, ch 106, §1; 96 Acts, ch 1115, §2; 2012 Acts, ch 1023, §157

Referred to in §499.2, 499.30A, 499.31

499.30A Reversion of disbursements.

1. As used in this section, *"disbursement"* means an amount of any dividend, patronage dividend, distribution including earnings distribution, or any other increment or sum realized or accruing from a membership or stock, subscription, or other equity interest in a cooperative association.

2. Once a person's membership or stock, subscription, or other member's equity in a cooperative association is deemed abandoned under section 556.5, the cooperative association may retain any disbursement held by the cooperative association for or owing to the person. The cooperative association may also deliver the disbursement to the treasurer of state for disposition as abandoned property pursuant to sections 556.5 and 556.11.

3. If the cooperative association elects to retain the disbursement under this section, the disbursement shall be deposited into a reversion fund established by the cooperative association.

4. A disbursement having an aggregate value of fifty dollars or more that is retained by the cooperative association shall be forfeited to the cooperative association only if the cooperative association publishes at least one notice of the abandoned property in a publication regularly distributed to its membership or in a newspaper having a general circulation in the county where the cooperative association is located. The notice shall include all of the following:

a. The name and address of the cooperative association.

b. The name of the person who has an interest in the disbursement according to the records of the cooperative association.

c. A brief description of the type of disbursement retained by the cooperative association.

d. A statement that the disbursement will be forfeited to the cooperative association unless the person files a claim for the disbursement within the period provided for in this section.

5. *a.* Subject to this subsection, a person asserting an interest in the disbursement may file a claim for it with the cooperative association in a manner and according to procedures required by the cooperative association. If a person is entitled to an abandoned membership, stock, subscription, or other interest as provided in section 556.20 or 556.21, the cooperative association shall also pay the person the disbursement deposited in the reversion fund that is realized or accrued from the membership or stock, subscription, or other interest.

b. If a person has not filed a claim for the disbursement within six months after the first date that the notice of abandoned property is first published as provided in this section, the disbursement shall be forfeited to the cooperative association.

6. The disbursements deposited into the reversion fund that are forfeited to the cooperative association shall be used as provided in this subsection. The cooperative association may authorize the payment of forfeited disbursements to persons claiming interests in forfeited disbursements as provided in the cooperative association's articles of incorporation or bylaws. Otherwise, forfeited disbursements shall be used as the directors deem suitable for any of the following purposes:

a. Teaching and promoting cooperation. The directors may deposit the amounts of disbursements into the education fund as provided in section 499.30.

b. Economic development including private or joint public and private investments

involving the creation of economic opportunities for its members or the retention of existing sources of income that would otherwise be lost.

2001 Acts, ch 142, §3; 2004 Acts, ch 1028, §1
Referred to in §490.629, 556.5

499.31 Control of allocation by members.

The members may at any meeting control the amount to be allocated to surplus or educational fund, within the limits specified in section 499.30, or the amount to be allocated to reserves.

[C35, §8512-g31; C39, §**8512.31;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §499.31]

499.32 Patronage dividends of subscribers.

Patronage dividends to subscribers whose stock or membership is not fully paid in cash shall be applied toward such payment until it is completed. If the articles or bylaws so provide, subscriptions not fully paid within two years may be canceled and all payments or patronage dividends thereon forfeited.

[C35, §8512-g32; C39, §**8512.32;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §499.32]
Referred to in §499.16

499.33 Use of revolving fund.

1. The directors may use a revolving fund to pay the obligations or add to the capital of the association or retire its preferred stock. In that event the deferred patronage dividends credited to members constitute a charge on the revolving fund, on future additions to the revolving fund, and on the corporate assets, subordinate to existing or future creditors and preferred stockholders. Except as otherwise provided in subsection 2, deferred patronage dividends for any year have priority over those for subsequent years.

2. *a.* Prior to other payments of deferred patronage dividends or redemption of preferred stock held by members, the directors of a cooperative association, other than a cooperative association which is a public utility as defined in section 476.1, shall pay local deferred patronage dividends and redeem local deferred patronage preferred stock of deceased natural persons who were members, and may pay deferred patronage dividends or may redeem preferred stock of deceased natural persons who were members or of members who become ineligible, without reference to the order of priority.

b. The directors of a cooperative association which is a public utility as defined in section 476.1 may pay deferred patronage dividends and redeem preferred stock of deceased natural persons who were members, and may pay all other deferred patronage dividends or redeem preferred stock of members without reference to priority.

3. Payment of deferred patronage dividends or the redemption of preferred stock shall be carried out to the extent and in the manner specified in the bylaws of the association.

[C35, §8512-g33; C39, §**8512.33;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §499.33]

86 Acts, ch 1196, §4; 95 Acts, ch 106, §2
Referred to in §499.30, 499.35

499.34 Patronage dividend certificates.

If its articles or bylaws so provide, an association may issue transferable or nontransferable certificates for deferred patronage dividends.

[C35, §8512-g34; C39, §**8512.34;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §499.34]
Referred to in §499.35

499.35 Time of payment.

Credits or certificates referred to in sections 499.33 and 499.34 shall not mature until the dissolution or liquidation of the association, but shall be callable by the association at any time in the order of priority specified in section 499.33.

[C35, §8512-g35; C39, §**8512.35;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §499.35]

499.36 Directors.

1. The affairs of each association shall be managed by a board of directors.

2. *a.* A director must be a member of the association or an officer or a member of a member-association. A director shall be elected by the members as prescribed by the association's articles of incorporation.

b. At least five directors shall serve on the association's board. The number of directors shall be established in accordance with the association's articles of incorporation or bylaws. If a board has the power to fix or change the number of directors, the board may increase or decrease by thirty percent or less the number of directors last approved by the members. Only the members may increase or decrease by more than thirty percent the number of directors last approved by the members.

c. The articles of incorporation may establish a variable range for the size of the board by fixing a minimum and maximum number of directors. If a variable range is established, the number of directors may be fixed or changed from time to time, within the minimum and maximum number, by the members or the board. After shares are issued, only the members may change the range for the size of the board, change from a fixed to a variable-range-size board, or change from a variable-size to a fixed-size board.

3. *a.* Unless the articles or bylaws otherwise provide, if a vacancy occurs on the board, including a vacancy resulting from an increase in the number of directors, the vacancy may be filled by any of the following:

(1) The shareholders.

(2) The board.

(3) If the directors remaining in office constitute fewer than a quorum of the board, the directors may fill the vacancy by the affirmative vote of all the directors remaining in office.

b. A vacancy that will occur at a specific later date, by reason of a resignation effective at a later date, may be filled before the vacancy occurs. The new director shall not take office until the vacancy occurs.

4. The articles or bylaws may permit the directors to select an executive committee from their own number; and may prescribe its authority, which may be coextensive with that of the whole board.

5. Directors shall be elected by districts, if the articles specify the districts, the number of directors from each district, the manner of nomination, redistricting, or reapportionment, and whether directors are to be directly elected by the members or by delegates chosen by them. Districts shall be formed and redistricting shall be ordered, from time to time, so that the districts contain as nearly as possible an equal number of members. The bylaws shall describe the district boundaries currently in effect.

6. Unless the articles of incorporation or bylaws provide otherwise, the board of directors may permit any or all directors to participate in a regular or special meeting through the use of any means of communication by which all directors participating are able to simultaneously hear each other during the meeting. A director participating in a meeting pursuant to this subsection is deemed to be present in person at the meeting.

7. Unless the articles of incorporation or bylaws provide otherwise, an action required or permitted by this chapter to be taken at a board of directors' meeting may be taken without a meeting if the action is taken by all members of the board. The action must be evidenced by one or more written consents describing the action taken, signed by each director, and filed with the corporate records reflecting the action taken. An action taken under this subsection is effective when the last director signs the consent, unless the consent specifies a different effective date. A consent signed under this subsection is deemed to have the same effect as a meeting vote and may be described as such in any document.

[C35, §8512-g36; C39, §**8512.36;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §499.36]
86 Acts, ch 1196, §5; 92 Acts, ch 1147, §1; 94 Acts, ch 1023, §64; 97 Acts, ch 17, §5
Referred to in §499.38, 499.40

499.36A Standards of conduct for directors.

1. A director shall discharge the duties of the position of director in good faith, in a manner the director reasonably believes to be in the best interests of the association, and with the care that a person in a like position would reasonably believe appropriate under

similar circumstances. A person who so performs those duties is not liable by reason of being or having been a director of the association.

2. *a.* A director is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, in each case prepared or presented by any of the following:

(1) One or more officers or employees of the association whom the director reasonably believes to be reliable and competent in the matters presented.

(2) Legal counsel, public accountants, or other persons as to matters that the director reasonably believes are within the person's professional or expert competence.

(3) A committee of the board upon which the director does not serve, duly established by the board as to matters within its designated authority, if the director reasonably believes the committee to merit confidence.

b. Paragraph "*a*" does not apply to a director who has knowledge concerning the matter in question that makes the reliance otherwise permitted by that paragraph unwarranted.

3. A director who is present at a meeting of the board when an action is approved by the affirmative vote of a majority of the directors present is presumed to have assented to the action approved, unless any of the following applies:

a. The director objects at the beginning of the meeting to the transaction of business because the meeting is not lawfully called or convened, and does not participate in the meeting after the objection, in which case the director is not considered to be present at the meeting for any purpose of this chapter.

b. The director votes against the action at the meeting.

c. The director is prohibited by a conflict of interest from voting on the action.

4. In discharging the duties of a director, the director may, in addition to consideration of the effects of any action on the association and its members, consider any or all of the following community interest factors:

a. The effects of the action on the association's employees, suppliers, creditors, and customers.

b. The interests of and effects on communities and the cooperative system in which the association and its members operate.

c. The long-term as well as short-term interests of the association and its members, including the possibility that these interests may be best served by the continued independence of the association.

2008 Acts, ch 1141, §1; 2009 Acts, ch 133, §166
Referred to in §499.37A, 499.47D

499.37 Officers.

1. The board of directors of the association shall select the association's officers as provided in its articles of incorporation or bylaws, and shall fill vacancies in such offices. The articles of incorporation or bylaws shall delegate to an officer the responsibility for all of the following:

a. Preparing minutes of meetings of the directors and the shareholders.

b. Authenticating the association's records.

2. Unless the association's articles of incorporation or bylaws otherwise provide, the association's officers shall serve for annual terms beginning at the close of the first regular meeting of members in each year.

[C35, §8512-g37; C39, §**8512.37;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §499.37]
2003 Acts, ch 66, §13

499.37A Standards of conduct for officers.

1. An officer, when performing in such capacity, shall act in conformity with all of the following:

a. In good faith.

b. With the care that a person in a like position would reasonably exercise under similar circumstances.

c. In a manner the officer reasonably believes to be in the best interests of the association.

2. In discharging the officer's duties, an officer who does not have knowledge that makes such reliance unwarranted is entitled to rely on any of the following:

a. The performance of properly delegated responsibilities by one or more employees of the association whom the officer reasonably believes to be reliable and competent in performing the responsibilities delegated.

b. Information, opinions, reports, or statements, including financial statements and other financial data, prepared or presented by one or more employees of the association whom the officer reasonably believes to be reliable and competent in the matters presented.

c. Legal counsel, public accountants, or other persons retained by the association as to matters involving skills or expertise the officer reasonably believes are matters within the particular person's professional or expert competence or as to which the particular person merits confidence.

3. An officer shall not be liable as an officer to the association or its members for any decision to take or not to take action, or any failure to take any action, if the duties of the officer are performed in compliance with this section. Whether an officer who does not comply with this section is liable depends in such instance on applicable law, including those principles of section 499.36A that have relevance.

2008 Acts, ch 1141, §2

499.38 Removal of officers and directors.

At any meeting called for that purpose, any officer or director may be removed by vote of a majority of all voting members of the association. A director chosen under section 499.36, subsection 5, may likewise be removed by vote of a majority of all members in the director's district.

[C35, §8512-g38; C39, §**8512.38;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §499.38]

499.39 Referendum.

If provided for in the articles of incorporation, any action of directors shall, on demand of one-third of the directors made and recorded at the same meeting, be referred to a regular or special meeting of members called for such purpose. Such action shall stand until and unless annulled by a majority of the votes cast at such meeting, which vote shall not impair rights of third parties previously acquired.

[C35, §8512-g39; C39, §**8512.39;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §499.39]

499.40 Articles.

Articles of incorporation must be signed and acknowledged by each incorporator. They may deal with any fiscal or internal affair of the association or any subject hereof in any manner not inconsistent with this chapter. All articles must state in the English language:

1. The name of the association, which must include the word "cooperative"; and the address of its principal office.

2. The purposes for which it is formed, and a statement that it is organized under this chapter.

3. Its duration, which may be perpetual.

4. The name, occupation and post office address of each incorporator.

5. The following information regarding the directors:

a. Their number.

b. Whether there is a fixed number or a variable range as provided in section 499.36. If a variable range is established, the information shall include the minimum and maximum number.

c. Their qualifications.

d. Their terms of office.

e. How they shall be chosen and removed from office.

6. Who are eligible for membership, how members shall be admitted and membership lost, how earnings shall be distributed among members, how assets shall be distributed in liquidation, and, in addition, either:

a. That the association shall have capital stock; the classes, par value and authorized

number of shares of each class thereof; how shares shall be issued and paid for; and what rights, limitations, conditions and restrictions pertain to the stock, which shall be alike as to all stock of the same class; or

b. That the association shall have no capital stock, and what limitations, conditions, restrictions and rights pertain to membership; and if the rights are unequal, the rules respecting them shall be specifically stated.

7. The date of the first regular meeting of members.

8. The name and street address of the association's initial registered agent.

[C35, §8512-g40; C39, §**8512.40;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §499.40]
93 Acts, ch 126, §15; 97 Acts, ch 17, §6
Referred to in §499.42

499.41 Amendments.

1. Notwithstanding the provisions of the articles of incorporation of any association pertaining to amendment thereto now in effect, any association may amend its articles of incorporation by a vote of sixty-six and two-thirds percent of the members present, or voting by mailed ballot or alternative voting method, and having voting privileges, at any annual meeting or any special meeting called for that purpose, provided that at least ten days before said annual meeting or special meeting a copy of the proposed amendment or summary thereof be sent to all members having voting rights; or said articles of incorporation may be amended in accordance with the amendment requirements contained in the articles or bylaws of said association that are adopted subsequent to July 4, 1963, or are in effect on or after July 4, 1964, provided said amendment requirements in the articles or bylaws are not less than established in this section.

2. Amendments shall be executed and filed as provided in section 499.44.

[C35, §8512-g41; C39, §**8512.41;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §499.41]
90 Acts, ch 1164, §3; 2011 Acts, ch 23, §3
Referred to in §499.42, 499.43A, 499.43B

499.41A Greater voting or quorum requirements.

An amendment to the articles of incorporation of an association that adds, changes, or deletes a greater voting or quorum requirement by the members than required by this chapter must be adopted by the voting or quorum requirements then in effect or proposed to be adopted, whichever is greater.

2008 Acts, ch 1141, §3

499.42 Renewal.

1. An association may extend its duration perpetually, or for any definite time, by resolution adopted by a majority of all its members, or any different vote for which the articles may provide, at a meeting called for that purpose and held before its original expiration.

2. Unless the association has meanwhile wound up, its duration may be extended in like manner within three years after its original expiration, with the same effect as if done prior thereto, by a vote of two-thirds of all its members.

3. The resolution must state the name of the association, its original expiration date, and for how long thereafter its duration is extended, and must also adopt, and designate officers to execute, renewal articles of incorporation containing the things required in section 499.40.

4. The renewal articles shall be executed and filed as required by section 499.41. Renewal shall not relieve the association from fees, charges, or penalties which may have accrued against it.

[C35, §8512-g42; C39, §**8512.42;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §499.42]
90 Acts, ch 1164, §4; 2018 Acts, ch 1041, §127
Code editor directive applied

499.43 Existing corporations — option. Repealed by 2006 Acts, ch 1062, §2, 3. See §499.43A.

499.43A Existing cooperatives organized under chapter 497 or 498 — conversion option.

1. As used in this section, "*cooperative association*" means any of the following:

a. An association organized under chapter 497, regardless of whether it is referred to as an "association", "company", "corporation", "exchange", "society", or "union" as provided in that chapter.

b. A cooperative association organized under chapter 498, regardless of whether it is referred to as an "association", "exchange", "society", or "union" as provided in that chapter.

2. A cooperative association may elect to be governed by and to comply with the provisions of this chapter. The election shall be governed by the following procedures:

a. The board of directors and members must adopt a resolution reciting that the cooperative association elects to be governed by and to comply with this chapter. The cooperative association, to the extent necessary, shall change its name to comply with the provisions of this chapter. The resolution shall be adopted according to the same procedures as provided in section 499.41. Upon the adoption of the resolution, the cooperative association shall execute an instrument on forms prescribed by the secretary of state. The instrument must be signed by the president and secretary and verified by one of the officers signing the instrument. The instrument shall include all of the following:

(1) The name of the cooperative association, before and after this election.

(2) A description of each resolution adopted by the cooperative association pursuant to this section, including the date each resolution was adopted.

b. The instrument shall be filed with the secretary of state. The cooperative association shall amend its articles of incorporation pursuant to section 499.41 to comply with the provisions of this chapter. The secretary of state shall not file the instrument unless the cooperative association organized under chapter 497 is in compliance with the provisions of chapter 497 at the time of filing. The secretary of state shall not file the instrument unless the cooperative association organized under chapter 498 is in compliance with the provisions of chapter 498 at the time of filing. A cooperative association shall file a biennial report which is due pursuant to section 499.49.

3. Upon filing the instrument with the secretary as required in this section, all of the following shall apply:

a. The cooperative association shall be deemed to be organized under this chapter and the provisions of this chapter shall apply to the cooperative association.

b. The secretary of state shall issue a certificate to the cooperative association acknowledging that it is deemed to be organized under this chapter.

4. The application of this chapter to the cooperative association does not affect any of the following:

a. For a cooperative association organized under chapter 497, a right accrued or established, or liability or penalty incurred, pursuant to chapter 497 prior to the filing of the instrument with the secretary of state as required in this section.

b. For a cooperative association organized under chapter 498, a right accrued or established, or liability or penalty incurred, pursuant to chapter 498 prior to the filing of the instrument with the secretary of state as required in this section.

92 Acts, ch 1066, §2; 94 Acts, ch 1055, §13; 2000 Acts, ch 1022, §8; 2006 Acts, ch 1062, §1, 3

499.43B Existing cooperatives organized under chapter 490 or 491 — option.

A cooperative association organized under chapter 490 or 491 may elect to be governed by and to comply with the provisions of this chapter. The election shall be governed by the following procedures:

1. The board of directors and shareholders must adopt a resolution reciting that the cooperative association elects to be governed by and to comply with this chapter. The cooperative association, to the extent necessary, shall change its name to comply with the provisions of this chapter. The resolution shall be adopted according to the same procedures as provided in section 499.41. Upon the adoption of the resolution, the cooperative association shall execute an instrument on forms prescribed by the secretary of state. The instrument must be signed by the president and secretary and verified by one of the officers signing the instrument. The instrument shall include all of the following:

a. The name of the cooperative association, before and after this election.

b. A description of each resolution adopted by the cooperative association pursuant to this section, including the date each resolution was adopted.

2. The instrument shall be filed with the secretary of state. The cooperative association shall amend its articles of incorporation pursuant to section 499.41 to comply with the provisions of this chapter. The secretary of state shall not file the instrument unless the cooperative association is in compliance with the provisions of the chapter in which it was organized at the time of filing. A cooperative association shall file a biennial report which is due pursuant to section 499.49. Upon filing the instrument with the secretary, all of the following shall apply:

a. The cooperative association shall be deemed to be organized under this chapter and the provisions of this chapter shall apply to the cooperative association.

b. The secretary of state shall issue a certificate to the cooperative association acknowledging that it is deemed to be organized under this chapter.

3. The application of this chapter to the cooperative association does not affect a right accrued or established, or liability or penalty incurred pursuant to the chapter in which the cooperative association was formally organized, prior to the filing of the instrument with the secretary of state.

2003 Acts, ch 59, §1

499.44 Execution and filing of documents.

1. The secretary of state shall record all documents submitted to and required to be filed with the secretary under this chapter.

2. *a.* A document required to be filed with the secretary of state pursuant to this chapter must be executed. The person executing the document must be the association's presiding officer of the board of directors, or the association's president or other officer. However, if the board of directors has not been selected or the association has not been formed, the document must be signed by an incorporator of the association. If the association is under the control of a person acting as a fiduciary of the association, including a trustee or receiver, the document must be signed by the fiduciary.

b. A document required to be executed shall contain the printed name of the person executing the document and the capacity in which the person serves the association. The signature of the person must appear above or opposite the person's printed name and capacity. In the discretion of the secretary of state, a document containing a copy of the person's signature may be accepted for filing. The document may also contain a corporate seal, an attestation by the secretary of state or person charged by the secretary, or an acknowledgment, verification, or proof that the execution is valid.

3. Articles of incorporation, amendments to articles, or renewal of articles must be filed with the secretary of state. The association's corporate existence shall begin upon approval by the secretary of state of the articles and issuance of the certificate of incorporation.

4. A document required to be filed with the secretary of state pursuant to this chapter is effective at the later of the following times:

a. The time of filing on the date it is filed, as evidenced by the secretary of state's date and time endorsement on the original document.

b. The delayed effective time and date specified in the document. If a delayed effective date but no time is specified in the document, the document is effective at the close of business on that date. A delayed effective date for a document shall not be later than the ninetieth day after the date it is filed.

5. *a.* A document filed under this section may be corrected if the document contains an incorrect statement or the execution of the document was defective. A document is corrected by filing with the secretary articles of correction which describe the document to be corrected, including its filing date or a copy of the document. The articles must specify the incorrect statement or defective execution, and correct the incorrect statement or defective execution.

b. Articles of correction are deemed to be effective on the date that the document corrected took or takes effect. However, as applied to persons relying upon the uncorrected

document or adversely affected by the articles of correction, the effective date of the articles of correction is the date that the articles are filed.

[C35, §8512-g44; C39, §**8512.44;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §499.44]
90 Acts, ch 1164, §6; 97 Acts, ch 65, §1; 2007 Acts, ch 23, §4
Referred to in §499.41, 499.67

499.45 Fees.

A fee of twenty dollars shall be paid to the secretary of state upon filing articles of incorporation, amendments, or renewals.

Except as provided in this section, the association shall pay the fees prescribed by section 490.122 when the documents described in that section are delivered to the secretary of state for filing.

[C35, §8512-g45; C39, §**8512.45;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §499.45]
93 Acts, ch 126, §16; 94 Acts, ch 1107, §30; 97 Acts, ch 171, §30

499.46 Bylaws.

The directors, by a vote of seventy-five percent of the directors, may adopt, alter, amend, or repeal bylaws for the association, which shall remain in force until altered, amended, or repealed by a vote of seventy-five percent of the members present or represented having voting privileges, at any annual meeting or special meeting of the membership, provided that at least ten days' prior written notice of the impending membership vote has been mailed to all members of the association with a copy or summary of the proposed adoption, alteration, amendment, or repeal of the bylaws. Proposals by members to adopt, alter, amend, or repeal bylaws by vote of the membership shall be presented to the association's registered office for mailing to the membership by the association at least twenty days prior to the meeting at which the proposed change is to be considered. Bylaws shall be kept by the secretary subject to inspection by any member at any time. Bylaws may deal with the fiscal or internal affairs of the association or any subject of this chapter in any manner not inconsistent with this chapter or the articles.

[C35, §8512-g46; C39, §**8512.46;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §499.46]
96 Acts, ch 1115, §3

499.47 Dissolution.

1. An association whose duration has expired, or which is sooner dissolved by voluntary act of its members, shall continue to exist for the purpose of winding up its affairs until its complete liquidation under subsection 3 hereof.

2. An association may be dissolved by two-thirds of all votes cast at any meeting called for that purpose at which a majority of all voting members vote.

3. Upon the expiration or voluntary dissolution of an association, the members shall designate three of their number as trustees to replace the officers and directors and wind up its affairs. The trustees shall have all the powers of the board, including the power to sell and convey real or personal property and execute conveyances. Within the time fixed in their designation, or any extension of that time, the trustees shall liquidate the association's assets, pay its debts and expenses, and distribute remaining funds among the members. Upon distribution of remaining assets the association shall stand dissolved and cease to exist. The trustees shall make and sign a report of the dissolution. The report shall be filed with the secretary of state.

4. The trustees and their successors in office shall be chosen, and the time for their action fixed and extended, by a majority of all votes cast at any meeting called for such purpose.

[C35, §8512-g47; C39, §**8512.47;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §499.47]
90 Acts, ch 1164, §7; 2007 Acts, ch 23, §5; 2007 Acts, ch 215, §254

499.47A Sale or other disposition of assets in regular course of business and mortgage or pledge of assets.

The sale, lease, exchange, or other disposition of the property and assets of a cooperative association, when made in the usual and regular course of the business of the cooperative

association, and the mortgage or pledge of any or all of the property and assets of the cooperative association, may be made upon such terms and conditions and for such consideration, which may consist in whole or in part of money or property, real or personal, including shares of any other corporation or cooperative association, domestic or foreign, as authorized by its board of directors; and in such case no authorization or consent of the members shall be required.

87 Acts, ch 88, §1

499.47B Sale or other disposition of assets other than in regular course of business.

A sale, lease, exchange, or other disposition of all, or substantially all, the property and assets, with or without the goodwill, of a cooperative association organized under this chapter, if not made in the usual and regular course of its business, may be made upon the terms and conditions and for such consideration, which may consist in whole or in part of money or property, real or personal, including shares of any other cooperative association organized under this chapter, as may be authorized in the following manner:

1. The board of directors shall adopt a resolution recommending the sale, lease, exchange, or other disposition and directing the submission thereof to a vote at a meeting of the membership, which may either be an annual or a special meeting. The board of directors may condition its recommendation and submission of the sale, lease, exchange, or other disposition to the members for approval under this section on any basis.

2. Written or printed notice shall be given to each member of record entitled to vote at the meeting within the time and in the manner provided in this chapter for the giving of notice of meetings of members, and, whether the meeting be an annual or a special meeting, shall state that the purpose, or one of the purposes, of the meeting is to consider the proposed sale, lease, exchange, or other disposition of substantially all of the property and assets of the cooperative association.

3. At the meeting, the membership may authorize the sale, lease, exchange, or other disposition and may fix, or may authorize the board of directors to fix, any or all of the terms and conditions thereof and the consideration to be received by the cooperative association. Such authorization for the sale, lease, exchange, or other disposition shall be approved by the members as follows:

a. Except as provided in paragraph *"b"*, the sale, lease, exchange, or other disposition must be approved by a two-thirds vote of the members in which vote a majority of all voting members participate.

b. (1) If the cooperative association's articles of incorporation require approval by more than two-thirds of its members in which vote a majority of all voting members participate, the sale, lease, exchange, or other disposition must be approved by the greater number as provided in the articles of incorporation.

(2) If the board of directors adopts additional conditions for the approval of the sale, lease, exchange, or other disposition as provided in subsection 1, the additional conditions must be satisfied in order for the sale, lease, exchange, or other disposition to be approved.

4. After such authorization by a vote of members, the board of directors nevertheless, in its discretion, may abandon the sale, lease, exchange, or other disposition of assets, subject to the rights of third parties under any contracts relating thereto, without further action or approval by the members.

87 Acts, ch 88, §2; 2008 Acts, ch 1141, §4; 2011 Acts, ch 23, §4, 5; 2012 Acts, ch 1023, §69, 70

Referred to in §499.47C

499.47C Sale or other disposition of assets in exchange for common stock.

1. In addition to the requirements of section 499.47B, in any case where a cooperative association issues its common stock or membership, or subscriptions for common stock or membership, or both, as a part or all of the consideration for the sale, lease, exchange, or other disposition of all, or substantially all, the property and assets of another cooperative association, the issuance of such common stock or membership, or subscriptions for common

stock or membership, or both, shall be authorized by the issuing cooperative association in the following manner:

a. The board of directors shall adopt a resolution recommending the issuance of the common stock or membership, or subscriptions for common stock or membership, or both, and directing the submission thereof to a vote at a meeting of the membership, which may be either an annual or special meeting.

b. Written or printed notice shall be given to each member of record entitled to vote at the meeting within the time and in the manner provided in this chapter for the giving of notice of meetings to members, and, whether the meeting be an annual or a special meeting, shall state that the purpose, or one of the purposes of the meeting, is to consider the proposed issuance of common stock or membership, or subscriptions for common stock or membership, or both, as consideration for all or a part of the property and assets of the other cooperative association.

c. At the meeting the membership may authorize the issuance and may fix, or may authorize the board of directors to fix, any or all of the terms and conditions thereof and the property and assets to be received as consideration. Such authorization shall be approved if a majority of the voting members present vote in the affirmative.

d. After such authorization by a vote of members, the board of directors nevertheless, in its discretion, may abandon the issuance, without further action or approval by the members.

2. If a cooperative association, in connection with its acquisition of property or assets of another cooperative association, agrees to solicit common stock or membership, or subscriptions for common stock or membership to the members of the cooperative association selling such property or assets, the agreement shall not itself constitute the issuance of common stock or membership, or subscriptions for common stock or membership as described in this section. This section shall not apply to a merger as defined in section 499.61.

87 Acts, ch 88, §3; 2012 Acts, ch 1023, §157

499.47D Consideration of acquisition proposals — community interests.

1. A director, in determining what is in the best interest of the association when considering a tender offer or proposal of acquisition, proposal of merger, proposal of consolidation, or similar proposal, may, in addition to consideration of the effects of any action on the association and its members, consider any or all of the community interest factors described in section 499.36A.

2. If on the basis of the community interest factors described in section 499.36A, the board of directors determines that a tender offer or proposal to acquire, merge, or consolidate the association or any similar proposal is not in the best interest of the association, it may reject the tender offer or proposal. If the board of directors rejects any such tender offer or proposal, the board of directors has no obligation to facilitate, to remove any barriers to, or to refrain from impeding the tender offer or proposal. Consideration of any or all of the community interest factors is not a violation of the business judgment rule or of any duty of the director to the members, or a group of members, even if the director reasonably determines that a community interest factor or factors outweigh the financial or other benefits to the association or a member or group of members.

2008 Acts, ch 1141, §5

499.48 Distribution in liquidation.

1. On dissolution or liquidation, the assets of the association shall be used to pay liquidation expenses first, next the association's obligations other than patronage dividends or patronage dividend certificates which it has issued, and the remainder shall be distributed in the following priority:

a. To pay to each person the full amount originally paid by that person in cash for stock or other equity interest in the association.

b. To pay to each person in proportion to the total of each person's revolving fund, stock, or other equity interest in the association remaining after the payment under paragraph "*a*".

2. In applying subsection 1, paragraphs "*a*" and "*b*", all classes of stock, all revolving funds, and all other equity interests in the association shall be treated equally based on their

stated values. However, an association may establish its own method of distributing the assets remaining, after paying liquidation expenses and obligations other than patronage dividends or patronage dividend certificates which it has issued, in articles of incorporation adopted, amended, or restated after July 1, 1986.

[C35, §8512-g48; C39, §**8512.48;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §499.48]
86 Acts, ch 1196, §6; 2012 Acts, ch 1023, §92

499.49 Biennial report.

Section 504.1613 applies to a cooperative organized under this chapter in the same manner as that section applies to a corporation organized under chapter 504. In addition to the information required to be set forth in the biennial report under section 504.1613, the cooperative shall also set forth the number of members of the cooperative, the percentage of the cooperative's business done with or for its own members during each of the fiscal or calendar years of the preceding two-year period, the percentage of the cooperative's business done with or for each class of nonmembers specified in section 499.3, and any other information deemed necessary by the secretary of state to advise the secretary whether the cooperative is actually functioning as a cooperative.

[C35, §8512-g49; C39, §**8512.49;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §499.49]
93 Acts, ch 126, §17; 97 Acts, ch 171, §31; 2004 Acts, ch 1049, §186, 191, 192
Referred to in §499.43A, 499.43B, 499.76

499.50 Notice of delinquent reports. Repealed by 97 Acts, ch 171, §49.

499.51 and 499.52 Repealed by 93 Acts, ch 126, §35.

499.53 Quo warranto.

The right of an association to exist or continue under this chapter may be inquired into by the attorney general, but not otherwise. If from its biennial report or otherwise, the secretary of state is informed that it is not functioning as a cooperative, the secretary shall so notify the attorney general who, if the attorney general finds reasonable cause so to believe, shall bring action to oust it and wind up its affairs.

[C35, §8512-g53; C39, §**8512.53;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §499.53]
2000 Acts, ch 1022, §9

499.54 Foreign associations.

1. Any foreign corporation organized under generally similar laws of any other state shall be admitted to do business in Iowa upon compliance with the general laws relating to foreign corporations and payment of the same fees as would be required under section 490.122 if the foreign cooperative corporation is a foreign corporation for profit seeking authority to transact business in Iowa under chapter 490. Upon the secretary of state being satisfied that the foreign corporation is so organized and has so complied, the secretary shall issue a certificate authorizing the foreign corporation to do business in Iowa.

2. Such a foreign corporation thus admitted shall be entitled to all remedies provided in this chapter, and to enforce all contracts theretofore or thereafter made by the foreign corporation which any association might make under this chapter.

3. If such a foreign corporation amends its articles it shall forthwith file a copy of the amendment with the secretary of state, certified by the secretary or other proper official of the state under whose laws it is formed, and shall pay the fees prescribed for amendments by section 490.122. Foreign corporations shall also file statements and pay fees otherwise prescribed by section 490.122.

[C35, §8512-g54; C39, §**8512.54;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §499.54]
93 Acts, ch 126, §18; 2018 Acts, ch 1041, §127
Referred to in §499.4, 501.104
Code editor directive applied

499.55 Individual exemptions applicable.

All exemptions or privileges applying to agricultural products in the possession or control of the individual producer shall apply to such products in the possession or control of any association which have been delivered to it by its members.

[C35, §8512-g55; C39, §**8512.55;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §499.55]

499.56 Conflicting laws.

Any law conflicting with any part of this chapter shall be construed as not applicable to associations formed hereunder.

[C35, §8512-g56; C39, §**8512.56;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §499.56]

499.57 State powers.

The state reserves the right to modify, amend or repeal this chapter, or any part hereof, and to cancel, modify, repeal or extend any grant, power, permit or franchise obtained or secured under this chapter, at any future time.

[C35, §8512-g57; C39, §**8512.57;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §499.57]

499.58 Limitation of promotion expense. Repealed by 92 Acts, ch 1147, §5.

499.59 Personal liability.

Except as otherwise provided in this chapter, a director, officer, employee, or member of the association is not liable on the association's debts or obligations, and a director, officer, member, or other volunteer is not personally liable in that capacity, for a claim based upon any action taken, or any failure to take action in the discharge of the person's duties, except for the amount of a financial benefit received by the person to which the person is not entitled, an intentional infliction of harm on the association or its members, or an intentional violation of criminal law.

87 Acts, ch 212, §8; 88 Acts, ch 1134, §93; 2003 Acts, ch 66, §14

499.59A Indemnification.

A cooperative association operating under this chapter may indemnify any present or former director, officer, employee, member, or volunteer in the manner and in the instances authorized in sections 490.850 through 490.859, provided that where sections 490.850 through 490.859 provide for action by shareholders the sections are applicable to action by voting members of the cooperative association, and where sections 490.850 through 490.859 refer to the corporation organized under chapter 490 the sections are applicable to the cooperative association organized under this chapter, and where sections 490.850 through 490.859 refer to the director the sections are applicable to a director, officer, employee, member, or volunteer of the cooperative association organized under this chapter.

88 Acts, ch 1170, §8; 94 Acts, ch 1023, §65; 2002 Acts, ch 1154, §106, 125

499.60 Chapters inapplicable.

The provisions of chapters 497 and 498 are hereby declared inoperative as to corporations chartered from and after July 4, 1935, but said chapters shall continue in force and effect as to corporations organized or operating thereunder prior to July 4, 1935, so long as any such corporations elect to operate under or renew their charters under said chapters.

[C35, §8512-g61; C39, §**8512.60;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §499.60]

SUBCHAPTER II

MERGER AND CONSOLIDATION

499.61 Definitions.

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

1. "*Consolidation*" means the uniting of two or more cooperative associations into one

cooperative association, in such manner that a new cooperative association is formed, and the new cooperative association absorbs the others, which cease to exist as separate entities.

2. *"Merger"* means the uniting of two or more cooperative associations into one cooperative association, in such manner that one of the merging associations retains its corporate existence and absorbs the others, which cease to exist as corporate entities. *"Merger"* does not include the acquisition, by purchase or otherwise, of the assets of one cooperative association by another, unless the acquisition only becomes effective by the filing of articles of merger by the associations and the issuance of a certificate of merger pursuant to sections 499.67 and 499.68.

3. *"New association"* is the cooperative association resulting from the consolidation of two or more cooperative associations.

4. *"Qualified corporation"* means a corporation organized and existing under chapter 490, which is structured and operated on a cooperative basis pursuant to 26 U.S.C. §1381(a)(2) and which meets the definitional requirements of an association as provided in 12 U.S.C. §1141j(a) or 7 U.S.C. §291.

5. *"Qualified merger"* means the uniting of one or more cooperative associations with one or more qualified corporations to form one cooperative association or qualified corporation, in such a manner that one entity participating in the merger continues to exist and absorbs the others, with the others ceasing to exist as cooperative or corporate entities.

6. *"Qualified survivor"* means the cooperative association or qualified corporation which continues to exist after a qualified merger.

7. *"Surviving association"* is the cooperative association resulting from the merger of two or more cooperative associations.

[C71, 73, 75, 77, 79, 81, §499.61]

87 Acts, ch 88, §4; 97 Acts, ch 17, §7; 2014 Acts, ch 1026, §143

Referred to in §499.47C

499.62 Merger.

1. Any two or more cooperative associations may merge into one cooperative association in the manner provided in this section.

2. The board of directors of each cooperative association shall, by resolution adopted by a majority vote of all members of each board, approve a plan of merger which shall set forth:

a. The names of the cooperative associations proposing to merge and the name of the surviving association.

b. The terms and conditions of the proposed merger.

c. A statement of any changes in the articles of incorporation of the surviving association.

d. Other provisions deemed necessary or desirable.

[C71, 73, 75, 77, 79, 81, §499.62]

2012 Acts, ch 1023, §93

Merger with other business entities; §501A.1101 – 501A.1103

499.63 Consolidation.

1. Any two or more cooperative associations may be consolidated into a new cooperative association in the manner provided in this section.

2. The board of directors of each cooperative association shall, by resolution adopted by a majority vote of all members of each board, approve a plan of consolidation setting forth:

a. The names of the cooperative associations proposing to consolidate and the name of the new association.

b. The terms and conditions of the proposed consolidation.

c. With respect to the new association, all of the statements required to be set forth in articles of incorporation for cooperative associations.

d. Other provisions deemed necessary or desirable.

[C71, 73, 75, 77, 79, 81, §499.63]

2012 Acts, ch 1023, §94

Consolidation with other business entities; §501A.1101

499.64 Vote of members.

1. The board of directors of a cooperative association, upon recommending a plan of merger or consolidation be approved by the members, shall, by motion or resolution, direct that the plan be submitted to a vote at a meeting of members, which may be either an annual or special meeting. The board of directors may condition its recommendation and submission of a plan of merger or consolidation to the members for approval under this section on any basis. Written notice shall be given not less than twenty days prior to the meeting, either personally or by mail to each voting member and shareholder of record. The notice shall state the time, place, and purpose of the meeting, and a summary of the plan of merger or consolidation shall be included in or enclosed with the notice.

2. At the meeting, a vote of the members who are entitled to vote in the affairs of the association shall be taken on the proposed plan of merger or consolidation. The plan of merger or consolidation shall be approved as follows:

a. Except as provided in paragraph *"b"*, the proposed plan of merger or consolidation must be approved by a two-thirds vote of the members in which vote a majority of all voting members participate.

b. (1) If the cooperative association's articles of incorporation require approval by more than two-thirds of its members in which vote a majority of all voting members participate, the proposed plan of merger or consolidation must be approved by the greater number as provided in the articles of incorporation.

(2) If the board of directors adopts additional conditions for the approval of the plan of merger or consolidation as provided in subsection 1, the additional conditions must be satisfied in order for the plan of merger or consolidation to be approved.

[C71, 73, 75, 77, 79, 81, §499.64]

97 Acts, ch 17, §8; 2008 Acts, ch 1141, §6; 2011 Acts, ch 23, §6; 2012 Acts, ch 1023, §71, 72

499.65 Objection of members — purchase of shares upon demand.

1. If a voting member or voting shareholder of a cooperative association which is a party to a merger or consolidation files with the cooperative association, prior to or at the meeting of members at which the plan is submitted to a vote, a written objection to the plan of merger or consolidation, and votes in opposition to the plan, and the member or shareholder, within twenty days after the merger or consolidation is approved by the other members, makes written demand on the surviving or new association for payment of the fair value of that member's or shareholder's interest as of the day prior to the date on which the vote was taken approving the merger or consolidation, the surviving or new association shall pay to the member or shareholder, upon surrender of that person's certificate of membership or shares of stock, the fair value of that person's interest as provided in section 499.66. A member or shareholder who fails to make demand within the twenty-day period is conclusively presumed to have consented to the merger or consolidation and is bound by its terms.

2. In the event that a dissenting member or shareholder does business with the surviving or new association before payment has been made for that person's membership or stock, the dissenting member or shareholder is deemed to have consented to the merger or consolidation and to have waived all further rights as a dissenting member or shareholder.

[C71, 73, 75, 77, 79, 81, §499.65]

86 Acts, ch 1196, §7; 92 Acts, ch 1147, §2; 2018 Acts, ch 1041, §127

Referred to in §499.66

Code editor directive applied

499.66 Value determined.

1. As used in this section:

a. *"Dissenting member"* means a voting member who votes in opposition to the plan of merger or consolidation and who makes a demand for payment of the fair value under section 499.65.

b. *"Old association"* means the association in which the member owns or owned a membership.

c. *"New association"* means the surviving or new association after the merger or consolidation.

d. *"Issue price"* means the amount paid for an interest in the old association or the amount stated in a notice of allocation of patronage dividends.

e. *"Fair market value"* means the cash price that would be paid by a willing buyer to a willing seller, neither being under any compulsion to buy or sell.

2. *a.* Within twenty days after the merger or consolidation is effected, the new association shall make a written offer to each dissenting member to pay a specified sum deemed by the new association to be the fair value of that dissenting member's interest in the old association. This offer shall be accompanied by a balance sheet of the old association as of the latest available date, a profit and loss statement of the old association for the twelve-month period ending on the date of this balance sheet, and a list of the dissenting member's interests in the old association. If the dissenting member does not agree that the sum stated in this notice represents the fair value of the member's interest, then the member may file a written objection with the new association within twenty days after receiving this notice. A dissenting member who fails to file this objection within the twenty-day period is conclusively presumed to have consented to the fair value stated in the notice.

b. If the surviving or new association receives any objections to fair values, then within ninety days after the merger or consolidation is effected, the new association shall file a petition in the Iowa district court asking for a finding and determination of the fair value of each type of equity. The action shall be prosecuted as an equitable action.

c. The fair value of a dissenting member's interest in the old association shall be determined as of the day preceding the merger or consolidation by taking the lesser of either the issue price of the dissenting member's membership, common stock, deferred patronage dividends, and preferred stock, or the amount determined by subtracting the old association's debts from the fair market value of the old association's assets, dividing the remainder by the total issue price of all memberships, common stock, preferred stock, and revolving funds, and then multiplying the quotient from this equation by the total issue price of a dissenting member's membership, common stock, preferred stock, and revolving fund interest.

3. The new association shall pay to each dissenting member in cash within sixty days after the merger or consolidation the amount paid in cash by the dissenting member for that member's interest in the old association. The new association shall pay the remainder of each dissenting member's fair value in ten annual equal payments. The final payment must be made not later than fifteen years after the merger or consolidation. The value of the deferred patronage dividends and preferred stock shall be considered a liability of the new association as reflected in the accounts of the new association until the value of the patronage dividends or preferred stock is paid in full to the dissenting member. A dissenting member who is a natural person who dies before receiving the fair value shall have all of the person's fair value paid with the same priority as if the person was a member at the time of death.

[C71, 73, 75, 77, 79, 81, §499.66]

86 Acts, ch 1196, §8; 87 Acts, ch 16, §1, 2; 92 Acts, ch 1147, §3; 2012 Acts, ch 1023, §157; 2014 Acts, ch 1092, §107

Referred to in §10.9, 499.65

499.67 Articles of merger or consolidation.

1. Upon approval, articles of merger or articles of consolidation shall be executed by each cooperative association as provided in section 499.44. The articles must include the following:

a. The plan of merger or the plan of consolidation.

b. As to each cooperative association, the number of individuals or cooperative associations entitled to vote.

c. As to each cooperative association, the number of individuals or cooperative associations who voted for and against the plan at the meeting called for that purpose.

2. The articles of merger or articles of consolidation shall be delivered to the secretary of state for filing.

3. The secretary of state, upon the filing of articles of merger or articles of consolidation,

shall issue a certificate of merger or a certificate of consolidation, and send the certificate to the surviving or new association, or to its representative.

[C71, 73, 75, 77, 79, 81, §499.67]

90 Acts, ch 1164, §8, 9; 94 Acts, ch 1055, §14; 2012 Acts, ch 1023, §157

Referred to in §499.61

499.68 When effective — effect.

A merger or consolidation shall become effective upon the date that the certificate of merger or the certificate of consolidation is issued by the secretary of state, or the effective date specified in the articles of merger or articles of consolidation, whichever is later. When a merger or consolidation has become effective:

1. The several cooperative associations which are parties to the plan of merger or consolidation shall be a single cooperative association, which, in the case of a merger, shall be that cooperative association designated in the plan of merger as the surviving association, and, in the case of consolidation, shall be that cooperative association designated in the plan of consolidation as the new association.

2. The separate existence of all cooperative associations which are parties to the plan of merger or consolidation, except the surviving or new association, shall cease.

3. The surviving or new association shall have all the rights, privileges, immunities, and powers and shall be subject to all the duties and liabilities of a cooperative association organized under the laws of this state.

4. The surviving or new association shall possess all the rights, privileges, immunities, and franchises, public as well as private, of each of the merging or consolidating cooperative associations.

5. All property, real, personal, and mixed, and all debts due on whatever account, including subscriptions to shares, and all other choses in action, and all and every other interest, of or belonging to or due to each of the cooperative associations merged or consolidated, shall be transferred to and vested in the surviving or new association without further act or deed. The title to any real estate, or any interest in real estate vested in any of the cooperative associations merged or consolidated, shall not revert or be in any way impaired by reason of the merger or consolidation.

6. A surviving or new association shall be responsible and liable for all obligations and liabilities of each of the cooperative associations merged or consolidated.

7. Any claim existing or action or proceeding pending by or against any of the cooperative associations merged or consolidated may be prosecuted as if the merger or consolidation had not taken place, or the surviving or new association may be substituted for the merged or consolidated association. Neither the rights of creditors nor any liens upon the property of any cooperative association shall be impaired by a merger or consolidation.

8. In the case of a merger, the articles of incorporation of the surviving association shall be deemed to be amended to the extent that changes in its articles of incorporation are stated in the plan of merger. In the case of a consolidation, the statements set forth in the articles of consolidation which are required or permitted to be set forth in the articles of incorporation of cooperative associations organized under the laws of the state of Iowa shall be deemed to be the original articles of incorporation of the new cooperative association.

9. The aggregate amount of the net assets of the merging or consolidating cooperative associations which was available for the payment of dividends immediately prior to the merger or consolidation, to the extent that the amount is not transferred to stated capital by the issuance of shares or otherwise, shall continue to be available for the payment of dividends by the surviving or new association.

[C71, 73, 75, 77, 79, 81, §499.68]

97 Acts, ch 65, §2; 2012 Acts, ch 1023, §95

Referred to in §499.61, 499.69A

499.69 Foreign and domestic mergers or consolidations.

1. One or more foreign cooperative associations and one or more domestic cooperative associations may be merged or consolidated in the following manner, if such merger or

consolidation is permitted by the laws of the state under which each foreign cooperative association is organized:

a. Each domestic cooperative association shall comply with the provisions of this subchapter with respect to the merger or consolidation of domestic cooperative associations, and each foreign cooperative association shall comply with the applicable provisions of the laws of the state under which it is organized.

b. If the surviving or new association is to be governed by the laws of any state other than this state, it shall comply with the provisions of the laws of this state with respect to the qualifications of foreign cooperative associations if it is to transact business in this state, and in every case it shall file with the secretary of state of this state:

(1) An agreement that it may be served with process in this state in any proceeding for the enforcement of any obligation of any domestic cooperative association which is a party to the merger or consolidation, and in any proceeding for the enforcement of the rights of a dissenting shareholder of any such domestic cooperative association, against the surviving or new association.

(2) An irrevocable appointment of the secretary of state of this state as its agent to accept service of process in any proceeding.

(3) An agreement that it will promptly pay to the dissenting shareholders of any domestic cooperative association the amount to which they are entitled under the provisions of this subchapter with respect to the rights of dissenters.

2. The effect of such merger or consolidation shall be the same as the effect of the merger or consolidation of domestic cooperative associations, if the surviving or new association is to be governed by the laws of this state. If the surviving or new association is to be governed by the laws of any other state, the effect of merger or consolidation shall be the same as in the case of the merger or consolidation of domestic cooperative associations, except as the laws of the other state otherwise provide.

[C71, 73, 75, 77, 79, 81, §499.69]

2012 Acts, ch 1023, §96; 2014 Acts, ch 1026, §143

Referred to in §499.69A

499.69A Qualified mergers.

1. One or more cooperative associations and one or more qualified corporations may participate in a qualified merger as provided in this section.

2. Each participating cooperative association and qualified corporation must approve a written plan of qualified merger.

a. The plan shall set forth all of the following:

(1) The name of each cooperative association and qualified corporation participating in the qualified merger, and the name of the qualified survivor.

(2) The terms and conditions of the qualified merger.

(3) The manner and basis of converting the interests, including shares or other securities, and obligations in each nonsurviving cooperative association or qualified corporation into the interests and obligations of the qualified survivor.

(4) Any amendments to the articles of incorporation of the qualified survivor as are desired to be effected by the qualified merger, or a statement that no amendment is desired.

(5) The date that the qualified merger becomes effective, if the date is different than the date when a certificate of merger is to be issued for a cooperative association, or if the date is different than the date when the articles of merger are filed with the secretary of state for a qualified corporation.

(6) Other provisions relating to the qualified merger as are deemed necessary or desirable.

b. A proposed plan for a qualified merger complying with the requirements of this section shall be approved as follows:

(1) For a cooperative association which is a party to the proposed qualified merger, the cooperative association shall approve the plan as provided in this chapter.

(2) For a qualified corporation which is a party to the proposed qualified merger, the qualified corporation shall approve the plan as provided in chapter 490.

c. After the proposed plan for the qualified merger is approved, a cooperative association

or qualified corporation may abandon the merger in the manner provided in the plan, prior to the filing of the articles of merger.

3. After a proposed plan of the qualified merger is approved, the qualified survivor shall deliver articles of merger for the qualified merger to the secretary of state for filing. The articles of merger shall be executed by each cooperative association and qualified corporation which is a party to the qualified merger. The articles of merger shall set forth all of the following:

a. The name of each cooperative association and qualified corporation which is a party to the qualified merger.

b. The plan for the qualified merger.

c. The effective date of the qualified merger, if later than the date of filing the articles of merger.

d. The name of the qualified survivor.

e. A statement that the plan for the qualified merger was approved by each participating cooperative association and qualified corporation in a manner required for the cooperative association and qualified corporation as provided in this section.

4. For a surviving cooperative association, a qualified merger becomes effective upon the filing of the articles of merger with the secretary of state and the issuance of a certificate of merger pursuant to section 499.68 or the date stated in the articles of merger, whichever is later. For a surviving qualified corporation, a qualified merger becomes effective upon the filing of the articles of merger with the secretary of state pursuant to section 490.1106 or the date stated in the articles, whichever is later.

5. The effect of a qualified merger for a qualified survivor which is a cooperative association shall be as provided for in this chapter. The effect of a qualified merger for a qualified survivor which is a qualified corporation shall be as provided for corporations under chapter 490.

6. The provisions governing the right of a shareholder or member of a cooperative association to object to a merger or the right of a member to dissent and obtain payment of the fair value of an interest in the cooperative association in the case of a merger as provided in this chapter shall apply to a qualified merger. The provisions governing the right of a shareholder of a corporation to dissent from and obtain payment of the fair value of the shareholder's shares in the case of a merger as provided in division XIII of chapter 490 shall apply to a qualified merger.

7. A foreign cooperative association may participate in a qualified merger as provided in this section, if the foreign cooperative association complies with the requirements for a cooperative association under this section and the requirements for a foreign cooperative association under section 499.69. A foreign corporation may participate in a qualified merger as provided in this section if it complies with the requirements of a qualified corporation under this section and the requirements for a foreign corporation under section 490.1102.

97 Acts, ch 17, §9; 2002 Acts, ch 1154, §107, 125

Referred to in §490.1109

499.70 Abandonment before filing.

At any time prior to the filing of the articles of merger or consolidation, the merger or consolidation may be abandoned pursuant to provisions set forth in the plan of merger or consolidation.

[C71, 73, 75, 77, 79, 81, §499.70]

499.71 Other laws applicable.

The provisions of this subchapter shall also apply to cooperative associations organized under chapters 497 and 498.

[C71, 73, 75, 77, 79, 81, §499.71]

2014 Acts, ch 1026, §143

SUBCHAPTER III

REGISTERED OFFICE AND REGISTERED AGENT

499.72 Registered office and registered agent.

Each association must continuously maintain in this state both of the following:

1. A registered office that may be the same as any of its places of business.
2. A registered agent, who may be any of the following:

a. An individual who resides in this state and whose business office is identical with the registered office.

b. A domestic corporation or not-for-profit domestic corporation whose business office is identical with the registered office.

c. A foreign corporation or not-for-profit foreign corporation authorized to transact business in this state whose business office is identical with the registered office.

93 Acts, ch 126, §19

499.73 Change of registered office or registered agent.

1. An association may change its registered office or registered agent by delivering to the secretary of state for filing a statement of change that sets forth all of the following:

a. The name of the association.

b. The street address of its current registered office.

c. If the current registered office is to be changed, the street address of the new registered office.

d. The name of its current registered agent.

e. If the current registered agent is to be changed, the name of the new registered agent and the new agent's written consent, either on the statement or attached to it, to the appointment.

f. That after the change or changes are made, the street addresses of its registered office and the business office of its registered agent will be identical.

2. If a registered agent changes the street address of the registered agent's business office, the registered agent may change the street address of the registered office of any association for which the person is the registered agent by notifying the association in writing of the change and signing, either manually or in facsimile, and delivering to the secretary of state for filing a statement that complies with the requirements of subsection 1 and recites that the association has been notified of the change.

3. If a registered agent changes the registered agent's business address to another place, the registered agent may change the business address and the address of the registered agent by filing a statement as required in subsection 2 for each association, or a single statement for all associations named in the notice, except that it need be signed only by the registered agent or agents and need not be responsive to subsection 1, paragraph *"e"*, and must recite that a copy of the statement has been mailed to each association named in the notice.

4. An association may also appoint or change its registered office or registered agent in its biennial report.

93 Acts, ch 126, §20; 2000 Acts, ch 1022, §10

499.73A Change of principal office.

An association may change its principal office by delivering to the secretary of state for filing a statement of change that sets forth all of the following:

1. The name of the association.
2. The street address of its current principal office.
3. The street address of its new principal office.

2007 Acts, ch 23, §6

499.74 Resignation of registered agent.

1. A registered agent may resign the agent's agency appointment by signing and delivering to the secretary of state for filing the signed original and two exact or conformed

copies of a statement of resignation. The statement may include a statement that the registered office is also discontinued.

2. After filing the statement the secretary of state shall mail one copy to the registered office, if not discontinued, and the other copy to the association at its principal office.

3. The agency appointment is terminated, and the registered office discontinued if so provided, on the thirty-first day after the date on which the statement was filed.

93 Acts, ch 126, §21

499.75 Service on association.

1. An association's registered agent is the association's agent for service of process, notice, or demand required or permitted by law to be served on the association.

2. If an association has no registered agent, or the agent cannot with reasonable diligence be served, the association may be served by registered or certified mail, return receipt requested, addressed to the secretary of the association at its principal office. Service is perfected under this subsection at the earliest of any of the following:

a. The date the association receives the mail.

b. The date shown on the return receipt, if signed on behalf of the association.

c. Five days after its deposit in the United States mail, as evidenced by the postmark, if mailed postpaid and correctly addressed.

3. This section does not prescribe the only means, or necessarily the required means, of serving an association.

93 Acts, ch 126, §22

Referred to in §499.77, 499.78, 499.78A

SUBCHAPTER IV

ADMINISTRATIVE DISSOLUTION

499.76 Grounds for administrative dissolution.

The secretary of state may commence a proceeding under section 499.77 to administratively dissolve an association if any of the following apply:

1. The association has not delivered a biennial report to the secretary of state in a form that meets the requirements of section 499.49, within sixty days after it is due.

2. The association is without a registered agent or registered office in this state for sixty days or more.

3. The association does not notify the secretary of state within sixty days that its registered agent or registered office has been changed, that its registered agent has resigned, or that its registered office has been discontinued.

4. The association's period of duration stated in its articles of incorporation expires.

93 Acts, ch 126, §23; 97 Acts, ch 171, §32; 2000 Acts, ch 1022, §11

Referred to in §499.77

499.77 Procedure for and effect of administrative dissolution.

1. If the secretary of state determines that one or more grounds exist under section 499.76 for dissolving an association, the secretary of state shall serve the association by ordinary mail with written notice of the secretary of state's determination pursuant to section 499.75.

2. If the association does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the secretary of state that each ground determined by the secretary of state does not exist within sixty days after service of the notice is perfected pursuant to section 499.75, the secretary of state shall administratively dissolve the association by signing a certificate of dissolution that recites the ground or grounds for dissolution and its effective date. The secretary of state shall file the original of the certificate and serve a copy on the association pursuant to section 499.75.

3. An association administratively dissolved continues its existence but shall not carry on any business except that necessary to wind up and liquidate its business and affairs and notify claimants.

4. The administrative dissolution of an association does not terminate the authority of its registered agent.

93 Acts, ch 126, §24
Referred to in §499.76, 499.78

499.78 Reinstatement following administrative dissolution.

1. An association administratively dissolved under section 499.77 may apply to the secretary of state for reinstatement at any time after the effective date of dissolution. The application must meet all of the following requirements:

a. Recite the name of the association at its date of dissolution and the effective date of its administrative dissolution.

b. State that the ground or grounds for dissolution have been eliminated.

2. If the secretary of state determines that the application contains the information required by subsection 1 and that the information is correct, the secretary of state shall cancel the certificate of dissolution and prepare a certificate of reinstatement that recites the secretary of state's determination and the effective date of reinstatement, file the original of the certificate, and serve a copy on the association pursuant to section 499.75.

3. When the reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative dissolution as if the administrative dissolution had never occurred.

93 Acts, ch 126, §25; 97 Acts, ch 171, §33; 2006 Acts, ch 1089, §41

499.78A Appeal from denial of reinstatement.

1. If the secretary of state denies an association's application for reinstatement following administrative dissolution, the secretary of state shall serve the association pursuant to section 499.75 with a written notice that explains the reason or reasons for denial.

2. The association may appeal the denial of reinstatement to the district court within thirty days after service of the notice of denial is perfected. The association appeals by petitioning the court to set aside the dissolution and attaching to the petition copies of the secretary of state's certificate of dissolution, the association's application for reinstatement, and the secretary of state's notice of denial.

3. The court may summarily order the secretary of state to reinstate the dissolved association or may take other action the court considers appropriate.

4. The court's final decision may be appealed as in other civil proceedings.

93 Acts, ch 126, §26

SUBCHAPTER V

OTHER MATTERS

499.79 Statement to estate of members and stockholders.

1. The board of directors, upon receiving actual notice of the death of a member or stockholder, shall provide a statement to the administrator or executor of the member's or stockholder's estate, or to the attorney representing such estate. The statement shall describe agricultural products owned by the member or stockholder which are in the possession of the association.

2. This section shall not require an association to conduct a search of the status of its members or stockholders. The association shall exercise reasonable diligence in determining to whom the statement must be delivered. The statement shall be delivered to the administrator, executor, or attorney, within thirty days following a determination as to whom the statement must be delivered. A statement is not required to be prepared or delivered, if the association is not notified of the member's or stockholder's death within one year after the date of death, or by the date that the member's or stockholder's estate is closed, whichever is later.

91 Acts, ch 230, §3; 2016 Acts, ch 1011, §121

499.80 Member information.

1. If a member of a cooperative association intends to distribute information to other members of a cooperative association and the member does not have a list of the members of the cooperative association, the member may request the board of directors to distribute the information for the member.

2. The board of directors shall adopt a policy which permits the distribution of materials or information to members of a cooperative association by request of a member when the purpose of the request concerns directly the action of the board of directors of the cooperative association.

3. The board of directors shall distribute for a member such material or information requested, provided that the board of directors may charge the member for the mailing costs incurred by the cooperative association in distributing the information.

4. Cooperative associations subject to regulation under chapter 476 are exempt from the provisions of this section.

92 Acts, ch 1147, §4; 2016 Acts, ch 1011, §121

CHAPTER 499A

MULTIPLE HOUSING

Referred to in §441.21, 490.1701, 558.72, 572.31, 669.14

1991 additions, amendments, and repeals apply to cooperatives organized on or after December 1, 1990; for prior law, see Code 1991; 91 Acts, ch 30, §18

SUBCHAPTER I

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SUBCHAPTER I

Referred to in §499A.104

499A.1 Articles.

1. Any two or more persons of full age, a majority of whom are citizens of the state, may organize themselves for the following or similar purposes: Ownership of residential, business property on a cooperative basis. A corporation or limited liability company is a person within the meaning of this chapter. The organizers shall adopt, and sign and

acknowledge the articles of incorporation, stating the name by which the cooperative shall be known, the location of its principal place of business, its business or objects, the number of directors to conduct the cooperative's business or objects, the names of the directors for the first year, the time of the cooperative's annual meeting, the time of the annual meeting of its directors, and the manner in which the articles may be amended. The articles of incorporation shall be filed with the secretary of state who shall, if the secretary approves the articles, endorse the secretary of state's approval on the articles, record the articles, and forward the articles to the county recorder of the county where the principal place of business is to be located, and there the articles shall be recorded, and upon recording be returned to the cooperative. The articles shall not be filed by the secretary of state until a filing fee of five dollars together with a recording fee of fifty cents per page is paid, and upon the payment of the fees and the approval of the articles by the secretary of state, the secretary shall issue to the cooperative a certificate of incorporation as a cooperative not for pecuniary profit. The county recorder shall collect recording fees pursuant to section 331.604 for articles forwarded for recording under this section.

2. Amendments to the articles shall be filed and receive approval as provided in this chapter for articles, and the fee for amendments shall be five dollars in each instance. An amendment is not effective until the amendment is approved and the fee is paid.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §499A.1]

91 Acts, ch 30, §1; 2009 Acts, ch 27, §27; 2014 Acts, ch 1095, §1, 6

499A.2 Powers — duration.

Upon filing such articles the persons signing and acknowledging the same and their associates and successors shall become a body corporate with the name therein stated and shall have power:

1. To have perpetual succession by its name, unless a limited period of duration is stated in its articles of incorporation, or they are sooner dissolved by three-fourths vote of all the members thereof, or by act of the general assembly or by operations of law.
2. To sue and be sued in its corporate name.
3. To build and construct apartment houses or dwellings.
4. To purchase, take, receive, lease as lessee, take by gift, devise or bequest, or otherwise acquire, and to own, hold, use and otherwise deal in and with any real or personal property or any interest therein.
5. To sell, convey, mortgage, pledge, lease as lessor, and otherwise dispose of all or any part of its property and assets.
6. To make contracts and incur liabilities which may be appropriate to enable it to accomplish any or all of its purposes; to borrow money for its corporate purposes at such rates of interest as the cooperative may determine, to issue its notes, bonds and other obligations; and to secure any of its obligations by mortgage, pledge, or deed of trust of all or any of its property.
7. To elect or appoint officers and agents of the cooperative, and to define their duties and fix their compensation.
8. To make and alter bylaws not inconsistent with its articles of incorporation or with the laws of this state, for the administration and the regulation of the affairs of the cooperative.
9. To cease its cooperative activities and surrender its cooperative franchise.
10. To have and exercise all powers necessary or convenient to effect any or all of the purposes for which the cooperative is organized.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §499A.2]

91 Acts, ch 30, §16

499A.2A Bylaws.

1. The initial bylaws of the cooperative shall be adopted by the cooperative's board of directors. Prior to the admission of members to the cooperative, the power to alter, amend, or repeal the bylaws or adopt new bylaws is vested in the board of directors. Following the admission of members to the cooperative, the power to alter, amend, or repeal the bylaws or

adopt new bylaws is vested in the members in accordance with the method set forth in the bylaws.

2. The bylaws may contain any provisions for the regulation and management of the affairs of the cooperative not inconsistent with law or the articles of incorporation. However, the bylaws must provide for:

a. The number of members of the board of directors and the term of the members.

b. The election of a president, vice president, treasurer, and secretary by the board of directors.

c. The qualifications, powers and duties, terms of office, and manner of electing and removing board members and officers and filling vacancies of such members.

d. The method of amending the bylaws.

91 Acts, ch 30, §7; 2012 Acts, ch 1023, §157

499A.3 Members.

A cooperative shall have only one class of members. The designation of that class and the rights of the members of the class shall be set forth in the articles of incorporation or the bylaws. The cooperative must issue membership certificates evidencing the ownership interest of each member of the cooperative.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §499A.3]

91 Acts, ch 30, §2

499A.3A Meetings of members.

1. Meetings of members may be held at such places as may be provided in the articles of incorporation or the bylaws, or as may be fixed from time to time in accordance with the provisions of the articles or the bylaws. In the absence of any such provision, all meetings shall be held at the registered office of the cooperative.

2. An annual meeting of the members shall be held at such time as may be provided in the articles of incorporation or the bylaws. Failure to hold the annual meeting at the designated time shall not work a forfeiture or dissolution of the cooperative.

3. Special meetings of the members may be called by the president or by the board of directors. Special meetings of the members may also be called by such officers or persons, or by a number or proportion of members as may be provided in the articles of incorporation or the bylaws. In the absence of a provision fixing the number or proportion of members entitled to call a meeting, a special meeting of members may be called by members having one-twentieth of the votes entitled to be cast at the meeting.

91 Acts, ch 30, §8; 2018 Acts, ch 1041, §127

Code editor directive applied

499A.3B Notice of members meetings.

Unless the articles of incorporation or the bylaws otherwise provide, written notice stating the place, day, and hour of the meeting and, in the case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered no less than ten nor more than fifty days before the date of the meeting, either personally or by mail, by or at the direction of the president, the secretary, or the officer or persons calling the meeting, to each member entitled to vote at the meeting. If mailed, notice is deemed to be delivered when deposited in the United States mail addressed to the member at the member's address as it appears on the records of the cooperative, with postage prepaid.

91 Acts, ch 30, §9

499A.3C Voting.

1. Each member is entitled to one vote on each matter submitted to a vote of the members. A membership interest in the cooperative jointly owned by two or more persons is nevertheless entitled to one vote.

2. A member entitled to vote may vote in person or by proxy in the manner prescribed in the bylaws.

91 Acts, ch 30, §10; 2018 Acts, ch 1041, §127

Code editor directive applied

499A.4 Dividends.
A dividend or distribution of property among the members shall not be made until dissolution of the cooperative.
[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §499A.4]
91 Acts, ch 30, §3

499A.5 and 499A.6 Repealed by 91 Acts, ch 30, §17, 18.

499A.7 Reorganizing prior to expiration of term.
The directors or members of any cooperative organized under this chapter may reorganize the cooperative, and all the property and rights of the cooperative shall vest in the cooperative as reorganized.
[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §499A.7]
91 Acts, ch 30, §4

499A.8 Reorganizing after expiration of term.
When the term of a cooperative organized under this chapter has expired, but the organization has continued to act as such cooperative, the directors or members thereof may reorganize, and the property and rights therein shall vest in the reorganized cooperative for the use and benefit of all of the members in the original cooperative.
[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §499A.8]
91 Acts, ch 30, §16

499A.9 Amendments of articles.
Any cooperative organized under this chapter may change its name or amend its articles of incorporation by a vote of a majority of the members, in such manner as may be provided in its articles; but if no such provision is made in the articles the same may be amended at any regular meeting or special meeting called for that purpose by the president or secretary or a majority of the board of directors. Notice of any meeting at which it is proposed to amend the articles of incorporation, shall be given by mailing to each member at the member's last known post office address at least ten days prior to such meeting, a notice signed by the secretary setting forth the proposed amendments in substance, or by two publications of said notice in some daily or weekly newspaper in general circulation in the county wherein said cooperative has its principal place of business. The last publication of said notice shall be not less than ten days prior to the date of said meeting. There shall be paid to the secretary of state at the time of the filing of such change or amendment a recording fee of fifty cents per page.
[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §499A.9]
91 Acts, ch 30, §16
Referred to in §499A.10

499A.10 Record — effect.
The change or amendment provided for in section 499A.9 shall be recorded as the original articles are recorded. From the date of filing such change or amendment for record, the provisions of said section having been complied with, the change or amendment shall take effect as a part of the original articles, and the cooperative thus constituted shall have the same rights, powers and franchises, be entitled to the same immunities, and liable upon all contracts to the same extent, as before such change or amendment.
[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §499A.10]
91 Acts, ch 30, §16

499A.11 Ownership — certificate of membership.
The cooperative has the right to purchase real estate for the purpose of erecting, owning, and operating apartment houses or apartment buildings. The interest of each individual member in the cooperative shall be evidenced by the issuance of a certificate of membership. The certificate of membership is coupled with a possessory interest in the real and personal

property of the cooperative, entitling each member to a proprietary lease with the cooperative under which each member has an exclusive possessory interest in an apartment unit and a possessory interest in common with all other members in that portion of the cooperative's real and personal property not constituting apartment units, and which creates a legal relationship of landlord and tenant between the cooperative and member. The certificate of membership shall be executed by the president of the cooperative and attested by its secretary in the name and in the behalf of the cooperative.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §499A.11]

91 Acts, ch 30, §5

499A.12 and 499A.13 Repealed by 91 Acts, ch 30, §17, 18.

499A.14 Taxation.

The real estate shall be taxed in the name of the cooperative, and each member of the cooperative shall pay that member's proportionate share of the tax in accordance with the proration formula set forth in the bylaws, and each member occupying an apartment as a residence shall receive that member's proportionate homestead tax credit and each veteran of the military services of the United States identified as such under the laws of the state of Iowa or the United States shall receive as a credit that member's veterans tax benefit as prescribed by the laws of the state of Iowa.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §499A.14]

91 Acts, ch 30, §6

Homestead credit, chapter 425

Veterans exemption, §426A.11

499A.15 through 499A.17 Repealed by 91 Acts, ch 30, §17, 18.

499A.18 Homestead.

Each individual apartment constitutes a homestead and is exempt from execution, provided the member otherwise qualifies within the laws of the state of Iowa for such exemption.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §499A.18]

91 Acts, ch 30, §13

499A.18A Upkeep of the cooperative.

It is the duty of the cooperative to maintain generally all portions of the cooperative's real property other than the apartment units. The maintenance, repair, and replacement costs of the cooperative's real property shall be contributed to by each of the members in accordance with the proration formula set forth in the bylaws. Each member is responsible for maintenance and repair of the person's apartment unit in the manner provided for in the bylaws and as prescribed by each member's proprietary lease.

91 Acts, ch 30, §11

499A.19 Election of directors.

1. The directors shall be elected by the members of the cooperative. The election of officers shall be made by the board of directors. The annual election of the directors shall be held during the month of January of each year, and they shall serve until their successors are elected and qualified.

2. The board of directors shall elect as officers, a president, a vice president, a secretary, and a treasurer.

3. It is the duty of the secretary to keep the records of the cooperative, and a correct list of the members, and all such records shall be submitted to any member upon demand at any reasonable time.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §499A.19]

91 Acts, ch 30, §14; 2018 Acts, ch 1041, §127

Code editor directive applied

499A.20 Reserved.

499A.21 Execution exemption. Repealed by 91 Acts, ch 30, §17, 18. See §499A.22(6).

499A.22 Lien for assessments.

1. *a.* The cooperative has a lien on a member's interest in the cooperative for all operating charges or other assessments payable by the member pursuant to the member's proprietary lease from the time the operating charge or other assessment becomes due. If carrying charges and assessments are payable in installments, the full amount of the charge or assessment is a lien from the first time the first installment becomes due. Upon nonpayment of a carrying charge or assessment, the member may be evicted from the member's apartment unit in the same manner as provided by law in the case of an unlawful holdover by a tenant and the lien may be foreclosed by judicial sale in like manner as a mortgage on real estate, or may be foreclosed by the power of sale provided in this section.

b. A lien under this section is prior to all other liens and encumbrances on a member's cooperative interest except liens and encumbrances on the cooperative's real property which the cooperative creates, assumes, or takes subject to, and liens for real estate taxes and other governmental assessments or charges against the cooperative or the member's cooperative interest.

2. The cooperative, upon a member's nonpayment of carrying charges and assessments and the cooperative's compliance with this section, may sell the defaulting member's cooperative interest. Sale may be at a public sale or by private negotiation, and at any time and place, but every aspect of the sale, including the method, advertising, time, place, and terms must be reasonable. The cooperative shall give to the member and any sublessees of the member reasonable written notice of the time and place of a public sale or, if a private sale is intended, of the intention of entering into a contract to sell and of the time after which a private disposition may be made. The same notice shall also be sent to any other person who has a recorded interest in the defaulting member's cooperative interest which would be extinguished by the sale. The notices required by this subsection may be sent to any address reasonable under the circumstances. Sale may not be held until five weeks after the sending of the notice. The cooperative may buy at a public sale, and, if the sale is conducted by a fiduciary or other person not related to the cooperative, at a private sale.

3. *a.* The proceeds of a sale under the preceding subsection shall be applied in the following order:

(1) The reasonable expenses of sale.

(2) The reasonable expenses of securing possession before sale, and the reasonable expenses of holding, maintaining, and preparing the cooperative interest for sale. These expenses include, but are not limited to, the payment of taxes and other governmental charges, premiums on liability insurance, and to the extent provided for by agreement between the cooperative and the member, reasonable attorney fees and other legal expenses incurred by the cooperative.

(3) Satisfaction of the cooperative's lien.

(4) Satisfaction in the order of priority of any subordinate claim of record.

(5) Remittance of any excess to the member.

b. Unless otherwise agreed, the member is liable for any deficiency.

4. If a cooperative interest is sold pursuant to this section, a good faith purchaser for value acquires the member's interest in the cooperative free of the debt that gave rise to the lien under which the sale occurred, and free of any subordinate interest.

5. At any time before the cooperative has disposed of the cooperative interest or entered into a contract for its disposition under the power of sale, the member or the holder of any subordinate security interest may cure the member's default and prevent sale or other disposition by tendering the performance due, including any amounts due arising from the exercise of the rights under this section, plus the reasonable expenses of proceeding to foreclosure incurred to the time of tender, including reasonable attorney fees of the creditor.

6. The property of a member other than the member's membership interest in the cooperative is not subject to claims of the cooperative's creditors, whether or not the member's membership interest is subject to those claims.

91 Acts, ch 30, §12; 2012 Acts, ch 1023, §97

499A.23 Effect of documents and instruments.

1. Unless amended or terminated by this chapter or by the following documents or instruments, all terms, conditions, covenants, and provisions contained in the following documents or instruments shall remain in full force and effect as long as the cooperative remains in existence:

a. The articles of incorporation of the cooperative and any amendments thereto.

b. The bylaws of the cooperative and any amendments thereto.

c. Any proprietary leases, contracts, or other agreements between the cooperative and a member of the cooperative or between members of the cooperative.

d. Any property interests created by any documents or instruments specified in paragraph *"a"*, *"b"*, or *"c"*.

2. A document or instrument specified in subsection 1, and any property interests created by such document or instrument, shall not be extinguished, limited, or impaired by application of section 558.68 or 614.24.

2014 Acts, ch 1095, §2, 6
Referred to in §558.68, 614.24

499A.24 Reserved.

499A.25 Title of Act.

This subchapter shall be known and cited as *"The Cooperative Housing Act"*.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §499A.20]
91 Acts, ch 30, §15
CS91, §499A.25

499A.26 through 499A.100 Reserved.

SUBCHAPTER II

499A.101 Definitions.

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

1. *"Advisor"* means a member of the association's advisory committee.

2. *"Association"* means a sweat equity housing cooperative association created pursuant to this subchapter.

3. *"Authority"* means a local housing authority created pursuant to section 499A.102.

4. *"Low income"* means the income of *"very low income families"* as defined in section 16.1.

5. *"Partner"* means a low-income sweat equity member of the association, and member of the sweat equity partners' committee.

6. *"Sweat equity"* means any contribution made by a partner to the operations of the association, including but not limited to physical labor.

90 Acts, ch 1120, §1

499A.102 Local housing authority.

1. A local housing authority may be created to encourage and assist the formation of housing cooperatives under this chapter. The following persons are authorized to form an authority, separately, or in combination with other authorized persons:

a. A city.

b. A county.

c. A nonprofit community organization.

d. A nonprofit religious organization.

2. The local housing authority shall be funded from the following sources:

a. State grants, loans, or other appropriations administered by the Iowa finance authority.

b. Funds solicited from third parties by the local housing authority.

c. Local government appropriations to the local housing authority.

d. Any other available sources, including but not limited to bequests, devises, and federal moneys.

3. The Iowa finance authority may provide assistance for initial organization of local housing authorities.

90 Acts, ch 1120, §2
Referred to in §499A.101

499A.103 Low-income participants.

The local housing authority shall recruit low-income persons to participate as sweat equity partners in a housing cooperative association organized by the local housing authority.

90 Acts, ch 1120, §3

499A.104 Sweat equity housing cooperative association.

1. The local housing authority may form one or more sweat equity housing cooperative associations under this chapter. A sweat equity housing cooperative association shall operate as a multiple housing cooperative association under subchapter I, except as specifically provided otherwise under this subchapter.

2. A sweat equity housing cooperative association shall meet the following additional conditions:

a. A sweat equity partners' committee shall be established, with each partner entitled to one vote on the committee.

b. The sweat equity committee shall hold twenty-five percent of the stock of the association upon incorporation of the association.

c. An advisory committee shall be established, made up of equity investors, skill contributors, and other community representatives including, but not limited to:

(1) Tradesperson volunteers.

(2) Community college trade representatives and business educators.

(3) Financial and legal advisors to association management.

d. The advisory committee shall hold seventy-five percent of the stock of the association upon incorporation of the association.

3. The association shall be controlled by the board of directors, with representation of partners and advisors on the board proportional to each group's equity interest at the time of the last election of directors to the board.

4. An association shall do all of the following:

a. Acquire existing housing or small business building stock in need of rehabilitation.

b. Establish a rehabilitation plan, which shall include, but not be limited to, all of the following elements:

(1) Statement of purpose.

(2) Financial plan.

(3) Construction timetable.

(4) Materials schedule.

(5) Construction training program schedule for partners. If a contract is executed with a person to perform skilled labor or to supervise skilled work, the person must be certified by an organization recognized as representing a membership of persons with common skills.

(6) Financial and managerial training program for partners.

(7) Bylaws of the association.

(8) A contract between the partners and advisors including the terms of transfer of stock from the advisory committee to the partners' committee.

c. Establish a program to ensure that partners are equipped with skills necessary for full participation in society.

d. Encourage participation by partners in the activities of the community.

90 Acts, ch 1120, §4; 2001 Acts, ch 61, §17
Referred to in §499A.105

499A.105 Association financing.

1. *Organizational and construction phase.* Upon incorporation, and after adoption of a rehabilitation plan pursuant to section 499A.104, the association may apply to the Iowa

finance authority or other sources for financial assistance. The Iowa finance authority shall review the rehabilitation plan, and subject to the availability of moneys, may approve for the association state grants, loans, or other appropriations administered by the Iowa finance authority.

2. *Stock transfer.* Advisory committee stock shall be transferred to the partners' committee for distribution to partners in accordance with the terms of the rehabilitation plan contract.

3. *Operational phase.* Upon completion of the rehabilitation plan and implementation of the contract, the association shall be wholly owned by partners. The partners shall rent space only to other association partners. New partners may be admitted subject to completion of required partner training programs and sweat equity contributions, as required by the association's bylaws. Partners shall make mortgage payments in proportion to their equity interest in the property, with total payments sufficient to repay the mortgage loan, maintain the property, and accumulate a capital reserve fund for future repairs and improvements. The capital reserve fund and enforcement of partner obligations is the responsibility of the board of directors.

90 Acts, ch 1120, §5

499A.106 Reimbursement of sweat equity contribution.

The association shall establish criteria for the reimbursement of a partner terminating membership in the association, in accordance with the partner's sweat equity contribution.

90 Acts, ch 1120, §6

CHAPTER 499B

HORIZONTAL PROPERTY (CONDOMINIUMS)

Referred to in §354.9, 425.11, 427A.1, 535B.1, 572.1, 572.31, 669.14

499B.1 Short title.
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499B.17 Lien against owner of unit.
499B.18 Common expenses before foreclosure.
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499B.20 Conversions to meet building codes.
499B.21 Effect of documents and instruments.

499B.1 Short title.

This chapter shall be known as the *"Horizontal Property Act"*.

[C66, 71, 73, 75, 77, 79, 81, §499B.1]

499B.2 Definitions.

Unless it is plainly evident from the context that a different meaning is intended, as used in this chapter:

1. *"Apartment"* means one or more rooms occupying all or a part of a floor or floors in

a building of one or more floors or stories and notwithstanding whether the apartment be intended for use or used as a residence, office, for the operation of any industry or business or for any other use not prohibited by law.

2. *"Building"* means and includes one or more buildings, whether attached to one or more buildings or unattached; provided, however, that if there is more than one building, all such buildings shall be described and included in the declaration, or an amendment thereto, and comprise an integral part of a single horizontal property regime.

3. *"Co-owner"* means a person, corporation, or other legal entity capable of holding or owning any interest in real property who owns all or an interest in an apartment within the building.

4. *"Council of co-owners"* means all the co-owners of the building. The business and affairs of the council of co-owners may be conducted by organizing a corporation not for pecuniary profit of which the co-owners are members.

5. *"General common elements"*, unless otherwise provided in the declaration or lawful amendments thereto, means and includes:

a. The land on which the building is erected.

b. The foundations, basements, floors, exterior walls of each apartment and of the building, ceilings and roofs, halls, lobbies, stairways, and entrances and exits or communication ways, elevators, garbage incinerators and in general all devices or installations existing for common use.

c. Compartments or installations of central services for public utilities, common heating and refrigeration units, reservoirs, water tanks and pumps servicing other than one apartment.

d. Premises for lodging of service personnel engaged in performing services other than services within a single apartment.

6. *"Limited common elements"* means and includes those common elements which are specified in or determined under the declaration to be reserved for the use of one or more apartments to the exclusion of the other apartments, such as special corridors, stairways and elevators, sanitary services common to the apartments of a particular floor, and the like.

7. *"Majority of co-owners"* or *"percent of co-owners"* means the owners of more than one-half or owners of that percent of interest in the building irrespective of the total number of co-owners.

8. *"Property"* includes the land whether committed to the horizontal property regime in fee or as a leasehold interest, the building, all other improvements located thereon, and all easements, rights and appurtenances belonging thereto.

9. All pronouns used herein include the male, female and neuter genders and include the singular or plural numbers, as the case may be.

[C66, 71, 73, 75, 77, 79, 81, §499B.2]

2016 Acts, ch 1073, §140

Referred to in §103.22, 103.23

499B.3 Recording of declaration to submit property to regime.

1. When the sole owner or all of the owners, or the sole lessee or all of the lessees of a lease desire to submit a parcel of real property upon which a building is located or to be constructed to the horizontal property regime established by this chapter, a declaration to that effect shall be executed and acknowledged by the sole owner or lessee or all of such owners or lessees and shall be recorded in the office of the county recorder of the county in which such property lies. The county recorder shall collect recording fees pursuant to section 331.604.

2. If the declaration is to convert an existing structure, the declarant shall file the declaration of the horizontal property regime with the city in which the regime is located or with the county if not located within a city at least sixty days before being recorded in the office of the county recorder to enable the city or county, as applicable, to establish that the converted structure meets appropriate building code requirements as provided in section 499B.20. However, if the city or county, as applicable, does not have a building code, the declarant shall file the declaration with the state building code commissioner instead of the

applicable city or county at least sixty days before the recording of the declaration to enable the commissioner to establish that the converted structure meets the state building code, as adopted pursuant to section 103A.7.

3. A declaration under this section for a horizontal property regime proposed to be located within an area of review established by a city under section 354.9 shall, in addition to being submitted to the county, be submitted to the city for review and approval.

[C66, 71, 73, 75, 77, 79, 81, §499B.3]

2000 Acts, ch 1142, §1, 5; 2004 Acts, ch 1086, §81; 2009 Acts, ch 27, §28; 2010 Acts, ch 1051, §2

Referred to in §499B.4, 499B.12

499B.4 Contents of declaration.

The declaration provided for in section 499B.3 shall contain:

1. A description of the land.

2. A description of the building, stating the number of stories and basements, the number of apartments and the principal materials of which it is or is to be constructed.

3. The apartment number of each apartment, and a statement of its location, approximate area, number of rooms, an immediate common area to which it has access, and any other data necessary for its proper identification.

4. A description of the general common elements and facilities.

5. A description of the limited common elements and facilities, if any, stating to which apartments their use is reserved.

6. The fractional or percentage interest which each apartment bears to the entire horizontal property regime. The sum of such shall be one if expressed in fractions and one hundred if expressed in percentage.

7. The provision as to the percentage of votes by the apartment owners which shall be determinative of whether to rebuild, repair, restore, or sell the property in the event of damage or destruction of all or part of the property.

8. Any further details in connection with the property which the person executing the declaration may deem desirable to set forth consistent with this chapter.

9. The method by which the declaration may be amended, consistent with the provisions of this chapter.

[C66, 71, 73, 75, 77, 79, 81, §499B.4]

Referred to in §499B.5, 499B.7, 499B.12

499B.5 Contents of deeds of apartments.

Deeds of apartments shall include the following particulars:

1. Description of land as provided in section 499B.4, including the document reference number and date of recording of the declaration.

2. The apartment number of the apartment in the declaration and any other data necessary for its proper identification.

3. The percentage of undivided interest appertaining to the apartment in the common areas and facilities.

4. Any further details which the grantor and grantee may deem desirable to set forth consistent with the declaration and this chapter.

[C66, 71, 73, 75, 77, 79, 81, §499B.5]

2009 Acts, ch 27, §29

499B.6 Copy of the floor plans to be filed.

There shall be attached to the declaration, at the time it is filed, a full and an exact copy of the plans of the building, which copy shall be entered of record along with the declaration. The plans shall show graphically all particulars of the building including but not limited to the dimensions, area, and location of common elements affording access to each apartment. Other common elements, both limited and general, shall be shown graphically insofar as

possible and shall be certified to by an engineer, architect, or land surveyor, who is licensed to practice that profession in this state.

[C66, 71, 73, 75, 77, 79, 81, §499B.6; 82 Acts, ch 1068, §1]

2007 Acts, ch 22, §85; 2017 Acts, ch 131, §2

499B.7 Interest in common elements — reference to them in instrument.

1. The fractional or percentage interest in the general common elements and the fractional or percentage interest in the limited common elements where such exist are hereby declared to be appurtenant to each of the separate apartments.

2. Any conveyance, encumbrance, lien, alienation, or devise of an apartment under a horizontal property regime by any instrument which describes the land and apartment as set forth in section 499B.4 shall also convey, encumber, alienate, devise, or be a lien upon the fractional or percentage interest appurtenant to each such apartment under section 499B.4, subsection 6, to the general common elements, and the respective share or percentage interest to limited common elements where applicable, whether such general common elements or limited common elements are described as in section 499B.4, subsections 4 and 5, by general reference only, or not at all.

[C66, 71, 73, 75, 77, 79, 81, §499B.7]

2015 Acts, ch 29, §67

499B.8 Removal from provisions of this chapter.

1. All of the apartment owners may remove a property from the provisions of this chapter by an instrument to that effect, duly recorded, provided that the holders of all liens affecting any of the apartments consent thereto or agree, in either case by instruments duly recorded, that their liens be transferred to the percentage of the undivided interest of the apartment owner in the property as hereinafter provided.

2. Upon removal of the property from the provisions of this chapter, the property shall be deemed to be owned in common by the apartment owners. The undivided interest in the property owned in common which shall appertain to each apartment owner shall be the percentage of undivided interest previously owned by such owner in the common area and facilities.

[C66, 71, 73, 75, 77, 79, 81, §499B.8]

Referred to in §499B.9

499B.9 Removal no bar to subsequent resubmission.

The removal provided for in section 499B.8 shall in no way bar the subsequent resubmission of the property to the provisions of this chapter.

[C66, 71, 73, 75, 77, 79, 81, §499B.9]

499B.10 Individual apartments and interest in common elements are alienable.

When real property containing a building is committed to a horizontal property regime, each individual apartment located in the building and the interests in the general common elements and limited common elements if any, appurtenant thereto, shall constitute for all purposes a separate parcel of real property and shall be as completely and freely alienable as any separate parcel of real property is or may be under the laws of this state, except as limited by the provisions of this chapter.

[C66, 71, 73, 75, 77, 79, 81, §499B.10]

2000 Acts, ch 1142, §2, 5

499B.11 Real property tax and special assessments — levy on each apartment.

1. All real property taxes and special assessments shall be assessed and levied on each apartment and its respective appurtenant fractional share or percentage of the land, general common elements and limited common elements where applicable as these apartments and appurtenances are separately owned, and not on the entire horizontal property regime. The fair market value determined for an apartment includes the value of its appurtenant share or percentage of the land, general common elements, and limited common elements.

2. Any exemption from taxes that may exist on real property or the ownership thereof shall not be denied by virtue of the registration of the property under the provisions of this chapter.

[C66, 71, 73, 75, 77, 79, 81, §499B.11]

99 Acts, ch 187, §1, 2; 2000 Acts, ch 1142, §3; 2001 Acts, ch 116, §26

499B.12 Liens against apartments — removal from lien — effect of part payment.

1. Subsequent to recording the declaration provided for in section 499B.3, and while the property remains enrolled in a horizontal property regime, no lien shall thereafter arise or be effective against the property. During such period liens or encumbrances shall arise or be created only against the individual apartment and the general common elements and limited common elements where applicable, appurtenant to such apartment, in the same manner and under the same conditions in every respect as liens or encumbrances may arise or be created upon or against any other separate parcel of real property subject to individual ownership.

2. In the event a lien against two or more apartments becomes effective, the owners of the separate apartments may remove their apartment and the general common elements and limited common elements where applicable appurtenant to such apartment from the lien by payment of the fractional or proportional amounts attributable to each of the apartments affected. Such individual payments shall be computed by reference to the fractions or percentages appearing on the declaration provided for in section 499B.4, subsection 6. Subsequent to any such payment, discharge or other satisfaction the individual apartment and the general common elements and limited common elements applicable appurtenant thereto shall thereafter be free and clear of the lien so paid, satisfied or discharged. Such partial payment, satisfaction or discharge shall not prevent the lienor from proceeding to enforce the lienor's rights against any apartment and the general common elements, limited common elements where applicable appurtenant thereto not so paid, satisfied or discharged.

[C66, 71, 73, 75, 77, 79, 81, §499B.12]

499B.13 Limitation upon availability of partition — exception as to limitation of partition by joint ownership.

1. The provisions of chapter 651, relating to partition of real property shall not be available to any owner of any interest in real property included within a regime established under this chapter as against any other owner or owners of any interest or interests in the same regime, so as to terminate the regime.

2. Nothing contained in the chapter shall be construed as a limitation on partition by joint owners of one or more apartments in a regime as to individual ownership of such apartment or apartments without terminating the regime, or as to ownership of such apartment or apartments and lands outside the limits of the regime.

[C66, 71, 73, 75, 77, 79, 81, §499B.13]

499B.14 Bylaws.

The administration of every property shall be governed by bylaws, a true copy of which shall be annexed to the declaration and made a part thereof. No modification of or amendment to the bylaws shall be valid unless set forth in an amendment to the declaration and such amendment is duly recorded.

[C66, 71, 73, 75, 77, 79, 81, §499B.14]

499B.15 Contents of bylaws.

The bylaws must provide for at least the following:

1. The form of administration, indicating whether this shall be in charge of an administrator or of a board of administration, or otherwise, and specifying the powers, manner of removal, and, where proper, the compensation thereof.

2. If the form of administration is a board of administration, board meetings must be open to all apartment owners except for meetings between the board and its attorney with respect to proposed or pending litigation where the contents of the discussion would otherwise be governed by the attorney-client privilege. Notice of each board meeting must be mailed

or delivered to each apartment owner at least seven days before the meeting. Minutes of meetings of the board of administration must be maintained in written form or in another form that can be converted into written form within a reasonable time. The official records of the board of administration must be open to inspection and available for photocopying at reasonable times and places. Any action taken by a board of administration at a meeting that is in violation of any of the provisions of this subsection is not valid or enforceable.

3. Method of calling or summoning the co-owners to assemble; what percentage, if other than a majority of apartment owners, shall constitute a quorum; who is to preside over the meeting; and who will keep the minute book wherein the resolutions shall be recorded.

4. Maintenance, repair, and replacement of the common areas and facilities and payments therefor including the method of approving payment vouchers.

5. Manner of collecting from the apartment owners their share of the common expenses.

6. Designation and removal of personnel necessary for the maintenance, repair and replacement of the common areas and facilities.

7. The percentage of votes required to amend the bylaws.

[C66, 71, 73, 75, 77, 79, 81, §499B.15]

2010 Acts, ch 1080, §1; 2015 Acts, ch 29, §68

499B.16 Disposition of property — destruction or damage.

If within thirty days of the date of the damage or destruction to all or part of the property, it is not determined by the council of co-owners to repair, reconstruct or rebuild, then and in that event:

1. The property shall be deemed to be owned in common by the apartment owners;

2. The undivided interest in the property owned in common which shall appertain to each apartment owner shall be the percentage of undivided interest previously owned by such owner in the common areas and facilities;

3. Any liens affecting any of the apartments shall be deemed to be transferred in accordance with the existing priorities to the percentage of the undivided interest of the apartment owner in the property as provided herein; and

4. The property shall be subject to an action for partition at the suit of any apartment owner, in which event the net proceeds of sale, together with the net proceeds of the insurance on the property, if any, shall be considered as one fund and shall be divided among all the apartment owners in a percentage equal to the percentage of undivided interest owned by each owner in the property, after first paying out of the respective shares of the apartment owners, to the extent sufficient for the purpose, all liens on the undivided interest in the property owned by each apartment owner.

[C66, 71, 73, 75, 77, 79, 81, §499B.16]

499B.17 Lien against owner of unit.

All sums assessed by the council of co-owners but unpaid for the share of the common expenses chargeable to any apartment shall constitute a lien on such apartment prior to all other liens except only tax liens on the apartment in favor of any assessing unit and special district and all sums unpaid on a first mortgage of record. Such lien may be foreclosed by suit by the council of co-owners or the representatives thereof, acting on behalf of the apartment owners, in like manner as a mortgage of real property. In the event of any such foreclosure, the apartment owner shall be required to pay a reasonable rental for the apartment if so provided in the bylaws, and the plaintiff in such foreclosure shall be entitled to the appointment of a receiver to collect the same. The council of co-owners or the representatives thereof, acting on behalf of the apartment owners, shall have power, unless prohibited by the declaration, to bid in the apartment at foreclosure sale, and to acquire and hold, lease, mortgage and convey the same. Suit to recover a money judgment for unpaid common expenses shall be maintainable without foreclosing or waiving the lien securing the same.

[C66, 71, 73, 75, 77, 79, 81, §499B.17]

2011 Acts, ch 25, §60

499B.18 Common expenses before foreclosure.

Where the mortgagee of a first mortgage of record or other purchaser of an apartment obtains title to the apartment as a result of foreclosure of the first mortgage, such acquirer of title, the acquirer's successors and assigns, shall not be liable for the share of the common expenses or assessments by the council of co-owners chargeable to such apartment which became due prior to the acquisition of title to such apartment by such acquirer. Such unpaid share of common expenses or assessments shall be deemed to be common expenses collectible from all of the apartment owners including such acquirer, the acquirer's successors and assigns.

[C66, 71, 73, 75, 77, 79, 81, §499B.18]

499B.19 Common expenses after voluntary conveyance.

In a voluntary conveyance the grantee of an apartment shall be jointly and severally liable with the grantor for all unpaid assessments against the latter for the grantor's share of the common expenses up to the time of the grant or conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor. However, any such grantee shall be entitled to a statement from the council of co-owners or its representatives, setting forth the amount of the unpaid assessments against the grantor and such grantee shall not be liable for, nor shall the apartment conveyed be subject to a lien for, any unpaid assessments against the grantor in excess of the amount therein set forth.

[C66, 71, 73, 75, 77, 79, 81, §499B.19]

499B.20 Conversions to meet building codes.

After April 25, 2000, an existing structure shall not be converted to a horizontal property regime unless the converted structure meets local city or county, as applicable, building code requirements in effect on the date of conversion or the state building code requirements, as adopted pursuant to section 103A.7, if the local city or county does not have a building code. For purposes of this section, if the structure is located in a city, the city building code applies and if the structure is located in the unincorporated area of the county, the county building code applies.

2000 Acts, ch 1142, §4, 5; 2004 Acts, ch 1086, §82

Referred to in §499B.3

499B.21 Effect of documents and instruments.

1. Unless amended or terminated by the following documents or instruments, all terms, conditions, covenants, and provisions contained in the following documents or instruments shall remain in full force and effect as long as the horizontal property regime remains in existence:

a. The declaration of the horizontal property regime and any amendments thereto.

b. The articles of incorporation of the horizontal property regime and any amendments thereto.

c. The bylaws of the horizontal property regime and any amendments thereto.

d. Any rules and regulations adopted pursuant to the declaration of the horizontal property regime and the bylaws of the horizontal property regime.

e. Any property interests created by any documents or instruments specified in paragraph *"a"*, *"b"*, *"c"*, or *"d"*.

2. A document or instrument specified in subsection 1, and any property interests created by such document or instrument, shall not be extinguished, limited, or impaired by application of section 558.68 or 614.24.

2014 Acts, ch 1095, §3, 6

Referred to in §558.68, 614.24

Section applies to all multiple housing cooperatives and horizontal property regimes created prior to, and still in existence on, July 1, 2014, and created on or after July 1, 2014; 2014 Acts, ch 1095, §6

CHAPTER 500

COLLECTIVE MARKETING

Referred to in §669.14

500.1 Authorization.
500.2 Liquidated damages.
500.3 Applicability of chapter.

500.1 Authorization.

Persons engaged in the conduct of any agricultural, horticultural, dairy, livestock, mercantile, mining, or manufacturing business in the manner provided in section 500.3 may act together in associations, corporate or otherwise, for the purpose of collectively producing, processing, preparing for market, handling, and marketing the products of their members. Such persons may organize and operate such associations, and such associations may make the necessary contracts and agreements to effect that purpose, any law to the contrary notwithstanding.

[C24, 27, 31, 35, 39, §**8513;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §500.1]

Referred to in §500.3

500.2 Liquidated damages.

Contracts and agreements entered into between associations and the members thereof may, where damages that may be sustained for the breach thereof are difficult of ascertainment, provide for such penalties as may be agreed upon, which penalties, if the parties thereto so agree, shall be construed as liquidated damages and be enforceable in the full amount thereof both at law and in equity.

[C24, 27, 31, 35, 39, §**8514;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §500.2]

500.3 Applicability of chapter.

The provisions of this chapter shall apply:

1. To corporations organized under the provisions of chapter 497.

2. *a.* To other incorporated associations or companies organized without capital stock, not for pecuniary profit and for the mutual benefit of their members.

b. For purposes of this subsection, *"not for pecuniary profit"* includes but is not necessarily limited to an incorporated association organized to assist its members to make profits for themselves as producers by the means authorized in section 500.1, but not to make income or profit for distribution to its members, directors, or officers, except as provided in chapter 504.

[C24, 27, 31, 35, 39, §**8515;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §500.3; 81 Acts, ch 162, §1]

2004 Acts, ch 1049, §191; 2004 Acts, ch 1175, §393; 2012 Acts, ch 1023, §157

Referred to in §500.1

CHAPTER 501

CLOSED COOPERATIVES

Referred to in §10B.1, 10B.4, 10B.7, 15.319, 15.333, 15E.202, 16.80, 203.1, 489.102, 499.4, 501A.102, 501A.501, 501A.1104, 502.102, 502.201, 547.1, 556.1, 558.72, 669.14

Statement of purpose; 96 Acts, ch 1010, §1
Option to come under chapter 501A; §501A.1104

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SUBCHAPTER I

GENERAL PROVISIONS

501.101 Definitions.

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

1. *"Alternative voting method"* means a method of voting other than a written ballot, including voting by electronic, telephonic, internet, or other means that reasonably allows members the opportunity to vote.

2. *"Articles"* means the cooperative's articles of association.

3. *"Authorized person"* means a person who is one of the following:

a. A farming entity.

b. A person who owns at least one hundred fifty acres of agricultural land and receives as rent a share of the crops or the animals raised on the land if that person is a natural person or a general partnership as organized under chapter 486, Code 1999, or chapter 486A in which all partners are natural persons.

c. An employee of the cooperative who performs at least one thousand hours of service for the cooperative in each calendar year.

4. *"Board"* means the cooperative's board of directors.

5. *"Cooperative"* means a cooperative association organized under this chapter or converted to this chapter pursuant to section 501.601.

6. *"Farming"* means the same as defined in section 9H.1.

7. *"Farming entity"* means any one of the following:

a. A natural person or a fiduciary for a natural person who regularly participates in physical labor or operations management in a farming operation and files schedule F as part of the person's annual form 1040 or form 1041 filing with the United States internal revenue service.

b. A family farm corporation, family farm limited liability company, family farm limited partnership, or family trust, as defined in section 9H.1.

c. A general partnership as organized under chapter 486, Code 1999, or chapter 486A in which all the partners are natural persons actively engaged in farming as provided in section 9H.1.

8. *"Interest"* means a voting interest or other interest in a cooperative as described in the cooperative's articles of association.

9. *"Interest holder"* means a person who owns an interest in a cooperative, whether or not that interest has voting rights.

10. *"Member"* means a person who owns a voting interest in a cooperative.

11. *"Membership"* means the interest established by a member owning a voting interest.

12. *"Voting interest"* means an interest in a cooperative that has voting rights.

96 Acts, ch 1010, §3; 98 Acts, ch 1152, §1 – 6, 69; 99 Acts, ch 96, §40, 41; 2011 Acts, ch 23, §7; 2011 Acts, ch 131, §68, 158

501.102 Purposes and powers.

1. A cooperative organized under this chapter has the purpose of engaging in any lawful business unless a more limited purpose is set forth in the articles.

2. Unless its articles provide otherwise, a cooperative has perpetual duration and succession in its cooperative name and has the same powers as an individual to do all things necessary or convenient to carry out its business and affairs, including, but not limited to, all of the following:

a. Sue and be sued, complain, and defend in its name.

b. Have a seal, which may be altered at will, and use it, or a facsimile of it, by impressing or affixing it or in any other manner reproducing it.

c. Make and amend bylaws, not inconsistent with its articles of association or with the laws of this state, for managing the business and regulating the affairs of the cooperative.

d. Purchase, receive, lease, or otherwise acquire, and own, hold, improve, use, and otherwise deal with, real or personal property, or any legal or equitable interest in property, wherever located.

e. Sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of all or any part of its property.

f. Purchase, receive, subscribe for, or otherwise acquire, own, hold, vote, use, sell, mortgage, lend, pledge, or otherwise dispose of, and deal in and with shares or other interests in, or obligations of, any other entity.

g. Make contracts and guarantees, incur liabilities, borrow money, issue its notes, bonds, and other obligations, which may be convertible into or include the option to purchase other interests of the cooperative, and secure any of its obligations by mortgage or pledge of any of its property, franchises, or income.

h. Lend money, invest and reinvest its funds, and receive and hold real and personal property as security for repayment.

i. Be a promoter, partner, member, associate, or manager of any partnership, joint venture, trust, or other entity.

j. Conduct its business, locate offices, and exercise the powers granted by this chapter within or without this state.

k. Elect directors and appoint officers, employees, and agents of the cooperative, define their duties, fix their compensation, and lend them money and credit.

l. Pay pensions and establish pension plans, pension trusts, profit-sharing plans, bonus plans, and benefit or incentive plans for any or all of its current or former directors, officers, employees, and agents.

m. Make donations for the public welfare or for charitable, scientific, or educational purposes.

n. Transact any lawful business that will aid governmental policy.

o. Make payments or donations, or do any other act, not inconsistent with law, that furthers the business and affairs of the cooperative.

96 Acts, ch 1010, §4; 98 Acts, ch 1152, §7, 69

501.103 Permissible members — limited farming activities.

1. Notwithstanding section 9H.4, any person or entity, subject to the limitations set forth in section 501.305, and subject to the cooperative's articles and bylaws, is permitted to own interests, including voting interests, in a cooperative.

2. Notwithstanding section 9H.4, a cooperative may, directly or indirectly, acquire or otherwise obtain or lease agricultural land in this state, for as long as the cooperative continues to meet the following requirements:

a. Farming entities own sixty percent of the interests and are eligible to cast sixty percent of the votes at member meetings.

b. Authorized persons own at least seventy-five percent of the interests and are eligible to cast at least seventy-five percent of the votes at member meetings.

c. The cooperative does not, either directly or indirectly, acquire or otherwise obtain or lease agricultural land, if the total agricultural land either directly or indirectly owned or leased by the cooperative would then exceed six hundred forty acres.

3. A cooperative that claims that it is exempt from the restrictions of section 9H.4 pursuant to subsection 2 shall file a biennial report with the secretary of state on or before March 31 of each even-numbered year on forms supplied by the secretary of state. The report shall be signed by the president or the vice president of the cooperative and shall contain the following:

a. The cooperative's name and address.

b. A certification that the cooperative meets both of the requirements of subsection 2.

c. The number of acres of agricultural land owned, leased, or held by the cooperative, including the following:

(1) The total number of acres in the state.

(2) The number of acres in each county identified by county name.

(3) The number of acres owned.

(4) The number of acres leased.

(5) The number of acres held other than by ownership or lease.

(6) The number of acres used for the production of row crops.

4. The president or the vice president of the cooperative who falsifies a report is guilty of perjury as provided in section 720.2.

5. In the event of a transfer of an interest in a cooperative by operation of law as a result of death, divorce, bankruptcy, or pursuant to a security interest, the cooperative may disregard the transfer for purposes of determining compliance with subsection 2 for a period of two years after the transfer.

96 Acts, ch 1010, §5; 97 Acts, ch 171, §34; 98 Acts, ch 1152, §8, 69; 2005 Acts, ch 19, §73
Referred to in §10.3, 10.5, 10.7, 10.10, 10B.4A, 502.102
Suspension of filing requirement, §10B.4A

501.104 Name.

The name of a cooperative organized under this chapter must comply with all of the following:

1. The name must contain the word "*cooperative*", "*coop*", or "*co-op*".

2. The name must be distinguishable from all of the following:

a. The name of a cooperative organized under this chapter.

b. The name of a cooperative or cooperative association organized under another chapter, including chapter 497, 498, 499, or 501A.

c. The name of a foreign cooperative, cooperative association, or corporation authorized to do business in this state, including as provided in section 499.54 or section 501A.221.

d. The name of a cooperative which has been administratively dissolved pursuant to section 501.812 for a period of less than five years from the effective date of the dissolution.

96 Acts, ch 1010, §6; 2006 Acts, ch 1089, §42
Referred to in §501.202, 501.813

501.105 Execution and filing of documents.

1. The secretary of state may prescribe and furnish on request forms for the proper administration of this chapter. If the secretary of state has prescribed a mandatory form for a document, then that form must be on the prescribed form.

2. Articles must be signed by all of the organizers; and all other documents filed with the secretary of state must be signed by one of the cooperative's officers. The printed name and capacity of each signatory must appear in proximity to the signatory's signature. The secretary of state may accept a document containing a copy of the signature. A document is not required to contain a seal, an acknowledgment, or a verification.

3. The secretary of state shall collect the following fees:

a. Twenty dollars upon the filing of original or amended articles or articles of merger.

b. Five dollars upon the filing of all other required documents.

c. Five dollars per document and fifty cents per page for copying and certifying a document.

4. A document is effective at the later of the following times:

a. The time of filing on the date it is filed, as evidenced by the secretary of state's date and time endorsement on the original document.

b. The delayed effective time and date specified in the document. If a delayed effective date but no time is specified in the document, the document is effective at the close of business on that date. A delayed effective date for a document shall not be later than the ninetieth day after the date it is filed.

5. A document filed under this section may be corrected if the document contains an incorrect statement or the execution of the document was defective. A document is corrected by filing with the secretary of state articles of correction which describe the document to be corrected, including its filing date or a copy of the document. The articles must specify and correct the incorrect statement or defective execution. Articles of correction are effective on the effective date of the document it corrects except as to persons relying on the original document and adversely affected by the correction. As to those persons, articles of correction are effective when filed.

6. The secretary of state shall forward for recording a copy of each original, amended, and restated articles, articles of merger, articles of consolidation, and articles of dissolution to the recorder of the county in which the cooperative has its principal place of business, or in the case of a merger or consolidation, to the recorders of each of the counties in which the merging or consolidating cooperatives have their principal offices. The county recorder shall collect recording fees pursuant to section 331.604 for documents forwarded for recording under this subsection.

96 Acts, ch 1010, §7; 98 Acts, ch 1152, §9, 69; 2009 Acts, ch 27, §30

Referred to in §501.617, 501.713

501.106 Registered office and registered agent.

1. A cooperative must continuously maintain in this state a registered office that may be the same as any of its places of business, and a registered agent, who may be any of the following:

a. An individual who resides in this state and whose business office is identical with the registered office.

b. A domestic corporation or not-for-profit domestic corporation whose business office is identical with the registered office.

c. A foreign corporation or not-for-profit foreign corporation authorized to transact business in this state whose business office is identical with the registered office.

2. A cooperative may change its registered office or registered agent by delivering to the secretary of state for filing a statement of change that sets forth all of the following:

a. The name of the cooperative.

b. The street address of its current registered office.

c. If the street address of the current registered office is to be changed, the street address of the new registered office.

d. The name of its current registered agent.

e. If the current registered agent is to be changed, the name of the new registered agent and the new agent's written consent, either on the statement or attached to it, to the appointment.

f. That after the change or changes are made, the street addresses of its registered office and the business office of its registered agent will be identical.

3. *a.* If a registered agent changes the street address of the registered agent's business office, the registered agent may change the street address of the registered office of any cooperative for which the person is the registered agent by notifying the cooperative in writing of the change and signing, either manually or in facsimile, and delivering to the secretary of state for filing, a statement that provides for a registered office and a registered agent as provided in this section, and which recites that the cooperative has been notified of the change.

b. If a registered agent changes the registered agent's business address to another place, the registered agent may change the business address and the address of the registered agent by filing a statement as required in paragraph *"a"* for each cooperative, or a single statement for all cooperatives named in the notice, except that it need be signed only by the registered agent or agents or be responsive to subsection 2, paragraph *"e"*. The statement must recite that a copy of the statement has been mailed to each cooperative named in the notice.

4. A cooperative may also change its registered office or registered agent in its biennial report.

5. *a.* A registered agent may resign the agent's agency appointment by signing and delivering to the secretary of state for filing the signed original statement of resignation. The statement may include a statement that the registered office is also discontinued. The registered agent shall send a copy of the statement of resignation by certified mail to the cooperative at its principal office and to the registered office, if not discontinued. The registered agent shall certify to the secretary of state that the copies have been sent to the cooperative, including the date the copies were sent.

b. The agency appointment is terminated, and the registered office discontinued if so provided, on the date on which the statement was filed.

6. *a.* A cooperative's registered agent is the cooperative's agent for service of process, notice, or demand required or permitted by law to be served on the cooperative.

b. If a cooperative has no registered agent, or the agent cannot with reasonable diligence be served, the cooperative may be served by registered or certified mail, return receipt requested, addressed to the secretary of the cooperative at its principal office. Service is perfected under this paragraph at the earliest of any of the following:

(1) The date that the cooperative receives the mail.

(2) The date shown on the return receipt, if signed on behalf of the cooperative.

(3) Five days after its deposit in the United States mail, as evidenced by the postmark, if mailed postpaid and correctly addressed.

c. A cooperative may be served pursuant to this section or as provided in other provisions of this chapter, unless the manner of service is otherwise specifically provided for by statute.

96 Acts, ch 1010, §8; 98 Acts, ch 1152, §10, 11, 69; 2000 Acts, ch 1022, §12
Referred to in §501.713, 501.812, 501.813, 501.814

501.107 Repealed by 98 Acts, ch 1152, §68, 69. See §501.701 et seq.

501.108 Quo warranto.

The attorney general alone shall have the right to inquire into whether a cooperative has the right to exist or continue under this chapter. If the secretary of state is informed that a cooperative is not functioning as a cooperative, the secretary of state shall notify the attorney general. If the attorney general finds reasonable cause that the cooperative is not functioning as provided under this chapter, the attorney general shall bring action to wind up the affairs of the cooperative.

96 Acts, ch 1010, §10

SUBCHAPTER II

ARTICLES AND BYLAWS

501.201 Cooperative formation.

Three or more individuals may organize a cooperative under this chapter by executing and delivering articles to the secretary of state.

96 Acts, ch 1010, §11

501.202 Documents of organization.

1. The initial articles must set forth all of the following:

a. The name, address, and occupation of each organizer.

b. The names and addresses of the initial directors.

c. The street address of the cooperative's initial registered office and the name of its initial registered agent at that office.

2. The articles must set forth all of the following:

a. The name that satisfies the requirements of section 501.104.

b. A statement that it is organized under this chapter.

c. Its duration, which may be perpetual.

d. The classes of interests and the authorized number of interests of each class.

e. The quorum required for each member meeting.

f. The member voting rules.

3. The articles may set forth any other provision consistent with law.

96 Acts, ch 1010, §12; 98 Acts, ch 1152, §12, 13, 69

Referred to in §501.203

501.203 Amended and restated documents of organization.

1. A cooperative may amend its articles at any time to add or change a provision that is required or permitted in the articles or to delete a provision not required in the articles.

2. A cooperative may restate its articles at any time. A restatement of the articles must contain the information required by section 501.202, subsection 2, and may set forth any other provision consistent with law.

3. If the board recommends the amendment or restatement to the members, the amendment or restatement must be adopted by the members by a vote of two-thirds of the votes cast.

4. If the board does not recommend the amendment or restatement to the members, then the amendment or restatement must be adopted by the members by a vote of two-thirds of the votes cast in which vote a majority of all votes are cast.

96 Acts, ch 1010, §13; 2011 Acts, ch 23, §8; 2012 Acts, ch 1023, §73

501.204 Bylaws.

The board may adopt or amend the cooperative's bylaws by a vote of three-fourths of the board. The members may adopt or amend the cooperative's bylaws by a vote of three-fourths of the votes cast in which vote a majority of all votes are cast. A bylaw provision adopted by the members shall not be amended or repealed by the directors.

96 Acts, ch 1010, §14; 2011 Acts, ch 23, §9; 2012 Acts, ch 1023, §74

SUBCHAPTER III

MEMBERS

501.301 Liability of members.

A member is not personally liable for the acts or debts of the cooperative.

96 Acts, ch 1010, §15

501.302 Calling and notice of meetings.

1. A cooperative shall hold an annual member meeting at a time and place fixed in accordance with the bylaws.

2. The board may call special member meetings, and the board shall call a special member meeting upon the written demand of twenty percent of the members.

3. A cooperative shall give each member at least ten days' advance notice of the time, place, and the issues to be considered at each member meeting. This notice may be given in person or by mail to the last known address of the member, or the notice requirement may be met by the member waiving the notice.

4. The record date for determining the members entitled to notice of and to vote at a member meeting is the close of business on the day before the first notices for the meeting are delivered or mailed.

96 Acts, ch 1010, §16

Referred to in §501.802

501.303 Conduct of meetings.

1. Only those issues included in the notice of a member meeting may be considered at that meeting.

2. A member may vote at a member meeting in person or by mail ballot that specifies the issue and the member's vote on that issue. If the board makes available a ballot form, then that form must be used to cast a mail ballot on that issue. If the cooperative's articles or bylaws permit it, a member may cast a vote by an alternative voting method. The cooperative shall take reasonable measures to authenticate that a vote is cast by a member eligible to cast that vote.

96 Acts, ch 1010, §17; 2011 Acts, ch 23, §10

501.304 Member information.

1. Within ten days from receiving a demand of a member, the cooperative shall produce and furnish the member with the names and addresses of all members of the cooperative.

2. The board shall adopt a policy which permits the distribution of information to all of the members upon the request of a member when the purpose of the request concerns directly the action of the board. Upon receipt of the information and the request of a member, the board shall distribute the information to all of the members. The cooperative may charge the requesting member the costs incurred by the cooperative in distributing the information.

96 Acts, ch 1010, §18

Referred to in §501.702

501.305 Multiple membership prohibited.

A person who is a member owning fifteen percent or more of a cooperative shall not be eligible to be a member of any other cooperative organized under this chapter. A person violating this section is subject to a civil penalty of not more than one hundred dollars. The person's membership in a cooperative shall terminate if the person's acquisition of an interest in that cooperative caused the person to be in violation of this section.

96 Acts, ch 1010, §19

Referred to in §501.103

501.306 Number of votes.

A person who is a member shall not own more than one membership. The person shall be entitled to cast not more than one vote regarding any matter in which a vote is conducted, including any matter subject to a vote during a cooperative meeting.

96 Acts, ch 1010, §20; 98 Acts, ch 1152, §14, 69

501.307 Financial information.

The cooperative shall make available financial information to its membership by doing either of the following:

1. Preparing and providing to its members a financial statement for the cooperative's last fiscal year.

a. The financial statement must be based upon an unqualified opinion based upon an audit performed by a certified public accountant licensed in this state. However, a qualification in an opinion is valid, if it is unavoidable by any audit procedure that is permitted under generally accepted accounting principles. An opinion that is qualified because of a limited audit procedure or because the scope of an audit is limited is invalid for purposes of this section.

b. The financial statement must disclose the assets, liabilities, and net worth of the cooperative. The financial statement must be prepared according to generally accepted accounting principles. Assets must be shown at original cost less depreciation, or based upon a valuation in accordance with a competent appraisal. Unpriced contracts for agricultural commodities or products must be shown as a liability and valued at the applicable current market price of the agricultural commodities or products as of the date the financial statement is prepared.

2. Honoring a demand to provide access at all reasonable hours at its offices to the books, records, accounts, papers, documents, and computer programs or other recordings relating

to the property, assets, business, and financial affairs of the cooperative. The demand shall be in writing and signed by at least fifty percent of all the members of the cooperative. The cooperative shall honor the demand within one day from its receipt. Upon receipt of the demand, the cooperative must provide access to one or more persons selected by the fifty percent of the members to conduct the examination.

96 Acts, ch 1010, §21

SUBCHAPTER IV

DIRECTORS, OFFICERS, AND AGENTS

PART 1

GENERAL PROVISIONS

501.401 Number and election.

1. The affairs of a cooperative shall be managed by a board of not less than three directors.
2. The members shall elect the directors as prescribed in the articles or bylaws.
3. Each director shall serve the term prescribed in the articles or bylaws. The terms may be staggered.

96 Acts, ch 1010, §22

501.402 Vacancies.

1. A director may resign at any time by delivering written notice to the board chairperson or the board secretary. A resignation is effective when the notice is delivered unless the notice specifies a later effective date.
2. The members may remove one or more directors with or without cause unless the articles provide that directors may be removed only for cause.
3. The articles may authorize the board to remove a director for a cause specified in the articles.
4. Unless the articles or bylaws provide otherwise, the board shall fill each vacancy until the members elect a director to fill the vacancy at the next scheduled meeting of the members. If the directors remaining in office constitute fewer than a quorum of the board, they may fill the vacancy by the affirmative vote of a majority of all the directors remaining in office.

96 Acts, ch 1010, §23

501.403 Board action.

1. The board may hold regular or special meetings in or out of this state. A quorum of the board consists of a majority of the directors.
2. Unless the articles or bylaws provide otherwise:

a. Regular board meetings may be held without notice of the date, time, place, or purpose of the meeting.

b. Special board meetings must be preceded by at least two days' notice of the date, time, and place of the meeting; but the notice need not describe the purpose of the special meeting.

c. The board may create one or more committees composed of directors, and specify the duties and authority of each committee.

d. The board may permit any number of directors to participate in a regular or special meeting by, or conduct the meeting through, the use of any means of communication by which all directors participating may simultaneously hear each other during the meeting.

e. Action required or permitted by this chapter to be taken at a board meeting may be taken without a meeting if the action is taken by all members of the board. The action must be evidenced by one or more written consents describing the action taken, signed by each director, and included in the minutes or filed with the cooperative's records reflecting the action taken. Action taken under this section is effective when the last director signs the

consent, unless the consent specifies a different effective date. A consent signed under this section has the effect of a meeting vote and may be described as such in any document.

3. A director may waive any notice required by this chapter, the articles, or the bylaws before or after the date and time stated in the notice. The waiver must be in writing, signed by the director entitled to the notice, and filed with the minutes or records of the cooperative. A director's attendance at or participation in a meeting waives any required notice to that director of the meeting unless the director at the beginning of the meeting or promptly upon the director's arrival objects to holding the meeting or transacting business at the meeting and does not thereafter vote for or assent to action taken at the meeting.

96 Acts, ch 1010, §24; 98 Acts, ch 1152, §15, 16, 69

501.404 Director conflict of interest.

1. A conflict of interest transaction is a transaction with the cooperative in which a director has a direct or indirect interest. A director shall be deemed to have a conflict of interest in a matter concerning a transaction between the cooperative and another entity, if the director owns a twenty-five percent or greater ownership interest in the other entity. A conflict of interest transaction is not voidable by the cooperative solely because of the director's interest in the transaction if any one of the following is true:

a. The material facts of the transaction and the director's interest were disclosed or known to the board or a board committee and the board or committee authorized, approved, or ratified the transaction. For purposes of this paragraph, a conflict of interest transaction is authorized, approved, or ratified if it receives the affirmative vote of a majority of the directors on the board or on the committee who have no direct or indirect interest in the transaction, but a transaction may not be authorized, approved, or ratified under this section by a single director. If a majority of the directors who have no direct or indirect interest in the transaction vote to authorize, approve, or ratify the transaction, a quorum is present for the purpose of taking action under this paragraph. The presence of, or a vote cast by, a director with a direct or indirect interest in the transaction does not affect the validity of any action taken under this paragraph, if the transaction is otherwise authorized, approved, or ratified as provided in this paragraph.

b. The material facts of the transaction and the director's interest were disclosed or known to the members entitled to vote and they authorized, approved, or ratified the transaction. For purposes of this paragraph, a conflict of interest transaction is authorized, approved, or ratified if it receives a majority of the votes entitled to be counted under this paragraph. Voting interests owned by or voted under the control of a director who has a direct or indirect interest in the transaction, and voting interests owned by or voted under the control of an entity described in subsection 2, paragraph *"a"*, shall not be counted in a vote of members to determine whether to authorize, approve, or ratify a conflict of interest transaction under this paragraph. The vote of those voting interests, however, is counted in determining whether the transaction is approved under other sections of this chapter. A majority of the votes, whether or not the members are present, that are entitled to be counted in a vote on the transaction under this paragraph constitutes a quorum for the purpose of taking action under this paragraph.

c. The transaction was fair to the cooperative.

2. For purposes of this section, a director of the cooperative has an indirect interest in a transaction if either:

a. Another entity in which the director has a material financial interest is a party to the transaction.

b. Another entity of which the director is a director, officer, or trustee is a party to the transaction and the transaction is or should be considered by the board.

96 Acts, ch 1010, §25; 97 Acts, ch 23, §57; 98 Acts, ch 1152, §17, 69

501.405 Officers.

A cooperative shall have officers described in its bylaws or appointed by the board in accordance with the bylaws. The bylaws or the board shall delegate to one of the officers responsibility for preparing minutes of the directors' and members' meetings and for

authenticating records of the cooperative. Each officer has the authority and shall perform the duties set forth in the bylaws or, to the extent consistent with the bylaws, the duties prescribed by the board. The same individual may simultaneously hold more than one office.

96 Acts, ch 1010, §26

501.406 Standards of conduct.

1. A director or officer shall discharge the director's or officer's duties in conformity with all of the following:

a. In good faith.

b. With the care an ordinarily prudent person in a like position would exercise under similar circumstances.

c. In a manner the director or officer reasonably believes to be in the best interests of the cooperative.

2. In discharging duties by a director or officer, the director or officer is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by any of the following:

a. One or more officers or employees of the cooperative whom the director or officer reasonably believes to be reliable and competent in the matters presented.

b. A person, including but not limited to a legal counsel or public accountant, regarding a matter that the director or officer reasonably believes is within the person's professional or expert competence.

c. A committee of the board of which the director or officer is not a member if the director or officer reasonably believes the committee merits confidence.

3. A director or officer is not acting in good faith if the director or officer has knowledge concerning a matter in question that makes reliance otherwise permitted by subsection 2 unwarranted.

4. A director or officer is not liable for any action taken as a director or officer, or the failure to take action, if the director or officer performs the duties of the office in compliance with this section or if, and to the extent that, liability for the action or failure to act has been limited by the articles pursuant to section 501.407.

96 Acts, ch 1010, §27

Referred to in §501.805

501.407 Personal liability — indemnification.

1. The articles may contain a provision eliminating or limiting the personal liability of a director, officer, or interest holder of the cooperative for money damages for any action taken, or any failure to take action as a director, officer, or interest holder, except liability for any of the following:

a. An intentional infliction of harm on the cooperative or its members.

b. An intentional violation of criminal law.

c. The amount of a financial benefit received by the person to which the person is not entitled.

d. An act or omission occurring prior to the date when the provision in the articles becomes effective.

2. The articles may contain a provision permitting or making obligatory indemnification of a director or officer for liability, as defined in section 501.411, to any person for any action taken, or any failure to take any action, as a director or officer, except liability for any of the following:

a. Receipt of a financial benefit to which the person is not entitled.

b. An intentional infliction of harm on the cooperative or its members.

c. An intentional violation of criminal law.

96 Acts, ch 1010, §28; 98 Acts, ch 1152, §18, 19, 69; 2003 Acts, ch 66, §15; 2004 Acts, ch 1101, §69

Referred to in §501.406, 501.412, 501.414

501.408 Repealed by 98 Acts, ch 1152, §68, 69. See §501.411 et seq.

501.409 and 501.410 Reserved.

PART 2

INDEMNIFICATION

501.411 Definitions.

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

1. *"Cooperative"* includes any domestic or foreign predecessor entity of a cooperative in a merger.

2. *"Director"* or *"officer"* means an individual who is or was a director or officer, respectively, of a cooperative who, while a director or officer of the cooperative, is or was serving at the cooperative's request as a director, officer, partner, trustee, employee, or agent of another domestic or foreign cooperative, corporation, partnership, joint venture, trust, employee benefit plan, or other entity. A director or officer is considered to be serving an employee benefit plan at the cooperative's request if the director's or officer's duties to the cooperative also impose duties on, or otherwise involve services by, that director or officer to the plan or to participants in or beneficiaries of the plan. *"Director"* or *"officer"* includes, unless the context requires otherwise, the estate or personal representative of a director or officer.

3. *"Disinterested director"* means a director who at the time of a vote referred to in section 501.414, subsection 3, or a vote or selection referred to in section 501.416, subsection 2 or 3, is not either of the following:

a. A party to the proceeding.

b. An individual having a familial, financial, professional, or employment relationship with the director whose indemnification or advance for expenses is the subject of the decision being made, which relationship would in the circumstances, reasonably be expected to exert an influence on the director's judgment when voting on the decision being made.

4. *"Expenses"* includes counsel fees.

5. *"Liability"* means the obligation to pay a judgment, settlement, penalty, fine, including an excise tax assessed with respect to an employee benefit plan, or reasonable expenses incurred with respect to a proceeding.

6. *"Official capacity"* means:

a. When used with respect to a director, the office of director in a cooperative.

b. When used with respect to an officer, as contemplated in section 501.417, the office in a cooperative held by the officer.

"Official capacity" does not include service for any other domestic or foreign cooperative or any corporation, partnership, joint venture, trust, employee benefit plan, or other entity.

7. *"Party"* means an individual who was, is, or is threatened to be made a defendant or respondent in a proceeding.

8. *"Proceeding"* means any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative and whether formal or informal.

98 Acts, ch 1152, §20, 69; 2003 Acts, ch 66, §16
Referred to in §501.407

501.412 Permissible indemnification.

1. Except as otherwise provided in this section, a cooperative may indemnify an individual who is a party to a proceeding because the individual is a director against liability incurred in the proceeding if either of the following apply:

a. All of the following apply:

(1) The individual acted in good faith.

(2) The individual reasonably believed:

(a) In the case of conduct in the individual's official capacity, that the individual's conduct was in the best interests of the cooperative.

(b) In all other cases, that the individual's conduct was at least not opposed to the best interests of the cooperative.

(3) In the case of any criminal proceeding, the individual had no reasonable cause to believe the individual's conduct was unlawful.

b. The individual engaged in conduct for which broader indemnification has been made permissible or obligatory under a provision of the articles of organization as authorized by section 501.407, subsection 2.

2. A director's conduct with respect to an employee benefit plan for a purpose the director reasonably believed to be in the interests of the participants in and beneficiaries of the plan is conduct that satisfies the requirement of subsection 1, paragraph *"a"*, subparagraph (2), subparagraph division (b).

3. The termination of a proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent is not, of itself, determinative that the director did not meet the relevant standard of conduct described in this section.

4. Unless ordered by a court pursuant to section 501.415, subsection 1, paragraph *"c"*, a cooperative shall not indemnify a director in either of the following circumstances:

a. In connection with a proceeding by or in the right of the cooperative, except for reasonable expenses incurred in connection with the proceeding if it is determined that the director has met the relevant standard of conduct under subsection 1, paragraph *"a"*.

b. In connection with any proceeding with respect to conduct for which the director was adjudged liable on the basis that the director received a financial benefit to which the director was not entitled, whether or not involving action in the director's official capacity.

98 Acts, ch 1152, §21, 69; 2003 Acts, ch 66, §17; 2009 Acts, ch 41, §263
Referred to in §501.414, 501.415, 501.416, 501.419, 501.712

501.413 Mandatory indemnification.

A cooperative shall indemnify a director who was wholly successful, on the merits or otherwise, in the defense of any proceeding to which the director was a party because the director is or was a director of the cooperative.

98 Acts, ch 1152, §22, 69; 2003 Acts, ch 66, §18
Referred to in §501.414, 501.415, 501.417, 501.712

501.414 Advance for expenses.

1. A cooperative may, before final disposition of a proceeding, advance funds to pay for or reimburse the reasonable expenses incurred by a director who is a party to a proceeding because the person is a director if the person delivers all of the following to the cooperative:

a. A written affirmation of the director's good faith belief that either the director has met the relevant standard of conduct described in section 501.412 or that the proceeding involves conduct for which liability has been eliminated under a provision of the articles of organization as authorized by section 501.407, subsection 1.

b. The director's written undertaking to repay any funds advanced if the director is not entitled to mandatory indemnification under section 501.413 and it is ultimately determined that the director has not met the relevant standard of conduct described in section 501.412.

2. The undertaking required by subsection 1, paragraph *"b"*, must be an unlimited general obligation of the director but need not be secured and may be accepted without reference to the financial ability of the director to make repayment.

3. Authorizations under this section shall be made according to either of the following:

a. By the board of directors, according to one of the following:

(1) If there are two or more disinterested directors, by a majority vote of all the disinterested directors, a majority of whom shall for such purpose constitute a quorum, or by a majority of the members of a committee of two or more disinterested directors appointed by such a vote.

(2) If there are fewer than two disinterested directors, if a quorum is present when the vote is taken, by the affirmative vote of a majority of the directors present, unless the articles or bylaws require the vote of a greater number of directors, in which authorization directors who do not qualify as disinterested directors may participate.

b. By the members, but voting interests owned by or voted under the control of a

director who at the time does not qualify as a disinterested director shall not be voted on the authorization.

98 Acts, ch 1152, §23, 69; 2003 Acts, ch 66, §19
Referred to in §501.411, 501.415, 501.419, 501.712

501.415 Court-ordered indemnification.

1. A director who is a party to a proceeding because the person is a director may apply to the court conducting the proceeding or to another court of competent jurisdiction for indemnification or an advance for expenses. After receipt of an application, and after giving any notice the court considers necessary, the court shall proceed according to the following:

a. Order indemnification if the court determines that the director is entitled to mandatory indemnification under section 501.413.

b. Order indemnification or advance for expenses if the court determines that the director is entitled to indemnification or advance for expenses pursuant to a provision authorized by section 501.419, subsection 1.

c. Order indemnification or advance for expenses if the court determines, in view of all the relevant circumstances, that it is fair and reasonable to do one of the following:

(1) To indemnify the director.

(2) To advance expenses to the director, even if the director has not met the relevant standard of conduct set forth in section 501.412, subsection 1, failed to comply with section 501.414, or was adjudged liable in a proceeding referred to in section 501.412, subsection 4, paragraph *"a"* or *"b"*, but if the director was adjudged so liable the director's indemnification shall be limited to reasonable expenses incurred in connection with the proceeding.

2. If the court determines that the director is entitled to indemnification under subsection 1, paragraph *"a"*, or to indemnification or advance for expenses under subsection 1, paragraph *"b"*, the court shall also order the cooperative to pay the director's reasonable expenses incurred in connection with obtaining court-ordered indemnification or advance for expenses. If the court determines that the director is entitled to indemnification or advance for expenses under subsection 1, paragraph *"c"*, the court may also order the cooperative to pay the director's reasonable expenses to obtain court-ordered indemnification or advance for expenses.

98 Acts, ch 1152, §24, 69; 2003 Acts, ch 66, §20
Referred to in §501.412, 501.417, 501.712

501.416 Determination and authorization of indemnification.

1. A cooperative shall not indemnify a director under section 501.412 unless authorized for a specific proceeding after a determination has been made that indemnification of the director is permissible because the director has met the relevant standard of conduct set forth in section 501.412.

2. The determination shall be made by one of the following:

a. If there are two or more disinterested directors, by the board of directors by a majority vote of all the disinterested directors, a majority of whom shall for such purpose constitute a quorum, or by a majority of the members of a committee of two or more disinterested directors appointed by such a vote.

b. By special legal counsel.

(1) The special legal counsel shall be selected in the manner described in paragraph *"a"*.

(2) If there are fewer than two disinterested directors, special legal counsel shall be selected by the board of directors, in which selection directors who do not qualify as disinterested directors may participate.

c. By the members, but voting interests owned by or voted under the control of a director who at the time does not qualify as a disinterested director shall not be voted on the determination.

3. Authorization of indemnification shall be made in the same manner as the determination that indemnification is permissible, except that if there are fewer than two disinterested directors or if the determination is made by special legal counsel, authorization

of indemnification shall be made by those entitled under subsection 2, paragraph *"b"*, to select special legal counsel.

98 Acts, ch 1152, §25, 69; 2003 Acts, ch 66, §21
Referred to in §501.411, 501.419

501.417 Indemnification of officers.

1. A cooperative may indemnify and advance expenses under this part to an officer of the cooperative who is a party to the proceeding because the person is an officer, according to both of the following:

a. To the same extent as to a director.

b. If the person is an officer but not a director, to such further extent as may be provided by the articles of association, the bylaws, a resolution of the board of directors, or contract, except for either of the following:

(1) Liability in connection with a proceeding by or in the right of the cooperative other than for reasonable expenses incurred in connection with the proceeding.

(2) Liability arising out of conduct that constitutes any of the following:

(a) Receipt by the officer of a financial benefit to which the officer is not entitled.

(b) An intentional infliction of harm on the cooperative or the interest holders.

(c) An intentional violation of criminal law.

2. The provisions of subsection 1, paragraph *"b"*, shall apply to an officer who is also a director if the basis on which the officer is made a party to a proceeding is an act or omission solely as an officer.

3. An officer of a cooperative who is not a director is entitled to mandatory indemnification under section 501.413, and may apply to a court under section 501.415 for indemnification or an advance for expenses, in each case to the same extent to which a director may be entitled to indemnification or an advance for expenses under those provisions.

98 Acts, ch 1152, §26, 69; 2003 Acts, ch 66, §22
Referred to in §501.411

501.418 Insurance.

A cooperative may purchase and maintain insurance on behalf of an individual who is a director or officer of the cooperative, or who, while a director or officer of the cooperative, serves at the cooperative's request as a director, officer, partner, trustee, employee, or agent of another domestic or foreign cooperative, corporation, partnership, joint venture, trust, employee benefit plan, or other entity, against liability asserted against or incurred by that individual in that capacity or arising from the individual's status as a director or officer, whether or not the cooperative would have power to indemnify or advance expenses to that individual against the same liability under this part.

98 Acts, ch 1152, §27, 69; 2003 Acts, ch 66, §23

501.419 Variation by corporate action — application of this part.

1. A cooperative may, by a provision in its articles of organization or bylaws or in a resolution adopted or a contract approved by its board of directors or members, obligate itself in advance of the act or omission giving rise to a proceeding to provide indemnification in accordance with section 501.412 or advance funds to pay for or reimburse expenses in accordance with section 501.414. Any such obligatory provision shall be deemed to satisfy the requirements for authorization referred to in section 501.414, subsection 3, and in section 501.416, subsection 3. Any such provision that obligates the cooperative to provide indemnification to the fullest extent permitted by law shall be deemed to obligate the cooperative to advance funds to pay for or reimburse expenses in accordance with section 501.414 to the fullest extent permitted by law, unless the provision specifically provides otherwise.

2. Any provision pursuant to subsection 1 shall not obligate the cooperative to indemnify or advance expenses to a director of a predecessor of the cooperative, pertaining to conduct with respect to the predecessor, unless otherwise specifically provided. Any provision for indemnification or advance for expenses in the articles of organization, bylaws, or a resolution of the board of directors or members of a predecessor of the cooperative in a

merger or in a contract to which the predecessor is a party, existing at the time the merger takes effect, shall be governed by section 501.618, subsection 3.

3. A cooperative may, by a provision in its articles of organization, limit any of the rights to indemnification or advance for expenses created by or pursuant to this part.

4. This part does not limit a cooperative's power to pay or reimburse expenses incurred by a director or an officer in connection with the director's or officer's appearance as a witness in a proceeding at a time when the director or officer is not a party.

5. This part does not limit a cooperative's power to indemnify, advance expenses to, or provide or maintain insurance on behalf of an employee or agent.

98 Acts, ch 1152, §28, 69; 2003 Acts, ch 66, §24
Referred to in §501.415

501.420 Exclusivity.

A cooperative may provide indemnification or advance expenses to a director or an officer only as permitted by this chapter.

2003 Acts, ch 66, §25

SUBCHAPTER V

CAPITAL STRUCTURE

501.501 Issuance and transfer of interests.

1. A cooperative may issue the number of interests of each class authorized by its articles. A cooperative may issue fractional interests. Interests may be represented by certificates or by entry on the cooperative's interest record books.

2. A member shall not sell or otherwise transfer voting interests to any person. A member may be restricted or limited from selling or otherwise transferring any other class of interests of the cooperative as provided by the cooperative's articles of association or bylaws or an agreement executed between the cooperative and the member.

3. A cooperative may acquire its own interests, and interests so acquired constitute authorized but unissued interests.

96 Acts, ch 1010, §30; 97 Acts, ch 16, §1; 98 Acts, ch 1152, §29, 69

501.502 Termination of membership.

1. A membership shall terminate upon the death of the member.

2. The articles or bylaws may authorize the board to terminate a membership for any of the following reasons:

a. The member has attempted to transfer any interest to a person who is not a member and has not been approved for membership.

b. The member has failed to meet the member's commitment to provide products to the cooperative or to buy the cooperative's products.

c. The member is no longer an authorized person.

d. The member is no longer a farming entity.

3. A member's right to vote at member meetings shall cease upon termination of the membership.

4. The cooperative shall redeem, without interest, the voting interest of a terminated member within one year after the termination of the membership for the fair market value of the interest. If the amount originally paid by the member for the voting interest was less than ten percent of the total amount the member paid for all classes of interests, the cooperative may redeem the voting interest for its issue price if the cooperative's articles of association grant the cooperative this authority.

5. The cooperative shall redeem, without interest, all of the terminated member's allocated patronage refunds and preferred interests originally issued as allocated patronage refunds for the issue price as follows:

a. If a terminated member's current equity is less than two percent of the cooperative's total members' equity, the cooperative shall either redeem the terminated member's equity

within one year after the termination of the membership or redeem the terminated member's equity in annual amounts of not less than twenty percent of the total amount provided that the entire amount must be redeemed within five years after the termination of the membership.

b. If a terminated member's current equity equals or exceeds two percent of the cooperative's total members' equity, the cooperative shall redeem the terminated member's equity in annual amounts of not less than fifteen percent of the total amount provided that the entire amount must be redeemed within seven years after the termination of the membership.

96 Acts, ch 1010, §31; 97 Acts, ch 16, §2; 98 Acts, ch 1152, §30 – 32, 69

501.503 Distribution of net savings.

The board shall annually dispose of the cooperative's earnings in excess of its operating expenses as follows:

1. If the articles authorize the payment of distributions on a class of interests, then the directors may declare a distribution pursuant to the articles. Distributions shall not exceed eight percent of the value of the interest in each fiscal year. The members may control the amount that is allocated under this subsection.

2. To provide a reasonable reserve for depreciation, obsolescence, bad debts, or contingent losses or expenses. The members may control the amount that is allocated under this subsection.

3. To increase the cooperative's retained savings to the extent determined by the board to be necessary based on its evaluation of the future needs and the competitive position of the cooperative.

4. The cooperative shall have an unconditional binding obligation to distribute to the members all remaining net savings as determined under the United States Internal Revenue Code. These net savings shall be allocated to each member in proportion to the business the member did with the cooperative during the preceding fiscal year. The net savings may be separately calculated for two or more categories of business, and allocated to the members on the basis of business done within each of these categories. Net savings shall be distributed in the form of cash or interests, or a combination of cash and interests, as determined by the board.

96 Acts, ch 1010, §32; 98 Acts, ch 1152, §33, 69

SUBCHAPTER VI

CONVERSION, SALE, MERGER, AND CONSOLIDATION

PART 1

CONVERSION OF EXISTING ASSOCIATIONS AND SALE OF ASSETS

501.601 Existing associations.

1. As used in this section:

a. *"Dissenting member"* means a voting member who votes in opposition to the plan of conversion and who makes a demand for payment as provided in this section not later than the deadline for members to vote to approve the plan of conversion.

b. *"Issue price"* means the amount paid for an interest in the association or the value stated in a notice of allocation of patronage refunds.

2. An association organized under chapter 497, 498, or 499 may adopt this chapter pursuant to the following procedures:

a. The board must adopt a plan of conversion that specifies the changes in the articles to comply with this chapter, the effect of the conversion on the association's outstanding

members' equity, and the option or options available to the equity holders who do not want to continue their investment in the association.

b. The members must approve the plan of conversion by a vote of two-thirds of the votes cast in which vote a majority of all votes are cast.

3. *a.* The cooperative shall redeem all of the members' equity held by dissenting members at its issue price within one year after the conversion to this chapter is effective.

b. An equity holder who is not a voting member shall have the same rights as a dissenting member if the equity holder makes a demand for payment pursuant to paragraph *"a"* not later than the deadline for members to vote to approve the plan of conversion.

c. The association shall notify all equity holders of their rights pursuant to paragraph *"a"* at the same time the association notifies the members of the member meeting to vote on the plan of conversion.

96 Acts, ch 1010, §33; 2011 Acts, ch 23, §11 – 13; 2012 Acts, ch 1023, §75
Referred to in §501.101

501.602 Repealed by 98 Acts, ch 1152, §68, 69. See §501.611 et seq.

501.603 Sale of assets.

1. A cooperative may, on the terms and conditions and for the consideration determined by the board, mortgage, pledge, or otherwise encumber any or all of its property.

2. A cooperative may sell, lease, exchange, or otherwise dispose of all, or substantially all, of its property, with or without the goodwill, on the terms and conditions and for the consideration determined by the board, which consideration may include the interests of another cooperative, if the board recommends the proposed transaction to the members, and the members approve it by a vote of two-thirds of the votes cast in which vote a majority of all votes are cast. The board may condition its submission of the proposed transaction on any basis.

96 Acts, ch 1010, §35; 98 Acts, ch 1152, §34, 69; 2011 Acts, ch 23, §14; 2012 Acts, ch 1023, §76

501.604 Repealed by 98 Acts, ch 1152, §68, 69. See §501.801 et seq.

501.605 through 501.610 Reserved.

PART 2

MERGER AND CONSOLIDATION

501.611 Definitions.

When used in this part, unless the context otherwise requires:

1. *"Consolidation"* means the uniting of two or more cooperatives organized under this chapter into one cooperative organized under this chapter, in such manner that a new cooperative is formed, and the new cooperative absorbs the others, which cease to exist as separate entities.

2. *"Dissenting member"* means a voting member who votes in opposition to the plan of merger or consolidation and who makes a demand for payment of the fair value under section 501.615.

3. *"Fair value"* means the cash price that would be paid by a willing buyer to a willing seller, neither being under any compulsion to buy or sell.

4. *"Issue price"* means the amount paid for an interest in the old cooperative or the amount stated in a notice of allocation of patronage distributions.

5. *"Merger"* means the uniting of two or more cooperatives organized under this chapter into one cooperative organized under this chapter, in such manner that one of the merging associations continues to exist and absorbs the others, which cease to exist as entities. *"Merger"* does not include the acquisition, by purchase or otherwise, of the assets of one cooperative by another, unless the acquisition only becomes effective by the filing of articles

of merger by the cooperatives and the issuance of a certificate of merger pursuant to sections 501.617 and 501.618.

6. *"New cooperative"* is the cooperative resulting from the consolidation of two or more cooperatives organized under this chapter.

7. *"Old cooperative"* means the cooperative in which the member owns or owned a membership prior to merger or consolidation.

8. *"Surviving cooperative"* is the cooperative resulting from the merger of two or more cooperatives organized under this chapter.

98 Acts, ch 1152, §35, 69

501.612 Merger.

Any two or more cooperatives may merge into one cooperative in the manner provided in this section. The board of directors of each cooperative shall, by resolution adopted by a majority vote of all members of each board, approve a plan of merger which shall set forth all of the following:

1. The names of the cooperatives proposing to merge and the name of the surviving cooperative.

2. The terms and conditions of the proposed merger.

3. A statement of any changes in the articles of association of the surviving cooperative.

4. Other provisions deemed necessary or desirable.

98 Acts, ch 1152, §36, 69

Merger with other business entities; §501A.1101 – 501A.1103

501.613 Consolidation.

Any two or more cooperatives may be consolidated into a new cooperative as provided in this section. The board of directors of each cooperative shall, by resolution adopted by a majority vote of all members of each board, approve a plan of consolidation setting forth:

1. The names of the cooperatives proposing to consolidate and the name of the new cooperative.

2. The terms and conditions of the proposed consolidation.

3. With respect to the new cooperative, all of the statements required to be set forth in articles of association for cooperatives.

4. Other provisions deemed necessary or desirable.

98 Acts, ch 1152, §37, 69

Consolidation with other business entities; §501A.1101

501.614 Vote of members.

1. The board of directors of a cooperative, upon approving a plan of merger or consolidation, shall, by motion or resolution, direct that the plan be submitted to a vote at a meeting of members, which may be either an annual or special meeting. Written notice shall be given not less than twenty days prior to the meeting, either personally or by mail, to each voting member of record. The notice shall state the time, place, and purpose of the meeting, and a summary of the plan of merger or consolidation shall be included in or enclosed with the notice.

2. At the meeting, a vote of the members who are entitled to vote in the affairs of the association shall be taken on the proposed plan of merger or consolidation. The plan of merger or consolidation shall be approved if two-thirds of the members vote affirmatively and a majority of all voting members participate in the voting.

98 Acts, ch 1152, §38, 69; 2011 Acts, ch 23, §15; 2012 Acts, ch 1023, §77

501.615 Objection of members — purchase of interests upon demand.

1. If a member of a cooperative which is a party to a merger or consolidation files with the cooperative, prior to or at the meeting of members at which the plan is submitted to a vote, a written objection to the plan of merger or consolidation, and votes in opposition to the plan, and the member, within twenty days after the merger or consolidation is approved by the other members, makes written demand on the surviving or new cooperative for payment of the fair value of that member's interest as of the day prior to the date on which the vote

was taken approving the merger or consolidation, the surviving or new cooperative shall pay to the member, upon surrender of that person's certificate of membership or interests in the cooperative, the fair value of that person's interest as provided in section 501.616. A member who fails to make demand within the twenty-day period is conclusively presumed to have consented to the merger or consolidation and is bound by its terms.

2. In the event that a dissenting member does business with the surviving or new cooperative before payment has been made for that person's membership, the dissenting member is deemed to have consented to the merger or consolidation and to have waived all further rights as a dissenting member.

98 Acts, ch 1152, §39, 69
Referred to in §501.611

501.616 Value determined.

1. Within twenty days after the merger or consolidation is effected, the surviving or new cooperative shall make a written offer to each dissenting member to pay a specified sum deemed by the surviving or new cooperative to be the fair value of that dissenting member's interest in the old cooperative. This offer shall be accompanied by a balance sheet of the old cooperative as of the latest available date, a profit and loss statement of the old cooperative for the twelve-month period ending on the date of the balance sheet, and a list of the dissenting member's interests in the old cooperative. If the dissenting member does not agree that the sum stated in the notice represents the fair value of the member's interest, then the member may file a written objection with the surviving or new cooperative within twenty days after receiving the notice. A dissenting member who fails to file the objection within the twenty-day period is conclusively presumed to have consented to the fair value stated in the notice.

2. If the surviving or new cooperative receives any objections to fair values, then within ninety days after the merger or consolidation is effected, the surviving or new cooperative shall file a petition in district court asking for a finding and determination of the fair value of each type of equity. The action shall be tried as an equitable action.

3. The fair value of a dissenting member's interest in the old cooperative shall be determined as of the day preceding the merger or consolidation by taking the lesser of either the issue price of the dissenting member's membership, deferred patronage, and any other interests in the cooperative, or the amount determined by subtracting the old cooperative's debts from the fair market value of the old cooperative's assets, dividing the remainder by the total issue price of all memberships, deferred patronage, and all other interests, and then multiplying the quotient from this equation by the total issue price of a dissenting member's membership, deferred patronage, and other interests.

4. The surviving or new cooperative shall pay to each dissenting member in cash within sixty days after the merger or consolidation the amount paid in cash by the dissenting member for that member's interest in the old cooperative. The surviving or new cooperative shall pay the remainder of each dissenting member's fair value in ten annual equal payments. The final payment must be made not later than fifteen years after the merger or consolidation. The value of the deferred patronage or interests issued to evidence deferred patronage shall be considered a liability of the surviving or new cooperative as reflected in the accounts of the surviving or new cooperative until the value of the deferred patronage or interests issued to evidence deferred patronage is paid in full to the dissenting member. A dissenting member who is a natural person who dies before receiving the fair value shall have all of the person's fair value paid with the same priority as if the person was a member at the time of death.

98 Acts, ch 1152, §40, 69; 2014 Acts, ch 1092, §108
Referred to in §501.615

501.617 Articles of merger or consolidation.

1. Upon approval, articles of merger or articles of consolidation shall be executed by each cooperative as provided in section 501.105. The articles must include the following:

a. The plan of merger or the plan of consolidation.

b. As to each cooperative, the number of members.

c. As to each cooperative, the number of members who voted for and against the plan at the meeting called for that purpose.

2. The articles of merger or articles of consolidation shall be delivered to the secretary of state for filing.

3. The secretary of state, upon the filing of articles of merger or articles of consolidation, shall issue a certificate of merger or a certificate of consolidation and send the certificate to the surviving or new cooperative, or to its representative.

98 Acts, ch 1152, §41, 69; 2012 Acts, ch 1023, §157
Referred to in §501.611

501.618 Effective date — effect.

A merger or consolidation shall become effective upon the date that the certificate of merger or the certificate of consolidation is issued by the secretary of state, or the effective date specified in the articles of merger or articles of consolidation, whichever is later. When a merger or consolidation has become effective:

1. The several cooperatives which are parties to the plan of merger or consolidation shall be a single cooperative, which, in the case of a merger, shall be that cooperative designated in the plan of merger as the surviving cooperative, and, in the case of consolidation, shall be that cooperative designated in the plan of consolidation as the new cooperative.

2. The separate existence of all cooperatives which are parties to the plan of merger or consolidation, except the surviving or new cooperative, shall cease.

3. The surviving or new cooperative shall have all the rights, privileges, immunities, and powers and shall be subject to all the duties and liabilities of a cooperative organized under this chapter.

4. The surviving or new cooperative shall possess all the rights, privileges, immunities, and franchises, public as well as private, of each of the merging or consolidating cooperatives.

5. All property, real, personal, and mixed, and all debts due on whatever account, including all choses in action, and all and every other interest, of or belonging to or due to each of the cooperatives merged or consolidated, shall be transferred to and vested in the surviving or new cooperative without further act or deed. The title to any real estate, or any interest in real estate vested in any of the cooperatives merged or consolidated, shall not revert or be in any way impaired by reason of the merger or consolidation.

6. A surviving or new cooperative shall be responsible and liable for all obligations and liabilities of each of the cooperatives merged or consolidated.

7. Any claim existing or action or proceeding pending by or against any of the cooperatives merged or consolidated may be prosecuted as if the merger or consolidation had not taken place, or the surviving or new cooperative may be substituted for the merged or consolidated cooperative. Neither the rights of creditors nor any liens upon the property of any cooperative shall be impaired by a merger or consolidation.

8. In the case of a merger, the articles of association of the surviving cooperative shall be deemed to be amended to the extent that changes in its articles of association are stated in the plan of merger. In the case of a consolidation, the statements set forth in the articles of consolidation which are required or permitted to be set forth in the articles of association of a cooperative shall be deemed to be the original articles of association of the new cooperative.

9. The aggregate amount of the net assets of the merging or consolidating cooperative which was available for the payment of distributions immediately prior to the merger or consolidation, to the extent that the amount is not transferred to stated capital by the issuance of interests or otherwise, shall continue to be available for the payment of distributions by the surviving or new cooperative.

98 Acts, ch 1152, §42, 69; 2012 Acts, ch 1023, §98
Referred to in §501.419, 501.611

501.619 Abandonment before filing.

At any time prior to the filing of the articles of merger or consolidation, the merger or consolidation may be abandoned pursuant to provisions set forth in the plan of merger or consolidation.

98 Acts, ch 1152, §43, 69

SUBCHAPTER VII

RECORDS AND REPORTS

PART 1

RECORDS

501.701 Records.

1. A cooperative shall keep as permanent records minutes of all meetings of its members and board of directors, a record of all actions taken by the members or board of directors without a meeting, and a record of all actions taken by a committee of the board of directors in place of the board of directors on behalf of the cooperative.

2. A cooperative shall maintain appropriate accounting records.

3. A cooperative or its agent shall maintain a record of its interest holders in a form that permits preparation of a list of the names and addresses of all interest holders in alphabetical order by class of interests showing the number and class of interests held by each.

4. A cooperative shall maintain its records in written form or in another form capable of conversion into written form within a reasonable time.

5. A cooperative shall keep a copy of the following records:

a. Its articles or restated articles of association and all amendments to them currently in effect.

b. Its bylaws or restated bylaws and all amendments to them currently in effect.

c. Resolutions adopted by its board of directors creating one or more classes or series of interests, and fixing their relative rights, preferences, and limitations, if the interests issued pursuant to those resolutions are outstanding.

d. The minutes of all members' meetings, and records of all action taken by members without a meeting, for the past three years.

e. All written communications to interest holders generally within the past three years, including the financial statements furnished for the past three years under section 501.711.

f. A list of the names and business addresses of its current directors and officers.

g. Its most recent biennial report delivered to the secretary of state under section 501.713.

98 Acts, ch 1152, §44, 69; 99 Acts, ch 96, §42; 2000 Acts, ch 1022, §13

Referred to in §501.702

501.702 Inspection of records by interest holders.

1. An interest holder of a cooperative is entitled to inspect and copy, during regular business hours at the cooperative's principal office, any of the records of the cooperative described in section 501.701, subsection 5, if the interest holder gives the cooperative written notice of the interest holder's demand at least five business days before the date on which the interest holder wishes to inspect and copy.

2. An interest holder of a cooperative is entitled to inspect and copy, during regular business hours at a reasonable location specified by the cooperative, any of the following records of the cooperative if the interest holder meets the requirements of subsection 3 and gives the cooperative written notice of the interest holder's demand at least five business days before the date on which the interest holder wishes to inspect and copy any of the following:

a. Excerpts from minutes of any meeting of the board of directors, records of any action of a committee of the board of directors while acting in place of the board of directors on behalf

of the cooperative, minutes of any meeting of the members, and records of action taken by the members or board of directors without a meeting, to the extent not subject to inspection under subsection 1 of this section.

b. Accounting records of the cooperative.

c. The record of interest holders.

3. An interest holder may inspect and copy the records described in subsection 2 only if:

a. The interest holder's demand is made in good faith and for a proper purpose.

b. The interest holder describes with reasonable particularity the interest holder's purpose and the records the interest holder desires to inspect.

c. The records are directly connected with the interest holder's purpose.

4. The right of inspection granted by this section shall not be abolished or limited by a cooperative's articles of association or bylaws.

5. This section does not affect either of the following:

a. The right of a member to obtain information under section 501.304 or the right of an interest holder to obtain information, if the interest holder is in litigation with the cooperative, to the same extent as any other litigant.

b. The power of a court, independently of this chapter, to compel the production of cooperative records for examination.

98 Acts, ch 1152, §45, 69; 99 Acts, ch 96, §43

Referred to in §501.703, 501.704

501.703 Scope of inspection right.

1. An interest holder's agent or attorney has the same inspection and copying rights as the interest holder the agent or attorney represents.

2. The right to copy records under section 501.702 includes, if reasonable, the right to receive copies made by photographic, xerographic, or other technological means.

3. The cooperative may impose a reasonable charge, covering the costs of labor and material, for copies of any documents provided to the interest holder. The charge shall not exceed the estimated cost of production or reproduction of the records.

4. The cooperative may comply with an interest holder's demand to inspect the record of interest holders under section 501.702, subsection 2, paragraph "*c*", by providing the interest holder with a list of its interest holders that was compiled no earlier than the date of the interest holder's demand.

98 Acts, ch 1152, §46, 69

501.704 Court-ordered inspection.

1. If a cooperative does not allow an interest holder who complies with section 501.702, subsection 1, to inspect and copy any records required by that subsection to be available for inspection, the district court of the county where the cooperative's principal office or, if none in this state, its registered office is located may summarily order inspection and copying of the records demanded at the cooperative's expense upon application of the interest holder.

2. If a cooperative does not within a reasonable time allow an interest holder to inspect and copy any other records, the interest holder who complies with section 501.702, subsections 2 and 3, may apply to the district court in the county where the cooperative's principal office or, if not in this state, its registered office is located for an order to permit inspection and copying of the records demanded. The court shall dispose of an application under this subsection on an expedited basis.

3. If the court orders inspection and copying of the records demanded, it shall also order the cooperative to pay the interest holder's costs, including reasonable counsel fees, incurred to obtain the order unless the cooperative proves that it refused inspection in good faith because it had a reasonable basis for doubt about the right of the interest holder to inspect the records demanded.

4. If the court orders inspection and copying of the records demanded, it may impose reasonable restrictions on the use or distribution of the records by the demanding interest holder.

98 Acts, ch 1152, §47, 69

501.705 through 501.710 Reserved.

PART 2

REPORTS

501.711 Financial statements for interest holders.

A cooperative shall prepare annual financial statements, which may be consolidated or combined statements of the cooperative and one or more of its subsidiaries, as appropriate, that include a balance sheet as of the end of the fiscal year and an income statement for that year. Upon written request from an interest holder, a cooperative, at its expense, shall furnish to that interest holder the financial statements requested. If the annual financial statements are reported upon by a public accountant, the report must accompany the financial statements.

98 Acts, ch 1152, §48, 69

Referred to in §501.701

501.712 Other reports to interest holders.

1. If a cooperative indemnifies or advances expenses to a director under sections 501.412 through 501.415 in connection with a proceeding by or in the right of the cooperative, the cooperative shall report the indemnification or advance in writing to the members with or before the notice of the next members' meeting.

2. If a cooperative issues or authorizes the issuance of interests for promissory notes or for promises to render services in the future, the cooperative shall report in writing to the members the number of interests authorized or issued, and the consideration received by the cooperative, with or before the notice of the next members' meeting.

98 Acts, ch 1152, §49, 69

501.713 Biennial report for secretary of state.

1. Each cooperative authorized to transact business in this state shall deliver to the secretary of state for filing a biennial report that sets forth all of the following:

a. The name of the cooperative.

b. The address of its registered office and the name of its registered agent at that office in this state, together with the consent of any new registered agent.

c. The address of its principal office.

d. The names and addresses of the president, secretary, treasurer, and one member of the board of directors.

2. Information in the biennial report must be current as of the first day of January of the year in which the report is due. The report shall be executed on behalf of the cooperative and signed as provided in section 501.105 or by any other person authorized by the board of directors of the cooperative.

3. The first biennial report shall be delivered to the secretary of state between January 1 and April 1 of the first even-numbered year following the calendar year in which a cooperative was organized. Subsequent biennial reports must be delivered to the secretary of state between January 1 and April 1 of the following even-numbered calendar years. A filing fee for the biennial report shall be determined by the secretary of state.

4. If a biennial report does not contain the information required by this section, the secretary of state shall promptly notify the reporting cooperative in writing and return the report to the cooperative for correction.

5. The secretary of state may provide for the change of registered office or registered agent on the form prescribed by the secretary of state for the biennial report, provided that the form contains the information required in section 501.106. If the secretary of state determines that a biennial report does not contain the information required by this section but otherwise meets the requirements of section 501.106 for the purpose of changing the registered office or registered agent, the secretary of state shall file the statement of change of registered office or registered agent, effective as provided in section 501.105, before returning the biennial report

to the cooperative as provided in this section. A statement of change of registered office or agent pursuant to this subsection shall be executed by a person authorized to execute the biennial report.

98 Acts, ch 1152, §50, 69; 99 Acts, ch 96, §44; 2000 Acts, ch 1022, §14, 15

Referred to in §501.701, 501.811

SUBCHAPTER VIII

DISSOLUTION

PART 1

GENERAL PROVISIONS

501.801 Dissolution by organizers or initial directors.

A majority of the organizers or initial directors of a cooperative that has not issued interests or has not commenced business may dissolve the cooperative by delivering to the secretary of state for filing articles of dissolution that set forth all of the following:

1. The name of the cooperative.
2. The date of its organization.
3. Either of the following:

a. That none of the cooperative's interests have been issued.

b. That the cooperative has not commenced business.

4. That no debt of the cooperative remains unpaid.
5. That the net assets of the cooperative remaining after winding up have been distributed in accordance with this chapter and the articles of association of the cooperative.
6. That a majority of the organizers or initial directors authorized the dissolution.

98 Acts, ch 1152, §51, 69

501.802 Dissolution by board of directors and members.

1. A cooperative's board of directors may propose dissolution for submission to the members.
2. For a proposal to dissolve to be adopted both of the following must apply:

a. The board of directors must recommend dissolution to the members unless the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation and communicates the basis for its determination to the members.

b. The members entitled to vote must approve the proposal to dissolve as provided in subsection 5.

3. The board of directors may condition its submission of the proposal for dissolution on any basis.
4. The cooperative shall notify each member of a meeting to consider dissolution in accordance with section 501.302. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider dissolving the cooperative.
5. Unless the articles of association or the board of directors acting pursuant to subsection 3 require a greater vote or a vote by voting groups, the proposal to dissolve must be approved by a majority of all the votes entitled to be cast on that proposal in order to be adopted.

98 Acts, ch 1152, §52, 69

501.803 Articles of dissolution.

1. At any time after dissolution is authorized, the cooperative may dissolve by delivering to the secretary of state for filing articles of dissolution setting forth all of the following:

a. The name of the cooperative.

b. The date dissolution was authorized.

c. If dissolution was approved by the members, both of the following:

(1) The number of votes entitled to be cast on the proposal to dissolve.

(2) Either the total number of votes cast for and against dissolution or the total number of undisputed votes cast for dissolution and a statement that the number cast for dissolution was sufficient for approval.

2. A cooperative is dissolved upon the effective date of its articles of dissolution.

98 Acts, ch 1152, §53, 69

Referred to in §501.804

501.804 Revocation of dissolution.

1. A cooperative may revoke its dissolution within one hundred twenty days of the effective date of the dissolution.

2. Revocation of dissolution must be authorized in the same manner as the dissolution was authorized unless that authorization permitted revocation by action of the board of directors alone, in which event the board of directors may revoke the dissolution without member action.

3. After the revocation of dissolution is authorized, the cooperative may revoke the dissolution by delivering to the secretary of state for filing articles of revocation of dissolution, together with a copy of its articles of dissolution, that set forth all of the following:

a. The name of the cooperative.

b. The effective date of the dissolution that was revoked.

c. The date that the revocation of dissolution was authorized.

d. If the cooperative's board of directors or organizers revoked the dissolution, a statement to that effect.

e. If the cooperative's board of directors revoked a dissolution authorized by the members, a statement that revocation was permitted by action by the board of directors alone pursuant to that authorization.

f. If member action was required to revoke the dissolution, the information required by section 501.803, subsection 1, paragraph "*c*".

4. Revocation of dissolution is effective upon the effective date of the articles of revocation of dissolution.

5. When the revocation of dissolution is effective, it relates back to and takes effect as of the effective date of the dissolution as if the dissolution had never occurred.

98 Acts, ch 1152, §54, 69

501.805 Effect of dissolution.

1. A dissolved cooperative continues its existence but shall not carry on any business except that appropriate to wind up and liquidate its business and affairs, including any of the following:

a. Collecting its assets.

b. Disposing of its properties that will not be distributed in kind in accordance with this chapter and the cooperative's articles of association.

c. Discharging or making provision for discharging its liabilities.

d. Distributing its remaining property in accordance with this chapter and the cooperative's articles of association.

e. Doing every other act necessary to wind up and liquidate its business and affairs.

2. Dissolution of a cooperative does not do any of the following:

a. Transfer title to the cooperative's property.

b. Prevent transfer of its interests, although the authorization to dissolve may provide for closing the cooperative's interest transfer records.

c. Subject its directors or officers to standards of conduct different from those prescribed in section 501.406.

d. Change quorum or voting requirements for its board of directors or members; change provisions for selection, resignation, or removal of its directors or officers or both; or change provisions for amending its bylaws.

e. Prevent commencement of a proceeding by or against the cooperative in its name.

f. Abate or suspend a proceeding pending by or against the cooperative on the effective date of dissolution.

g. Terminate the authority of the registered agent of the cooperative.

98 Acts, ch 1152, §55, 69

Referred to in §501.812, 501.824

501.806 Distribution of assets.

Upon the cooperative's dissolution, the cooperative's assets shall first be used to pay expenses necessary to carry out the dissolution and liquidation of assets, then be used to pay the cooperative's obligations other than the payment of deferred patronage or interests issued as deferred patronage, and the remainder shall be paid in the manner set forth in the cooperative's articles of association.

98 Acts, ch 1152, §56, 69

501.807 Known claims against dissolved cooperative.

1. A dissolved cooperative may dispose of the known claims against it by following the procedure described in this section.

2. The dissolved cooperative shall notify its known claimants in writing of the dissolution at any time after the effective date of the dissolution. The written notice must do all of the following:

a. Describe information that must be included in a claim.

b. Provide a mailing address where a claim may be sent.

c. State the deadline, which shall not be fewer than one hundred twenty days from the effective date of the written notice, by which the dissolved cooperative must receive the claim.

d. State that the claim will be barred if not received by the deadline.

3. A claim against the dissolved cooperative is barred if either of the following occur:

a. A claimant who was given written notice under subsection 2 does not deliver the claim to the dissolved cooperative by the deadline.

b. A claimant whose claim was rejected by the dissolved cooperative does not commence a proceeding to enforce the claim within ninety days from the effective date of the rejection notice.

4. For purposes of this section, *"claim"* does not include a contingent liability or a claim based on an event occurring after the effective date of dissolution.

98 Acts, ch 1152, §57, 69

Referred to in §501.808, 501.812, 501.824

501.808 Unknown claims against dissolved cooperative.

1. A dissolved cooperative may also publish notice of its dissolution and request that persons with claims against the cooperative present them in accordance with the notice.

2. The notice must meet all of the following requirements:

a. Be published one time in a newspaper of general circulation in the county where the dissolved cooperative's principal office or, if not in this state, its registered office is or was last located.

b. Describe the information that must be included in a claim and provide a mailing address where the claim may be sent.

c. State that a claim against the cooperative will be barred unless a proceeding to enforce the claim is commenced within five years after the publication of the notice.

3. If the dissolved cooperative publishes a newspaper notice in accordance with subsection 2, the claim of each of the following claimants is barred unless the claimant commences a proceeding to enforce the claim against the dissolved cooperative within five years after the publication date of the newspaper notice:

a. A claimant who did not receive written notice under section 501.807.

b. A claimant whose claim was timely sent to the dissolved cooperative but not acted on.

c. A claimant whose claim is contingent or based on an event occurring after the effective date of dissolution.

4. A claim may be enforced under this section in either of the following ways:

a. Against the dissolved cooperative, to the extent of its undistributed assets.

b. If the assets have been distributed in liquidation, against an interest holder of the dissolved cooperative to the extent of the interest holder's pro rata share of the claim or the cooperative assets distributed to the interest holder in liquidation, whichever is less, but an interest holder's total liability for all claims under this section shall not exceed the total amount of assets distributed to the interest holder in liquidation.

98 Acts, ch 1152, §58, 69
Referred to in §501.812, 501.824

501.809 and 501.810 Reserved.

PART 2

ADMINISTRATIVE DISSOLUTION

501.811 Grounds for administrative dissolution.

The secretary of state may commence a proceeding under section 501.812 to administratively dissolve a cooperative if any of the following apply:

1. The cooperative has not delivered a biennial report to the secretary of state in a form that meets the requirements of section 501.713, within sixty days after it is due, or has not paid the filing fee as determined by the secretary of state, within sixty days after it is due.
2. The cooperative is without a registered agent or registered office in this state for sixty days or more.
3. The cooperative does not notify the secretary of state within sixty days that its registered agent or registered office has been changed, that its registered agent has resigned, or that its registered office has been discontinued.
4. The cooperative's period of duration stated in its articles of association expires.

98 Acts, ch 1152, §59, 69; 2000 Acts, ch 1022, §16
Referred to in §501.812

501.812 Procedure for and effect of administrative dissolution.

1. If the secretary of state determines that one or more grounds exist under section 501.811 for dissolving a cooperative, the secretary of state shall serve the cooperative with written notice of the secretary of state's determination under section 501.106.
2. If the cooperative does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the secretary of state that each ground determined by the secretary of state does not exist within sixty days after service of the notice is perfected under section 501.106, the secretary of state shall administratively dissolve the cooperative by signing a certificate of dissolution that recites the ground or grounds for dissolution and its effective date. The secretary of state shall file the original of the certificate and serve a copy on the cooperative under section 501.106.
3. A cooperative administratively dissolved continues its existence but shall not carry on any business except that necessary to wind up and liquidate its business and affairs under section 501.805 and notify claimants under sections 501.807 and 501.808.
4. The administrative dissolution of a cooperative does not terminate the authority of its registered agent.
5. The secretary of state's administrative dissolution of a cooperative pursuant to this section appoints the secretary of state the cooperative's agent for service of process in any proceeding based on a cause of action which arose during the time the cooperative was authorized to transact business in this state. Service of process on the secretary of state under this subsection is service on the cooperative. Upon receipt of process, the secretary of state shall serve a copy of the process on the cooperative as provided in section 501.106. This subsection does not preclude service on the cooperative's registered agent, if any.

98 Acts, ch 1152, §60, 69
Referred to in §501.104, 501.811, 501.813

501.813 Reinstatement following administrative dissolution.

1. A cooperative administratively dissolved under section 501.812 may apply to the secretary of state for reinstatement at any time after the effective date of dissolution. The application must meet all of the following requirements:

a. Recite the name of the cooperative at its date of dissolution and the effective date of its administrative dissolution.

b. State that the ground or grounds for dissolution have been eliminated.

c. If the application is received more than five years after the effective date of the cooperative's dissolution, state a name that satisfies the requirements of section 501.104.

d. State the federal tax identification number of the cooperative.

2. *a.* The secretary of state shall refer the federal tax identification number contained in the application for reinstatement to the departments of revenue and workforce development. The departments of revenue and workforce development shall report to the secretary of state the tax status of the cooperative. If either department reports to the secretary of state that a filing delinquency or liability exists against the cooperative, the secretary of state shall not cancel the certificate of dissolution until the filing delinquency or liability is satisfied.

b. (1) If the secretary of state determines that the application contains the information required by subsection 1, and that a delinquency or liability reported pursuant to paragraph "*a*" has been satisfied, and that the information is correct, the secretary of state shall cancel the certificate of dissolution and prepare a certificate of reinstatement that recites the secretary of state's determination and the effective date of reinstatement, file the document, and deliver a copy to the cooperative under section 501.106.

(2) If the name of the cooperative as provided in subsection 1, paragraph "*c*", is different than the name in subsection 1, paragraph "*a*", the certificate of reinstatement shall constitute an amendment to the articles of association insofar as it pertains to the name. A cooperative shall not relinquish the right to retain its name if the reinstatement is effective within five years of the effective date of the cooperative's dissolution.

3. When the reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative dissolution as if the administrative dissolution had never occurred.

98 Acts, ch 1152, §61, 69; 2003 Acts, ch 145, §286; 2006 Acts, ch 1089, §43 – 45; 2010 Acts, ch 1040, §4

501.814 Appeal from denial of reinstatement.

1. If the secretary of state denies a cooperative's application for reinstatement following administrative dissolution, the secretary of state shall serve the cooperative under section 501.106 with a written notice that explains the reason or reasons for denial.

2. The cooperative may appeal the denial of reinstatement to the district court within thirty days after service of the notice of denial is perfected. The cooperative appeals by petitioning the court to set aside the dissolution and attaching to the petition copies of the secretary of state's certificate of dissolution, the cooperative's application for reinstatement, and the secretary of state's notice of denial.

3. The court may summarily order the secretary of state to reinstate the dissolved cooperative or may take other action the court considers appropriate.

4. The court's final decision may be appealed as in other civil proceedings.

98 Acts, ch 1152, §62, 69

501.815 through 501.820 Reserved.

PART 3

JUDICIAL DISSOLUTION

501.821 Grounds for judicial dissolution.

The district court may dissolve a cooperative in any of the following ways:

1. A proceeding by the attorney general, if it is established that either of the following apply:

a. The cooperative obtained its articles of association through fraud.

b. The cooperative has continued to exceed or abuse the authority conferred upon it by law.

2. A proceeding by a member if it is established that any of the following conditions exist:

a. The directors are deadlocked in the management of the cooperative's affairs, the members are unable to break the deadlock, and either irreparable injury to the cooperative is threatened or being suffered, or the business and affairs of the cooperative can no longer be conducted to the advantage of the interest holders generally, because of the deadlock.

b. The directors or those in control of the cooperative have acted, are acting, or will act in a manner that is illegal, oppressive, or fraudulent.

c. The members are deadlocked in voting power and have failed, for a period that includes at least two consecutive annual meeting dates, to elect successors to directors whose terms have expired.

d. The cooperative's assets are being misapplied or wasted.

3. A proceeding by a creditor if it is established that either of the following apply:

a. The creditor's claim has been reduced to judgment, the execution on the judgment returned unsatisfied, and the cooperative is insolvent.

b. The cooperative has admitted in writing that the creditor's claim is due and owing and the cooperative is insolvent.

4. A proceeding by the cooperative to have its voluntary dissolution continued under court supervision.

98 Acts, ch 1152, §63, 69
Referred to in §501.822, 501.824

501.822 Procedure for judicial dissolution.

1. Venue for a proceeding by the attorney general to dissolve a cooperative lies in Polk county district court. Venue for a proceeding brought by any other party named in section 501.821 lies in the county where a cooperative's principal office or, if not in this state, its registered office is or was last located.

2. It is not necessary to make interest holders parties to a proceeding to dissolve a cooperative unless relief is sought against them individually.

3. A court in a proceeding brought to dissolve a cooperative may issue injunctions, appoint a receiver or custodian pendente lite with all powers and duties the court directs, take other action required to preserve the cooperative's assets wherever located, and carry on the business of the cooperative until a full hearing can be held.

98 Acts, ch 1152, §64, 69

501.823 Receivership or custodianship.

1. A court in a judicial proceeding brought to dissolve a cooperative may appoint one or more receivers to wind up and liquidate, or one or more custodians to manage, the business and affairs of the cooperative. The court shall hold a hearing, after notifying all parties to the proceeding and any interested persons designated by the court, before appointing a receiver or custodian. The court appointing a receiver or custodian has exclusive jurisdiction over the cooperative and all its property wherever located.

2. The court may appoint an individual or a domestic or foreign corporation authorized to transact business in this state as a receiver or custodian. The court may require the receiver or custodian to post bond, with or without sureties, in an amount the court directs.

3. The court shall describe the powers and duties of the receiver or custodian in its appointing order, which may be amended from time to time.

a. Among other powers, the receiver may do any of the following:

(1) Dispose of all or any part of the assets of the cooperative wherever located, at a public or private sale, if authorized by the court.

(2) Sue and defend in the receiver's own name as receiver of the cooperative in all courts of this state.

b. The custodian may exercise all of the powers of the cooperative, through or in place of its board of directors or officers, to the extent necessary to manage the affairs of the cooperative in the best interests of its interest holders and creditors.

4. The court during a receivership may redesignate the receiver a custodian, and during a custodianship may redesignate the custodian a receiver, if doing so is in the best interests of the cooperative, its interest holders, and creditors.

5. The court from time to time during the receivership or custodianship may order compensation paid and expense disbursements or reimbursements made to the receiver or custodian and the receiver's or custodian's counsel from the assets of the cooperative or proceeds from the sale of the assets.

98 Acts, ch 1152, §65, 69

501.824 Decree of dissolution.

1. If after a hearing the court determines that one or more grounds for judicial dissolution described in section 501.821 exist, it may enter a decree dissolving the cooperative and specifying the effective date of the dissolution, and the clerk of the district court shall deliver a certified copy of the decree to the secretary of state, who shall file it.

2. After entering the decree of dissolution, the court shall direct the winding up and liquidation of the cooperative's business and affairs in accordance with section 501.805 and the notification of claimants in accordance with sections 501.807 and 501.808.

98 Acts, ch 1152, §66, 69

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Assets of a dissolved cooperative that should be transferred to a creditor, claimant, or interest holder of the cooperative who cannot be found or who is not competent to receive them shall be reduced to cash and deposited with the treasurer of state or other appropriate state official for safekeeping. When the creditor, claimant, or interest holder furnishes satisfactory proof of entitlement to the amount deposited, the treasurer of state or other appropriate state official shall pay the creditor, claimant, or interest holder or that person's representative the amount.

98 Acts, ch 1152, §67, 69

CHAPTER 501A

COOPERATIVE ASSOCIATIONS ACT

Referred to in §10B.1, 10B.4, 10B.7, 15E.202, 203.1, 489.102, 499.4, 501.104, 502.201, 547.1, 556.1, 558.72, 669.14

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SUBCHAPTER I

GENERAL PROVISIONS

501A.101 Short title.

This chapter shall be known and may be cited as the *"Iowa Cooperative Associations Act"*. 2005 Acts, ch 135, §1

501A.102 Definitions.

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

1. *"Address"* means mailing address, including a zip code. In the case of a registered address, the term means the mailing address and the actual office location, which shall not be a post office box.

2. *"Alternative voting method"* means a method of voting other than a written ballot, including voting by electronic, telephonic, internet, or other means that reasonably allows members the opportunity to vote.

3. *"Articles"* means the articles of organization of a cooperative as originally filed or subsequently amended as provided in this chapter.

4. *"Association"* means a business entity on a cooperative plan and organized under the

laws of this state or another state or that is chartered to conduct business under the laws of another state.

5. *"Board"* means the board of directors of a cooperative.

6. *"Business entity"* means a person organized under statute or common law in this state or another jurisdiction for purposes of engaging in a commercial activity on a profit, cooperative, or not-for-profit basis, including but not limited to a corporation or entity taxed as a corporation under the Internal Revenue Code, nonprofit corporation, cooperative or cooperative association, partnership, limited partnership, limited liability company, limited liability partnership, investment company, joint stock company, joint stock association, or trust, including but not limited to a business trust.

7. *"Cooperative"* means a business association organized under this chapter.

8. *"Crop"* means a plant used for food, animal feed, fiber, or oil, if the plant is classified as a forage or cereal plant, including but not limited to alfalfa, barley, buckwheat, corn, flax, forage, millet, oats, popcorn, rye, sorghum, soybeans, sunflowers, wheat, and grasses used for forage or silage.

9. *"Domestic business entity"* means a business entity organized under the laws of this state, including but not limited to a limited liability company as defined in section 489.102; a corporation organized pursuant to chapter 490; a nonprofit corporation organized under chapter 504; a partnership, limited partnership, limited liability partnership, or limited liability limited partnership as provided in chapter 486A or 488; or a cooperative association or other cooperative organized under this chapter or chapter 497, 498, 499, or 501.

10. *"Domestic cooperative"* means a cooperative association or other cooperative organized under this chapter or chapter 497, 498, 499, or 501.

11. *"Foreign business entity"* means a business entity that is not a domestic business entity.

12. *"Foreign cooperative"* means a foreign business entity organized to conduct business consistent with this chapter or chapter 497, 498, or 499.

13. *"Iowa limited liability company"* means a limited liability company governed by chapter 489.

14. *"Livestock"* means the same as defined in section 717.1.

15. *"Member"* means a person or entity reflected on the books of a cooperative as the owner of governance rights of a membership interest of the cooperative and includes patron and nonpatron members.

16. *"Member control agreement"* means an instrument which controls the investment or governance of nonpatron members, which may be executed by the board and one or more nonpatron members and which may provide for their individual or collective rights to elect directors or to participate in the distribution or allocation of profits or losses.

17. *"Membership interest"* means a member's interest in a cooperative consisting of a member's financial rights, a member's right to assign financial rights, a member's governance rights, and a member's right to assign governance rights. *"Membership interest"* includes patron membership interests and nonpatron membership interests.

18. *"Members' meeting"* means a regular or special members' meeting.

19. *"Nonpatron member"* means a member who holds a nonpatron membership interest.

20. *"Nonpatron membership interest"* means a membership interest that does not require the holder to conduct patronage for or with the cooperative to receive financial rights or distributions.

21. *"Patron"* means a person or entity who conducts patronage with the cooperative, regardless of whether the person is a member.

22. *"Patronage"* means business, transactions, or services done for or with the cooperative as defined by the cooperative.

23. *"Patron member"* means a member holding a patron membership interest.

24. *"Patron membership interest"* means the membership interest requiring the holder to conduct patronage for or with the cooperative, as specified by the cooperative to receive financial rights or distributions.

25. *"Secretary"* means the secretary of state.

26. *"Traditional cooperative"* means a cooperative or cooperative association organized under chapter 497, 498, 499, or 501.

2005 Acts, ch 135, §2, 118, 119; 2008 Acts, ch 1162, §139, 154, 155; 2011 Acts, ch 23, §16

501A.103 Requirements for signatures on documents.

A document is signed when a person has affixed the person's name on a document. A person authorized to do so by this chapter, the articles or bylaws, or by a resolution approved by the directors or the members must sign the document. A signature on a document may be a facsimile affixed, engraved, printed, placed, stamped with indelible ink, transmitted by facsimile or electronically, or in any other manner reproduced on the document.

2005 Acts, ch 135, §3; 2006 Acts, ch 1030, §52

Referred to in §501A.231

SUBCHAPTER II

FILING

Referred to in §501A.503, 501A.504

PART 1

GENERAL REQUIREMENTS

501A.201 General filing requirements.

1. A document must satisfy the requirements of this section, and of any other section that adds to or varies these requirements, to be entitled to filing.

2. The document must be one that this chapter requires or permits to be filed with the secretary.

3. The document must contain the information required by this chapter. The document may contain other information as well.

4. The document must be typewritten or printed. The typewritten or printed portion shall be in black ink. Manually signed photocopies, or other reproduced copies, including facsimiles and other electronically or computer-generated copies of typewritten or printed documents may be filed.

5. The document must be in the English language. A cooperative's name need not be in English if written in English letters or Arabic or Roman numerals. The articles, duly authenticated by the official having custody of the applicable records in the state or country under whose law the cooperative is formed, which are required of cooperatives, need not be in English if accompanied by a reasonably authenticated English translation.

6. The document must be executed by one of the following persons:

a. An officer of the cooperative, or if no officer has been selected, by any patron member of the cooperative.

b. If the cooperative has not been organized, by the organizers of the cooperative as provided in subchapter V.

c. If the cooperative is in the hands of a receiver, trustee, or other court-appointed fiduciary, that fiduciary.

7. The person executing the document shall sign the document and state beneath or opposite the person's signature, the person's name, and the capacity in which the person signs.

8. If, pursuant to any provision of this chapter, the secretary has prescribed a mandatory form for the document, the document shall be in or on the prescribed form.

9. The document must be delivered to the secretary for filing and must be accompanied by the correct filing fee as provided in this subchapter.

2005 Acts, ch 135, §4

Referred to in §501A.202, 501A.504

501A.202 Filing duty of secretary of state.

1. If a document delivered to the secretary for filing satisfies the requirements of section 501A.201, the secretary shall file it and issue any necessary certificate.

2. The secretary files a document by recording it as filed on the date and at the time of receipt. After filing a document, and except as provided in section 501A.204, the secretary shall deliver the document, and an acknowledgment of the date and time of filing, to the domestic cooperative or foreign cooperative or its representative.

3. If the secretary refuses to file a document, the secretary shall return it to the domestic cooperative or foreign cooperative or its representative within ten days after the document was received by the secretary, together with a brief, written explanation of the reason for the refusal.

4. The secretary's duty to file documents under this section is ministerial. Filing or refusing to file a document does not do any of the following:

a. Affect the validity or invalidity of the document in whole or in part.

b. Relate to the correctness or incorrectness of information contained in the document.

c. Create a presumption that the document is valid or invalid or that information contained in the document is correct or incorrect.

2005 Acts, ch 135, §5

501A.203 Effective time and date of documents.

1. Except as provided in subsection 2 and section 501A.204, subsection 3, a document accepted for filing is effective at the later of the following times:

a. At the time of filing on the date the document is filed, as evidenced by the secretary's date and time endorsement on the original document.

b. At the time specified in the document as its effective time on the date the document is filed.

2. A document may specify a delayed effective time and date, and if the document does so, the document becomes effective at the time and date specified. If a delayed effective date but no time is specified, the document is effective at the close of business on that date. A delayed effective date for a document shall not be later than the ninetieth day after the date the document is filed.

2005 Acts, ch 135, §6

Referred to in §501A.231

501A.204 Correcting filed documents.

1. A domestic cooperative or foreign cooperative may correct a document filed by the secretary if the document satisfies any of the following requirements:

a. Contains an incorrect statement.

b. Was defectively executed, attested, sealed, verified, or acknowledged.

2. A document is corrected by complying with all of the following:

a. By preparing articles of correction that satisfy all of the following requirements:

(1) Describe the document, including its filing date, or attach a copy of the document to the articles.

(2) Specify the incorrect statement and the reason the statement is incorrect or the manner in which the execution was defective.

(3) Correct the incorrect statement or defective execution.

b. By delivering the articles of correction to the secretary for filing.

3. Articles of correction are effective on the effective date of the document the articles correct, except as to persons relying on the uncorrected document and adversely affected by the correction. As to those persons, articles of correction are effective when filed.

2005 Acts, ch 135, §7

Referred to in §501A.202, 501A.203

501A.205 Fees.

1. The secretary shall collect the following fees when documents described in this subsection are delivered to the secretary's office for filing:

a. Articles of organization ..... $ 50

b. Application for use of indistinguishable name ..... $ 10
c. Application for reserved name ..... $ 10
d. Notice of transfer of reserved name ..... $ 10
e. Application for registered name per month or part thereof ..... $ 2
f. Application for renewal of registered name ..... $ 20
g. Statement of change of registered agent or registered office or both ..... No fee
h. Agent's statement of change of registered office for each affected cooperative ..... No fee
i. Agent's statement of resignation ..... No fee
j. Amendment of articles of organization..... $ 50
k. Restatement of articles of organization with amendment of articles ..... $ 50
l. Articles of merger ..... $ 50
m. Articles of dissolution ..... $ 5
n. Articles of revocation of dissolution ..... $ 5
o. Certificate of administrative dissolution ..... No fee
p. Application for reinstatement following administrative dissolution ..... $ 5
q. Certificate of reinstatement ..... No fee
r. Certificate of judicial dissolution ..... No fee
s. Application for certificate of authority $100
t. Application for amended certificate of authority $100
u. Application for certificate of cancellation ..... $ 10
v. Certificate of revocation of authority to transact business ..... No fee
w. Articles of correction ..... $ 5
x. Application for certificate of existence or authorization ..... $ 5
y. Any other document required or permitted to be filed by this chapter ..... $ 5

2. The secretary shall collect a fee of five dollars each time process is served on the secretary under this chapter. The party to a proceeding causing service of process is entitled to recover this fee as costs if the party prevails in the proceeding.

3. The secretary shall collect the following fees for copying and certifying the copy of any filed document relating to a domestic cooperative or foreign cooperative:

a. One dollar a page for copying.

b. Five dollars for the certificate.

2005 Acts, ch 135, §8
Referred to in §501A.503

501A.206 Forms.

1. *a.* The secretary may prescribe and furnish on request forms, including but not limited to the following:

(1) An application for a certificate of existence.

(2) A foreign cooperative's application for a certificate of authority to transact business in this state.

(3) A foreign cooperative's application for a certificate of withdrawal.

b. If the secretary so requires, use of these listed forms prescribed by the secretary is mandatory.

2. The secretary may prescribe and furnish on request forms for other documents required or permitted to be filed by this chapter, but their use is not mandatory.

2005 Acts, ch 135, §9; 2012 Acts, ch 1023, §157

501A.207 Appeal from secretary of state's refusal to file document.

1. If the secretary refuses to file a document delivered to the secretary's office for filing, the domestic cooperative or foreign cooperative may appeal the refusal, within thirty days after the return of the document, to the district court for the county in which the cooperative's principal office or, if none in this state, where its registered office is or will be located. The appeal is commenced by petitioning the court to compel filing the document and by attaching to the petition the document and the secretary's explanation of the refusal to file.

2. The court may summarily order the secretary to file the document or take other action the court considers appropriate.

3. The court's final decision may be appealed as in other civil proceedings.

2005 Acts, ch 135, §10

501A.208 Evidentiary effect of copy of filed document.

A certificate attached to a copy of a document filed by the secretary, bearing the secretary's signature, which may be in facsimile, and the seal of the secretary, is conclusive evidence that the original document is on file with the secretary.

2005 Acts, ch 135, §11

501A.209 Certificate of existence.

1. Anyone may apply to the secretary to furnish a certificate of existence for a domestic cooperative or a certificate of authorization for a foreign cooperative.

2. A certificate of existence or certificate of authorization must set forth all of the following:

a. The domestic cooperative's name or the foreign cooperative's name used in this state.

b. That one of the following applies:

(1) If it is a domestic cooperative, that it is duly organized under the law of this state, the date of its organization, and the period of its duration.

(2) If it is a foreign cooperative, that it is authorized to transact business in this state.

c. That all fees required by this subchapter have been paid.

d. If it is a domestic cooperative, that articles of dissolution have not been filed.

e. Other facts of record in the office of the secretary that may be requested by the applicant.

3. Subject to any qualification stated in the certificate, a certificate of existence or certificate of authorization issued by the secretary may be relied upon as conclusive evidence that the domestic cooperative or foreign cooperative is in existence or is authorized to transact business in this state.

2005 Acts, ch 135, §12

501A.210 Penalty for signing false document.

1. A person commits an offense if that person signs a document the person knows is false in any material respect with intent that the document be delivered to the secretary for filing.

2. An offense under this section is a serious misdemeanor punishable by a fine of not to exceed one thousand dollars.

2005 Acts, ch 135, §13

501A.211 Secretary of state — powers.

The secretary has the power reasonably necessary to perform the duties required of the secretary by this chapter.

2005 Acts, ch 135, §14

PART 2

FOREIGN COOPERATIVES

501A.221 Certificate of authority.

A foreign cooperative may apply for a certificate of authority to transact business in this state by delivering an application to the secretary for filing. An application for registration as a foreign cooperative shall set forth all of the following:

1. The name of the foreign cooperative and, if different, the name under which the foreign cooperative proposes to register and transact business in this state.
2. The state or other jurisdiction in which the foreign cooperative was formed and the date of its formation.
3. The street address of the registered office of the foreign cooperative in this state and the name of the registered agent at the office.
4. The address of the principal office, which is the office where the principal executive offices are located.
5. A certificate of existence or a document of similar import duly authenticated by the proper office of the state or other jurisdiction of its formation which is dated no earlier than ninety days prior to the date that the application is filed with the secretary.

2005 Acts, ch 135, §15
Referred to in §501.104

501A.222 Cancellation of certificate of authority.

1. A foreign cooperative may cancel its certificate of authority by delivering to the secretary for filing a certificate of cancellation which shall set forth all of the following:

a. The name of the foreign cooperative and the name of the state or other jurisdiction under whose jurisdiction the foreign cooperative was formed.

b. That the foreign cooperative is not transacting business in this state and that the foreign cooperative surrenders its registration to transact business in this state.

c. That the foreign cooperative revokes the authority of its registered agent to accept service on its behalf and appoints the secretary as its agent for service of process in any proceeding based on a cause of action arising during the time the foreign cooperative was authorized to transact business in this state.

d. A mailing address to which the secretary may mail a copy of any process served on the secretary under paragraph "*c*".

e. A commitment to notify the secretary in the future of any change in the mailing address of the foreign cooperative.

2. The certificate of authority shall be canceled upon the filing of the certificate of cancellation by the secretary.

2005 Acts, ch 135, §16

PART 3

REPORTS

501A.231 Biennial report for secretary of state.

1. A cooperative authorized to transact business in this state shall deliver to the secretary of state for filing a biennial report that sets forth all of the following:

a. The name of the cooperative.

b. The address of its registered office and the name of its registered agent at that office in this state, together with the consent of any new registered agent.

c. The address of its principal office.

d. The names and addresses of the president, secretary, treasurer, and one member of the board of directors.

2. Information in the biennial report must be current as of the first day of January of the year in which the report is due. The report shall be executed on behalf of the cooperative

and signed as provided in section 501A.103 or by any other person authorized by the board of directors of the cooperative.

3. The first biennial report shall be delivered to the secretary of state between January 1 and April 1 of the first even-numbered year following the calendar year in which a cooperative is organized. Subsequent biennial reports shall be delivered to the secretary of state between January 1 and April 1 of the following even-numbered calendar years. A filing fee for the biennial report shall be determined by the secretary of state.

4. If a biennial report does not contain the information required by this section, the secretary of state shall promptly notify the reporting cooperative in writing and return the report to the cooperative for correction.

5. The secretary of state may provide for the change of registered office or registered agent on the form prescribed by the secretary of state for the biennial report, provided that the form contains the information required by section 501A.402. If the secretary of state determines that a biennial report does not contain the information required by this section but otherwise meets the requirements of section 501A.402 for the purpose of changing the registered office or registered agent, the secretary of state shall file the statement of change of registered office or registered agent, effective as provided in section 501A.203, before returning the biennial report to the cooperative as provided in this section. A statement of change of registered office or agent pursuant to this subsection shall be executed by a person authorized to execute the biennial report.

2005 Acts, ch 135, §17; 2005 Acts, ch 179, §133

SUBCHAPTER III

NAMES

501A.301 Name.

1. A cooperative name must contain the word "cooperative", "coop", or the abbreviation "CP".

2. Except as authorized by subsections 3 and 4, a cooperative name must be distinguishable upon the records of the secretary from all of the following:

a. The name of a domestic cooperative, limited liability company, limited partnership, or corporation organized under the laws of this state or registered as a foreign cooperative, foreign limited liability company, foreign limited partnership, or foreign corporation in this state.

b. A name reserved in the manner provided under the laws of this state.

c. The fictitious name adopted by a foreign cooperative, foreign limited liability company, foreign limited partnership, or foreign corporation authorized to transact business in this state because its real name is unavailable.

d. The corporate name of a nonprofit corporation incorporated or authorized to transact business in this state.

3. A cooperative may apply to the secretary for authorization to use a name that is not distinguishable upon the secretary's records from one or more of the names described in subsection 2. The secretary shall authorize use of the name applied for if one of the following conditions applies:

a. The other entity consents to the use in writing and submits an undertaking in a form satisfactory to the secretary to change the entity's name to a name that is distinguishable upon the records of the secretary from the name of the applying cooperative.

b. The applicant delivers to the secretary a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.

4. A cooperative may use the name, including the fictitious name, of another business entity that is used in this state if the other business entity is formed under the laws of this state or is authorized to transact business in this state and the proposed user cooperative meets one of the following conditions:

a. Has merged with the other business entity.

b. Has been formed by reorganization of the other business entity.

c. Has acquired all or substantially all of the assets, including the name, of the other business entity.

5. This chapter does not control the use of fictitious names; however, if a cooperative uses a fictitious name in this state, the cooperative shall deliver to the secretary for filing a certified copy of the resolution of the cooperative adopting the fictitious name.

2005 Acts, ch 135, §18

501A.302 Reserved name.

1. A person may reserve the exclusive use of a cooperative name, including a fictitious name for a foreign cooperative whose cooperative name is not available, by delivering an application to the secretary for filing. The application must set forth the name and address of the applicant and the name proposed to be reserved. If the secretary finds that the cooperative name applied for is available, the secretary shall reserve the name for the applicant's exclusive use for a nonrenewable one-hundred-twenty-day period.

2. The owner of a reserved cooperative name may transfer the reservation to another person by delivering to the secretary a signed notice of the transfer that states the name and address of the transferee.

2005 Acts, ch 135, §19

SUBCHAPTER IV

REGISTERED OFFICE AND AGENT

501A.401 Registered office and registered agent.

A cooperative must continuously maintain in this state each of the following:

1. A registered office that may be the same as any of its places of business.

2. A registered agent who may be any of the following:

a. An individual who is a resident of this state and whose business office is identical with the registered office.

b. A cooperative, domestic corporation, domestic limited liability company, or not-for-profit domestic corporation whose business office is identical with the registered office.

c. A foreign cooperative, foreign corporation, foreign limited liability company, or not-for-profit foreign corporation authorized to transact business in this state whose business office is identical with the registered office.

2005 Acts, ch 135, §20

Referred to in §501A.402

501A.402 Change of registered office or registered agent.

1. A cooperative may change its registered office or registered agent by delivering to the secretary for filing a statement of change that sets forth the following:

a. The name of the domestic cooperative or foreign cooperative.

b. If the current registered office is to be changed, the street address of the new registered office.

c. If the current registered agent is to be changed, the name of the new registered agent and the new agent's written consent, either on the statement or attached to the statement, to the appointment.

d. That after the change or changes are made, the street address of its registered office and the business office of its registered agent will be identical.

2. A statement of change shall forthwith be filed in the office of the secretary by a cooperative whenever its registered agent dies, resigns, or ceases to satisfy the requirements of section 501A.401.

3. If a registered agent changes the registered agent's business address to another place, the registered agent may change the business address and the address of the registered agent

by filing a statement as required in subsection 1 for each cooperative, or a single statement for all cooperatives named in the notice, except that the statement need be signed only by the registered agent and need not be responsive to subsection 1, paragraph "*c*", and must recite that a copy of the statement has been mailed to each cooperative named in the notice.

4. The change of address of a registered office or the change of registered agent becomes effective upon the filing of such statement by the secretary.

2005 Acts, ch 135, §21
Referred to in §501A.231

501A.403 Resignation of registered agent — discontinuance of registered office — statement.

1. A registered agent may resign the agent's agency appointment by signing and delivering to the secretary for filing an original statement of resignation. The statement may include a statement that the registered office is also discontinued. The registered agent shall send a copy of the statement of resignation to the registered office, if not discontinued, and to the cooperative at its principal office. The agent shall certify to the secretary that the copy has been sent to the cooperative, including the date the copy was sent.

2. The agency appointment is terminated, and the registered office discontinued if so provided, on the date on which the statement is filed by the secretary.

2005 Acts, ch 135, §22

501A.404 Service on domestic cooperatives.

1. A domestic cooperative's registered agent is the cooperative's agent for service of process, notice, or demand required or permitted by law to be served on the cooperative.

2. If a cooperative has no registered agent, or the agent cannot with reasonable diligence be served, the cooperative may be served by registered mail or certified mail, return receipt requested, and addressed to the cooperative at its principal office. Service is perfected under this subsection at the earliest of any of the following:

a. The date the cooperative receives the mail.

b. The date shown on the return receipt for the registered mail or certified mail, return receipt requested, if signed on behalf of the cooperative.

c. Five days after its deposit in the United States mail, as evidenced by the postmark, if mailed postpaid and correctly addressed.

3. This section does not prescribe the only means, or necessarily the required means, of serving a domestic cooperative or foreign cooperative.

2005 Acts, ch 135, §23

501A.405 Service on foreign cooperative.

1. The registered agent of a foreign cooperative authorized to transact business in this state is the foreign cooperative's agent for service of process, notice, or demand required or permitted by law to be served on the foreign cooperative.

2. A foreign cooperative may be served by certified mail or restricted certified mail addressed to the foreign cooperative at its principal office shown in its application for a certificate of authority if the foreign cooperative meets any of the following conditions:

a. Has no registered agent or its registered agent cannot with reasonable diligence be served.

b. Has withdrawn from transacting business in this state.

c. Has had its certificate of authority revoked.

3. Service is perfected under subsection 2 at the earliest of any of the following:

a. The date the foreign cooperative receives the mail.

b. The date shown on the return receipt for the restricted certified mail, if signed on behalf of the foreign cooperative.

c. Five days after its deposit in the United States mail, as evidenced by the postmark, if mailed postpaid and correctly addressed.

4. A foreign cooperative may also be served in any other manner permitted by law.

2005 Acts, ch 135, §24

SUBCHAPTER V

ORGANIZATION

Referred to in §501A.201

501A.501 Organizational purpose.

A cooperative may be formed and organized for any lawful purpose for the benefit of its members, including but not limited to any of the following purposes:

1. To store or market agricultural commodities, including crops and livestock.
2. To market, process, or otherwise change the form or marketability of agricultural commodities. The cooperative may provide for the manufacturing or processing of those commodities into products.
3. To accomplish other purposes that are necessary or convenient to facilitate the production or marketing of agricultural commodities or agricultural products by patron members, other patrons, and other persons, and for other purposes that are related to the business of the cooperative.
4. To provide products, supplies, and services to its patron members, other patrons, and others.
5. For any other purpose that a cooperative is authorized by law under chapter 499 or 501.

2005 Acts, ch 135, §25

Referred to in §501A.601

501A.502 Organizers.

1. *Qualification.* A cooperative may be organized by one or more organizers who shall be adult natural persons, and who may act for themselves as individuals or as the agents of other entities. The organizers forming the cooperative need not be members of the cooperative.
2. *Role of organizers.* If the first board of directors is not named in the articles of organization, the organizers may elect the first board or may act as directors with all of the powers, rights, duties, and liabilities of directors, until directors are elected or until a contribution is accepted, whichever occurs first.
3. *Meeting or written action.*

a. After the filing of articles of organization, the organizers or the directors named in the articles of organization shall either hold an organizational meeting at the call of a majority of the organizers or of the directors named in the articles, or take written action for the purposes of transacting business and taking actions necessary or appropriate to complete the organization of the cooperative, including but not limited to all of the following:

(1) Amending the articles.
(2) Electing directors.
(3) Adopting bylaws.
(4) Authorizing or ratifying the purchase, lease, or other acquisition of suitable space, furniture, furnishings, supplies, or materials.
(5) Adopting a fiscal year.
(6) Contracting to receive and accept contributions.
(7) Making appropriate tax elections.

b. If a meeting is held, the person or persons calling the meeting shall give at least three days' notice of the meeting to each organizer or director named, stating the date, time, and place of the meeting. Organizers and directors may waive notice of an organizational meeting in the same manner that a director may waive notice of meetings of the board.

2005 Acts, ch 135, §26; 2012 Acts, ch 1023, §157

501A.503 Articles of organization.

1. *Requirements.*

a. The articles of organization for the cooperative shall include all of the following:

(1) The name of the cooperative.
(2) The purpose of the cooperative.
(3) The name and address of each organizer.

(4) The period of duration for the cooperative, if the duration is not to be perpetual.

(5) The street address of the cooperative's initial registered office and the name of its registered agent at that office.

b. The articles may contain any other lawful provision.

2. *Effect of filing.* When the articles of organization or an application for a certificate of authority has been filed pursuant to subchapter II and the required fee has been paid to the secretary under section 501A.205, all of the following shall be presumed:

a. All conditions precedent that are required to be performed by the organizers have been complied with.

b. The organization of the cooperative has been organized under the laws of this state as a separate legal entity.

c. The secretary will issue an acknowledgment to the cooperative.

2005 Acts, ch 135, §27; 2006 Acts, ch 1030, §53
Referred to in §501A.505

501A.504 Amendment of articles.

1. *Procedure.*

a. The articles of organization of a cooperative shall be amended only as follows:

(1) The board, by majority vote, must pass a resolution stating the text of the proposed amendment. The text of the proposed amendment and an attached ballot, if the board has provided for a mail ballot in the resolution, shall be mailed or otherwise distributed with a regular or special meeting notice to each member. If the board authorizes an alternative voting method, the text of the proposed amendment and explanation of how to cast a vote using the alternative voting method shall be distributed with the regular or special meeting notice to each member. The notice shall designate the time and place of the meeting for the proposed amendment to be considered and voted on.

(2) If a quorum of the members is registered as being present or represented at the meeting, the proposed amendment is adopted if any of the following occurs:

(a) If approved by a majority of the votes cast.

(b) For a cooperative with articles or bylaws requiring more than majority approval or other conditions for approval, the amendment is approved by a proportion of the votes cast or a number of total members as required by the articles or bylaws and the conditions for approval in the articles or bylaws have been satisfied.

b. After an amendment has been adopted by the members, the amendment must be signed by the chairperson, vice chairperson, records officer, or assistant records officer and a copy of the amendment filed in the office of the secretary.

2. *Certified statement.*

a. The board shall prepare a certified statement affirming that all of the following are true:

(1) The vote and meeting of the board adopting a resolution of the proposed amendment.

(2) The notice given to members of the meeting at which the amendment was adopted.

(3) The quorum registered at the meeting.

(4) The vote cast adopting the amendment.

b. The certified statement shall be signed by the chairperson, vice chairperson, records officer, or financial officer and filed with the records of the cooperative.

3. *Amendment by directors.* A majority of directors may amend the articles if the cooperative does not have any members with voting rights.

4. *Filing.* An amendment of the articles shall be filed with the secretary as required in section 501A.201. The amendment is effective as provided in subchapter II. After an amendment to the articles of organization has been adopted and approved in the manner required by this chapter and by the articles of organization, the cooperative shall deliver to the secretary of state for filing articles of amendment which shall set forth all of the following:

a. The name of the cooperative.

b. The text of each amendment adopted.

c. The date of each amendment's adoption.

d. (1) If the amendment was adopted by the directors, a statement that the amendment

was duly adopted in the manner required by this chapter and by the articles of organization and that members' adoption was not required.

(2) If an amendment required adoption by the members, a statement that the amendment was duly adopted by the members in the manner required by this chapter and by the articles of organization.

2005 Acts, ch 135, §28; 2006 Acts, ch 1010, §128; 2011 Acts, ch 23, §17, 18; 2012 Acts, ch 1021, §96

501A.505 Existence.

1. *Commencement.* The existence of a cooperative shall commence on or after the filing of articles of organization as provided in section 501A.503.

2. *Duration.* A cooperative shall have a perpetual duration unless the cooperative provides for a limited period of duration in the articles or the cooperative is dissolved as provided in subchapter XII.

2005 Acts, ch 135, §29

501A.506 Bylaws.

1. *Required.* A cooperative shall have bylaws governing the cooperative's business affairs, structure, the qualifications, classification, rights and obligations of members, and the classifications, allocations, and distributions of membership interests, which are not otherwise provided in the articles or by this chapter.

2. *Contents.*

a. If not stated in the articles, a cooperative's bylaws must state all of the following:

(1) The purpose of the cooperative.

(2) The capital structure of the cooperative to the extent not stated in the articles, including a statement of the classes and relative rights, preferences, and restrictions granted to or imposed upon each class of member interests, the rights to share in profits or distributions of the cooperative, and the authority to issue membership interests, which may be designated to be determined by the board.

(3) A provision designating the voting and governance rights, to the extent not stated in the articles, including which membership interests have voting power and any limitations or restrictions on the voting power, which shall be in accordance with the provisions of this chapter.

(4) A statement that patron membership interests with voting power shall be restricted to one vote for each member regardless of the amount of patron membership interests held in the affairs of the cooperative or a statement describing the allocation of voting power allocated as prescribed in this chapter.

(5) A statement that membership interests held by a member are transferable only with the approval of the board or as provided in the bylaws.

(6) If nonpatron membership interests are authorized, all of the following:

(a) A statement as to how profits and losses will be allocated and cash will be distributed between patron membership interests collectively and nonpatron membership interests collectively to the extent not stated in the articles.

(b) A statement that net income allocated to a patron membership interest as determined by the board in excess of dividends and additions to reserves shall be distributed on the basis of patronage.

(c) A statement that the records of the cooperative shall include patron membership interests and, if authorized, nonpatron membership interests, which may be further described in the bylaws of any classes and in the reserves.

b. The bylaws may contain any provision relating to the management or regulation of the affairs of the cooperative that are not inconsistent with law or the articles, and shall include all of the following:

(1) The number of directors and the qualifications, manner of election, powers, duties, and compensation, if any, of directors.

(2) The qualifications of members and any limitations on their number.

(3) The manner of admission, withdrawal, suspension, and expulsion of members.

(4) Generally, the governance rights, financial rights, assignability of governance and financial rights, and other rights, privileges, and obligations of members and their membership interests, which may be further described in member control agreements.

(5) Any provisions required by the articles to be in the bylaws.

3. *Adoption.*

a. Bylaws shall be adopted before any distributions to members, but if the articles or bylaws provide that rights of contributors to a class of membership interest will be determined in the bylaws, the bylaws must be adopted before the acceptance of any contributions to that class.

b. Subject to subsections 4, 5, and 6, the bylaws of a cooperative may be adopted or amended by the directors, or the members may adopt or amend bylaws at a regular or special members' meeting if all of the following apply:

(1) The notice of the regular or special meeting contains a statement that the bylaws or restated bylaws will be voted upon and copies are included with the notice, or copies are available upon request from the cooperative and a summary statement of the proposed bylaws or amendment is included with the notice.

(2) A quorum is registered as being present or represented by mail or alternative voting method if the mail or alternative voting method is authorized by the board.

(3) The bylaws or amendment is approved by a majority vote cast, or for a cooperative with articles or bylaws requiring more than majority approval or other conditions for approval, the bylaws or amendment is approved by a proportion of the vote cast or a number of the total members as required by the articles or bylaws and the conditions for approval in the articles or bylaws have been satisfied.

c. Until the next annual or special members' meeting, the majority of directors may adopt and amend bylaws for the cooperative that are consistent with subsections 4, 5, and 6, which may be further amended or repealed by the members at an annual or special members' meeting.

4. *Amendment of bylaws by board or members.*

a. The board may amend the bylaws at any time to add, change, or delete a provision, unless any of the following applies:

(1) This chapter, the articles, or the bylaws reserve the power exclusively to the members in whole or in part.

(2) A particular bylaw expressly prohibits the board from doing so.

b. Any amendment of the bylaws adopted by the board must be distributed to the members no later than ten days after adoption and the notice of the annual meeting of the members must contain a notice and summary or the actual amendments to the bylaws adopted by the board.

c. The members may amend the bylaws even though the bylaws may also be amended by the board.

5. *Bylaw changing quorum or voting requirement for members.*

a. (1) The members may amend the bylaws to fix a greater quorum or voting requirement for members, or voting groups of members, than is required under this chapter.

(2) An amendment to the bylaws to add, change, or delete a greater quorum or voting requirement for members shall meet the same quorum requirement and be adopted by the same vote and voting groups required to take action under the quorum and voting requirements then in effect or proposed to be adopted, whichever is greater.

b. A bylaw that fixes a greater quorum or voting requirement for members under paragraph *"a"* shall not be adopted and shall not be amended by the board.

6. *Bylaw changing quorum or voting requirement for directors.*

a. A bylaw that fixes a greater quorum or voting requirement for the board may be amended by any of the following methods:

(1) If adopted by the members, only by the members.

(2) If adopted by the board, either by the members or by the board.

b. A bylaw adopted or amended by the members that fixes a greater quorum or voting requirement for the board may provide that the bylaw may be amended only by a specified

vote of either the members or the board, but if the bylaw is to be amended by a specified vote of the members, the bylaw must be adopted by the same specified vote of the members.

c. Action by the board under paragraph "*a*", subparagraph (2), to adopt or amend a bylaw that changes the quorum or voting requirement for the board shall meet the same quorum requirement and be adopted by the same vote required to take action under the quorum and voting requirement then in effect or proposed to be adopted, whichever is greater.

7. *Emergency bylaws.*

a. Unless otherwise provided in the articles or bylaws, the board may adopt bylaws to be effective only in an emergency as defined in paragraph "*d*". The emergency bylaws, which are subject to amendment or repeal by the members, may include all provisions necessary for managing the cooperative during the emergency, including any of the following:

(1) Procedures for calling a meeting of the board.

(2) Quorum requirements for the meeting.

(3) Designation of additional or substitute directors.

b. All provisions of the regular bylaws consistent with the emergency bylaws shall remain in effect during the emergency. The emergency bylaws shall not be effective after the emergency ends.

c. All of the following shall apply to action taken in good faith in accordance with the emergency bylaws:

(1) The action binds the cooperative.

(2) The action shall not be the basis for imposition of liability on any director, officer, employee, or agent of the cooperative on the grounds that the action was not authorized cooperative action.

d. An emergency exists for the purposes of this section, if a quorum of the directors cannot readily be obtained because of some catastrophic event.

2005 Acts, ch 135, §30

Member control agreements, see §501A.1007

Emergency powers, see §501A.602

501A.507 Cooperative records.

1. *Permanent records required to be kept.* A cooperative shall keep as permanent records minutes of all meetings of its members and of the board, a record of all actions taken by the members or the board without a meeting by a written unanimous consent in lieu of a meeting, and a record of all waivers of notices of meetings of the members and of the board.

2. *Accounting records.* A cooperative shall maintain appropriate accounting records.

3. *Format.* A cooperative shall maintain its records in written form or in another form capable of conversion into written form within a reasonable time.

4. *Copies.* A cooperative shall keep a copy of each of the following records at its principal office:

a. Its articles and other governing instruments.

b. Its bylaws or other similar instruments.

c. A record of the names and addresses of its members, in a form that allows preparation of an alphabetical list of members with each member's address.

d. The minutes of members' meetings, and records of all actions taken by members without a meeting by unanimous written consent in lieu of a meeting, for the past three years.

e. All written communications within the past three years to members as a group or to any class of members as a group.

f. A list of the names and business addresses of its current board members and officers.

g. All financial statements prepared for periods ending during the last fiscal year.

5. *Policy.* Except as otherwise limited by this chapter, the board of a cooperative shall have discretion to determine what records are appropriate for the purposes of the cooperative, the length of time records are to be retained, and policies relating to the confidentiality, disclosure, inspection, and copying of the records of the cooperative.

2005 Acts, ch 135, §31

Referred to in §501A.801

SUBCHAPTER VI

POWERS AND AUTHORITIES

501A.601 Powers.

1. *Generally.*

a. In addition to other powers, a cooperative as an agent or otherwise may do any of the following:

(1) Perform every act necessary or proper to the conduct of the cooperative's business or the accomplishment of the purposes of the cooperative.

(2) Enjoy other rights, powers, or privileges granted by the laws of this state to other cooperatives, except those that are inconsistent with the express provisions of this chapter.

(3) Have the powers provided in section 501A.501 and in this section.

b. This section does not give a cooperative the power or authority to exercise the powers of a credit union under chapter 533 or a bank under chapter 524.

2. *Dealing in products.* A cooperative may buy, sell, or deal in its own commodities or products or those of another person, including but not limited to those of its members, patrons, or nonmembers; or commodities or products of another cooperative organized under this chapter or another cooperative association organized under other law including a traditional cooperative, or members or patrons of such cooperatives or cooperative associations. A cooperative may negotiate the price at which its commodities or products may be sold.

3. *Contracts.* A cooperative may enter into or become a party to a contract or agreement for the cooperative or for the cooperative's members or patrons or between the cooperative and its members or patrons.

4. *Holding and transactions of real and personal property.*

a. A cooperative may purchase and hold, lease, mortgage, encumber, sell, exchange, and convey as a legal entity real, personal, and intellectual property, including real estate, buildings, personal property, patents, and copyrights as the business of the cooperative may require, including but not limited to the sale or other disposition of assets required by the business of the cooperative as determined by the board.

b. A cooperative may take, receive, and hold real or personal property, including the principal and interest of money or other negotiable instruments and rights in a contract, in trust for any purpose not inconsistent with the purposes of the cooperative in its articles or bylaws. The cooperative may exercise fiduciary powers in relation to taking, receiving, and holding the real or personal property. However, a cooperative's fiduciary powers do not include trust powers or trust services exercised for its members as provided in section 633.63 or chapter 524.

5. *Buildings.* A cooperative may erect buildings or other structures or facilities on the cooperative's owned or leased property or on a right-of-way legally acquired by the cooperative.

6. *Debt instruments.*

a. A cooperative may issue bonds, debentures, or other evidence of indebtedness, except as provided in subsection 1, paragraph *"b"*. The cooperative shall not issue bonds, debentures, or other evidence of indebtedness to a nonaccredited member, unless prior to issuance the cooperative provides the member with a written disclosure statement which includes a conspicuous notice that moneys are not insured or guaranteed by an agency or instrumentality of the United States government, and that the investment may lose value.

b. A cooperative may borrow money, may secure any of its obligations by mortgage of or creation of a security interest in or other encumbrances or assignment of all or any of its property, franchises, or income, and may issue guarantees for any legal purpose.

c. A cooperative may form special purpose business entities to secure assets of the cooperative.

7. *Advances to patrons.* A cooperative may make advances to its members or patrons on products delivered by the members or patrons to the cooperative.

8. *Deposits.* A cooperative may accept donations or deposits of money or real or personal property from other cooperatives or associations from which the cooperative is constituted.

9. *Borrowing, investment, and payment terms.* A cooperative may borrow money from its members, or cooperatives or associations from which the cooperative is constituted, with security that the cooperative considers sufficient. A cooperative may invest or reinvest its moneys. A cooperative may extend payment terms to its customers not exceeding six months from the date of the sale of the cooperative's goods or services. An extension of payment terms by the cooperative shall not be secured by real property. A cooperative may exercise rights as a lien creditor or judgment creditor to collect any past due or delinquent account which is owed to the cooperative.

10. *Pensions and benefits.* A cooperative may pay pensions, retirement allowances, and compensation for past services to and for the benefit of, and establish, maintain, continue, and carry out, wholly or partially at the expense of the cooperative, employee or incentive benefit plans, trusts, and provisions to or for the benefit of any or all of its and its related organizations' officers, managers, directors, governors, employees, and agents, and in the case of a related organization that is a cooperative, members who provide services to the cooperative, and any of their families, dependents, and beneficiaries. A cooperative may indemnify and purchase and maintain insurance for and on behalf of a fiduciary of any of these employee benefit and incentive plans, trusts, and provisions.

11. *Insurance.*

a. A cooperative may purchase and maintain insurance on behalf of a person who is or was a director, officer, employee, or agent of the cooperative and in which the cooperative has an insurable interest. The cooperative may also purchase and maintain insurance on the life of a member for the purpose of acquiring at the death of the member any or all membership interests in the cooperative owned by the member.

b. A cooperative or a foreign cooperative shall not sell, solicit, or negotiate in this state any line of insurance to members or nonmembers.

12. *Ownership interests in other entities.*

a. A cooperative may purchase, acquire, hold, or dispose of the ownership interests of another business entity or organize business entities whether organized under the laws of this state or another state or the United States and assume all rights, interests, privileges, responsibilities, and obligations arising out of the ownership interests, including a business entity organized as any of the following:

(1) As a federation of associations.

(2) For the purpose of forming a district, state, or national marketing sales or service agency.

(3) For the purpose of acquiring marketing facilities at terminal or other markets in this state or other states.

b. A cooperative may purchase, own, and hold ownership interests, including stock and other equity interests, memberships, interests in nonstock capital, and evidences of indebtedness of any domestic business entity or foreign business entity.

13. *Fiduciary powers.* A cooperative may exercise any and all fiduciary powers in relations with members, cooperatives, or business entities from which the cooperative is constituted. However, these fiduciary powers do not include trust powers or trust services for its members as provided in section 633.63 or chapter 524.

2005 Acts, ch 135, §32; 2006 Acts, ch 1010, §129; 2012 Acts, ch 1017, §98

501A.602 Emergency powers.

1. In anticipation of or during an emergency as defined in this section, the board may do any of the following:

a. Modify lines of succession to accommodate the incapacity of any director, officer, employee, or agent.

b. Relocate the principal office, designate alternative principal offices or regional offices, or authorize the officers to do so.

2. During an emergency, unless emergency bylaws provide otherwise, all of the following apply:

a. A notice of a meeting of the board need be given only to those directors to whom it is practicable to reach and may be given in any practicable manner, including by publication or radio.

b. One or more officers of the cooperative present at a meeting of the board may be deemed to be directors for the meeting, in order of rank and within the same rank in order of seniority, as necessary to achieve a quorum.

3. All of the following apply to cooperative action taken in good faith during an emergency under this section to further the ordinary business affairs of the cooperative:

a. The action binds the cooperative.

b. The action shall not be the basis for the imposition of liability on any director, officer, employee, or agent of the cooperative on the grounds that the action was not an authorized cooperative action.

4. An emergency exists for purposes of this section if a quorum of the directors cannot readily be obtained because of a catastrophic event.

2005 Acts, ch 135, §33

Emergency bylaws, see §501A.506

501A.603 Agricultural commodities and products — marketing contracts.

1. *Authority.* A cooperative and its patron member or patron may make and execute a marketing contract, requiring the patron member or patron to sell a specified portion of the patron member's or patron's agricultural commodity or product or specified commodity or product produced from a certain area exclusively to or through the cooperative or facility established by the cooperative.

2. *Title to commodities or products.* If a sale is contracted to the cooperative, the sale shall transfer title to the commodity or product absolutely, except for a recorded lien or security interest against the agricultural commodity or product of the patron member or patron as provided in article 9 of chapter 554, and provisions in Title XIV, subtitle 3, governing agricultural liens, and liens granted against farm products under federal law, to the cooperative on delivery of the commodity or product or at another specified time if expressly provided in the contract. The contract may allow the cooperative to sell or resell the commodity or product of its patron member or patron with or without taking title to the commodity or product, and pay the resale price to the patron member or patron, after deducting all necessary selling, overhead, and other costs and expenses, including other proper reserves and interest.

3. *Term of contract.* A single term of a marketing contract shall not exceed ten years, but a marketing contract may be made self-renewing for periods not exceeding five years each, subject to the right of either party to terminate by giving written notice of the termination during a period of the current term as specified in the contract.

4. *Damages for breach of contract.* The cooperative's bylaws or marketing contract in which the cooperative is a party may set a specific sum as liquidated damages to be paid by the patron member or patron to the cooperative for breach of any provision of the marketing contract regarding the sale or delivery or withholding of a commodity or product and may provide that the patron member or patron shall pay the costs, premiums for bonds, expenses, and fees if an action is brought on the contract by the cooperative. The remedies for breach of contract are valid and enforceable in the courts of this state. The provisions shall be enforced as liquidated damages and are not considered a penalty.

5. *Injunction against breach of contract.* If there is a breach or threatened breach of a marketing contract by a patron member or patron, the cooperative is entitled to an injunction to prevent the further breach of the contract and to a decree of specific performance of the contract. Pending the adjudication of the action after filing a complaint showing the breach or threatened breach and filing a sufficient bond, the cooperative is entitled to a temporary restraining order and preliminary injunction against the patron member or patron.

6. *Penalties for contract interference.* A person who knowingly induces or attempts to induce any patron member or patron of a cooperative organized under this chapter to breach a marketing contract with the cooperative is guilty of a simple misdemeanor.

7. *Civil damages for contract interference.* In addition to the penalty provided in

subsection 6, the person may be liable to the cooperative for civil damages for any violation of that subsection.

2005 Acts, ch 135, §34; 2006 Acts, ch 1030, §54

SUBCHAPTER VII

DIRECTORS — LIABILITY AND INDEMNIFICATION — OFFICERS

PART 1

DIRECTORS

501A.701 Board governs cooperative.

A cooperative shall be governed by its board of directors, which shall take all action for and on behalf of the cooperative, except those actions reserved or granted to members. Board action shall be by the affirmative vote of a majority of the directors voting at a duly called meeting unless a greater majority is required by the articles or bylaws. A director individually or collectively with other directors does not have authority to act for or on behalf of the cooperative unless authorized by the board. A director may advocate interests of members or member groups to the board, but the fiduciary duty of each director is to represent the best interests of the cooperative and all members collectively.

2005 Acts, ch 135, §35

501A.702 Number of directors.

The board shall not have less than five directors, except that a cooperative with fifty or fewer members may have three or more directors as prescribed in the cooperative's articles or bylaws.

2005 Acts, ch 135, §36

501A.703 Election of directors.

1. *First board.* The organizers shall elect and obtain the acknowledgment of the first board to serve until directors are elected by members. Until election by members, the first board shall appoint directors to fill any vacancies.

2. *Generally.*

a. Directors shall be elected for the term, at the time, and in the manner provided in this section and the bylaws.

b. A majority of the directors shall be members and a majority of the directors shall be elected exclusively by the members holding patron membership interests unless otherwise provided in the articles or bylaws.

c. The voting power of the directors may be allocated according to equity classifications or allocation units of the cooperative. If the cooperative authorizes nonpatron membership interests, one of the following must apply:

(1) At least one-half of the voting power on matters of the cooperative that are not specific to equity classifications or allocation units shall be allocated to the directors elected by members holding patron membership interests.

(2) The directors elected by the members holding patron membership interests shall have at least an equal voting power or shall not have a minority voting power on general matters of the cooperative that are not specific to equity classifications or allocation units.

d. A director holds office for the term the director was elected and until a successor is elected and has qualified, or until the earlier death, resignation, removal, or disqualification of the director.

e. The expiration of a director's term with or without election of a qualified successor does not make the prior or subsequent acts of the director or the board void or voidable.

f. Subject to any limitation in the articles or bylaws, the board may set the compensation of directors.

g. Directors may be divided into or designated and elected by class or other distinction as provided in the articles or bylaws.

h. A director may resign by giving written notice to the chairperson of the board or the board. The resignation is effective without acceptance when the notice is given to the chairperson of the board or the board unless a later effective time is specified in the notice.

3. *Election at regular meeting.* Directors shall be elected at the regular members' meeting for the terms of office prescribed in the bylaws. Except for directors elected at district meetings or special meetings to fill a vacancy, all directors shall be elected at the regular members' meeting. There shall be no cumulative voting for directors except as provided in this chapter and the articles or bylaws.

4. *District or local unit election of directors.* For a cooperative with districts or other units, members may elect directors on a district or unit basis if provided in the bylaws. The directors may be nominated or elected at district meetings if provided in the bylaws. Directors who are nominated at district meetings shall be elected at the annual regular members' meeting by vote of the entire membership, unless the bylaws provide that directors who are nominated at district meetings are to be elected by vote of the members of the district, at the district meeting or the annual regular members' meeting.

5. *Vote by ballot or alternative voting method.* The following shall apply to voting by ballot or alternative voting method:

a. A member shall not vote for a director other than by being present at a meeting, by mail ballot, or by alternative voting method, as authorized by the board.

b. The ballot shall be in a form prescribed by the board.

c. The member shall mark the ballot for the candidate chosen and mail the ballot to the cooperative in a sealed plain envelope inside another envelope bearing the member's name, or the member shall vote by designating the candidate chosen by an alternative voting method in the manner prescribed by the board.

d. If the ballot of the member is received by the cooperative on or before the date of the regular members' meeting or as otherwise prescribed for an alternative voting method, the ballot or alternative voting method shall be accepted and counted as the vote of the absent member.

6. *Business entity members may nominate persons for director.* If a member of a cooperative is not a natural person, and the bylaws do not provide otherwise, the member may appoint or elect one or more natural persons to be eligible for election as a director.

7. *Term.* A director holds office for the term the director was elected and until a successor is elected and has qualified, or the earlier death, resignation, removal, or disqualification of the director.

8. *Acts not void or voidable.* The expiration of a director's term with or without the election of a qualified successor does not make prior or subsequent acts of the director void or voidable.

9. *Compensation.* Subject to any limitation in the articles or bylaws, the board may fix the compensation of the directors.

10. *Classification.* Directors may be divided into classes as provided in the articles or bylaws.

2005 Acts, ch 135, §37; 2006 Acts, ch 1030, §55; 2011 Acts, ch 23, §19; 2011 Acts, ch 131, §69, 158

501A.704 Filling vacancies.

1. *Patron directors.* If a patron member director's position becomes vacant or a new director position is created for a director that was or is to be elected by patron members, the board, in consultation with the directors elected by patron members, shall appoint a patron member of the cooperative to fill the director's position until the next regular or special members' meeting. If there are no directors elected by patron members on the board at the time of the vacancy, a special patron members' meeting shall be called to fill the patron member director vacancy.

2. *Nonpatron directors.* If the vacating director was not elected by the patron members or a new director position is created, unless otherwise provided in the articles or bylaws, the board shall appoint a director to fill the vacant position by majority vote of the remaining or then serving directors even though less than a quorum. At the next regular or special members' meeting, the members or patron members shall elect a director to fill the unexpired term of the vacant director's position.

2005 Acts, ch 135, §38

501A.705 Removal of directors.

1. *Modification.* The provisions of this section apply unless modified by the articles or the bylaws.

2. *Removal of directors.* A director may be removed at any time, with or without cause, if all of the following apply:

a. The director was named by the board to fill a vacancy.

b. The members have not elected directors in the interval between the time of the appointment to fill a vacancy and the time of the removal.

c. A majority of the remaining directors present affirmatively vote to remove the director.

3. *Removal by members.* Any one or all of the directors may be removed at any time, with or without cause, by the affirmative vote of the holders of a majority of the voting power of membership interests entitled to vote at an election of directors, provided that if a director has been elected solely by the patron members or the holders of a class or series of membership interests as stated in the articles or bylaws, then that director may be removed only by the affirmative vote of the holders of a majority of the voting power of the patron members for a director elected by the patron members or of all membership interests of that class or series entitled to vote at an election of that director.

4. *Election of replacements.* New directors may be elected at a meeting at which directors are removed.

2005 Acts, ch 135, §39

501A.706 Board of directors' meetings.

1. *Time and place.* Meetings of the board may be held from time to time as provided in the articles or bylaws at any place within or without the state that the board may select or by any means described in subsection 2. If the board fails to select a place for a meeting, the meeting must be held at the principal executive office, unless the articles or bylaws provide otherwise.

2. *Electronic communications.*

a. A conference among directors by any means of communication through which the directors may simultaneously hear each other during the conference constitutes a board meeting, if the same notice is given of the conference as would be required by subsection 3 for a meeting, and if the number of directors participating in the conference would be sufficient to constitute a quorum at a meeting. Participation in a meeting by that means constitutes presence in person at the meeting.

b. A director may participate in a board meeting not described in paragraph "*a*" by any means of communication through which the director, other directors so participating, and all directors physically present at the meeting may simultaneously hear each other during the meeting. Participation in a meeting by that means constitutes presence in person at the meeting.

3. *Calling meetings and notice.* Unless the articles or bylaws provide for a different time period, a director may call a board meeting by giving at least ten days' notice or, in the case of organizational meetings, at least three days' notice to all directors of the date, time, and place of the meeting. The notice need not state the purpose of the meeting unless this chapter, the articles, or the bylaws require it.

4. *Previously scheduled meetings.* If the day or date, time, and place of a board meeting have been provided in the articles or bylaws, or announced at a previous meeting of the board, no notice is required. Notice of an adjourned meeting need not be given other than by announcement at the meeting at which adjournment is taken.

5. *Waiver of notice.* A director may waive notice of a meeting of the board. A waiver of notice by a director entitled to notice is effective whether given before, at, or after the meeting, and whether given in writing, orally, or by attendance. Attendance by a director at a meeting is a waiver of notice of that meeting, except where the director objects at the beginning of the meeting to the transaction of business because the meeting is not lawfully called or convened and does not participate in the meeting after the objection.

6. *Absent directors.* If the articles or bylaws so provide, a director may give advance written consent or opposition to a proposal to be acted on at a board meeting. If the director is not present at the meeting, consent or opposition to a proposal does not constitute presence for purposes of determining the existence of a quorum, but consent or opposition must be counted as the vote of a director present at the meeting in favor of or against the proposal and must be entered in the minutes or other record of action at the meeting, if the proposal acted on at the meeting is substantially the same or has substantially the same effect as the proposal to which the director has consented or objected.

2005 Acts, ch 135, §40

501A.707 Quorum.

A majority, or a larger or smaller portion or number provided in the articles or bylaws, of the directors currently holding office is a quorum for the transaction of business. In the absence of a quorum, a majority of the directors present may adjourn a meeting from time to time until a quorum is present. If a quorum is present when a duly called or held meeting is convened, the directors present may continue to transact business until adjournment, even though the withdrawal of a number of directors originally present leaves less than the proportion of number otherwise required for a quorum.

2005 Acts, ch 135, §41

501A.708 Action of board of directors.

1. Except as provided in subsection 2, the board shall only take action at a duly held meeting by the affirmative vote of any of the following:

a. A majority of directors present at the meeting.

b. A majority of the directors' voting power present at the meeting.

2. The articles or bylaws may require the affirmative vote of a larger vote than provided in subsection 1. If the articles or bylaws require a larger vote than is required by this chapter for a particular action, the articles or bylaws control.

2005 Acts, ch 135, §42

501A.709 Action without a meeting.

1. *Method.* An action required or permitted to be taken at a board meeting may be taken by written action signed by all of the directors. If the articles or bylaws so provide, any action, other than an action requiring member approval, may be taken by written action signed by the number of directors that would be required to take the same action at a meeting of the board at which all directors were present.

2. *Effective time.* The written action is effective when signed by the required number of directors, unless a different effective time is provided in the written action.

3. *Notice and liability.* When written action is permitted to be taken by less than all directors, all directors must be notified immediately of its text and effective date. Failure to provide the notice does not invalidate the written action. A director who does not sign or consent to the written action has no liability for the action or actions taken by the written action.

2005 Acts, ch 135, §43

501A.710 Audit committee.

The board shall establish an audit committee to review the financial information and accounting report of the cooperative. The cooperative shall have the financial information audited for presentation to the members unless the cooperative's bylaws allow financial statements that are not audited and the financial statements clearly state that they are

not audited and the difference between the financial statements and audited financial statements that are prepared according to generally accepted accounting procedures. The directors shall elect members to the audit committee. The audit committee shall ensure an independent review of the cooperative's finances and audit.

2005 Acts, ch 135, §44

501A.711 Committees.

1. *Generally.* A resolution approved by the affirmative vote of a majority of the board may establish committees having the authority of the board in the management of the business of the cooperative only to the extent provided in the resolution. Committees may include a special litigation committee consisting of one or more independent directors or other independent persons to consider legal rights or remedies of the cooperative and whether those rights and remedies should be pursued. Committees other than special litigation committees are subject at all times to the direction and control of the board.

2. *Membership.* Committee members must be natural persons. Unless the articles or bylaws provide for a different membership or manner of appointment, a committee consists of one or more persons, who need not be directors, appointed by affirmative vote of a majority of the directors present.

3. *Procedure.* The procedures for meetings of the board apply to committees and members of committees to the same extent as those sections apply to the board and individual directors.

4. *Minutes.* Minutes, if any, of committee meetings must be made available upon request to members of the committee and to any director.

5. *Standard of conduct.* The establishment of, delegation of authority to, and action by a committee does not alone constitute compliance by a director with the standard of conduct set forth in section 501A.712.

6. *Committee members considered directors.* Committee members are considered to be directors for purposes of sections 501A.712, 501A.713, and 501A.715.

2005 Acts, ch 135, §45

501A.712 Standard of conduct.

1. *Standard and liability.* A director shall discharge the duties of the position of director in good faith, in a manner the director reasonably believes to be in the best interests of the cooperative, and with the care an ordinarily prudent person in a like position would exercise under similar circumstances. A person who so performs those duties is not liable by reason of being or having been a director of the cooperative.

2. *Reliance.*

a. A director is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, in each case prepared or presented by any of the following:

(1) One or more officers or employees of the cooperative whom the director reasonably believes to be liable and competent in the matters presented.

(2) Counsel, public accountants, or other persons as to matters that the director reasonably believes are within the person's professional or expert competence.

(3) A committee of the board upon which the director does not serve, duly established by the board, as to matters within its designated authority, if the director reasonably believes the committee to merit confidence.

b. Paragraph *"a"* does not apply to a director who has knowledge concerning the matter in question that makes the reliance otherwise permitted by paragraph *"a"* unwarranted.

3. *Presumption of assent and dissent.* A director who is present at a meeting of the board when an action is approved by the affirmative vote of a majority of the directors present is presumed to have assented to the action approved, unless any of the following applies:

a. The director objects at the beginning of the meeting to the transaction of business because the meeting is not lawfully called or convened and does not participate in the meeting after the objection, in which case the director is not considered to be present at the meeting for any purpose of this chapter.

b. The director votes against the action at the meeting.

c. The director is prohibited by a conflict of interest from voting on the action.

4. *Considerations.* In discharging the duties of the position of director, a director may, in considering the best interests of the cooperative, consider the interests of the cooperative's employees, customers, suppliers, and creditors, the economy of the state, and long-term as well as short-term interests of the cooperative and its patron members, including the possibility that these interests may be best served by the continued independence of the cooperative.

2005 Acts, ch 135, §46
Referred to in §501A.711

501A.713 Director conflicts of interest.

1. *Conflict and procedure when conflict arises.*

a. A contract or other transaction between a cooperative and one or more of its directors, or between a cooperative and a business entity in or of which one or more of its directors are governors, directors, managers, officers, or legal representatives or have a material financial interest, is not void or voidable because the director or directors or the other business entities are parties or because the director or directors are present at the meeting of the members or the board or a committee at which the contract or transaction is authorized, approved, or ratified, if any of the following applies:

(1) The contract or transaction was, and the person asserting the validity of the contract or transaction sustains the burden of establishing that the contract or transaction was, fair and reasonable as to the cooperative at the time it was authorized, approved, or ratified and all of the following apply:

(a) The material facts as to the contract or transaction and as to the director's or directors' interest are disclosed or known to the members.

(b) The material facts as to the contract or transaction and as to the director's or directors' interest are fully disclosed or known to the board or a committee, and the board or committee authorizes, approves, or ratifies the contract or transaction in good faith by a majority of the board or committee, but the interested director or directors are not counted in determining the presence of a quorum and must not vote.

(2) The contract or transaction is a distribution, contract, or transaction that is made available to all members or patron members as part of the cooperative's business.

b. If a committee is elected or appointed to authorize, ratify, or approve a contract or transaction under this section, the members of the committee must not have a conflict of interest and must be charged with representing the best interests of the cooperative.

2. *Material financial interest.* For purposes of this section, all of the following apply:

a. A resolution fixing the compensation of a director or fixing the compensation of another director as a director, officer, employee, or agent of the cooperative is not void or voidable or considered to be a contract or other transaction between a cooperative and one or more of its directors for purposes of this section even though the director receiving the compensation fixed by the resolution is present and voting at the meeting of the board or a committee at which the resolution is authorized, approved, or ratified or even though other directors voting upon the resolution are also receiving compensation from the cooperative.

b. A director has a material financial interest in each organization in which the director or a family member of the director has a material financial interest. A contract or other transaction between a cooperative and a family member of a director is considered to be a transaction between the cooperative and the director. A family member of a director includes the spouse, parents, children and spouses of children, brothers and sisters and spouses of brothers and sisters, and the brothers and sisters of the spouse of the director or any combination of them.

2005 Acts, ch 135, §47
Referred to in §501A.711

PART 2

LIABILITY AND INDEMNIFICATION
OF PARTIES

501A.714 Limitation of liability of directors, officers, employees, members, and volunteers.

Except as otherwise provided in this chapter, a director, officer, employee, or member of the cooperative is not liable for the cooperative's debts or obligations, and a director, officer, member, or other volunteer is not personally liable in that capacity for a claim based upon any action taken, or any failure to take action in the discharge of the person's duties, except for the amount of a financial benefit received by the person to which the person is not entitled, an intentional infliction of harm to the cooperative or its members or patrons, or an intentional violation of criminal law.

2005 Acts, ch 135, §48
Referred to in §501A.715

501A.715 Indemnification.

1. *Definitions.* As used in this section, all of the following apply:

a. "Official capacity" means any of the following:

(1) With respect to a director, the position of director in a cooperative.

(2) With respect to a person other than a director, the elective or appointive office or position held by the person, member of a committee of the board, the employment relationship undertaken by an employee of the cooperative, or the scope of the services provided by members of the cooperative who provide services to the cooperative.

(3) With respect to a director, chief executive officer, member, or employee of the cooperative who, while a director, chief executive officer, or member or employee of the cooperative, is or was serving at the request of the cooperative or whose duties in that position involve or involved service as a governor, director, manager, officer, member, partner, trustee, employee, or agent of another organization or employee benefit plan, the position of that person as a governor, director, manager, officer, member, partner, trustee, employee, or agent, as the case may be, of the other organization or employee benefit plan.

b. "Predecessor entity" includes a domestic cooperative or foreign cooperative that was the predecessor of the cooperative referred to in this section in a merger or other transaction in which the predecessor entity's existence ceased upon consummation of the transaction.

c. "Proceeding" means a threatened, pending, or completed civil, criminal, administrative, arbitration, or investigative proceeding, including a proceeding by or in the right of the cooperative.

d. "Special legal counsel" means counsel who has not represented the cooperative or a related organization, or a director, manager, member of a committee of the board, or employee whose indemnification is in issue.

2. *Indemnification.*

a. Subject to the provisions of subsection 4, a cooperative shall indemnify a person made or threatened to be made a party to a proceeding by reason of the former or present official capacity of the person against judgments, penalties, and fines, including, without limitation, excise taxes assessed against the person with respect to an employee benefit plan, settlements, and reasonable expenses, including attorney fees and disbursements incurred by the person in connection with the proceeding, if, with respect to the acts or omissions of the person complained of in the proceeding, any of the following applies:

(1) All of the following apply:

(a) The person has not been indemnified by another organization or employee benefit plan for the same judgments, penalties, fines, including, without limitation, excise taxes assessed against the person with respect to an employee benefit plan, settlements, and reasonable expenses, including attorney fees and disbursements incurred by the person in connection with the proceeding with respect to the same acts or omissions.

(b) The person acted in good faith.

(c) The person has not received an improper personal benefit.

(d) The person has not committed an act for which liability can be eliminated or limited under section 501A.714.

(e) In the case of a criminal proceeding, the person had no reasonable cause to believe the conduct was unlawful.

(2) (a) In the case of an act or omission occurring in the official capacity described in subsection 1, paragraph *"a"*, subparagraph (1) or (2), the person reasonably believed that the conduct was in the best interests of the cooperative.

(b) In the case of an act or omission occurring in the official capacity described in subsection 1, paragraph *"a"*, subparagraph (3), the person reasonably believed that the conduct was not opposed to the best interests of the cooperative. If the person's acts or omissions complained of in the proceeding relate to conduct as a director, officer, trustee, employee, or agent of an employee benefit plan, the conduct is not considered to be opposed to the best interests of the cooperative if the person reasonably believed that the conduct was in the best interests of the participants or beneficiaries of the employee benefit plan.

b. The termination of a proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent does not, of itself, establish that the person did not meet the criteria set forth in this subsection.

3. *Advances.*

a. Subject to the provisions of subsection 4, if a person is made or threatened to be made a party to a proceeding, the person is entitled, upon written request to the cooperative, to payment or reimbursement by the cooperative of reasonable expenses, including attorney fees and disbursements incurred by the person in advance of the final disposition of the proceeding, as follows:

(1) Upon receipt by the cooperative of a written affirmation by the person of a good-faith belief that the criteria for indemnification set forth in subsection 2 have been satisfied, and a written undertaking by the person to repay all amounts paid or reimbursed by the cooperative, if it is ultimately determined that the criteria for indemnification have not been satisfied.

(2) After a determination that the facts then known to those making the determination would not preclude indemnification under this section.

b. The written undertaking required by this subsection is an unlimited general obligation of the person making it, but need not be secured and shall be accepted without reference to financial ability to make the repayment.

4. *Prohibition or limit on indemnification or advances.* The articles or bylaws either may prohibit indemnification or advances of expenses otherwise required by this section or may impose conditions on indemnification or advances of expenses in addition to the conditions contained in subsection 2 or 3, including, without limitation, monetary limits on indemnification or advances of expenses if the conditions apply equally to all persons or to all persons within a given class. A prohibition or limit on indemnification or advances of expenses shall not apply to or affect the right of a person to indemnification or advances of expenses with respect to any acts or omissions of the person occurring before the effective date of a provision in the articles or the date of adoption of a provision in the bylaws establishing the prohibition or limit on indemnification or advances of expenses.

5. *Reimbursement to witnesses.* This section does not require, or limit the ability of, a cooperative to reimburse expenses, including attorney fees and disbursements incurred by a person in connection with an appearance as a witness in a proceeding at a time when the person has not been made or threatened to be made a party to a proceeding.

6. *Determination of eligibility.*

a. All determinations whether indemnification of a person is required because the criteria set forth in subsection 2 have been satisfied and whether a person is entitled to payment or reimbursement of expenses in advance of the final disposition of a proceeding as provided in subsection 3 must be made as follows:

(1) By the board by a majority of a quorum, if the directors who are, at the time, parties to the proceeding are not counted for determining either a majority or the presence of a quorum.

(2) If a quorum under subparagraph (1) cannot be obtained, by a majority of a committee of the board consisting solely of two or more directors not at the time parties to the proceeding

duly designated to act in the matter by a majority of the full board, including directors who are parties.

(3) If a determination is not made under subparagraph (1) or (2), by special legal counsel selected either by a majority of the board or a committee by vote under subparagraph (1) or (2), or if the requisite quorum of the full board cannot be obtained and the committee cannot be established, by a majority of the full board, including directors who are parties.

(4) If a determination is not made under subparagraphs (1) through (3), by the affirmative vote of the members, but the membership interests held by parties to the proceeding must not be counted in determining the presence of a quorum and are not considered to be present and entitled to vote on the determination.

(5) If an adverse determination is made under subparagraphs (1) through (4) or paragraph *"b"* or if a determination is not made under subparagraphs (1) through (4) or paragraph *"b"* within sixty days either after the later to occur of the termination of a proceeding or a written request for indemnification to the cooperative, or a written request for an advance of expenses, as the case may be, by a court in this state, which may be the same court in which the proceeding involving the person's liability took place upon application of the person and any notice the court requires. The person seeking indemnification or payment or reimbursement of expenses under this subparagraph has the burden of establishing that the person is entitled to indemnification or payment or reimbursement of expenses.

b. With respect to a person who is not, and was not at the time of the act or omission complained of in the proceedings, a director, chief executive officer, or person possessing, directly or indirectly, the power to direct or cause the direction of the management or policies of the cooperative, the determination whether indemnification of this person is required because the criteria set forth in subsection 2 have been satisfied and whether such person is entitled to payment or reimbursement of expenses in advance of the final disposition of a proceeding as provided in subsection 3 may be made by an annually appointed committee of the board, having at least one member who is a director. The committee shall report at least annually to the board concerning its actions.

7. *Insurance.* A cooperative may purchase and maintain insurance on behalf of a person in that person's official capacity against any liability asserted against and incurred by the person in or arising from that capacity, whether or not the cooperative would have been required to indemnify the person against the liability under the provisions of this section.

8. *Disclosure.* A cooperative that indemnifies or advances expenses to a person in accordance with this section in connection with a proceeding by or on behalf of the cooperative shall report to the members in writing the amount of the indemnification or advance and to whom and on whose behalf it was paid not later than the next meeting of members.

9. *Indemnification of other persons.* Nothing in this section must be construed to limit the power of the cooperative to indemnify persons other than a director, chief executive officer, member, employee, or member of a committee of the board of the cooperative by contract or otherwise.

2005 Acts, ch 135, §49; 2006 Acts, ch 1010, §130; 2006 Acts, ch 1030, §56, 85, 89; 2012 Acts, ch 1023, §99, 157

Referred to in §501A.711

PART 3

OFFICERS

501A.716 Officers.

1. *Required officers.*

a. The board shall elect all of the following:

(1) A chairperson.

(2) One or more vice chairpersons.

b. The board shall elect or appoint all of the following:

(1) A records officer.

(2) A financial officer.

c. The officers, other than the chief executive officer, shall not have the authority to bind the cooperative except as authorized by the board.

2. *Additional officers.* The board may elect additional officers as the articles or bylaws authorize or require.

3. *Records officer and financial officer may be combined.* The offices of records officer and financial officer may be combined.

4. *Officers that must be members.* The chairperson and first vice chairperson shall be directors and members. The financial officer, records officer, and additional officers need not be directors or members.

5. *Chief executive officer.* The board may employ a chief executive officer to manage the day-to-day affairs and business of the cooperative, and if a chief executive officer is employed, the chief executive officer shall have the authority to implement the functions, duties, and obligations of the cooperative except as restricted by the board. The chief executive officer shall not exercise authority reserved to the board or the members under this chapter, the articles, or the bylaws.

2005 Acts, ch 135, §50

SUBCHAPTER VIII

MEMBERS — PROPERTY — OWNERSHIP INTERESTS

PART 1

MEMBERS

501A.801 Members.

1. *Requirement.* A cooperative shall have one or more patron members.

2. *Grouping of members.*

a. A cooperative may group members and patron members in districts, units, or on another basis if and as authorized in its articles or bylaws. The articles or bylaws may include authorization for the board to determine the groupings.

b. The board may implement the use of districts or units, including setting the time and place and prescribing the rules of conduct for holding meetings by districts or units to elect delegates to members' meetings.

3. *Member violations.*

a. A member who knowingly, intentionally, or repeatedly violates a provision of this chapter, the articles or bylaws of the cooperative, or a member control agreement or marketing contract with the cooperative may be required by the board to surrender the member's voting power or the financial rights of membership interest of any class owned by the member, or both.

b. The cooperative shall refund to the member for the surrendered financial rights of membership interest the lesser of the book value or market value of the financial right of the membership interest payable in not more than seven years from the date of surrender or the board may transfer all of any patron member's financial rights to a class of financial rights held by members who are not patron members, or to a certificate of interest, which carries liquidation rights on par with membership interests and is redeemed within seven years after the transfer as provided in the certificate.

c. Membership interests required to be surrendered may be reissued or be retired and canceled by the board.

4. *Inspection of cooperative records by member.*

a. A member is entitled to inspect and copy, at the member's expense, during regular

business hours at a reasonable location specified by the cooperative, any of the records described in section 501A.507 if the member meets the requirements of paragraph *"b"* and gives the cooperative written demand at least five business days before the date on which the member wishes to inspect and copy the records. Notwithstanding the provisions of this subsection or any provisions of section 501A.507, a member shall not have the right to inspect or copy any records of the cooperative relating to the amount of equity capital in the cooperative held by any person or any accounts receivable or other amounts due the cooperative from any person, or any personnel records or employment records of any employee.

b. To be entitled to inspect and copy permitted records, the member shall meet all of the following requirements:

(1) The member must have been a member for at least one year immediately preceding the demand to inspect or copy or must be a member holding at least five percent of all of the outstanding equity interests in the cooperative as of the date the demand is made.

(2) The demand is made in good faith and for a proper cooperative business purpose.

(3) The member describes with reasonable particularity the purpose and the records the member desires to inspect.

(4) The records are directly connected with the described purpose.

c. The right of inspection granted by this subsection shall not be abolished or limited by the articles, bylaws, or any actions of the board or the members.

d. This subsection does not affect any of the following:

(1) The right of a member to inspect records to the same extent as any other litigant if the member is in litigation with the cooperative.

(2) The power of a court to compel the production of the cooperative's records for examination.

e. Notwithstanding any other provision in this subsection, if the records to be inspected or copied are in active use or storage and, therefore, not available at the time otherwise provided for inspection or copying, the cooperative shall notify the member and shall set a date and hour within three business days of the date otherwise set in this subsection for the inspection or copying.

f. A member's agent or attorney has the same inspection and copying rights as the member. The right to copy records under this subsection includes, if reasonable, the right to receive copies made by photographic copying, xerographic copying, or other means. The cooperative may impose a reasonable charge, covering the costs of labor and material, for copies of any documents provided to the member. The charge shall not exceed the estimated cost of production and reproduction of the records.

g. If a cooperative refuses to allow a member, or the member's agent or attorney, who complies with this subsection to inspect or copy any records that the member is entitled to inspect or copy within a prescribed time limit or, if none, within a reasonable time, the district court of the county in this state where the cooperative's principal office is located or, if it has no principal office in this state, the district court of the county in which its registered office is located may, on application of the member, summarily order the inspection or copying of the records demanded at the cooperative's expense.

h. If a court orders inspection or copying of the records demanded, unless the cooperative proves that it refused inspection or copying in good faith because it had a reasonable basis for doubt about the right of the member or the member's agent or attorney to inspect or copy the records demanded, all of the following shall apply:

(1) The court may order the losing party to pay the prevailing party's reasonable costs, including reasonable attorney fees.

(2) The court may order the losing party to pay the prevailing party for any damages the prevailing party shall have incurred by reason of the subject matter of the litigation.

(3) If inspection or copying is ordered under this paragraph *"h"*, the court may order the cooperative to pay the member's inspection and copying expenses.

(4) The court may grant either party any other remedy provided by law.

(5) The court may impose reasonable restrictions on the use or distribution of the records by the demanding member.

2005 Acts, ch 135, §51

501A.802 Member liability.

A member is not, merely on the account of that status, personally liable for the acts, debts, liabilities, or obligations of a cooperative. A member is liable for any unpaid subscription for the membership interest, unpaid membership fees, or a debt for which the member has separately contracted with the cooperative.

2005 Acts, ch 135, §52

See also §501A.714

501A.803 Regular members' meetings.

1. *Annual meeting.* Regular members' meetings shall be held annually at a time determined by the board, unless otherwise provided for in the bylaws.

2. *Location.* The regular members' meeting shall be held at the principal place of business of the cooperative or at another conveniently located place as determined by the bylaws or the board.

3. *Business and fiscal reports.* The officers shall submit reports to the members at the regular members' meeting covering the business of the cooperative for the previous fiscal year that show the condition of the cooperative at the close of the fiscal year.

4. *Election of directors.* All directors shall be elected at the regular members' meeting for the terms of office prescribed in the bylaws, except for directors elected at district or unit meetings.

5. *Notice.*

a. The cooperative shall give notice of regular members' meetings by mailing the regular members' meeting notice to each member at the members' last known post office address or by other notification approved by the board and agreed to by the members. The regular members' meeting notice shall be published or otherwise given by approved method at least two weeks before the date of the meeting or mailed at least fifteen days before the date of the meeting.

b. The notice shall contain a summary of any bylaw amendments adopted by the board since the last annual meeting.

6. *Waiver and objections.* A member may waive notice of a meeting of members. A waiver of notice by a member entitled to notice is effective whether given before, at, or after the meeting, and whether given in writing, orally, or by attendance. Attendance by a member at a meeting is a waiver of notice of that meeting, except where the member objects at the beginning of the meeting to the transaction of business because the meeting is not lawfully called or convened, or objects before a vote on an item of business because the item cannot lawfully be considered at that meeting and does not participate in the consideration of the item at that meeting.

2005 Acts, ch 135, §53

501A.804 Special members' meetings.

1. *Calling meeting.* Special members' meetings of the members may be called by any of the following:

a. A majority vote of the board.

b. The written petition of at least twenty percent of the patron members and, if authorized by the articles or bylaws, twenty percent of the nonpatron members, twenty percent of all members, or members representing twenty percent of the membership interests collectively submitted to the chairperson.

2. *Notice.* The cooperative shall give notice of a special members' meeting by mailing the special members' meeting notice to each member personally at the person's last known post office address, or by another process determined by the board if the member is to vote by an alternative voting method as approved by the board and agreed to by the member individually or the members generally. For a member that is an entity, the notice mailed, or delivered by

another process for vote by an alternative voting method, shall be to an officer of the entity. The special members' meeting notice shall state the time, place, and purpose of the special members' meeting. The special members' meeting notice shall be issued within ten days from and after the date of the presentation of a members' petition, and the special members' meeting shall be held within thirty days after the date of the presentation of the members' petition.

3. *Waiver and objections.* A member may waive notice of a meeting of members. A waiver of notice by a member entitled to notice is effective whether given before, at, or after the meeting, and whether given in writing, orally, or by attendance. Attendance by a member at a meeting is a waiver of notice of that meeting, except where the member objects at the beginning of the meeting to the transaction of business because the meeting is not lawfully called or convened, or objects before a vote on an item of business because the item cannot lawfully be considered at that meeting and does not participate in the consideration of the item at that meeting.

2005 Acts, ch 135, §54; 2011 Acts, ch 23, §20

501A.805 Certification of meeting notice.

1. *Certificate of mailing.* After mailing special or regular members' meeting notices or otherwise delivering the notices, the cooperative shall execute a certificate containing the date of mailing or delivery of the notice and a statement that the special or regular members' meeting notices were mailed or delivered as prescribed by law.

2. *Matter of record.* The certificate shall be made a part of the record of the meeting.

3. *Failure to receive meeting notice.* Failure of a member to receive a special or regular members' meeting notice does not invalidate an action taken by the members at a members' meeting.

2005 Acts, ch 135, §55

501A.806 Quorum.

1. *Quorum.* The quorum for a members' meeting to transact business shall be by any of the following:

a. Ten percent of the total number of members of a cooperative with five hundred or fewer members.

b. Fifty members for cooperatives with more than five hundred members.

2. *Quorum for voting by mail.* In determining a quorum at a meeting, on a question submitted to a vote by mail or by an alternative voting method, members present in person or represented by mail vote or the alternative voting method shall be counted. The attendance of a sufficient number of members to constitute a quorum shall be established by a registration of the members of the cooperative present at the meeting. The registration shall be verified by the chairperson or the records officer of the cooperative and shall be reported in the minutes of the meeting.

3. *Meeting action invalid without quorum.* An action by a cooperative is not valid or legal in the absence of a quorum at the meeting at which the action was taken.

2005 Acts, ch 135, §56; 2011 Acts, ch 23, §21

Referred to in §501A.808

501A.807 Remote communications for members' meetings.

1. *Construction and application.* This section shall be construed and applied to all of the following:

a. To facilitate remote communication consistent with other applicable law.

b. To be consistent with reasonable practices concerning remote communication and with the continued expansion of those practices.

2. *Members' meetings held solely by means of remote communication.* To the extent authorized in the articles, a member control agreement, or the bylaws and determined by the board, a regular or special meeting of members may be held solely by any combination of means of remote communication through which the members may participate in the meeting, if notice of the meeting is given to every owner of membership interests entitled

to vote as would be required by this chapter for a meeting, and if the membership interests held by the members participating in the meeting would be sufficient to constitute a quorum at a meeting. Participation by a member by that means constitutes presence at the meeting in person or by proxy if all the other requirements of this chapter for the meeting are met.

3. *Participation in members' meetings by means of remote communication.* To the extent authorized in the articles or the bylaws and determined by the board, a member not physically present in person or by proxy at a regular or special meeting of members may, by means of remote communication, participate in a meeting of members held at a designated place. Participation by a member by that means constitutes presence at the meeting in person or by proxy if all the other requirements of this chapter for the meeting are met.

4. *Requirements for meetings held solely by means of remote communication and for participation by means of remote communication.* In any meeting of members held solely by means of remote communication under subsection 2 or in any meeting of members held at a designated place in which one or more members participate by means of remote communication under subsection 3, all of the following shall apply:

a. The cooperative shall implement reasonable measures to verify that each person deemed present and entitled to vote at the meeting by means of remote communication is a member.

b. The cooperative shall implement reasonable measures to provide each member participating by means of remote communication with a reasonable opportunity to participate in the meeting, including an opportunity to do all of the following:

(1) Read or hear the proceedings of the meeting substantially concurrently with those proceedings.

(2) If allowed by the procedures governing the meeting, have the member's remarks heard or read by other participants in the meeting substantially concurrently with the making of those remarks.

(3) If otherwise entitled, vote on matters submitted to the members.

5. *Notice to members.*

a. Any notice to members given by the cooperative under any provision of this chapter, the articles, or the bylaws by a form of electronic communication consented to by the member to whom the notice is given is effective when given. The notice is deemed given upon any of the following:

(1) If by facsimile communication, when directed to a telephone number at which the member has consented to receive notice.

(2) If by electronic mail, when directed to an electronic mail address at which the member has consented to receive notice.

(3) If by a posting on an electronic network on which the member has consented to receive notice, together with separate notice to the member of the specific posting, upon the later of any of the following:

(a) The posting.

(b) The giving of the separate notice.

(4) If by any other form of electronic communication by which the member has consented to receive notice, when directed to the member.

b. An affidavit of the secretary, other authorized officer, or authorized agent of the cooperative that the notice has been given by a form of electronic communication is, in the absence of fraud, prima facie evidence of the facts stated in the affidavit.

c. Consent by a member to notice given by electronic communication may be given in writing or by authenticated electronic communication. The cooperative is entitled to rely on any consent so given until revoked by the member, provided that no revocation affects the validity of any notice given before receipt by the cooperative of revocation of the consent.

6. *Revocation.* Any ballot, vote, authorization, or consent submitted by electronic communication under this chapter may be revoked by the member submitting the ballot, vote, authorization, or consent so long as the revocation is received by a director or the chief executive officer of the cooperative at or before the meeting or before an action without a meeting is effective.

7. *Waiver.* Waiver of notice by a member of a meeting by means of authenticated

electronic communication may be given in the manner provided for the regular or special meeting. Participation in a meeting by means of remote communication described in subsections 2 and 3 is a waiver of notice of that meeting, except where the member objects at the beginning of the meeting to the transaction of business because the meeting is not lawfully called or convened, or objects before a vote on an item of business because the item cannot lawfully be considered at the meeting and does not participate in the consideration of the item at that meeting.

2005 Acts, ch 135, §57
Referred to in §501A.814

501A.808 Action of members.

1. *Action by affirmative vote of members.*

a. The members shall take action by the affirmative vote of the members of the greater of any of the following:

(1) A majority of the voting power of the membership interests present and entitled to vote on that item of business.

(2) A majority of the voting power that would constitute a quorum for the transaction of business at the meeting, except where this chapter, the articles or bylaws, or a member control agreement requires a larger proportion.

b. If the articles, bylaws, or a member control agreement require a larger proportion than is required by this chapter for a particular action, the articles, bylaws, or the member control agreement shall have control over the provisions of this chapter.

2. *Class or series of membership interests.* In any case where a class or series of membership interests is entitled by this chapter, the articles, bylaws, a member control agreement, or the terms of the membership interests to vote as a class or series, the matter being voted upon must also receive the affirmative vote of the owners of the same proportion of the membership interests present of that class or series; or of the total outstanding membership interests of that class or series, as the proportion required under subsection 1, unless the articles, bylaws, or the member control agreement requires a larger proportion. Unless otherwise stated in the articles, bylaws, or a member control agreement, in the case of voting as a class or series, the minimum percentage of the total voting power of membership interests of the class or series that must be present is equal to the minimum percentage of all membership interests entitled to vote required to be present under section 501A.806.

3. *Greater quorum or voting requirements.*

a. The articles or bylaws adopted by the members may provide for a greater quorum or voting requirement for members or voting groups than is provided for by this chapter.

b. An amendment to the articles or bylaws that adds, changes, or deletes a greater quorum or voting requirement shall meet the same quorum requirement and be adopted by the same vote and voting groups required to take action under the quorum and voting requirements then in effect or proposed to be adopted, whichever is greater.

2005 Acts, ch 135, §58; 2006 Acts, ch 1030, §57

501A.809 Action without a meeting.

1. *Method.* An action required or permitted to be taken at a meeting of the members may be taken by written action signed, or consented to by authenticated electronic communication, by all of the members. If the articles, bylaws, or a member control agreement so provide, any action may be taken by written action signed, or consented to by authenticated electronic communication, by the members who own voting power equal to the voting power that would be required to take the same action at a meeting of the members at which all members were present.

2. *Effective time.* The written action is effective when signed or consented to by authenticated electronic communication by the required members, unless a different effective time is provided in the written action.

3. *Notice and liability.* When written action is permitted to be taken by less than all members, all members must be notified immediately of its text and effective date. Failure to provide the notice does not invalidate the written action. A member who does not sign or

consent to the written action has no liability for the action or actions taken by the written action.

2005 Acts, ch 135, §59

501A.810 Member voting rights.

1. *Patron and nonpatron member voting.* A patron member of a cooperative is only entitled to one vote on an issue to be voted upon by members holding patron membership interests. However, if authorized in the cooperative's articles or bylaws, a patron member may be entitled to additional votes based on patronage criteria in section 501A.811. If nonpatron members are authorized by the patron members and granted voting rights on any matter voted on by the members of the cooperative, the entire patron members' voting power shall be voted collectively based upon the vote of the majority of patron members voting on the issue and the collective vote of the patron members shall be a majority of the vote cast unless otherwise provided in the bylaws. The bylaws shall not reduce the collective patron member vote to less than fifteen percent of the total vote on matters of the cooperative. A nonpatron member has the voting rights in accordance to the nonpatron member's nonpatron membership interests as granted in the bylaws, subject to the provisions of this chapter.

2. *Right to vote at meeting.* A member or delegate may exercise voting rights on any matter that is before the members as prescribed in the articles or bylaws at a members' meeting from the time the member or delegate arrives at the members' meeting, unless the articles or bylaws specify an earlier and specific time for closing the right to vote.

3. *Voting method.* A member's vote at a members' meeting shall be cast in person, by mail if a mail ballot is authorized by the board, or by an alternative voting method if that is authorized by the board. A vote shall not be cast by proxy, except as provided in subsection 4. The cooperative shall take reasonable measures to authenticate that a vote is cast by a member eligible to cast that vote.

4. *Members represented by delegates.*

a. The provisions of this subsection apply to members represented by delegates.

b. A cooperative may provide in the articles or bylaws that units or districts of members are entitled to be represented at members' meetings by delegates chosen by the members of the unit or district. The delegates may vote on matters at the members' meeting in the same manner as a member. The delegates may only exercise the voting rights on a basis and with the number of votes as prescribed in the articles or bylaws.

c. If the approval of a certain portion of the members is required for adoption of amendments, a dissolution, a merger, a consolidation, or a sale of assets, the votes of delegates shall be counted as votes by the members represented by the delegate.

d. Patron members may be represented by the proxy of other patron members.

e. Nonpatron members may be represented by proxy if authorized in the bylaws.

5. *Mail ballots.* The provisions of this subsection apply to mail ballots.

a. A member who is or will be absent from a members' meeting may vote by mail on any motion, resolution, or amendment that the board submits for vote by mail.

b. A ballot shall be in the form prescribed by the board and be accompanied by the text of the proposed motion, resolution, or amendment to be acted upon at the meeting.

c. The member shall express a choice by marking an appropriate choice on the ballot and mail, deliver, or otherwise submit the ballot to the cooperative in a plain, sealed envelope inside another envelope bearing the member's name or by an alternative method approved by the board.

d. A properly executed ballot shall be accepted by the board and counted as the vote of the absent member at the meeting.

6. *Alternative voting method.* The board may also allow the members to vote by alternative voting method, provided the members receive a copy of the proposed motion, resolution, or amendment to be acted upon.

2005 Acts, ch 135, §60; 2011 Acts, ch 23, §22 – 24

Referred to in §501A.813, 501A.903, 501A.1007

501A.811 Patron member voting based on patronage.

1. *Patron members to have an additional vote.* A cooperative may authorize by the articles or the bylaws for patron members to have an additional vote for all of the following:

a. A stipulated amount of business transacted between the patron member and cooperative.

b. A stipulated number of patron members in a member cooperative.

c. A certain stipulated amount of equity allocated to or held by a patron member in the cooperative's central organization.

d. A combination of methods provided in this subsection.

2. *Delegates elected by patrons to have an additional vote.* A cooperative that is organized into units or districts of patron members may, by the articles or the bylaws, authorize the delegates elected by its patron members to have an additional vote for any of the following:

a. A stipulated amount of business transacted between the patron members in the units or districts and the cooperative.

b. A certain stipulated amount of equity allocated to or held by the patron members of the units or districts of the cooperative.

c. A combination of methods in this subsection.

2005 Acts, ch 135, §61
Referred to in §501A.810

501A.812 Voting rights.

1. *Determination.* The board may fix a date not more than sixty days, or a shorter time period provided in the articles or bylaws, before the date of a meeting of members as the date for the determination of the owners of membership interests entitled to notice of and entitled to vote at the meeting. When a date is so fixed, only members on that date are entitled to notice of and permitted to vote at that meeting of members.

2. *Nonmembers.* The articles or bylaws may give or prescribe the manner of giving a creditor, security holder, or other person a right to vote on patron membership interests under this section.

3. *Jointly owned membership interests.* Membership interests owned by two or more members may be voted by any one of them unless the cooperative receives written notice from any one of them denying the authority of that person to vote those membership interests.

4. *Manner of voting and presumption.* Except as provided in subsection 3, an owner of a nonpatron membership interest or a patron membership interest with more than one vote that is entitled to vote may vote any portion of the membership interest in any way the member chooses. If a member votes without designating the proportion voted in a particular way, the member is considered to have voted all of the membership interest in that way.

2005 Acts, ch 135, §62

501A.813 Voting by organizations and legal representatives.

1. *Membership interests held by another organization.* Membership interests of a cooperative reflected in the required records as being owned by another domestic business entity or foreign business entity may be voted by the chairperson, chief executive officer, or another legal representative of that organization.

2. *Membership interests held by subsidiary.* Except as provided in subsection 3, membership interests of a cooperative reflected in the required records as being owned by a subsidiary are not entitled to be voted on any matter.

3. *Membership interests controlled in a fiduciary capacity.* Membership interests of a cooperative in the name of, or under the control of, the cooperative or a subsidiary in a fiduciary capacity are not entitled to be voted on any matter, except to the extent that the settler or beneficiary possesses and exercises a right to vote or gives the cooperative or, with respect to membership interests in the name of or under control of a subsidiary, the subsidiary, binding instructions on how to vote the membership interests.

4. *Voting by certain representatives.* Subject to section 501A.810, membership interests under the control of a person in a capacity as a personal representative, an administrator,

executor, guardian, conservator, or the like may be voted by the person, either in person or by proxy, without reflecting in the required records those membership interests in the name of the person.

5. *Voting by trustees in bankruptcy or receiver.* Membership interests reflected in the required records in the name of a trustee in bankruptcy or a receiver may be voted by the trustee or receiver either in person or by proxy. Membership interests under the control of a trustee in bankruptcy or a receiver may be voted by the trustee or receiver without reflecting in the required records the name of the trustee or receiver, if authority to do so is contained in an appropriate order of the court by which the trustee or receiver was appointed. The right to vote of trustees in bankruptcy and receivers is subject to section 501A.810.

6. *Membership interests held by other organizations.* Membership interests reflected in the required records in the name of a business entity not described in subsections 1 through 5 may be voted either in person or by proxy by the legal representative of that business entity.

7. *Grant of security interest.* The grant of a security interest in a membership interest does not entitle the holders of the security interest to vote.

2005 Acts, ch 135, §63

501A.814 Proxies.

1. *Authorization.*

a. A patron member may only grant a proxy to vote to another patron member.

b. A member may cast or authorize the casting of a vote by any of the following:

(1) Filing a written appointment of a proxy with the board at or before the meeting at which the appointment is to be effective.

(2) Telephonic transmission or authenticated electronic communication, whether or not accompanied by written instructions of the member, of an appointment of a proxy with the cooperative or the cooperative's duly authorized agent at or before the meeting at which the appointment is to be effective.

c. The telephonic transmission or authenticated electronic communication must set forth or be submitted with information from which it can be determined that the appointment was authorized by the member. If it is reasonably concluded that the telephonic transmission or authenticated electronic communication is valid, the inspectors of election or, if there are not inspectors, the other persons making that determination shall specify the information upon which they relied to make that determination. A proxy so appointed may vote on behalf of the member, or otherwise participate, in a meeting by remote communication under section 501A.807, to the extent the member appointing the proxy would have been entitled to participate by remote communication if the member did not appoint the proxy.

d. A copy, facsimile, telecommunication, or other reproduction of the original writing or transmission may be substituted or used in lieu of the original writing or transmission for any purpose for which the original transmission could be used, if the copy, facsimile, telecommunication, or other reproduction is a complete and legible reproduction of the entire original writing or transmission.

e. An appointment of a proxy for membership interests owned jointly by two or more members is valid if signed or consented to by authenticated electronic communication, by any one of them, unless the cooperative receives from any one of those members written notice or an authenticated electronic communication either denying the authority of that person to appoint a proxy or appointing a different proxy.

2. *Duration.* The appointment of a proxy is valid for eleven months unless a longer period is expressly provided in the appointment. An appointment is not irrevocable unless the appointment is coupled with an interest in the membership interests or the cooperative.

3. *Termination.* An appointment may be terminated at will unless the appointment is coupled with an interest, in which case the appointment shall not be terminated except in accordance with the terms of an agreement, if any, between the parties to the appointment. Termination may be made by filing written notice of the termination of the appointment with a manager of the cooperative or by filing a new written appointment of a proxy with a manager of the cooperative. Termination in either manner revokes all prior proxy appointments and is effective when filed with a manager of the cooperative.

4. *Revocation by death or incapacity.* The death or incapacity of a person appointing a proxy does not revoke the authority of the proxy, unless written notice of the death or incapacity is received by a manager of the cooperative before the proxy exercises the authority under that appointment.

5. *Multiple proxies.* Unless the appointment specifically provides otherwise, if two or more persons are appointed as proxies for a member, all of the following apply:

a. Any one of them may vote the membership interests on each item of business in accordance with specific instructions contained in the appointment.

b. If no specific instructions are contained in the appointment with respect to voting the membership interests on a particular item of business, the membership interests must be voted as a majority of the proxies determine. If the proxies are equally divided, the membership interests must not be voted.

6. *Vote of proxy accepted and liability.* Unless the appointment of a proxy contains a restriction, limitation, or specific reservation of authority, the cooperative may accept a vote or action taken by a person named in the appointment. The vote of a proxy is final, binding, and not subject to challenge, but the proxy is liable to the member for damages resulting from a failure to exercise the proxy or from an exercise of the proxy in violation of the authority granted in the appointment.

7. *Limited authority.* If a proxy is given authority by a member to vote on less than all items of business considered at a meeting of members, the member is considered to be present and entitled to vote by the proxy only with respect to those items of business for which the proxy has authority to vote. A proxy who is given authority by a member who abstains with respect to an item of business is considered to have authority to vote on the item of business for purposes of this subsection.

2005 Acts, ch 135, §64

PART 2

PROPERTY AND ASSETS

501A.815 Sale of property and assets.

1. *Member approval not required.* A cooperative may, by affirmative vote of a majority of the board present, upon those terms and conditions and for those considerations, which may be money, securities, or other instruments for the payment of money or other property, as the board considers expedient and without member approval, do any of the following:

a. Sell, lease, transfer, or otherwise dispose of all or substantially all of its property and assets in the usual and regular course of its business.

b. Grant a security interest in all or substantially all of its property and assets whether or not in the usual and regular course of its business.

c. Transfer any or all of its property to a business entity all the ownership interests of which are owned by the cooperative.

d. For purposes of debt financing, transfer any or all of its property to a special purpose entity owned or controlled by the cooperative for an asset securitization.

2. *Member approval required.* Except as provided in subsection 1, a cooperative, by affirmative vote of a majority of the board present, may sell, lease, transfer, or otherwise dispose of all or substantially all of its property and assets, including its goodwill, not in the usual and regular course of its business, upon those terms and conditions and for those considerations, which may be money, securities, or other instruments for the payment of money or other property, as the board considers expedient, when approved at a regular or special meeting of the members by the affirmative vote of two-thirds of the voting power voting at the meeting. Ten days' written notice of the meeting must be given to all members whether or not they are entitled to vote at the meeting. The written notice must state that a purpose of the meeting is to consider the sale, lease, transfer, or other disposition of all or substantially all of the property and assets of the cooperative.

3. *Confirmatory documents.* Confirmatory deeds, assignments, or similar instruments to

evidence a sale, lease, transfer, or other disposition may be signed and delivered at any time in the name of the transferor by its current chairperson of the board or authorized agents.

4. *Liability of transferee.* The transferee is liable for the debts, obligations, and liabilities of the transferor only to the extent provided in the contract or agreement between the transferee and the transferor or to the extent provided by law.

2005 Acts, ch 135, §65

PART 3

OWNERSHIP INTERESTS

501A.816 Vote of ownership interests held by cooperative.

A cooperative that holds ownership interests of another business entity may, by direction of the cooperative's board, elect or appoint a person to represent the cooperative at a meeting of the business entity. The representative has authority to represent the cooperative and may cast the cooperative's vote at the business entity's meeting.

2005 Acts, ch 135, §66

SUBCHAPTER IX

MEMBERSHIP INTERESTS

501A.901 Membership interests.

1. *Patron membership interests.* Patron membership interests shall be the only membership interests of a cooperative unless nonpatron memberships are authorized under subsection 2. If nonpatron interests are authorized, the patron membership interests collectively shall have not less than fifty percent of the cooperative's financial rights to profit allocations and distributions. However, the cooperative's articles or bylaws may be amended by the affirmative vote of patron members to allow the cooperative's financial rights to profit allocations and distributions to patron members collectively to be a lesser amount but in no case less than fifteen percent.

2. *Nonpatron membership interests.*

a. In order for a cooperative to have nonpatron membership interests, the patron members must approve articles or bylaw provisions authorizing the terms and conditions of the nonpatron membership interests, which may include authorizing the board to determine the terms and conditions of the nonpatron membership interests.

b. If nonpatron membership interests are authorized, the cooperative may solicit and issue nonpatron membership interests on terms and conditions determined by the board and disclosed in the articles, bylaws, or by separate disclosure to the members. Each member acquiring nonpatron membership interests shall sign a member control agreement or otherwise agree to the conditions of the bylaws. The control agreement or the bylaws shall describe the rights and obligations of the member as it relates to the nonpatron membership interests, the financial and governance rights, the transferability of the nonpatron membership interests, the division and allocation of profits and losses among the membership interests and membership classes, and financial rights upon liquidation. If the articles or bylaws do not otherwise provide for the allocation of the profits and losses between patron membership interests and nonpatron membership interests, then the allocation of profits and losses among nonpatron membership interests individually and patron membership interests collectively shall be allocated on the basis of the value of contributions to capital made according to the patron membership interests collectively and the nonpatron membership interests individually to the extent the contributions have been accepted by the cooperative. Distributions of cash or other assets of the cooperative shall be allocated among the membership interests as provided in the articles or bylaws, subject to the provisions of this chapter. If not otherwise provided in the articles or bylaws, distributions shall be made on the basis of value of the capital contributions of the patron

membership interests collectively and the nonpatron membership interests to the extent the contributions have been accepted by the cooperative.

3. *Amounts and divisions of membership interests.* The authorized amount and divisions of patron membership interests and, if authorized by the patron members, nonpatron membership interests, may be increased, decreased, established, or altered in accordance with the restrictions in this chapter by amending the articles or bylaws at a regular members' meeting or at a special members' meeting called for the purpose of the amendment.

4. *Issuance of membership interests.* Authorized membership interests may be issued on terms and conditions prescribed in the articles, bylaws, or if authorized in the articles or bylaws as determined by the board. The cooperative shall disclose to any person acquiring membership interests to be issued by the cooperative, the organization, capital structure, and known business prospects and risks of the cooperative, the nature of the governance and financial rights of the membership interest being acquired and of other classes of membership and membership interests. The cooperative shall notify all members of the membership interests being issued by the cooperative. A membership interest shall not be issued until subscription price of the membership interest has been paid for in money or property with the value of the property to be contributed approved by the board.

5. *Transferring or selling membership interests.* After issuance by the cooperative, membership interests in a cooperative may only be sold or transferred with the approval of the board. The board may adopt resolutions prescribing procedures to prospectively approve transfers.

6. *Cooperative first right to purchase membership interests.* The articles or bylaws may provide that the cooperative or the patron members, individually or collectively, have the first privilege of purchasing the membership interests of any class of membership interests offered for sale. The first privilege to purchase membership interests may be satisfied by notice to other members that the membership interests are for sale and a procedure by which members may proceed to attempt to purchase and acquire the membership interests.

7. *Payment for dissenting membership interests.*

a. Subject to the provisions in the articles and bylaws, a member may dissent from and obtain payment for the fair value of the member's membership interests in the cooperative if all of the following apply:

(1) The majority of the cooperative's member voting power is held by different classes of interests.

(2) The articles or bylaws are amended or the cooperative is merged or otherwise combined with another entity in a manner that materially and adversely affects the rights and preferences of the membership interests of the dissenting member.

b. The dissenting member shall file a notice of intent to demand fair value of the membership interest with the records officer of the cooperative within thirty days after the amendment of the bylaws and notice of the amendment to members; otherwise, the right of the dissenting member to demand payment of fair value for the membership interest is waived. If a proposed amendment of the articles or bylaws must be approved by the members, a member who is entitled to dissent and who wishes to exercise dissenter's rights shall file a notice to demand fair value of the membership interest with the records officer of the cooperative; otherwise, the right to demand fair value for the membership interest by the dissenting member is waived. After receipt of the dissenting member's demand notice and approval of the amendment, the cooperative has sixty days to rescind the amendment, or otherwise the cooperative shall remit the fair value for the member's interest to the dissenting member by one hundred eighty days after receipt of the notice. Upon receipt of the fair value for the membership interest, the member has no further member rights in the cooperative.

2005 Acts, ch 135, §67
Referred to in §501A.1007

501A.902 Assignment of financial rights.

1. *Assignment of financial rights permitted.* Except as provided in subsection 3, a member's financial rights are transferable in whole or in part.

2. *Effect of assignment of financial rights.* An assignment of a member's financial rights entitles the assignee to receive, to the extent assigned, only the share of profits and losses and the distributions to which the assignor would otherwise be entitled. An assignment of a member's financial rights does not dissolve the cooperative and does not entitle or empower the assignee to become a member, to exercise any governance rights, to receive any notices from the cooperative, or to cause dissolution. The assignment shall not allow the assignee to control the member's exercise of governance or voting rights.

3. *Restrictions of assignment of financial rights.*

a. A restriction on the assignment of financial rights may be imposed in the articles, in the bylaws, in a member control agreement, by a resolution adopted by the members, by an agreement among or other written action by the members, or by an agreement among or other written action by the members and the cooperative. A restriction is not binding with respect to financial rights reflected in the required records before the adoption of the restriction, unless the owners of those financial rights are parties to the agreement or voted in favor of the restriction.

b. Subject to paragraph *"c"*, a written restriction on the assignment of financial rights that is not manifestly unreasonable under the circumstances and is noted conspicuously in the required records may be enforced against the owner of the restricted financial rights or a successor or transferee of the owner, including a pledgee or a legal representative. Unless noted conspicuously in the required records, a restriction, even though permitted by this section, is ineffective against a person without knowledge of the restriction.

c. With regard to restrictions on the assignment of financial rights, a would-be assignee of financial rights is entitled to rely on a statement of membership interest issued by the cooperative under section 501A.903. A restriction on the assignment of financial rights, which is otherwise valid and in effect at the time of the issuance of a statement of membership interest but which is not reflected in that statement, is ineffective against an assignee who takes an assignment in reliance on the statement.

d. Notwithstanding any provision of law, articles, bylaws, member control agreement, other agreement, resolution, or action to the contrary, a security interest in a member's financial rights may be foreclosed and otherwise enforced, and a secured party may assign a member's financial rights in accordance with the uniform commercial code, chapter 554, without the consent or approval of the member whose financial rights are subject to the security interest.

2005 Acts, ch 135, §68
Referred to in §501A.903

501A.903 Nature of a membership interest and statement of interest owned.

1. *Generally.* A membership interest is personal property. A member has no interest in specific cooperative property. All property of the cooperative is property of the cooperative.

2. *Statement of membership interest.* At the request of any member, the cooperative shall state in writing the particular membership interest owned by that member as of the date the cooperative makes the statement. The statement must describe the member's rights to vote, if any, to share in profits and losses, and to share in distributions, restrictions on assignments of financial rights under section 501A.902, subsection 3, or voting rights under section 501A.810 then in effect, as well as any assignment of the member's rights then in effect other than a security interest.

3. *Terms of membership interests.* All the membership interests of a cooperative are subject to all of the following:

a. Membership interests shall be of one class, without series, unless the articles or bylaws establish or authorize the board to establish more than one class or series within classes.

b. Ordinary patron membership interests and, if authorized, nonpatron membership interests subject to this chapter are entitled to vote as provided in section 501A.810, and have equal rights and preferences in all matters not otherwise provided for by the board and to the extent that the articles or bylaws have fixed the relative rights and preferences of different classes and series.

c. Membership interests share profits and losses and are entitled to distributions as provided in sections 501A.1005 and 501A.1006.

4. *Rights of judgment creditor.* On application to a court of competent jurisdiction by any judgment creditor of a member, the court may charge a member's or an assignee's financial rights with payment of the unsatisfied amount of the judgment with interest. To the extent so charged, the judgment creditor has only the rights of an assignee of a member's financial rights under section 501A.902. This chapter does not deprive any member or assignee of financial rights of the benefit of any exemption laws applicable to the membership interest. This section is the sole and exclusive remedy of a judgment creditor with respect to the judgment debtor's membership interest.

5. *Establishment of class or series.*

a. Subject to any restrictions in the articles or bylaws, the power granted in this subsection may be exercised by a resolution or resolutions establishing a class or series, setting forth the designation of the class or series, and fixing the relative rights and preferences of the class or series. Any of the rights and preferences of a class or series established in the articles, bylaws, or by resolution of the board may do any of the following:

(1) Be made dependent upon facts ascertainable outside the articles or bylaws or outside the resolution or resolutions establishing the class or series, if the manner in which the facts operate upon the rights and preferences of the class or series is clearly and expressly set forth in the articles or bylaws or in the resolution or resolutions establishing the class or series.

(2) Include by reference some or all of the terms of any agreements, contracts, or other arrangements entered into by the cooperative in connection with the establishment of the class or series if the cooperative retains at its principal executive office a copy of the agreements, contracts, or other arrangements or the portions will be included by reference.

b. A statement setting forth the name of the cooperative and the text of the resolution and certifying the adoption of the resolution and the date of adoption must be given to the members before the acceptance of any contributions for which the resolution creates rights or preferences not set forth in the articles or bylaws. Where the members have received notice of the creation of membership interests with rights or preferences not set forth in the articles or bylaws before the acceptance of the contributions with respect to the membership interests, the statement may be filed anytime within one year after the acceptance of the contributions. The resolution is effective three days after delivery to the members is deemed effective by the board, or, if the statement is not required to be given to the members before the acceptance of contributions, on the date of its adoption by the directors.

6. *Specific terms.* Without limiting the authority granted in this section, in regulating the membership interests of a class or series, a cooperative may do any of the following:

a. Subject to the right of the cooperative, redeem any of those membership interests at the price fixed for their redemption by the articles or bylaws or by the board.

b. Entitle the members to receive cumulative, partially cumulative, or noncumulative distributions.

c. Provide a preference over any class or series of membership interests for the payment of distributions of any or all kinds.

d. Convert membership interests into any other class or any series of the same or another class.

e. Provide full, partial, or no voting rights, except as provided in section 501A.810.

7. *Grant of a security interest.* For the purpose of any law relating to security interests, membership interests, governance or voting rights, and financial rights are each to be characterized as provided in section 554.8103, subsection 3.

8. *Powers of estate of a deceased or incompetent member.*

a. If a member who is an individual dies or a court of competent jurisdiction adjudges the member to be incompetent to manage the member's person or property, or an order for relief under the bankruptcy code is entered with respect to the member, the member's executor, administrator, guardian, conservator, trustee, or other legal representative may exercise all of the member's rights for the purpose of settling the estate or administering the member's property. If a member is a business entity, trust, or other entity and is dissolved, terminated, or

placed by a court in receivership or bankruptcy, the powers of that member may be exercised by its legal representative or successor.

b. If an event referred to in paragraph *"a"* causes the termination of a member's membership interest and the termination does not result in dissolution, then, subject to the articles and bylaws, all of the following apply:

(1) As provided in section 501A.902, the terminated member's interest will be considered to be merely that of an assignee of the financial rights owned before the termination of membership.

(2) The rights to be exercised by the legal representative of the terminated member shall be limited accordingly.

9. *Liability of subscribers and members with respect to membership interests.* A person who subscribes to or owns a membership interest in a cooperative is under no obligation to the cooperative or its creditors with respect to the membership interests subscribed for or owned, except to pay to the cooperative the full consideration for which the membership interests are issued or to be issued.

2005 Acts, ch 135, §69; 2006 Acts, ch 1030, §58
Referred to in §501A.902

501A.904 Certificated and uncertificated membership interests.

1. *Certificated — uncertificated.* The membership interests of a cooperative shall be either certificated or uncertificated. Each holder of certificated membership interests issued is entitled to a certificate of membership interest.

2. *Signature required.* Certificates shall be signed by an agent or officer authorized in the articles or bylaws to sign share certificates or, in the absence of an authorization, by the chairperson or records officer of the cooperative.

3. *Signature valid.* If a person signs or has a facsimile signature placed upon a certificate while the chairperson, an officer, transfer agent, or records officer of a cooperative, the certificate may be issued by the cooperative, even if the person has ceased to have that capacity before the certificate is issued, with the same effect as if the person had that capacity at the date of its issue.

4. *Form of certificate.* A certificate representing membership interests of a cooperative shall contain on its face all of the following:

a. The name of the cooperative.

b. A statement that the cooperative is organized under the laws of this state and this chapter.

c. The name of the person to whom the certificate is issued.

d. The number and class of membership interests, and the designation of the series, if any, that the certificate represents.

e. A statement that the membership interests in the cooperative are subject to the articles and bylaws of the cooperative.

f. Any restrictions on transfer, including approval of the board, if applicable, first rights of purchase by the cooperative, and other restrictions on transfer, which may be stated by reference to the back of the certificate or to another document.

5. *Limitations set forth.* A certificate representing membership interests issued by a cooperative authorized to issue membership interests of more than one class or series shall set forth upon the face or back of the certificate, or shall state that the cooperative will furnish to any member upon request and without charge, a full statement of the designations, preferences, limitations, and relative rights of the membership interests of each class or series authorized to be issued, so far as they have been determined, and the authority of the board to determine the relative rights and preferences of subsequent classes or series.

6. *Prima facie evidence.* A certificate signed as provided in subsection 2 is prima facie evidence of the ownership of the membership interests referred to in the certificate.

7. *Uncertificated membership interests.*

a. Unless uncertificated membership interests are prohibited by the articles or bylaws, a resolution approved by the affirmative vote of a majority of the directors present may

provide that some or all of any or all classes and series of its membership interests will be uncertificated membership interests.

b. The resolution does not apply to membership interests represented by a certificate until the certificate is surrendered to the cooperative. Within a reasonable time after the issuance or transfer of uncertificated membership interests, the cooperative shall send to the new member the information required by this section to be stated on certificates. This information is not required to be sent to the new holder by a publicly held cooperative that has adopted a system of issuance, recordation, and transfer of its membership interests by electronic or other means not involving an issuance of certificates if the system complies with section 17A of the Securities Exchange Act of 1934, 15 U.S.C. §78a et seq. Except as otherwise expressly provided by statute, the rights and obligations of the holders of certificated and uncertificated membership interests of the same class and series are identical.

2005 Acts, ch 135, §70; 2012 Acts, ch 1023, §157

501A.905 Lost certificates — replacement.

1. *Issuance.* A new membership interest certificate may be issued under section 554.8405 in place of one that is alleged to have been lost, stolen, or destroyed.

2. *Not overissue.* The issuance of a new certificate under this section does not constitute an overissue of the membership interests the new certificate represents.

2005 Acts, ch 135, §71

501A.906 Restriction on transfer or registration of membership interests.

1. *How imposed.* A restriction on the transfer or registration of transfer of membership interests of a cooperative may be imposed in the articles, in the bylaws, by a resolution adopted by the members, or by an agreement among or other written action by a number of members or holders of other membership interests or among them and the cooperative. A restriction is not binding with respect to membership interests issued prior to the adoption of the restriction, unless the holders of those membership interests are parties to the agreement or voted in favor of the restriction.

2. *Restrictions permitted.*

a. A written restriction on the transfer or registration of transfer of membership interests of a cooperative that is not manifestly unreasonable under the circumstances may be enforced against the holder of the restricted membership interests or a successor or transferee of the holder, including a pledgee or a legal representative, if the restriction is any of the following:

(1) Noted conspicuously on the face or back of the certificate.

(2) Included in this chapter or the articles or bylaws.

(3) Included in information sent to the holders of uncertificated membership interests.

b. Unless otherwise restricted by this chapter, the articles, bylaws, noted conspicuously on the face or back of the certificate, or included in information sent to the holders of uncertificated membership interests, a restriction, even though permitted by this section, is ineffective against a person without knowledge of the restriction. A restriction under this section is deemed to be noted conspicuously and is effective if the existence of the restriction is stated on the certificate and reference is made to a separate document creating or describing the restriction.

2005 Acts, ch 135, §72; 2012 Acts, ch 1023, §157

SUBCHAPTER X

CONTRIBUTIONS, ALLOCATIONS, AND DISTRIBUTIONS — MEMBER CONTROL AGREEMENTS

501A.1001 Authorization, form, and acceptance of contributions.

1. *Board to authorize.* Subject to any restrictions in this chapter regarding patron and nonpatron membership interests or in the articles or bylaws, and only when authorized

by the board, a cooperative may accept contributions, which may be patron or nonpatron membership contributions as determined by the board under subsections 2 and 3, make contribution agreements under section 501A.1003, and make contribution rights agreements under section 501A.1004.

2. *Permissible forms.* A person may make a contribution to a cooperative by any of the following:

a. Paying money or transferring the ownership of an interest in property to the cooperative or rendering services to or for the benefit of the cooperative.

b. Executing a written obligation signed by the person to pay money or transfer ownership of an interest in property to the cooperative or to perform services to or for the benefit of the cooperative.

3. *Acceptance.* A purported contribution shall not be treated or considered as a contribution, unless all of the following apply:

a. The board accepts the contribution on behalf of the cooperative and in that acceptance describes the contribution, including terms of future performance, if any, and states the value being accorded to the contribution.

b. The fact of contribution and the contribution's accorded value are both reflected in the required records of the cooperative.

4. *Valuation by directors.* The determinations of the board as to the amount or fair value or the fairness to the cooperative of the contribution accepted or to be accepted by the cooperative or the terms of payment or performance, including under a contribution agreement in section 501A.1003, and a contribution rights agreement in section 501A.1004, are presumed to be proper if they are made in good faith and on the basis of accounting methods, or a fair valuation or other method, reasonable in the circumstances. Directors who are present and entitled to vote, and who, intentionally or without reasonable investigation, fail to vote against approving a consideration that is unfair to the cooperative, or overvalue property or services received or to be received by the cooperative as a contribution, are jointly and severally liable to the cooperative for the benefit of the then members who did not consent to and are damaged by the action to the extent of the damages of those members. A director against whom a claim is asserted under this subsection, except in case of knowing participation in a deliberate fraud, is entitled to contribution on an equitable basis from other directors who are liable under this subsection.

2005 Acts, ch 135, §73; 2005 Acts, ch 179, §134
Referred to in §501A.1002

501A.1002 Restatement of value of previous contributions.

1. *Definition.* As used in this section, an "*old contribution*" is a contribution reflected in the required records of a cooperative before the time the cooperative accepts a new contribution.

2. *Restatement required.* Whenever a cooperative accepts a new contribution, the board shall restate, as required by this section, the value of all old contributions.

3. *Restatement as to particular series or class to which new contribution pertains.*

a. Unless otherwise provided in a cooperative's articles or bylaws, this subsection sets forth the method of restating the value of old contributions that pertain to the same series or class to which the new contribution pertains. In restating the value, the cooperative shall do all of the following:

(1) State the value the cooperative has accorded to the new contribution under section 501A.1001, subsection 3, paragraph "*a*".

(2) Determine what percentage the value stated under subparagraph (1) will constitute, after the restatement required by this subsection, of the total value of all contributions that pertain to the particular series or class to which the new contribution pertains.

(3) Divide the value stated under subparagraph (1) by the percentage determined under subparagraph (2), yielding the total value, after the restatement required by this subsection, of all contributions pertaining to the particular series or class.

(4) Subtract the value stated under subparagraph (1) from the value determined under

subparagraph (3), yielding the total value, after the restatement required by this subsection, of all the old contributions pertaining to the particular series or class.

(5) Subtract the value, as reflected in the required records before the restatement required by this subsection, of the old contributions from the value determined under subparagraph (4), yielding the value to be allocated among and added to the old contributions pertaining to the particular series or class.

(6) Allocate the value determined under subparagraph (5) proportionally among the old contributions pertaining to the particular series or class, add the allocated values to those old contributions, and change the required records accordingly.

b. The values determined under paragraph "*a*", subparagraph (5), and allocated and added under paragraph "*a*", subparagraph (6), may be positive, negative, or zero.

4. *Restatement method for other series or class.* Unless otherwise provided in a cooperative's articles or bylaws, this subsection sets forth the method of restating the value of old contributions that do not pertain to the same series or class to which the new contribution pertains. In restating the value, the cooperative shall do all of the following:

a. Determine the percentage by which the restatement under subsection 3 has changed the total contribution value reflected in the required records for the series or class to which the new contribution pertains.

b. As to each old contribution that does not pertain to the same series or class to which the new contribution pertains, change the value reflected in the required records by the percentage determined under paragraph "*a*". The percentage determined under paragraph "*a*" may be positive, negative, or zero.

5. *New contributions may be aggregated.* If a cooperative accepts more than one contribution pertaining to the same series or class at the same time, then for the purpose of the restatement required by this section, the cooperative may consider all the new contributions a single contribution.

2005 Acts, ch 135, §74

501A.1003 Contribution agreements.

1. *Signed writing.* A contribution agreement, whether made before or after the formation of the cooperative, is not enforceable against the would-be contributor unless it is in writing and signed by the would-be contributor.

2. *Irrevocable period.* Unless otherwise provided in the contribution agreement, or unless all of the would-be contributors and, if in existence, the cooperative, consent to a shorter or longer period, a contribution agreement is irrevocable for a period of six months.

3. *Current and deferred payment.* A contribution agreement, whether made before or after the formation of a cooperative, must be paid or performed in full at the time or times, or in the installments, if any, specified in the contribution agreement. In the absence of a provision in the contribution agreement specifying the time at which the contribution is to be paid or performed, the contribution must be paid or performed at the time or times determined by the board. However, a call made by the board for payment or performance on contributions must be uniform for all membership interests of the same class or for all membership interests of the same series.

4. *Failure to pay — remedies.*

a. Unless otherwise provided in the contribution agreement, in the event of default in the payment or performance of an installment or call when due, the cooperative may proceed to collect the amount due in the same manner as a debt due the cooperative. If a would-be contributor does not make a required contribution of property or services, the cooperative shall require the would-be contributor to contribute cash equal to that portion of the value, as stated in the cooperative's required records, of the contribution that has not been made.

b. (1) If the amount due under a contribution agreement remains unpaid for a period of twenty days after written notice of demand for payment has been given to the delinquent would-be contributor, the membership interests that were subject to the contribution agreement may be offered for sale by the cooperative for a price in money equaling or exceeding the sum of the full balance owed by the delinquent would-be contributor plus the expenses incidental to the sale.

(2) If the membership interests that were subject to the contribution agreement are sold according to this paragraph *"b"*, the cooperative shall pay to the delinquent would-be contributor or to the delinquent would-be contributor's legal representative the lesser of one of the following:

(a) The excess of net proceeds realized by the cooperative over the sum of the amount owed by the delinquent would-be contributor plus the expenses incidental to the sale, less any penalty stated in the contribution agreement, which may include forfeiture of the partial contribution.

(b) The amount actually paid by the delinquent would-be contributor.

(3) If the membership interests that were subject to the contribution agreement are not sold according to this paragraph *"b"*, the cooperative may collect the amount due in the same manner as a debt due the cooperative or cancel the contribution agreement according to paragraph *"c"*.

c. If the amount due under a contribution agreement remains unpaid for a period of twenty days after written notice of demand for payment has been given to the delinquent would-be contributor and the membership interests that were subject to the defaulted contribution agreement have not been sold according to paragraph *"b"*, the cooperative may cancel the contribution agreement. In addition, the cooperative may retain any portion of the contribution agreement price actually paid as provided in the contribution agreement. The cooperative shall refund to the delinquent would-be contributor or the delinquent would-be contributor's legal representatives any portion of the contribution agreement price as provided in the contribution agreement.

5. *Restrictions on assignment.* Unless otherwise provided in the articles or bylaws, a would-be contributor's rights under a contribution agreement shall not be assigned, in whole or in part, to a person who was not a member at the time of the assignment, unless all the members approve the assignment by unanimous written consent.

2005 Acts, ch 135, §75; 2012 Acts, ch 1023, §157
Referred to in §501A.1001

501A.1004 Contribution rights agreements.

1. *Agreements permitted.* Subject to any restrictions in a cooperative's articles or bylaws, the cooperative may enter into contribution rights agreements under the terms, provisions, and conditions established by board resolution.

2. *Writing required and terms to be stated.* Any contribution rights agreement must be in writing and the writing must state in full, summarize, or include by reference all the agreement's terms, provisions, and conditions of the rights to make contributions.

3. *Restrictions on assignment.* Unless otherwise provided in a cooperative's articles or bylaws, a would-be contributor's rights under a contribution rights agreement shall not be assigned, in whole or in part, to a person who was not a member at the time of the assignment, unless all the members approve the assignment by unanimous written consent.

2005 Acts, ch 135, §76
Referred to in §501A.1001

501A.1005 Allocations and distributions — profits, losses, cash, or other assets.

1. *Allocation of profits and losses.* If nonpatron membership interests are authorized by the patrons, the bylaws shall prescribe the allocation of profits and losses between patron membership interests collectively and any other membership interests. If the bylaws do not otherwise provide, the profits and losses between patron membership interests collectively and other membership interests shall be allocated on the basis of the value of contributions to capital made by the patron membership interests collectively and other membership interests accepted by the cooperative. The allocation of profits to the patron membership interests collectively shall not be less than fifty percent of the total profits in any fiscal year, except if authorized in the cooperative's articles or bylaws that are adopted by an affirmative vote of the patron members, or in the articles or bylaws as amended by the affirmative vote of the patron members. However, the allocation of profits to the patron membership interests collectively shall not be less than fifteen percent of the total profits in any fiscal year.

2. *Distribution of cash or other assets.* A cooperative's bylaws shall prescribe the distribution of cash or other assets of the cooperative among the membership interests of the cooperative. If nonpatron membership interests are authorized by the patrons and the bylaws do not provide otherwise, distributions shall be made to the patron membership interests collectively and other members on the basis of the value of contributions to capital made and accepted by the cooperative, by the patron membership interests collectively, and other membership interests. The distributions to patron membership interests collectively shall not be less than fifty percent of the total distributions in any fiscal year, except if authorized in the articles or bylaws adopted by the affirmative vote of the patron members, or the articles or bylaws as amended by the affirmative vote of the patron members. However, the distributions to patron membership interests collectively shall not be less than fifteen percent of the total distributions in any fiscal year.

2005 Acts, ch 135, §77; 2006 Acts, ch 1030, §59
Referred to in §501A.903, 501A.1007

501A.1006 Allocations and distributions — net income.

1. *Distribution of net income.* A cooperative may set aside a portion of net income allocated to the patron membership interests as the board determines advisable to create or maintain a capital reserve.

2. *Reserves.* In addition to a capital reserve, the board may, for patron membership interests, do any of the following:

a. Set aside an amount not to exceed five percent of the annual net income of the cooperative for promoting and encouraging cooperative organization.

b. Establish and accumulate reserves for new buildings, machinery and equipment, depreciation, losses, and other proper purposes.

3. *Patronage distributions.* Net income allocated to patron members in excess of dividends on equity and additions to reserves shall be distributed to patron members on the basis of patronage. A cooperative may establish allocation units, whether the units are functional, divisional, departmental, geographic, or otherwise. The cooperative may provide for pooling arrangements. The cooperative may account for and distribute net income to patrons on the basis of allocation units and pooling arrangements. A cooperative may offset the net loss of an allocation unit or pooling arrangement against the net income of other allocation units or pooling arrangements.

4. *Frequency of distribution.* A distribution of net income shall be made at least annually. The board shall present to the members at their annual meeting a report covering the operations of the cooperative during the preceding fiscal year.

5. *Form of distribution.* A cooperative may distribute net income to patron members in cash, capital credits, allocated patronage equities, revolving fund certificates, or its own or other securities.

6. *Eligible nonmember patrons.* A cooperative may provide in the bylaws that nonmember patrons are allowed to participate in the distribution of net income payable to patron members on equal terms with patron members.

7. *Patronage credits for ineligible members.* If a nonmember patron with patronage credits is not qualified or eligible for membership, a refund due may be credited to the nonmember patron's individual account. The board may issue a certificate of interest to reflect the credited amount. After the nonmember patron is issued a certificate of interest, the nonmember patron may participate in the distribution of net income on the same basis as a patron member.

2005 Acts, ch 135, §78; 2006 Acts, ch 1030, §60
Referred to in §501A.903, 501A.1007

501A.1007 Member control agreements.

1. *Authorization.* A written agreement among persons who are then members, including a sole member, or who have signed subscription or contribution agreements, relating to the control of any phase of the business and affairs of the cooperative, its liquidation, dissolution and termination, or the relations among members or persons who have signed subscription

or contribution agreements is valid as provided in subsection 2. Other than the authorization of nonpatron membership interests as provided in section 501A.901 and nonpatron voting rights as provided in section 501A.810, whenever this chapter provides that a particular result may or must be obtained through a provision in a cooperative's articles or bylaws, the same result can be accomplished through a member control agreement valid under this section or through a procedure established by a member control agreement valid under this section. However, the member control agreement must be authorized by the cooperative's articles or bylaws and cannot conflict with the cooperative's articles or bylaws. Any result accomplished through a membership control agreement under this section must be properly disclosed as provided in section 501A.901.

2. *Valid execution.* Other than patron member voting control under section 501A.810 and patron member allocation and distribution provisions under sections 501A.1005 and 501A.1006, a written agreement among persons described in subsection 1 that relates to the control of or the liquidation, dissolution, and termination of the cooperative, the relations among them, or any phase of the business and affairs of the cooperative is valid if it meets the requirements of this subsection. This includes but is not limited to the management of its business, the declaration and payment of distributions, the sharing of profits and losses, the election of directors, the employment of members by the cooperative, or the arbitration of disputes. The written agreement must be signed by all persons who are then the members of the cooperative, whether or not the members all have voting power, and all those who have signed contribution agreements, regardless of whether those signatories will, when members, have voting power.

3. *Other agreements not affected.* This section does not apply to, limit, or restrict agreements otherwise valid, nor is the procedure set forth in this section the exclusive method of agreement among members or between the members and the cooperative with respect to any of the matters described.

2005 Acts, ch 135, §79

501A.1008 Reversion of disbursements.

1. Once a person's membership interest or other member's equity in a cooperative is deemed abandoned under section 556.5, the cooperative may retain any disbursement held by the cooperative for or owing to the person. The cooperative may also deliver the disbursement to the treasurer of state for disposition as abandoned property pursuant to sections 556.5 and 556.11.

2. If the cooperative elects to retain the disbursement under this section, the disbursement shall be deposited into a reversion fund established by the cooperative.

3. A disbursement having an aggregate value of fifty dollars or more that is retained by the cooperative shall be forfeited to the cooperative only if the cooperative publishes at least one notice of the abandoned property in a publication regularly distributed to its membership or in a newspaper having a general circulation in the county where the cooperative is located. The notice shall include all of the following:

a. The name and address of the cooperative.

b. The name of the person who has an interest in the disbursement according to the records of the cooperative.

c. A brief description of the type of disbursement retained by the cooperative.

d. A statement that the disbursement will be forfeited to the cooperative unless the person files a claim for the disbursement within the period provided for in this section.

4. *a.* Subject to this subsection, a person asserting an interest in the disbursement may file a claim for it with the cooperative in a manner and according to procedures required by the cooperative. If a person is entitled to an abandoned membership interest, or other interest as provided in section 556.20 or 556.21, the cooperative shall also pay the person the disbursement deposited in the reversion fund that is realized or accrued from the membership interest or other interest.

b. If a person has not filed a claim for the disbursement within six months after the first date that the notice of abandoned property is first published as provided in this section, the disbursement shall be forfeited to the cooperative.

5. The disbursements deposited into the reversion fund that are forfeited to the cooperative shall be used as provided in this subsection. The cooperative may authorize the payment of forfeited disbursements to persons claiming interests in forfeited disbursements as provided in the cooperative's articles of organization or bylaws. Otherwise, forfeited disbursements shall be used as the directors deem suitable for any of the following purposes:

a. Teaching and promoting cooperation. The directors may deposit the amounts of disbursements into the education fund as established by the cooperative.

b. Economic development including private or joint public and private investments involving the creation of economic opportunities for the cooperative's members or the retention of existing sources of income that would otherwise be lost.

2005 Acts, ch 135, §80; 2006 Acts, ch 1010, §131
Referred to in §556.5

SUBCHAPTER XI

MERGER AND CONVERSION

501A.1101 Merger and consolidation.

1. *Authorization.* Unless otherwise prohibited, cooperatives organized under the laws of this state, including cooperatives organized under this chapter or traditional cooperatives, may merge or consolidate with each other, an Iowa limited liability company under the provisions of section 489.1015, or other business entities organized under the laws of another state by complying with the provisions of this section and the law of the state where the surviving or new business entity will exist. A cooperative shall not merge or consolidate with a business entity organized under the laws of this state, other than a traditional cooperative, unless the law governing the business entity expressly authorizes merger or consolidation with a cooperative. This subsection does not authorize a foreign business entity to do any act not authorized by the law governing the foreign business entity.

2. *Plan.* To initiate a merger or consolidation of a cooperative, a written plan of merger or consolidation shall be prepared by the board or by a committee selected by the board to prepare a plan. The plan shall state all of the following:

a. The names of the constituent domestic cooperative, the name of any Iowa limited liability company that is a party to the merger, to the extent authorized under section 489.1015, and any foreign business entities.

b. The name of the surviving or new domestic cooperative, Iowa limited liability company as required by section 489.1015, or other foreign business entity.

c. The manner and basis of converting membership or ownership interests of the constituent domestic cooperative, the Iowa limited liability company that is a party as provided in section 489.1015, or foreign business entity into membership or ownership interests in the surviving or new domestic cooperative, the surviving Iowa limited liability company as authorized in section 489.1015, or foreign business entity.

d. The terms of the merger or consolidation.

e. The proposed effect of the merger or consolidation on the members and patron members of each constituent domestic cooperative.

f. For a consolidation, the plan shall contain the articles of the entity or organizational documents to be filed with the state in which the entity is organized or, if the surviving organization is an Iowa limited liability company, the articles of organization.

3. *Notice.* The following shall apply to notice:

a. The board shall mail or otherwise transmit or deliver notice of the merger or consolidation to each member. The notice shall contain the full text of the plan, and the time and place of the meeting at which the plan will be considered.

b. A cooperative with more than two hundred members may provide the notice in the same manner as a regular members' meeting notice.

4. *Adoption of plan.*

a. A plan of merger or consolidation shall be adopted by a domestic cooperative as provided in this subsection.

b. The plan of merger or consolidation is adopted if all of the following apply:

(1) A quorum of the members eligible to vote is registered as being present at the meeting or voting by mail ballot or alternative voting method.

(2) The plan is approved by the patron members, or if otherwise provided in the articles or bylaws, is approved by a majority of the votes cast in each class of votes cast. For a domestic cooperative with articles or bylaws requiring more than a majority of the votes cast or other conditions for approval, the plan must be approved by a proportion of the votes cast or a number of total members as required by the articles or bylaws and the conditions for approval in the articles or bylaws have been satisfied.

c. After the plan has been adopted, articles of merger or consolidation stating the plan and that the plan was adopted according to this subsection shall be signed by the chairperson, vice chairperson, or records officer of each cooperative merging or consolidating.

d. The articles of merger or consolidation shall be filed in the office of the secretary.

e. For a merger, the articles of the surviving domestic cooperative subject to this chapter are deemed amended to the extent provided in the articles of merger.

f. Unless a later date is provided in the plan, the merger or consolidation is effective when the articles of merger or consolidation are filed in the office of the secretary or the appropriate office of another jurisdiction.

g. The secretary shall issue a certificate of organization of the merged or consolidated cooperative.

5. *Effect of merger or consolidation.* For a merger that does not involve an Iowa limited liability company, the following shall apply to the effect of a merger:

a. After the effective date, the domestic cooperative, Iowa limited liability company, if party to the plan, and any foreign business entity that is a party to the plan become a single entity. For a merger, the surviving business entity is the business entity designated in the plan. For a consolidation, the new domestic cooperative, the Iowa limited liability company, if any, and any foreign business entity is the business entity provided for in the plan. Except for the surviving or new domestic cooperative, Iowa limited liability company, or foreign business entity, the separate existence of each merged or consolidated domestic or foreign business entity that is a party to the plan ceases on the effective date of the merger or consolidation.

b. The surviving or new domestic cooperative, Iowa limited liability company, or foreign business entity possesses all of the rights and property of each of the merged or consolidated business entities and is responsible for all their obligations. The title to property of the merged or consolidated domestic cooperative, Iowa limited liability company, or foreign business entity is vested in the surviving or new domestic cooperative, Iowa limited liability company, or foreign business entity without reversion or impairment of the title caused by the merger or consolidation.

c. If a merger involves an Iowa limited liability company, this subsection is subject to the provisions of section 489.1015.

2005 Acts, ch 135, §81; 2006 Acts, ch 1010, §132; 2007 Acts, ch 126, §86; 2008 Acts, ch 1162, §140 – 142, 154, 155; 2011 Acts, ch 23, §25

Referred to in §489.1015, 501A.1102

501A.1102 Merger of subsidiary.

1. *Definition.* For purposes of this section, *"subsidiary"* means a domestic cooperative, an Iowa limited liability company, or a foreign cooperative.

2. *When authorized — contents of plan.* An Iowa limited liability company may only participate in a merger under this section to the extent authorized under section 489.1015. A parent domestic cooperative or a subsidiary that is a domestic cooperative may complete the merger of a subsidiary as provided in this section. However, if either the parent cooperative or the subsidiary is a business entity organized under the laws of this state, the merger of the subsidiary is not authorized under this section unless the law governing the business entity expressly authorizes merger with a cooperative.

a. A parent cooperative owning at least ninety percent of the outstanding ownership

interests of each class and series of a subsidiary directly, or indirectly through related organizations, other than classes or series that, absent this section, would otherwise not be entitled to vote on the merger, may merge the subsidiary into itself or into any other subsidiary at least ninety percent of the outstanding ownership interests of each class and series of which is owned by the parent cooperative directly, or indirectly through related organizations, other than classes or series that, absent this section, would otherwise not be entitled to vote on the merger, without a vote of the members of itself or any subsidiary or may merge itself, or itself and one or more of the subsidiaries, into one of the subsidiaries under this section. A resolution approved by the affirmative vote of a majority of the directors of the parent cooperative present shall set forth a plan of merger that contains all of the following:

(1) The name of the subsidiary or subsidiaries, the name of the parent cooperative, and the name of the surviving cooperative.

(2) The manner and basis of converting the membership interests of the subsidiary or subsidiaries or parent cooperative into securities of the parent cooperative, subsidiary, or of another cooperative or, in whole or in part, into money or other property.

(3) If the parent cooperative is a constituent cooperative but is not the surviving cooperative in the merger, a provision for the pro rata issuance of membership interests of the surviving cooperative to the holders of membership interests of the parent on surrender of any certificates for shares or membership interests of the parent cooperative.

(4) If the surviving cooperative is a subsidiary, a statement of any amendments to the articles of the surviving cooperative that will be part of the merger.

b. If the parent is a constituent cooperative and the surviving cooperative in the merger, the parent cooperative may change its cooperative name, without a vote of its members, by the inclusion of a provision to that effect in the resolution of merger setting forth the plan of merger that is approved by the affirmative vote of a majority of the directors of the parent cooperative present. Upon the effective date of the merger, the name of the parent cooperative shall be changed.

c. If the parent cooperative is a constituent cooperative but is not the surviving cooperative in the merger, the resolution is not effective unless the resolution is also approved by the affirmative vote of the holders of a majority of the voting power of all membership interests of the parent entitled to vote at a regular or special meeting if the parent is a cooperative, or in accordance with the laws under which the parent is organized if the parent is a foreign business entity or foreign cooperative.

3. *Notice to members of subsidiary.* Notice of the action, including a copy of the plan of merger, shall be delivered to each member, other than the parent cooperative and any subsidiary of each subsidiary that is a constituent cooperative in the merger before, or within ten days after, the effective date of the merger.

4. *Articles of merger — contents of articles.* Articles of merger shall be prepared that contain all of the following:

a. The plan of merger.

b. The number of outstanding membership interests of each series and class of each subsidiary that is a constituent cooperative in the merger, other than the series or classes that, absent this section, would otherwise not be entitled to vote on the merger, and the number of membership interests of each series and class of the subsidiary or subsidiaries, other than series or classes that, absent this section, would otherwise not be entitled to vote on the merger, owned by the parent directly, or indirectly through related organizations.

c. A statement that the plan of merger has been approved by the parent under this section.

5. *Articles signed, filed.* The articles of merger shall be signed on behalf of the parent and filed with the secretary.

6. *Certificate.* The secretary shall issue a certificate of merger to the parent or its legal representative or, if the parent is a constituent cooperative but is not the surviving cooperative in the merger, to the surviving cooperative or its legal representative.

7. *Nonexclusivity.* A merger among a parent and one or more subsidiaries or among two

or more subsidiaries of a parent may be accomplished under section 501A.1101 instead of this section, in which case this section does not apply.

2005 Acts, ch 135, §82; 2008 Acts, ch 1162, §143, 154, 155

501A.1103 Abandonment.

1. *Abandonment by members of plan.* After a plan of merger has been approved by the members entitled to vote on the approval of the plan and before the effective date of the plan, the plan may be abandoned by the same vote that approved the plan.

2. *Abandonment of merger.*

a. A merger may be abandoned upon any of the following:

(1) The members of each of the constituent domestic cooperatives entitled to vote on the approval of the plan have approved the abandonment at a meeting by the affirmative vote of the holders of a majority of the voting power of the membership interests entitled to vote.

(2) The merger is with a domestic cooperative and an Iowa limited liability company or foreign business entity.

(3) The abandonment is approved in such manner as may be required by section 489.1015 for the involvement of an Iowa limited liability company, or for a foreign business entity by the laws of the state under which the foreign business entity is organized.

(4) The members of a constituent domestic cooperative are not entitled to vote on the approval of the plan, and the board of the constituent domestic cooperative has approved the abandonment by the affirmative vote of a majority of the directors present.

(5) The plan provides for abandonment and all conditions for abandonment set forth in the plan are met.

(6) The plan is abandoned before the effective date of the plan by a resolution of the board of any constituent domestic cooperative abandoning the plan of merger approved by the affirmative vote of a majority of the directors present, subject to the contract rights of any other person under the plan. If a plan of merger is with a domestic business entity or foreign business entity, the plan of merger may be abandoned before the effective date of the plan by a resolution of the foreign business entity adopted according to the laws of the state under which the foreign business entity is organized, subject to the contract rights of any other person under the plan. If the plan of merger is with an Iowa limited liability company, the plan of merger may be abandoned by the Iowa limited liability company as provided in section 489.1015, subject to the contractual rights of any other person under the plan.

b. If articles of merger have been filed with the secretary, but have not yet become effective, the constituent organizations, in the case of abandonment under paragraph *"a"*, subparagraphs (1) through (4), the constituent organizations or any one of them, in the case of abandonment under paragraph *"a"*, subparagraph (5), or the abandoning organization in the case of abandonment under paragraph *"a"*, subparagraph (6), shall file with the secretary articles of abandonment that include all of the following:

(1) The names of the constituent organizations.

(2) The provisions of this section under which the plan is abandoned.

(3) If the plan is abandoned under paragraph *"a"*, subparagraph (6), the text of the resolution abandoning the plan.

2005 Acts, ch 135, §83; 2008 Acts, ch 1162, §144, 154, 155

Referred to in §489.1015

501A.1104 Conversion — amendment of organizational documents to be governed by this chapter.

1. *Authority.*

a. A traditional cooperative may convert to a cooperative and become subject to this chapter by amending its organizational documents to conform to the requirements of this chapter.

b. A traditional cooperative becoming a converted cooperative must provide its members with a disclosure statement of the rights and obligations of the members and the capital structure of the cooperative before becoming subject to this chapter. A traditional cooperative, upon distribution of the disclosure required in this subsection and approval

of its members as necessary for amending its articles under the respective chapter of its organization, may amend its articles to comply with this chapter.

c. A traditional cooperative becoming a converted cooperative must prepare a certificate stating all of the following:

(1) The date on which the traditional cooperative was first organized.

(2) The name of the traditional cooperative and, if the name is changed, the name of the cooperative becoming converted.

(3) The future effective date and time, which must be a date and time certain, that the traditional cooperative will be governed by this chapter, if the effective date and time is not to be the date and time of filing.

d. Upon filing with the secretary of the articles for compliance with this chapter and the certificate required under paragraph "*c*", a traditional cooperative is converted and governed by this chapter unless a later date and time is specified in the certificate under paragraph "*c*".

e. In connection with a conversion under which a traditional cooperative becomes governed by this chapter, the rights, securities, or interests of the traditional cooperative as provided in chapter 497, 498, 499, or 501 may be exchanged or converted into rights, property, securities, or interests in the converted cooperative.

2. *Effect of being governed by this chapter.* The conversion of a traditional cooperative to a cooperative governed by this chapter does not affect any obligations or liabilities of the cooperative before the conversion or the personal liability of any person incurred before the conversion.

a. When the conversion is effective, the rights, privileges, and powers of the cooperative, real and personal property of the cooperative, debts due to the cooperative, and causes of action belonging to the traditional cooperative remain vested in the converted cooperative and are the property of the converted cooperative and governed by this chapter. Title to real property vested by deed or otherwise in the traditional cooperative does not revert and is not impaired by reason of the cooperative being converted and governed by this chapter.

b. Rights of creditors and liens upon property of the traditional cooperative are preserved unimpaired, and debts, liabilities, and duties of the traditional cooperative remain attached to the converted cooperative and may be enforced against the converted cooperative to the same extent as if the debts, liabilities, and duties had originally been incurred or contracted by the cooperative as organized under this chapter.

c. The rights, privileges, powers, and interests in property of the traditional cooperative as well as the debts, liabilities, and duties of the traditional cooperative are not deemed, as a consequence of the conversion, to have been transferred for any purpose by the laws of this state.

2005 Acts, ch 135, §84; 2006 Acts, ch 1010, §133

SUBCHAPTER XII

DISSOLUTION

Referred to in §501A.505

501A.1201 Methods of dissolution.

A cooperative may be dissolved by the members or by administrative or court order as provided in this chapter.

2005 Acts, ch 135, §85

501A.1202 Winding up.

1. *Collection and payment of debts.* After the notice of intent to dissolve has been filed with the secretary, the board, or the officers acting under the direction of the board, shall proceed as soon as possible to do all of the following:

a. Collect or make provision for the collection of all debts due or owing to the cooperative, including unpaid subscriptions for membership interests.

b. Pay or make provision for the payment of all debts, obligations, and liabilities of the cooperative according to their priorities.

2. *Transfer of assets.* After the notice of intent to dissolve has been filed with the secretary, the board may sell, lease, transfer, or otherwise dispose of all or substantially all of the property and assets of the dissolving cooperative without a vote of the members.

3. *Distribution to members.* Tangible and intangible property, including money, remaining after the discharge of the debts, obligations, and liabilities of the cooperative shall be distributed to the members and former members as provided in the cooperative's articles or bylaws, unless otherwise provided by law. If previously authorized by the members, the tangible and intangible property of the cooperative may be liquidated and disposed of at the discretion of the board.

2005 Acts, ch 135, §86

501A.1203 Revocation of dissolution proceedings.

1. *Authority to revoke.* Dissolution proceedings may be revoked before the articles of dissolution are filed with the secretary.

2. *Revocation by members.* The chairperson may call a members' meeting to consider the advisability of revoking the dissolution proceedings. The question of the proposed revocation shall be submitted to the members at the members' meeting called to consider the revocation. The dissolution proceedings are revoked if the proposed revocation is approved at the members' meeting by a majority of the members of the cooperative or, for a cooperative with articles or bylaws requiring a greater number of members, the number of members required by the articles or bylaws.

3. *Filing with the secretary.* Revocation of dissolution proceedings is effective when a notice of revocation is filed with the secretary. After the notice is filed, the cooperative may resume business.

2005 Acts, ch 135, §87

501A.1204 Statute of limitations.

The claim of a creditor or claimant against a dissolving cooperative is barred if the claim has not been enforced by initiating legal, administrative, or arbitration proceedings concerning the claim by two years after the date the notice of intent to dissolve is filed with the secretary.

2005 Acts, ch 135, §88

Barring of claims, §501A.1215

501A.1205 Articles of dissolution.

1. *Conditions to file.* Articles of dissolution of a cooperative shall be filed with the secretary after payment of the claims of all known creditors and claimants has been made or provided for and the remaining property has been distributed by the board. The articles of dissolution shall state all of the following:

a. The name of the cooperative.

b. All debts, obligations, and liabilities of the cooperative have been paid or discharged or adequate provisions have been made for them or time periods allowing claims have run and other claims are not outstanding.

c. The remaining property, assets, and claims of the cooperative have been distributed among the members or under a liquidation authorized by the members.

d. Legal, administrative, or arbitration proceedings by or against the cooperative are not pending or adequate provision has been made for the satisfaction of a judgment, order, or decree that may be entered against the cooperative in a pending proceeding.

2. *Dissolution effective on filing.* The cooperative is dissolved when the articles of dissolution have been filed with the secretary.

3. *Certificate.* The secretary shall issue to the dissolved cooperative or its legal representative a certificate of dissolution that contains all of the following:

a. The name of the dissolved cooperative.

b. The date the articles of dissolution were filed with the secretary.

c. A statement that the cooperative is dissolved.

2005 Acts, ch 135, §89

501A.1206 Application for court-supervised voluntary dissolution.

After a notice of intent to dissolve has been filed with the secretary and before a certificate of dissolution has been issued, the cooperative or, for good cause shown, a member or creditor may apply to a court within the county where the registered address is located to have the dissolution conducted or continued under the supervision of the court.

2005 Acts, ch 135, §90

501A.1207 Court-ordered remedies for dissolution.

1. *Conditions for relief.* A court may grant equitable relief that the court deems just and reasonable in the circumstances or may dissolve a cooperative and liquidate its assets and business as follows:

a. In a supervised voluntary dissolution that is applied for by the cooperative.

b. In an action by a member when it is established that any of the following apply:

(1) The directors or the persons having the authority otherwise vested in the board are deadlocked in the management of the cooperative's affairs and the members are unable to break the deadlock.

(2) The directors or those in control of the cooperative have acted fraudulently, illegally, or in a manner unfairly prejudicial toward one or more members in their capacities as members, directors, or officers.

(3) The members of the cooperative are so divided in voting power that, for a period that includes the time when two consecutive regular members' meetings were held, they have failed to elect successors to directors whose terms have expired or would have expired upon the election and qualification of their successors.

(4) The cooperative assets are being misapplied or wasted.

(5) The period of duration as provided in the articles has expired and has not been extended as provided in this chapter.

c. In an action by a creditor when any of the following applies:

(1) The claim of the creditor against the cooperative has been reduced to judgment and an execution on the judgment has been returned unsatisfied.

(2) The cooperative has admitted in writing that the claim of the creditor against the cooperative is due and owing and it is established that the cooperative is unable to pay its debts in the ordinary course of business.

(3) In an action by the attorney general to dissolve the cooperative in accordance with this chapter when it is established that a decree of dissolution is appropriate.

2. *Condition of cooperative or association.* In determining whether to order equitable relief or dissolution, the court shall take into consideration the financial condition of the cooperative, but shall not refuse to order equitable relief or dissolution solely on the grounds that the cooperative has accumulated operating net income or current operating net income.

3. *Dissolution as remedy.* In deciding whether to order dissolution of the cooperative, the court shall consider whether lesser relief suggested by one or more parties, such as a form of equitable relief or a partial liquidation, would be adequate to permanently relieve the circumstances established under subsection 1, paragraph *"b"*, subparagraph (1) or (2). Lesser relief may be ordered if it would be appropriate under the facts and circumstances of the case.

4. *Expenses.* If the court finds that a party to a proceeding brought under this section has acted arbitrarily, vexatiously, or otherwise not in good faith, the court may in its discretion award reasonable expenses, including attorney fees and disbursements, to any of the other parties.

5. *Venue.* Proceedings under this section shall be brought in a court within the county where the registered address of the cooperative is located.

6. *Parties.* It is not necessary to make members parties to the action or proceeding unless relief is sought against them personally.

2005 Acts, ch 135, §91

501A.1208 Procedure in involuntary or court-supervised voluntary dissolution.

1. *Action before hearing.* Before a hearing is completed in dissolution proceedings, a court may do any of the following:

a. Issue injunctions.

b. Appoint receivers with all powers and duties that the court directs.

c. Take actions required to preserve the cooperative's assets, wherever located.

d. Carry on the business of the cooperative.

2. *Action after hearing.* After a hearing is completed, upon notice to parties to the proceedings and to other parties in interest designated by the court, the court may appoint a receiver to collect the cooperative's assets, including amounts owing to the cooperative by subscribers on account of an unpaid portion of the consideration for the issuance of membership interests. A receiver has authority, subject to the order of the court, to continue the business of the cooperative and to sell, lease, transfer, or otherwise dispose of the property and assets of the cooperative, either at public or private sale.

3. *Discharge of obligations.* The assets of the cooperative or the proceeds resulting from a sale, lease, transfer, or other disposition shall be applied in the following order of priority:

a. The costs and expense of the proceedings, including attorney fees and disbursements.

b. Debts, taxes, and assessments due the United States, this state, and other states in that order.

c. Claims duly proved and allowed to employees under the provisions of the workers' compensation law, except that claims under this paragraph shall not be allowed if the cooperative carried workers' compensation insurance, as provided by law, at the time the injury was sustained.

d. Claims, including the value of all compensation paid in a medium other than money, proved and allowed to employees for services performed within three months preceding the appointment of the receiver.

e. Other claims that are proved and allowed by the court.

4. *Remainder to members.* After payment of the expenses of receivership and claims of creditors are proved, the remaining assets, if any, may be distributed to the members or distributed under an approved liquidation plan.

2005 Acts, ch 135, §92

501A.1209 Receiver qualifications and powers.

1. *Qualifications.* A receiver shall be a natural person or a domestic business entity or a foreign business entity authorized to transact business in this state. A receiver shall give a bond as directed by the court with the sureties required by the court.

2. *Powers.* A receiver may sue and defend in all courts as receiver of the cooperative. The court appointing the receiver has exclusive jurisdiction of the cooperative and its property.

2005 Acts, ch 135, §93

501A.1210 Dissolution action by attorney general — administrative dissolution.

1. *Conditions to begin action.* A cooperative may be dissolved involuntarily by a decree of a court in this state in an action filed by the attorney general if it is established that any of the following applies:

a. The articles and certificate of organization were procured through fraud.

b. The cooperative was organized for a purpose not permitted by this chapter or prohibited by state law.

c. The cooperative has flagrantly violated a provision of this chapter, has violated a provision of this chapter more than once, or has violated more than one provision of this chapter.

d. The cooperative has acted, or failed to act, in a manner that constitutes surrender or abandonment of the cooperative's franchise, privileges, or enterprise.

2. *Notice to cooperative.* An action shall not be commenced under subsection 1 until thirty days after notice to the cooperative by the attorney general of the reason for the filing of the action. If the reason for filing the action is an act that the cooperative has done, or omitted to do, and the act or omission may be corrected by an amendment of the articles or

bylaws or by performance of or abstention from the act, the attorney general shall give the cooperative thirty additional days to make the correction before filing the action.

2005 Acts, ch 135, §94

501A.1211 Filing claims in court-supervised dissolution proceedings.

1. *Filing under oath.* In proceedings to dissolve a cooperative, the court may require all creditors and claimants of the cooperative to file their claims under oath with the clerk of court or with the receiver in a form prescribed by the court.

2. *Date to file a claim.* If the court requires the filing of claims, the court shall do all of the following:

a. Set a date, by order, at least one hundred twenty days after the date the order is filed as the last day for the filing of claims.

b. Prescribe the notice of the fixed date that shall be given to creditors and claimants.

3. *Fixed date or extension for filing.* Before the fixed date, the court may extend the time for filing claims. Creditors and claimants failing to file claims on or before the fixed date may be barred, by order of court, from claiming an interest in or receiving payment out of the property or assets of the cooperative.

2005 Acts, ch 135, §95

501A.1212 Discontinuance of court-supervised dissolution proceedings.

The involuntary or supervised voluntary dissolution of a cooperative may be discontinued at any time during the dissolution proceedings if it is established that cause for dissolution does not exist. The court shall dismiss the proceedings and direct the receiver, if any, to redeliver to the cooperative its remaining property and assets.

2005 Acts, ch 135, §96

501A.1213 Court-supervised dissolution order.

1. *Conditions for dissolution order.* In an involuntary or supervised voluntary dissolution the court shall enter an order dissolving the cooperative upon the following conditions:

a. After the costs and expenses of the proceedings and all debts, obligations, and liabilities of the cooperative have been paid or discharged and the remaining property and assets have been distributed to its members.

b. If the property or other assets are not sufficient to satisfy and discharge the costs, expenses, debts, obligations, and liabilities, when all the property and assets have been applied so far as they will go to their payment according to their priorities.

2. *Dissolution effective on filing order.* When the order dissolving the cooperative has been entered, the cooperative is dissolved.

2005 Acts, ch 135, §97

501A.1214 Filing court's dissolution order.

After the court enters an order dissolving a cooperative, the clerk of court shall cause a certified copy of the dissolution order to be filed with the secretary. The secretary shall not charge a fee for filing the dissolution order.

2005 Acts, ch 135, §98

501A.1215 Barring of claims.

1. *Claims barred.* A person who is or becomes a creditor or claimant before, during, or following the conclusion of dissolution proceedings, who does not file a claim or pursue a remedy in a legal, administrative, or arbitration proceeding during the pendency of the dissolution proceeding or has not initiated a legal, administrative, or arbitration proceeding before the commencement of the dissolution proceedings and all those claiming through or under the creditor or claimant are forever barred from suing on that claim or otherwise realizing upon or enforcing it, except as provided in this section.

2. *Certain unfiled claims allowed.* Within one year after articles of dissolution have been filed with the secretary under this chapter or a dissolution order has been entered, a creditor

or claimant who shows good cause for not having previously filed the claim may apply to a court in this state to allow a claim for any of the following:

a. Against the cooperative to the extent of undistributed assets.

b. If the undistributed assets are not sufficient to satisfy the claim, the claim may be allowed against a member to the extent of the distributions to members in dissolution received by the member.

3. *Omitted claims allowed.* Debts, obligations, and liabilities incurred during dissolution proceedings shall be paid or provided for by the cooperative before the distribution of assets to a member. A person to whom this kind of debt, obligation, or liability is owed but is not paid may pursue any remedy against the offenders, directors, or members of the cooperative before the expiration of the applicable statute of limitations. This subsection does not apply to dissolution under the supervision or order of a court.

2005 Acts, ch 135, §99
Statute of limitations, see §501A.1204

501A.1216 Right to sue or defend after dissolution.

After a cooperative has been dissolved, any of its former officers, directors, or members may assert or defend, in the name of the cooperative, a claim by or against the cooperative.

2005 Acts, ch 135, §100

CHAPTER 501B

REVISED UNIFORM UNINCORPORATED NONPROFIT ASSOCIATION ACT

Referred to in §558.72, 669.14

This chapter takes effect July 1, 2010, and does not affect an action or proceeding commenced or right accrued before that date; 2010 Acts, ch 1112, §33

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501B.1 Short title.

This Act shall be known and may be cited as the *"Revised Uniform Unincorporated Nonprofit Association Act"*.

2010 Acts, ch 1112, §1, 33

501B.2 Definitions.

As used in this chapter:

1. *"Established practices"* means the practices used by an unincorporated nonprofit association without material change during the most recent five years of its existence, or if it has existed for less than five years, during its entire existence.

2. *"Governing principles"* means the agreements, whether oral, in a record, or implied from its established practices, that govern the purpose or operation of an unincorporated nonprofit association and the rights and obligations of its members and managers. *"Governing principles"* includes any amendment or restatement of the agreements constituting the governing principles.

3. *"Manager"* means a person that is responsible, alone or in concert with others, for the management of an unincorporated nonprofit association and includes but is not limited to persons who may be designated as directors and officers or some other designation indicating that such persons would perform the duties of a manager.

4. *"Member"* means a person that, under the governing principles, may participate in the selection of persons authorized to manage the affairs of the unincorporated nonprofit association or in the development of the policies and activities of the association.

5. *"Person"* means an individual, corporation, business trust, statutory entity trust, estate, trust, partnership, limited liability company, cooperative, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

6. *"Record"* means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

7. *"State"* means a state of the United States, the District of Columbia, Puerto Rico, United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

8. "*Unincorporated nonprofit association*" or "*association*" means an unincorporated organization consisting of two or more members joined under an agreement that is oral, in a record, or implied from conduct, for one or more common, nonprofit purposes. "*Unincorporated nonprofit association*" does not include any of the following:

a. A trust.

b. A marriage, domestic partnership, common law domestic relationship, civil union, or other domestic living arrangement.

c. An organization formed under any other statute that governs the organization and operation of unincorporated associations.

d. A joint tenancy or tenancy in common even if the co-owners share use of the property for a nonprofit purpose.

e. A relationship under an agreement in a record that expressly provides that the relationship between the parties does not create an unincorporated nonprofit association.

2010 Acts, ch 1112, §2, 33

Referred to in §9H.1

501B.3 Relation to other law.

1. Principles of law and equity supplement this chapter unless displaced by a particular provision of this chapter.

2. A statute governing a specific type of unincorporated nonprofit association prevails over an inconsistent provision in this chapter, to the extent of the inconsistency.

3. This chapter supplements the law of this state that applies to nonprofit associations operating in this state. If a conflict exists, that law applies.

2010 Acts, ch 1112, §3, 33

501B.4 Governing law.

1. Except as otherwise provided in subsection 2, this chapter governs the operation in this state of all unincorporated nonprofit associations formed or operating in this state.

2. Unless the governing principles specify a different jurisdiction, the law of the jurisdiction in which an unincorporated nonprofit association has its main place of activities governs the internal affairs of the association.

2010 Acts, ch 1112, §4, 33

501B.5 Legal entity — perpetual existence — powers.

1. An unincorporated nonprofit association is a legal entity distinct from its members and managers.

2. An unincorporated nonprofit association has perpetual duration unless the governing principles specify otherwise.

3. An unincorporated nonprofit association has the same powers as an individual to do all things necessary or convenient to carry on its purposes.

4. An unincorporated nonprofit association may engage in profit-making activities but profits from any activities must be used or set aside for the association's nonprofit purposes.

2010 Acts, ch 1112, §5, 33

501B.6 Ownership and transfer of property.

1. An unincorporated nonprofit association may acquire, hold, encumber, or transfer in its name an interest in real or personal property.

2. An unincorporated nonprofit association may be a beneficiary of a trust or contract, a legatee, or a devisee.

2010 Acts, ch 1112, §6, 33

501B.7 Statement of authority as to real property.

1. For purposes of this section, "*statement of authority*" means a statement authorizing a person to transfer an interest in real property held in the name of an unincorporated nonprofit association.

2. An interest in real property held in the name of an unincorporated nonprofit association may be transferred by a person authorized to do so in a statement of authority filed by the association in the office of the county recorder in which a transfer of the property would be recorded.

3. A statement of authority must set forth all of the following:

a. The name of the unincorporated nonprofit association.

b. The address in this state, including the street address, if any, of the association or, if the association does not have an address in this state, its out-of-state address.

c. That the association is an unincorporated nonprofit association.

d. The name, title, or position of a person authorized to transfer an estate or interest in real property held in the name of the association.

4. A statement of authority must be executed in the same manner as an affidavit by a person other than the person authorized in the statement to transfer the interest.

5. The county recorder may collect a fee as provided in sections 331.604 and 331.605 for filing a statement of authority in the amount authorized for filing a transfer of real property.

6. A document amending, revoking, or canceling a statement of authority or stating that the statement is unauthorized or erroneous must meet the requirements for executing and filing an original statement.

7. A statement of authority filed in the office of the county recorder as provided in subsection 2 is effective until amended or canceled, unless an earlier cancellation date is specified in the statement.

8. If the record title to real property is in the name of an unincorporated nonprofit association and the statement of authority is filed in the office of the county recorder in which a transfer of the property would be filed, the authority of the person named in the

statement to transfer is conclusive in favor of a person that gives value without notice that the person lacks authority.

2010 Acts, ch 1112, §7, 33; 2013 Acts, ch 108, §3; 2014 Acts, ch 1092, §109

501B.8 Liability.

1. For a debt, obligation, or other liability of an unincorporated nonprofit association, whether arising in contract, tort, or otherwise, all of the following apply:

a. It is solely the debt, obligation, or other liability of the association.

b. It does not become a debt, obligation, or other liability of a member, manager, employee, or volunteer solely because the member acts as a member, the manager acts as a manager, the employee acts as an employee, or a volunteer acts as a volunteer.

2. A person's status as a member, manager, employee, or volunteer does not prevent or restrict law other than this chapter from imposing liability on the person or the association because of the person's conduct.

3. A person who is a manager, member, employee, or volunteer is not personally liable in that capacity to the unincorporated nonprofit association or any of its members for any action taken or failure to take any action in the discharge of the person's duties except liability for any of the following:

a. The amount of any financial benefit to which the person is not entitled.

b. An intentional infliction of harm on the unincorporated nonprofit association or the members.

c. An intentional violation of criminal law.

d. Improper distributions.

2010 Acts, ch 1112, §8, 33

501B.9 Assertion and defense of claims.

1. An unincorporated nonprofit association may sue or be sued in its own name.

2. A member or manager may assert a claim the member or manager has against the unincorporated nonprofit association. An association may assert a claim it has against a member or manager.

2010 Acts, ch 1112, §9, 33

501B.10 Effect of judgment or order.

A judgment or order against an unincorporated nonprofit association is not by itself a judgment or order against a member or manager.

2010 Acts, ch 1112, §10, 33

501B.11 Appointment of agent to receive service of process.

1. An unincorporated nonprofit association may file in the office of the secretary of state a statement appointing an agent authorized to receive service of process.

2. A statement appointing an agent must set forth all of the following:

a. The name of the unincorporated nonprofit association.

b. The name of the person in this state authorized to receive service of process and the person's address, including the street address, in this state.

3. A statement appointing an agent must be signed and acknowledged by a person authorized to manage the affairs of the unincorporated nonprofit association and by the person appointed as the agent. By signing and acknowledging the statement the person becomes the agent.

4. An amendment to or cancellation of a statement appointing an agent to receive service of process must meet the requirements for executing an original statement. An agent may resign by filing a resignation in the office of the secretary of state and giving notice to the association.

5. The secretary of state may collect a fee for filing a statement appointing an agent to

receive service of process, an amendment, a cancellation, or a resignation in the amount charged for filing similar documents.

2010 Acts, ch 1112, §11, 33
Referred to in §501B.12

501B.12 Service of process.

In an action or proceeding against an unincorporated nonprofit association, process may be served on an agent authorized by appointment to receive service of process pursuant to section 501B.11, on a manager of the association, or in any other manner authorized by the law of this state.

2010 Acts, ch 1112, §12, 33

501B.13 Action or proceeding not abated by change.

An action or proceeding against an unincorporated nonprofit association does not abate merely because of a change in its members or managers.

2010 Acts, ch 1112, §13, 33

501B.14 Venue.

Unless otherwise provided by law other than this chapter, venue of an action against an unincorporated nonprofit association brought in this state is determined under the statutes applicable to an action brought in this state against a corporation under chapter 504.

2010 Acts, ch 1112, §14, 33

501B.15 Member not agent.

A member is not an agent of an unincorporated nonprofit association solely by reason of being a member.

2010 Acts, ch 1112, §15, 33

501B.16 Approval by members.

1. Except as otherwise provided in the governing principles, an unincorporated nonprofit association must have the approval of its members to do any of the following:

a. Admit, suspend, dismiss, or expel a member.

b. Select or dismiss a manager.

c. Adopt, amend, or repeal the governing principles.

d. Sell, lease, exchange, or otherwise dispose of all, or substantially all, of the association's property, with or without the association's goodwill, outside the ordinary course of its activities.

e. Dissolve under section 501B.28 or merge under section 501B.30.

f. Undertake any other act outside the ordinary course of the association's activities.

g. Determine the policy and purposes of the association.

2. An unincorporated nonprofit association must have the approval of the members to do any other act or exercise a right that the governing principles require to be approved by members.

2010 Acts, ch 1112, §16, 33
Referred to in §501B.22

501B.17 Meetings of members — voting, notice, and quorum requirements.

1. Unless the governing principles provide otherwise all of the following apply:

a. Approval of a matter by members requires an affirmative majority of the votes cast at a meeting of members.

b. Each member is entitled to one vote on each matter that is submitted for approval by members.

2. Notice and quorum requirements for member meetings and the conduct of meetings of members are determined by the governing principles.

2010 Acts, ch 1112, §17, 33

501B.18 Duties of member.

1. A member does not have a fiduciary duty to an unincorporated nonprofit association or to another member solely by being a member.

2. A member shall discharge the duties to the unincorporated nonprofit association and the other members and exercise any rights under this chapter consistent with the governing principles and the obligation of good faith and fair dealing.

2010 Acts, ch 1112, §18, 33

Referred to in §501B.27

501B.19 Admission, suspension, dismissal, or expulsion of members.

1. A person becomes a member and may be suspended, dismissed, or expelled in accordance with the association's governing principles. If there are no applicable governing principles, a person may become a member or be suspended, dismissed, or expelled from an association only by a vote of its members. A person may not be admitted as a member without the person's consent.

2. Unless the governing principles provide otherwise, the suspension, dismissal, or expulsion of a member does not relieve the member from any unpaid capital contribution, dues, assessments, fees, or other obligation incurred or commitment made by the member before the suspension, dismissal, or expulsion.

2010 Acts, ch 1112, §19, 33

501B.20 Member's resignation.

1. A member may resign as a member in accordance with the governing principles. In the absence of applicable governing principles, a member may resign at any time.

2. Unless the governing principles provide otherwise, resignation of a member does not relieve the member from any unpaid capital contribution, dues, assessments, fees, or other obligation incurred or commitment made by the member before resignation.

2010 Acts, ch 1112, §20, 33

501B.21 Membership interest not transferable.

Except as otherwise provided in the governing principles, a member's interest or any right under the governing principles is not transferable.

2010 Acts, ch 1112, §21, 33

501B.22 Selection of managers — management rights of managers.

Except as otherwise provided in this chapter or the governing principles, all of the following apply:

1. Only the members may select a manager or managers.

2. A manager may be a member or a nonmember.

3. If a manager is not selected, all members are managers.

4. Each manager has equal rights in the management and conduct of the association's activities.

5. All matters relating to the association's activities shall be decided by its managers except for matters reserved for approval by members pursuant to section 501B.16.

6. A difference among managers is decided by a majority of the managers.

2010 Acts, ch 1112, §22, 33

501B.23 Duties of managers.

1. A manager owes to the unincorporated nonprofit association and to its members the fiduciary duties of loyalty and care.

2. A manager shall manage the unincorporated nonprofit association in good faith, in a manner the manager reasonably believes to be in the best interests of the association, and with such care, including reasonable inquiry, as a prudent person would reasonably exercise in a similar position and under similar circumstances. A manager may rely in good faith upon any opinion, report, statement, or other information provided by another person that the manager reasonably believes is a competent and reliable source for the information.

3. After full disclosure of all material facts, a specific act or transaction that would otherwise violate the duty of loyalty by a manager may be authorized or ratified by a majority of the members that are not interested directly or indirectly in the act or transaction.

4. A manager that makes a business judgment in good faith satisfies the duties specified in subsection 1 if all of the following conditions apply:

a. The manager is not interested, directly or indirectly, in the subject of the business judgment and is otherwise able to exercise independent judgment.

b. The manager is informed with respect to the subject of the business judgment to the extent the manager reasonably believes to be appropriate under the circumstances.

c. The manager believes that the business judgment is in the best interests of the unincorporated nonprofit association and in accordance with its purposes.

2010 Acts, ch 1112, §23, 33
Referred to in §501B.27

501B.24 Notice and quorum requirements for meetings of managers.

Notice and quorum requirements for meetings of managers and the conduct of meetings of managers are determined by the governing principles.

2010 Acts, ch 1112, §24, 33

501B.25 Right of member or manager to information.

1. On reasonable notice, a member or manager of an unincorporated nonprofit association may inspect and copy during the unincorporated nonprofit association's regular operating hours, at a reasonable location specified by the association, any record maintained by the association regarding its activities, financial condition, or other circumstances, to the extent the information is material to the member's or manager's rights or duties under the governing principles.

2. An unincorporated nonprofit association may impose reasonable restrictions on access to and use of information to be furnished under this section, including designating the information confidential and imposing obligations of nondisclosure and safeguarding on the recipient.

3. An unincorporated nonprofit association may charge a person that makes a demand under this section reasonable copying costs, limited to the costs of labor and materials.

4. A former member or manager is entitled to information to which the member or manager was entitled while a member or manager if the information pertains to the period during which the person was a member or manager, the former member or manager seeks the information in good faith, and the former member or manager satisfies subsections 1 through 3.

2010 Acts, ch 1112, §25, 33

501B.26 Distributions prohibited — compensation and other permitted payments.

1. Except as otherwise provided in subsection 2, an unincorporated nonprofit association may not pay dividends or make distributions to a member or manager.

2. An unincorporated nonprofit association may do any of the following:

a. Pay reasonable compensation or reimburse reasonable expenses to a member or manager for services rendered.

b. Confer benefits on a member or manager in conformity with its nonprofit purposes.

c. Repurchase a membership and repay a capital contribution made by a member to the extent authorized by its governing principles.

d. Make distributions of property to members upon winding up and termination to the extent permitted by section 501B.29.

2010 Acts, ch 1112, §26, 33
Referred to in §501B.30

501B.27 Reimbursement — indemnification — advancement of expenses.

1. Except as otherwise provided in the governing principles, an unincorporated nonprofit association shall reimburse a member, manager, employee, or volunteer for authorized

expenses reasonably incurred in the course of the member's, manager's, employee's, or volunteer's activities on behalf of the association.

2. An unincorporated nonprofit association may indemnify a member, manager, employee, or volunteer for any debt, obligation, or other liability incurred in the course of the member's, manager's, employee's, or volunteer's activities on behalf of the association if the person seeking indemnification has complied with section 501B.18 or 501B.23, or other law, as applicable. Governing principles in a record may broaden or limit indemnification.

3. If a person is made or threatened to be made a party in an action based on that person's activities on behalf of an unincorporated nonprofit association and the person makes a request in a record to the association, a majority of the disinterested managers may approve in a record advance payment, or reimbursement, by the association, of all or a part of the reasonable expenses, including attorney fees and costs, incurred by the person before the final disposition of the proceeding. To be entitled to an advance payment or reimbursement, the person must state in a record that the person has a good faith belief that the criteria for indemnification in subsection 2 have been satisfied and that the person will repay the amounts advanced or reimbursed if the criteria for payment have not been satisfied. Governing principles in a record may broaden or limit the advance payments or reimbursements.

4. An unincorporated nonprofit association may purchase insurance on behalf of a member, manager, employee, or volunteer for liability asserted against or incurred by the member, manager, employee, or volunteer in the capacity of a member, manager, employee, or volunteer whether or not the association has authority under this chapter to reimburse, indemnify, or advance expenses to the member, manager, employee, or volunteer against the liability.

5. The rights of reimbursement, indemnification, and advancement of expenses under this section apply to a former member, manager, employee, or volunteer for an activity undertaken on behalf of the unincorporated nonprofit association while a member, manager, employee, or volunteer.

2010 Acts, ch 1112, §27, 33

501B.28 Dissolution.

1. An unincorporated nonprofit association may be dissolved pursuant to any of the following:

a. If the governing principles provide a time or method for dissolution, at that time or by that method.

b. If the governing principles do not provide a time or method for dissolution, upon approval by the members.

c. If no member can be located and the association's operations have been discontinued for at least three years, by the managers or, if the association has no current manager, by its last manager.

d. By court order.

e. Under law other than this chapter.

2. After dissolution, an unincorporated nonprofit association continues in existence until its activities have been wound up and it is terminated pursuant to section 501B.29.

2010 Acts, ch 1112, §28, 33

Referred to in §501B.16

501B.29 Winding up and termination.

Winding up and termination of an unincorporated nonprofit association shall proceed in accordance with all of the following rules:

1. All known debts and liabilities must be paid or adequately provided for.

2. Any property subject to a condition requiring return to the person designated by the donor must be transferred to that person.

3. Any property subject to a trust must be distributed in accordance with the trust agreement.

4. Any remaining property must be distributed as follows:

a. As required by law other than this chapter that requires assets of an association to be distributed to another person with similar nonprofit purposes.

b. In accordance with the association's governing principles or in the absence of applicable governing principles, to the members of the association per capita or as the members direct.

c. If neither paragraph "*a*" nor "*b*" applies, under chapter 556.

2010 Acts, ch 1112, §29, 33
Referred to in §501B.26, 501B.28, 501B.30

501B.30 Mergers.

1. For purposes of this section all of the following definitions apply:

a. "*Constituent organization*" means an organization that is merged with one or more other organizations including the surviving organization.

b. "*Nonsurviving organization*" means a constituent organization that is not the surviving organization.

c. "*Organization*" means an unincorporated nonprofit association; a general partnership, including a limited liability partnership; limited partnership, including a limited liability limited partnership; limited liability company; business or statutory trust; corporation; or any other legal or commercial entity having a statute governing its formation and operation. "*Organization*" includes a for-profit or nonprofit organization.

d. "*Surviving organization*" means an organization into which one or more other organizations are merged.

2. An unincorporated nonprofit association may merge with any organization that is authorized by law to merge with an unincorporated nonprofit association.

3. A merger involving an unincorporated nonprofit association is subject to the following rules:

a. Each constituent organization shall comply with its governing law.

b. Each party to the merger shall approve a plan of merger. The plan, which must be in a record, must include all of the following provisions:

(1) The name and form of each organization that is a party to the merger.

(2) The name and form of the surviving organization and, if the surviving organization is to be created by the merger, a statement to that effect.

(3) If the surviving organization is to be created by the merger, the surviving organization's organizational documents that are proposed to be in a record.

(4) If the surviving organization is not to be created by the merger, any amendments to be made by the merger to the surviving organization's organizational documents that are, or are proposed to be, in a record.

(5) The terms and conditions of the merger, including the manner and basis for converting the interests in each constituent organization into any combination of money, interests in the surviving organization, and other consideration except that the plan of merger may not permit members of an unincorporated nonprofit association to receive merger consideration if a distribution of such consideration would not be permitted in the absence of a merger under section 501B.26 or 501B.29.

c. The plan of merger must be approved by the members of each unincorporated nonprofit association that is a constituent organization in the merger. If a plan of merger would impose personal liability for an obligation of a constituent or surviving organization on a member of an association that is a party to the merger, the plan may not take effect unless it is approved in a record by the member.

d. Subject to the contractual rights of third parties, after a plan of merger is approved and at any time before the merger is effective, a constituent organization may amend the plan or abandon the merger as provided in the plan, or except as otherwise prohibited in the plan, with the same consent as was required to approve the plan.

e. Following approval of the plan, a merger under this section is effective as follows:

(1) If a constituent organization is required to give notice to or obtain the approval of a governmental agency or officer in order to be a party to a merger, when the notice has been given and the approval has been obtained.

(2) For the surviving organization the following apply:

(a) If the surviving organization is an unincorporated nonprofit association, as specified in the plan of merger and upon compliance by any constituent organization that is not an association with any requirements, including any required filings in the office of the secretary of state, of the organization's governing statute.

(b) If the surviving organization is not an unincorporated nonprofit association, as provided by the statute governing the surviving organization.

4. When a merger becomes effective all of the following apply:

a. The surviving organization continues or comes into existence.

b. Each constituent organization that merges into the surviving organization ceases to exist as a separate entity.

c. All property owned by each constituent organization that ceases to exist vests in the surviving organization.

d. All debts, obligations, or other liabilities of each nonsurviving organization continue as debts, obligations, or other liabilities of the surviving organization.

e. An action or proceeding pending by or against any nonsurviving organization may be continued as if the merger had not occurred.

f. Except as prohibited by law other than this chapter, all of the rights, privileges, immunities, powers, and purposes of each constituent organization that ceases to exist vest in the surviving organization.

g. Except as otherwise provided in the plan of merger, the terms and conditions of the plan of merger take effect.

h. The merger does not affect the personal liability, if any, of a member or manager of a constituent organization for a debt, obligation, or other liability incurred before the merger is effective.

i. A surviving organization that is not organized in this state is subject to the jurisdiction of the courts of this state to enforce any debt, obligation, or other liability owed by a constituent organization, if before the merger the constituent organization was subject to suit in this state for the debt, obligation, or other liability.

5. Property held for a charitable purpose under the law of this state by a constituent organization immediately before a merger under this section becomes effective may not, as a result of the merger, be diverted from the objects for which it was given, unless, to the extent required by or pursuant to the law of this state concerning cy pres or other law dealing with nondiversion of charitable assets, the organization obtains an appropriate order from the district court specifying the disposition of the property.

6. A bequest, devise, gift, grant, or promise contained in a will or other instrument of donation, subscription, or conveyance that is made to a nonsurviving organization and that takes effect or remains payable after the merger inures to the surviving organization. A trust obligation that would govern property if transferred to the nonsurviving organization applies to property that is transferred to the surviving organization under this section.

2010 Acts, ch 1112, §30, 33

Referred to in §501B.16

501B.31 Uniformity of application and construction.

In applying and construing this chapter, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact the revised uniform unincorporated nonprofit association Act as recommended by the national conference of commissioners on uniform state laws.

2010 Acts, ch 1112, §31, 33

501B.32 Relation to Electronic Signatures in Global and National Commerce Act.

This chapter modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. §7001, et seq., but does not modify, limit, or supersede section 101(c) of that Act, 15 U.S.C. §7001(c), or authorize electronic delivery of any of the notices described in section 103(b) of that Act, 15 U.S.C. §7003(b).

2010 Acts, ch 1112, §32, 33

SUBTITLE 4

SECURITIES

Referred to in §491.39

CHAPTER 502

UNIFORM SECURITIES ACT
(Blue Sky Law)

Referred to in §8A.438, 12.28, 15E.66, 15E.204, 331.301, 331.402, 364.4, 384.24A, 455G.14, 476B.9, 476C.6, 489.1108, 491.114, 496C.10, 502A.8, 505.1, 505.28, 505.29, 506.11, 524.825, 535.2, 536A.22, 546.8, 551A.4, 669.14

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JOINT INVESTMENT TRUSTS

502.701 Public joint investment trusts.

ARTICLE 1
GENERAL PROVISIONS

502.101 Short title.

This chapter may be cited as the *"Iowa Uniform Securities Act"*.

[C31, 35, §8581-c1; C39, §**8581.01;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §502.1; C77, 79, 81, §502.101]

502.102 Definitions.

In this chapter, unless the context otherwise requires:

1. *"Administrator"* means the commissioner of insurance or the deputy appointed pursuant to section 502.601.

2. *"Agent"* means an individual, other than a broker-dealer, who represents a broker-dealer in effecting or attempting to effect purchases or sales of securities or represents an issuer in effecting or attempting to effect purchases or sales of the issuer's securities. But a partner, officer, or director of a broker-dealer or issuer, or an individual having a similar status or performing similar functions, is an agent only if the individual otherwise comes within the term. The term does not include an individual excluded by rule adopted or order issued under this chapter.

2A. *"Agricultural cooperative association"* means an entity which is structured and operated on a cooperative basis pursuant to 26 U.S.C. §1381(a) and which meets the definitional requirement of an association as provided in 12 U.S.C. §1141j(c) or 7 U.S.C. §291, if the association is organized as any one of the following:

a. A farmers cooperative association as defined in section 10.1.

b. An association of persons organized pursuant to chapter 497 for purposes of conducting an agricultural or dairy business on a cooperative plan, as described in section 497.1.

c. A cooperative association organized pursuant to chapter 498 for purposes of conducting an agricultural, livestock, horticultural, or dairy business on a cooperative plan and acting as a cooperative selling agency, as described in section 498.2.

d. An agricultural association as defined in section 499.2 and organized pursuant to chapter 499.

e. A cooperative organized under chapter 501 which may acquire or otherwise obtain or lease agricultural land in this state as provided in section 501.103.

f. Any other entity which is organized on a cooperative basis under the laws of this state for the purpose of engaging in the activities of an agricultural association as defined in section 499.2.

3. *"Bank"* means any of the following:

a. A banking institution organized under the laws of the United States.

b. A member bank of the United States federal reserve system.

c. Any other banking institution, whether incorporated or not, doing business under the laws of a state or of the United States, a substantial portion of the business of which consists of receiving deposits or exercising fiduciary powers similar to those permitted to be exercised by national banks under the authority of the office of the comptroller of the currency of the United States pursuant to Pub. L. No. 87-722, §1, 12 U.S.C. §92a, and which is supervised and examined by a state or federal agency having supervision over banks, and which is not operated for the purpose of evading this chapter.

d. A receiver, conservator, or other liquidating agent of any institution or firm included in paragraph *"a"*, *"b"*, or *"c"*.

4. *"Broker-dealer"* means a person engaged in the business of effecting transactions in securities for the account of others or for the person's own account. The term does not include any of the following:

a. An agent.

b. An issuer.

c. A bank or savings institution if its activities as a broker-dealer are limited to those specified in section 3(a)(4)(B)(i) through (vi), section 3(a)(4)(B)(vii) if the offer and sale of private securities offerings are limited to nonconsumer transactions that are not primarily for personal, family, or household purposes, section 3(a)(4)(B)(viii) through (x), or section 3(a)(4)(B)(xi) if limited to unsolicited transactions all as provided in the Securities Exchange Act of 1934, 15 U.S.C. §78c(a)(4); in section 3(a)(5)(B), and 3(a)(5)(C) of the Securities Exchange Act of 1934, 15 U.S.C. §78c(a)(4) and (5); or a bank that satisfies the conditions described in section 3(a)(4)(E) of the Securities Exchange Act of 1934, 15 U.S.C. §78c(a)(4).

d. An international banking institution.

e. A person excluded by rule adopted or order issued under this chapter.

5. *"Depository institution"* means any of the following:

a. A bank.

b. A savings institution, trust company, credit union, or similar institution that is organized or chartered under the laws of a state or of the United States, authorized to receive deposits, and supervised and examined by an official or agency of a state or the United States if its deposits or share accounts are insured to the maximum amount authorized by statute by the federal deposit insurance corporation, the national credit union share insurance fund, or a successor authorized by federal law. The term does not include any of the following:

(1) An insurance company or other organization primarily engaged in the business of insurance.

(2) A Morris plan bank.

(3) An industrial loan company that is not an "insured depository institution" as defined in section 3(c)(2) of the Federal Deposit Insurance Act, 12 U.S.C. §1813(c)(2), or any successor federal statute.

6. *"Federal covered investment adviser"* means a person registered under the Investment Advisers Act of 1940.

7. *"Federal covered security"* means a security that is, or upon completion of a transaction

will be, a covered security under section 18(b) of the Securities Act of 1933, 15 U.S.C. §77r(b), or rules or regulations adopted pursuant to that provision.

8. *"Filing"* means the receipt under this chapter of a record by the administrator or a designee of the administrator.

9. *"Fraud"*, *"deceit"*, and *"defraud"* are not limited to common law deceit.

10. *"Guaranteed"* means guaranteed as to payment of all principal and all interest.

11. *"Institutional investor"* means any of the following, whether acting for itself or for others in a fiduciary capacity:

a. A depository institution or international banking institution.

b. An insurance company.

c. A separate account of an insurance company.

d. An investment company as defined in the Investment Company Act of 1940.

e. A broker-dealer registered under the Securities Exchange Act of 1934.

f. An employee pension, profit-sharing, or benefit plan if the plan has total assets in excess of five million dollars or its investment decisions are made by a named fiduciary, as defined in the Employee Retirement Income Security Act of 1974, that is a broker-dealer registered under the Securities Exchange Act of 1934, an investment adviser registered or exempt from registration under the Investment Advisers Act of 1940, an investment adviser registered under this chapter, a depository institution, or an insurance company.

g. A plan established and maintained by a state, a political subdivision of a state, or an agency or instrumentality of a state or a political subdivision of a state for the benefit of its employees, if the plan has total assets in excess of five million dollars or its investment decisions are made by a duly designated public official or by a named fiduciary, as defined in the Employee Retirement Income Security Act of 1974, that is a broker-dealer registered under the Securities Exchange Act of 1934, an investment adviser registered or exempt from registration under the Investment Advisers Act of 1940, an investment adviser registered under this chapter, a depository institution, or an insurance company.

h. A trust, if it has total assets in excess of five million dollars, its trustee is a depository institution, and its participants are exclusively plans of the types identified in paragraph *"f"* or *"g"*, regardless of the size of their assets, except a trust that includes as participants self-directed individual retirement accounts or similar self-directed plans.

i. An organization described in section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. §501(c)(3), corporation, Massachusetts trust or similar business trust, limited liability company, or partnership, not formed for the specific purpose of acquiring the securities offered, with total assets in excess of five million dollars.

j. A small business investment company licensed by the small business administration under section 301(c) of the Small Business Investment Act of 1958, 15 U.S.C. §681(c), with total assets in excess of five million dollars.

k. A private business development company as defined in section 202(a)(22) of the Investment Advisers Act of 1940, 15 U.S.C. §80b-2(a)(22), with total assets in excess of five million dollars.

l. A federal covered investment adviser acting for its own account.

m. A *"qualified institutional buyer"* as defined in Rule 144A(a)(1), other than Rule 144A(a)(1)(i)(H), adopted by the securities and exchange commission under the Securities Act of 1933, 17 C.F.R. §230.144A.

n. A *"major U. S. institutional investor"* as defined in Rule 15a-6(b)(4)(i) adopted by the securities and exchange commission under the Securities Exchange Act of 1934, 17 C.F.R. §240.15a-6.

o. Any other person, other than an individual, of institutional character with total assets in excess of five million dollars not organized for the specific purpose of evading this chapter.

p. Any other person specified by rule adopted or order issued under this chapter.

12. *"Insurance company"* means a company organized as an insurance company whose primary business is writing insurance or reinsuring risks underwritten by insurance companies and which is subject to supervision by the insurance commissioner or a similar official or agency of a state.

13. *"Insured"* means insured as to payment of all principal and all interest.

13A. *"Interest at the legal rate"* means the interest rate for judgments specified in section 535.3.

14. *"International banking institution"* means an international financial institution of which the United States is a member and whose securities are exempt from registration under the Securities Act of 1933.

15. *"Investment adviser"* means a person that, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or the advisability of investing in, purchasing, or selling securities or that, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities. The term includes a financial planner or other person that, as an integral component of other financially related services, provides investment advice to others for compensation as part of a business or that holds itself out as providing investment advice to others for compensation. The term does not include any of the following:

a. An investment adviser representative.

b. A lawyer, accountant, engineer, or teacher whose performance of investment advice is solely incidental to the practice of the person's profession.

c. A broker-dealer or its agents whose performance of investment advice is solely incidental to the conduct of business as a broker-dealer and who does not receive special compensation for the investment advice.

d. A publisher of a bona fide newspaper, news magazine, or business or financial publication of general and regular circulation.

e. A federal covered investment adviser.

f. A bank or savings institution.

g. Any other person that is excluded by the Investment Advisers Act of 1940 from the definition of investment adviser.

h. Any other person excluded by rule adopted or order issued under this chapter.

16. *"Investment adviser representative"* means an individual employed by or associated with an investment adviser or federal covered investment adviser and who makes any recommendations or otherwise gives investment advice regarding securities, manages accounts or portfolios of clients, determines which recommendation or advice regarding securities should be given, provides investment advice or holds oneself out as providing investment advice, receives compensation to solicit, offer, or negotiate for the sale of or for selling investment advice, or supervises employees who perform any of the foregoing. The term does not include an individual who does or is any of the following:

a. Performs only clerical or ministerial acts.

b. Is an agent whose performance of investment advice is solely incidental to the individual acting as an agent and who does not receive special compensation for investment advisory services.

c. Is employed by or associated with a federal covered investment adviser, unless the individual has a "place of business" in this state as that term is defined by rule adopted by the administrator pursuant to chapter 17A and is any of the following:

(1) An "investment adviser representative" as that term is defined by rule adopted under section 203A of the Investment Advisers Act of 1940, 15 U.S.C. §80b-3a.

(2) Not a "supervised person" as that term is defined by rule adopted by the administrator pursuant to chapter 17A.

d. Is excluded by rule adopted or order issued under this chapter.

17. *"Issuer"* means a person that issues or proposes to issue a security, subject to all of the following:

a. The issuer of a voting trust certificate, collateral trust certificate, certificate of deposit for a security, or share in an investment company without a board of directors or individuals performing similar functions is the person performing the acts and assuming the duties of depositor or manager pursuant to the trust or other agreement or instrument under which the security is issued.

b. The issuer of an equipment trust certificate or similar security serving the same purpose is the person by which the property is or will be used or to which the property or equipment

is or will be leased or conditionally sold or that is otherwise contractually responsible for assuring payment of the certificate.

c. The issuer of a fractional undivided interest in an oil, gas, or other mineral lease or in payments out of production under a lease, right, or royalty is the owner of an interest in the lease or in payments out of production under a lease, right, or royalty, whether whole or fractional, that creates fractional interests for the purpose of sale.

d. With respect to a viatical settlement investment contract, *"issuer"* means a person involved in creating, transferring, or selling to an investor any interest in such a contract, including but not limited to fractional or pooled interests, but does not include an agent or a broker-dealer.

18. *"Nonissuer transaction"* or *"nonissuer distribution"* means a transaction or distribution not directly or indirectly for the benefit of the issuer.

19. *"Offer to purchase"* includes an attempt or offer to obtain, or solicitation of an offer to sell, a security or interest in a security for value. The term does not include a tender offer that is subject to section 14(d) of the Securities Exchange Act of 1934, 15 U.S.C. §78n(d).

20. *"Person"* means an individual; corporation; business trust; estate; trust; partnership; limited liability company; association; cooperative; joint venture; government; governmental subdivision, agency, or instrumentality; public corporation; or any other legal or commercial entity.

21. *"Place of business"* of a broker-dealer, an investment adviser, or a federal covered investment adviser means any of the following:

a. An office at which the broker-dealer, investment adviser, or federal covered investment adviser regularly provides brokerage or investment advice or solicits, meets with, or otherwise communicates with customers or clients.

b. Any other location that is held out to the general public as a location at which the broker-dealer, investment adviser, or federal covered investment adviser provides brokerage or investment advice or solicits, meets with, or otherwise communicates with customers or clients.

22. *"Predecessor chapter"* means this chapter as it existed on December 31, 2004.

23. *"Price amendment"* means the amendment to a registration statement filed under the Securities Act of 1933 or, if an amendment is not filed, the prospectus or prospectus supplement filed under the Securities Act of 1933 that includes a statement of the offering price, underwriting and selling discounts or commissions, amount of proceeds, conversion rates, call prices, and other matters dependent upon the offering price.

24. *"Principal place of business"* of a broker-dealer or an investment adviser means the executive office of the broker-dealer or investment adviser from which the officers, partners, or managers of the broker-dealer or investment adviser direct, control, and coordinate the activities of the broker-dealer or investment adviser.

25. *"Record"*, except in the phrases "of record", "official record", and "public record", means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

26. *"Sale"* includes every contract of sale, contract to sell, or disposition of, a security or interest in a security for value, and *"offer to sell"* includes every attempt or offer to dispose of, or solicitation of an offer to purchase, a security or interest in a security for value. Both terms include all of the following:

a. A security given or delivered with, or as a bonus on account of, a purchase of securities or any other thing constituting part of the subject of the purchase and having been offered and sold for value.

b. A gift of assessable stock involving an offer and sale.

c. A sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer and a sale or offer of a security that gives the holder a present or future right or privilege to convert the security into another security of the same or another issuer, including an offer of the other security.

27. *"Securities and exchange commission"* means the United States securities and exchange commission.

27A. *"Securities and regulated industries bureau"* means the securities and regulated industries bureau of the insurance division of the department of commerce.

28. *"Security"* means a note; stock; treasury stock; security future; bond; debenture; evidence of indebtedness; certificate of interest or participation in a profit-sharing agreement; collateral trust certificate; preorganization certificate or subscription; transferable share; investment contract; voting trust certificate; certificate of deposit for a security; fractional undivided interest in oil, gas, or other mineral rights; put, call, straddle, option, or privilege on a security, certificate of deposit, or group or index of securities, including an interest therein or based on the value thereof; put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency; or, in general, an interest or instrument commonly known as a "security"; or a certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing. All of the following shall apply to the term:

a. It includes both a certificated and an uncertificated security.

b. It does not include an insurance or endowment policy or annuity contract under which an insurance company promises to pay a fixed or variable sum of money either in a lump sum or periodically for life or other specified period.

c. It does not include any of the following:

(1) An interest in a contributory or noncontributory pension or welfare plan subject to the Employee Retirement Income Security Act of 1974.

(2) A certificate or tax credit issued or transferred pursuant to chapter 15E, subchapter VII.

d. It includes an investment in a common enterprise with the expectation of profits to be derived primarily from the efforts of a person other than the investor and a *"common enterprise"* means an enterprise in which the fortunes of the investor are interwoven with those of either the person offering the investment, a third party, or other investors.

e. It includes as a security an interest in a limited liability company or in a limited liability partnership or any class or series of such interest, including any fractional or other interest in such interest, provided *"security"* does not include an interest in a limited liability company or a limited liability partnership if the person claiming that such an interest is not a security proves that all of the members of the limited liability company or limited liability partnership are actively engaged in the management of the limited liability company or limited liability partnership; provided that the evidence that members vote or have the right to vote, or the right to information concerning the business and affairs of the limited liability company or limited liability partnership, or the right to participate in management, shall not establish, without more, that all members are actively engaged in the management of the limited liability company or limited liability partnership.

f. It includes a viatical settlement investment contract.

29. *"Self-regulatory organization"* means a national securities exchange registered under the Securities Exchange Act of 1934, a national securities association of broker-dealers registered under the Securities Exchange Act of 1934, a clearing agency registered under the Securities Exchange Act of 1934, or the municipal securities rulemaking board established under the Securities Exchange Act of 1934.

30. *"Sign"* means, with present intent to authenticate or adopt a record, to do any of the following:

a. To execute or adopt a tangible symbol.

b. To attach or logically associate with the record an electronic symbol, sound, or process.

31. *"State"* means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

31A. *"Viatical settlement investment contract"* means a contract entered into by a viatical settlement purchaser, to which the viator is not a party, to purchase a life insurance policy or

an interest in the death benefits of a life insurance policy, which contract is entered into for the purpose of deriving economic benefit.

[C31, 35, §8581-c3; C39, §**8581.03;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §502.3; C77, 79, 81, §502.102; 81 Acts, ch 163, §1; 82 Acts, ch 1100, §24]

83 Acts, ch 169, §2; 85 Acts, ch 155, §23; 87 Acts, ch 53, §1, 2; 87 Acts, ch 181, §1; 91 Acts, ch 40, §3 – 5; 91 Acts, ch 230, §4, 5; 94 Acts, ch 1031, §6; 96 Acts, ch 1025, §1; 97 Acts, ch 114, §1 – 4; 98 Acts, ch 1106, §1, 2, 24; 99 Acts, ch 134, §1 – 3; 2001 Acts, ch 16, §5, 37; 2001 Acts, ch 55, §31, 38; 2001 Acts, ch 118, §1, 2; 2002 Acts, ch 1111, §2, 3; 2003 Acts, ch 44, §89; 2003 Acts, ch 108, §130; 2004 Acts, ch 1161, §1, 68; 2005 Acts, ch 19, §74; 2005 Acts, ch 135, §115; 2006 Acts, ch 1117, §5, 6; 2013 Acts, ch 124, §3

Referred to in §252I.1, 421.17A, 422.10, 422.33, 508.31A, 508.32, 508.32A, 521A.14, 633D.2

502.103 References to federal statutes.

"*Securities Act of 1933*", 15 U.S.C. §77a et seq.; "*Securities Exchange Act of 1934*", 15 U.S.C. §78a et seq.; "*Public Utility Holding Company Act of 1935*", 15 U.S.C. §79 et seq.; "*Investment Company Act of 1940*", 15 U.S.C. §80a-1 et seq.; "*Investment Advisers Act of 1940*", 15 U.S.C. §80b-1 et seq.; "*Employee Retirement Income Security Act of 1974*", 29 U.S.C. §1001 et seq.; "*National Housing Act*", 12 U.S.C. §1701; "*Commodity Exchange Act*", 7 U.S.C. §1 et seq.; "*Internal Revenue Code*", 26 U.S.C. §1 et seq.; "*Securities Investor Protection Act of 1970*", 15 U.S.C. §78aaa et seq.; "*Securities Litigation Uniform Standards Act of 1998*", 112 Stat. 3227; "*Small Business Investment Act of 1958*", 15 U.S.C. §661 et seq.; "*Electronic Signatures in Global and National Commerce Act*", 15 U.S.C. §7001 et seq.; and "*Dodd-Frank Wall Street Reform and Consumer Protection Act*", Pub. L. No. 111-203 mean those federal statutes and the rules and regulations adopted under those federal statutes, as in effect on January 1, 2015.

2004 Acts, ch 1161, §2, 68; 2015 Acts, ch 128, §2, 50, 51

502.104 References to federal agencies.

A reference in this chapter to an agency or department of the United States is also a reference to a successor agency or department.

2004 Acts, ch 1161, §3, 68

502.105 Electronic records and signatures.

This chapter modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, but does not modify, limit, or supersede §101(c) of that Act, 15 U.S.C. §7001(c), or authorize electronic delivery of any of the notices described in section 103(b) of that Act, 15 U.S.C. §7003(b). This chapter authorizes the filing of records and signatures, when specified by provisions of this chapter or by a rule adopted or order issued under this chapter, in a manner consistent with section 104(a) of that Act, 15 U.S.C. §7004(a).

2004 Acts, ch 1161, §4, 68

ARTICLE 2

EXEMPTIONS FROM REGISTRATION OF SECURITIES

502.201 Exempt securities.

All of the following securities are exempt from the requirements of sections 502.301 through 502.306 and 502.504:

1. *United States government and municipal securities.* A security, including a revenue obligation or a separate security as defined in rule 131, 17 C.F.R. §230.131, adopted by the securities and exchange commission under the Securities Act of 1933, issued, insured, or guaranteed by the United States; by a state; by a political subdivision of a state; by a public authority, agency, or instrumentality of one or more states; by a political subdivision of one or more states; or by a person controlled or supervised by and acting as an instrumentality of the United States under authority granted by the Congress; or a certificate of deposit for any of the foregoing.

2. *Foreign government securities.* A security issued, insured, or guaranteed by a foreign government with which the United States maintains diplomatic relations, or any of its political subdivisions, if the security is recognized as a valid obligation by the issuer, insurer, or guarantor.

3. *Depository institution and international banking institution securities.* A security issued by and representing or that will represent an interest in or a direct obligation of, or be guaranteed by any of the following:

a. An international banking institution.

b. A banking institution organized under the laws of the United States; a member bank of the United States federal reserve system; or a depository institution, a substantial portion of the business of which consists or will consist of receiving deposits or share accounts that are insured to the maximum amount authorized by statute by the federal deposit insurance corporation, the national credit union share insurance fund, or a successor authorized by federal law or exercising fiduciary powers that are similar to those permitted for national banks under the authority of the comptroller of the currency pursuant to Pub. L. No. 87-722, §1, 12 U.S.C. §92a.

c. Any other depository institution, unless by rule or order the administrator proceeds under section 502.204.

4. *Insurance company securities.* A security issued by and representing an interest in, or a debt of, or insured or guaranteed by, an insurance company authorized to do business in this state.

5. *Common carrier and public utility securities.* A security issued or guaranteed by a railroad, other common carrier, public utility, or public utility holding company that is any of the following:

a. Regulated in respect to its rates and charges by the United States or a state.

b. Regulated in respect to the issuance or guarantee of the security by the United States, a state, Canada, or a Canadian province or territory.

c. A public utility holding company registered under the Public Utility Holding Company Act of 1935 or a subsidiary of such a registered holding company within the meaning of that Act.

6. *Certain options and rights.* A federal covered security specified in section 18(b)(1) of the Securities Act of 1933, 15 U.S.C. §77r(b)(1), or by rule adopted under that provision or a security listed or approved for listing on another securities market specified by rule under this chapter; a put or a call option contract; a warrant; a subscription right on or with respect to such securities; or an option or similar derivative security on a security or an index of securities or foreign currencies issued by a clearing agency registered under the Securities Exchange Act of 1934 and listed or designated for trading on a national securities exchange, a facility of a national securities exchange, or a facility of a national securities association registered under the Securities Exchange Act of 1934 or an offer or sale, of the underlying security in connection with the offer, sale, or exercise of an option or other security that was exempt when the option or other security was written or issued; or an option or a derivative security designated by the securities and exchange commission under section 9(b) of the Securities Exchange Act of 1934, 15 U.S.C. §78i(b).

7. *Nonprofit securities.* A security issued by a person organized and operated exclusively for religious, educational, benevolent, fraternal, charitable, social, athletic, or reformatory purposes, or as a chamber of commerce, and not for pecuniary profit, no part of the net earnings of which inures to the benefit of a private stockholder or other person, or a security of a company that is excluded from the definition of an investment company under section 3(c)(10)(B) of the Investment Company Act of 1940, 15 U.S.C. §80a-3(c)(10)(B); except that with respect to the offer or sale of a note, bond, debenture, or other evidence of indebtedness issued by such a person, a rule may be adopted under this chapter limiting the availability of this exemption by classifying securities, persons, and transactions, imposing different requirements for different classes, specifying with respect to paragraph *"b"* the scope of the exemption and the grounds for denial or suspension, and requiring an issuer to do any of the following:

a. File a notice specifying the material terms of the proposed offer or sale and copies of any

proposed sales and advertising literature to be used and provide that the exemption becomes effective if the administrator does not disallow the exemption within the period established by the rule.

b. File a request for exemption authorization for which a rule under this chapter may specify the scope of the exemption, the requirement of an offering statement, the filing of sales and advertising literature, the filing of consent to service of process complying with section 502.611, and grounds for denial or suspension of the exemption.

c. Register under section 502.304.

8. Reserved.

8A. *Cooperative associations.* A stock or similar security, including a patronage refund certificate, issued by any of the following:

a. A cooperative housing corporation described in paragraph 1 of subsection *"b"* of section 216 of the Internal Revenue Code, if its activities are limited to the ownership, leasing, management, or construction of residential properties for its members, and activities incidental thereto.

b. A mutual or cooperative organization, including a cooperative association organized in good faith under and for any of the purposes enumerated in chapter 497, 498, 499, 501, or 501A, that deals in commodities or supplies goods or services in transactions primarily with and for the benefit of its members, if all of the following apply:

(1) Such stock or similar security is part of a class issuable only to persons who deal in commodities with, or obtain goods or services from, the issuer.

(2) Such stock or similar security is transferable only to the issuer or a successor in interest of the transferor who qualifies for membership in such mutual or cooperative organization.

(3) No dividends other than patronage refunds are payable to holders of such stock or similar security except on a complete or partial liquidation.

8B. *Agricultural cooperative associations.* A security issued by an agricultural cooperative association, provided all of the following conditions are satisfied:

a. A commission or remuneration must not be paid or provided either directly or indirectly for the sale, except as permitted by the administrator by rule or by order issued upon written application showing good cause for allowance of a commission or other remuneration.

b. If the securities to be issued are notes or other evidences of indebtedness and are issued after July 1, 1991, the issuer must file with the administrator a written notice specifying the name of the issuer, the date of the issuer's organization, the name of a contact person, a copy of the issuer's current audited financial statement, the types of security or securities to be offered, and the class of persons to whom the offer will be made in accordance with such rules as prescribed by the administrator.

9. *Equipment trust certificate.* An equipment trust certificate with respect to equipment leased or conditionally sold to a person, if any security issued by the person would be exempt under this section or would be a federal covered security under section 18(b)(1) of the Securities Act of 1933, 15 U.S.C. §77r(b)(1).

9A. *Economic development corporations.* Any security issued by a corporation formed under chapter 496B.

9B. *Iowa finance authority.* Any security issued by the Iowa finance authority under chapter 16, subchapter VIII.

9C. *Membership campgrounds.* Any security representing a membership camping contract which is registered pursuant to section 557B.2 or exempt under section 557B.4.

9D. *Time-shares.* Any security representing a time-share interval as defined in section 557A.2.

9E. *Viatical settlement investment contracts.* A viatical settlement investment contract, or fractional or pooled interest in such contract, provided any of the following conditions are satisfied:

a. The assignment, transfer, sale, devise, or bequest of a death benefit of a life insurance policy or contract is made by the viator to an insurance company as provided under Title XIII, subtitle 1.

b. The assignment, transfer, sale, devise, or bequest of a life insurance policy or contract,

for any value less than the expected death benefit, is made by the viator to a family member or other person who enters into no more than one such agreement in a calendar year.

c. A life insurance policy or contract is assigned to a bank, savings bank, savings and loan association, credit union, or other licensed lending institution as collateral for a loan.

d. Accelerated benefits are exercised as provided in the life insurance policy or contract and consistent with applicable law.

e. The assignment, transfer, sale, devise, or bequest of the death benefit or ownership of a life insurance policy or contract made by the policyholder or contract owner to a viatical settlement provider, if the viatical settlement transaction complies with chapter 508E, including rules adopted pursuant to that chapter.

[C31, 35, §8581-c6; C39, §**8581.06;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §502.6; C77, 79, 81, §502.201]

97 Acts, ch 114, §5; 2004 Acts, ch 1161, §5, 68; 2006 Acts, ch 1117, §7; 2008 Acts, ch 1123, §1; 2013 Acts, ch 100, §26, 27; 2014 Acts, ch 1080, §93, 98

Referred to in §502.203, 502.204, 502.301, 502.302, 502.504, 557B.14

502.202 Exempt transactions.

The following transactions are exempt from the requirements of sections 502.301 through 502.306 and 502.504:

1. *Isolated nonissuer transactions.* An isolated nonissuer transaction, whether effected by or through a broker-dealer or not.

2. *Nonissuer transactions in specified outstanding securities.* A nonissuer transaction by or through a broker-dealer registered, or exempt from registration, under this chapter, and a resale transaction by a sponsor of a unit investment trust registered under the Investment Company Act of 1940, provided that for either transaction, the security is of a class that has been outstanding in the hands of the public for at least ninety days, if, at the date of the transaction, all of the following apply:

a. The issuer of the security is engaged in business, the issuer is not in the organizational stage or in bankruptcy or receivership, and the issuer is not a blank check, blind pool, or shell company that has no specific business plan or purpose or has indicated that its primary business plan is to engage in a merger or combination of the business with, or an acquisition of, an unidentified person.

b. The security is sold at a price reasonably related to its current market price.

c. The security does not constitute the whole or part of an unsold allotment to, or a subscription or participation by, the broker-dealer as an underwriter of the security or a redistribution.

d. A nationally recognized securities manual or its electronic equivalent designated by rule adopted or order issued under this chapter or a record filed with the securities and exchange commission that is publicly available contains all of the following:

(1) A description of the business and operations of the issuer.

(2) The names of the issuer's executive officers and the names of the issuer's directors, if any.

(3) An audited balance sheet of the issuer as of a date within eighteen months before the date of the transaction or, in the case of a reorganization or merger when the parties to the reorganization or merger each had an audited balance sheet, and a pro forma balance sheet for the combined organization.

(4) An audited income statement for each of the issuer's two immediately previous fiscal years or for the period of existence of the issuer, whichever is shorter, or, in the case of a reorganization or merger when each party to the reorganization or merger had audited income statements, and a pro forma income statement.

e. Any one of the following requirements is met:

(1) The issuer of the security has a class of equity securities listed on a national securities exchange registered under section 6 of the Securities Exchange Act of 1934.

(2) The issuer of the security is a unit investment trust registered under the Investment Company Act of 1940.

(3) The issuer of the security, including its predecessors, has been engaged in continuous business for at least three years.

(4) The issuer of the security has total assets of at least two million dollars based on an audited balance sheet as of a date within eighteen months before the date of the transaction or, in the case of a reorganization or merger when the parties to the reorganization or merger each had such an audited balance sheet, and a pro forma balance sheet for the combined organization.

3. *Nonissuer transactions in specified foreign transactions.* A nonissuer transaction by or through a broker-dealer registered or exempt from registration under this chapter in a security of a foreign issuer that is a margin security defined in regulations or rules adopted by the board of governors of the United States federal reserve system.

4. *Nonissuer transactions in securities subject to securities exchange act reporting.* A nonissuer transaction by or through a broker-dealer registered or exempt from registration under this chapter in an outstanding security if the guarantor of the security files reports with the securities and exchange commission under the reporting requirements of section 13 or 15(d) of the Securities Exchange Act of 1934, 15 U.S.C. §78m or 78o(d).

5. *Nonissuer transactions in specified fixed income securities.* A nonissuer transaction by or through a broker-dealer registered or exempt from registration under this chapter in a security if any of the following apply:

a. It is rated at the time of the transaction by a nationally recognized statistical rating organization in one of its four highest rating categories.

b. It has a fixed maturity or a fixed interest or dividend, if all of the following apply:

(1) A default has not occurred during the current fiscal year or within the three previous fiscal years or during the existence of the issuer and any predecessor if less than three fiscal years, in the payment of principal, interest, or dividends on the security.

(2) The issuer is engaged in business, is not in the organizational stage or in bankruptcy or receivership, and is not and has not been within the previous twelve months a blank check, blind pool, or shell company that has no specific business plan or purpose or has indicated that its primary business plan is to engage in a merger or combination of the business with, or an acquisition of, an unidentified person.

6. *Unsolicited brokerage transactions.* A nonissuer transaction by or through a broker-dealer registered or exempt from registration under this chapter effecting an unsolicited order or offer to purchase.

7. *Nonissuer transaction by pledgees.* A nonissuer transaction executed by a bona fide pledgee without the purpose of evading this chapter.

8. *Nonissuer transactions with federal covered investment advisers.* A nonissuer transaction by a federal covered investment adviser with investments under management in excess of one hundred million dollars acting in the exercise of discretionary authority in a signed record for the account of others.

9. *Specified exchange transactions.* A transaction in a security, whether or not the security or transaction is otherwise exempt, in exchange for one or more bona fide outstanding securities, claims, or property interests, or partly in such exchange and partly for cash, if the terms and conditions of the issuance and exchange or the delivery and exchange and the fairness of the terms and conditions have been approved after a hearing by a court; by an official or agency of the United States; by a state securities, banking, or insurance agency; or by any other government authority expressly authorized by law to grant such approvals.

10. *Underwriter transactions.* A transaction between the issuer or other person on whose behalf the offering is made and an underwriter, or among underwriters.

11. *Unit secured transactions.* A transaction in a note, bond, debenture, or other evidence of indebtedness secured by a mortgage or other security agreement if all of the following apply:

a. The note, bond, debenture, or other evidence of indebtedness is offered and sold with the mortgage or other security agreement as a unit.

b. A general solicitation or general advertisement of the transaction is not made.

c. A commission or other remuneration is not paid or given, directly or indirectly, to a person not registered under this chapter as a broker-dealer or as an agent.

12. *Bankruptcy, guardian, or conservator transactions.* A transaction by an executor, administrator of an estate, sheriff, marshal, receiver, trustee in bankruptcy, guardian, or conservator.

13. *Transactions with specified investors.* A sale or offer to sell to any of the following:

a. An institutional investor.

b. A federal covered investment adviser.

c. Any other person exempted by rule adopted or order issued under this chapter.

d. A person or class of persons who are granted this exemption by the administrator. The administrator, by rule or order, may grant this exemption to a person or class of persons based upon the factors of financial sophistication, net worth, and the amount of assets under investment.

14. *Limited offering transactions.* A sale or an offer to sell securities by or on behalf of an issuer, if the transaction is part of a single issue in which all of the following apply:

a. Not more than thirty-five purchasers are present in this state during any twelve consecutive months, other than those designated in subsection 13.

b. A general solicitation or general advertising is not made in connection with the offer to sell or sale of the securities.

c. A commission or other remuneration is not paid or given, directly or indirectly, to a person other than a broker-dealer registered under this chapter or an agent registered under this chapter for soliciting a prospective purchaser in this state.

d. The issuer reasonably believes that all the purchasers in this state, other than those designated in subsection 13, are purchasing for investment.

15. *Transactions with existing security holders.* A transaction under an offer to existing security holders of the issuer, including persons that at the date of the transaction are holders of convertible securities, options, or warrants, if a commission or other remuneration, other than a standby commission, is not paid or given, directly or indirectly, for soliciting a security holder in this state.

16. *Offerings registered under this chapter and the Securities Act of 1933.* An offer to sell, but not a sale, of a security not exempt from registration under the Securities Act of 1933 if all of the following apply:

a. A registration or offering statement or similar record as required under the Securities Act of 1933 has been filed, but is not effective, or the offer is made in compliance with rule 165 adopted under the Securities Act of 1933, 17 C.F.R. §230.165.

b. A stop order of which the offeror is aware has not been issued against the offeror by the administrator or the securities and exchange commission, and an audit, inspection, or proceeding that is public and that may culminate in a stop order is not known by the offeror to be pending.

17. *Offerings when registration has been filed, but is not effective under this chapter and exempt from the Securities Act of 1933.* An offer to sell, but not a sale, of a security exempt from registration under the Securities Act of 1933 if all of the following apply:

a. A registration statement has been filed under this chapter, but is not effective.

b. A solicitation of interest is provided in a record to offerees in compliance with a rule adopted by the administrator under this chapter.

c. A stop order of which the offeror is aware has not been issued by the administrator under this chapter and an audit, inspection, or proceeding that may culminate in a stop order is not known by the offeror to be pending.

18. *Control transactions.* A transaction involving the distribution of the securities of an issuer to the security holders of another person in connection with a merger, consolidation, exchange of securities, sale of assets, or other reorganization to which the issuer, or its parent or subsidiary and the other person, or its parent or subsidiary, are parties.

19. *Rescission offers.* A rescission offer, sale, or purchase under section 502.510.

20. *Out-of-state offers or sales.* An offer or sale of a security to a person not a resident of this state and not present in this state if the offer or sale does not constitute a violation of

the laws of the state or foreign jurisdiction in which the offeree or purchaser is present and is not part of an unlawful plan or scheme to evade this chapter.

21. *Employee benefit plans.* Employees' stock purchase, savings, option, profit-sharing, pension, or similar employees' benefit plan, including any securities, plan interests, and guarantees issued under a compensatory benefit plan or compensation contract, contained in a record, established by the issuer, its parents, its majority-owned subsidiaries, or the majority-owned subsidiaries of the issuer's parent for the participation of their employees including offers or sales of such securities to any of the following:

a. Directors; general partners; trustees, if the issuer is a business trust; officers; consultants; and advisers.

b. Family members who acquire such securities from those persons through gifts or domestic relations orders.

c. Former employees, directors, general partners, trustees, officers, consultants, and advisers if those individuals were employed by or providing services to the issuer when the securities were offered.

d. Insurance agents who are exclusive insurance agents of the issuer, or the issuer's subsidiaries or parents, or who derive more than fifty percent of their annual income from those organizations.

22. *Specified dividends and tender offers and judicially recognized reorganizations.* A transaction involving any of the following:

a. A stock dividend or equivalent equity distribution, whether the corporation or other business organization distributing the dividend or equivalent equity distribution is the issuer or not, if nothing of value is given by stockholders or other equity holders for the dividend or equivalent equity distribution other than the surrender of a right to a cash or property dividend if each stockholder or other equity holder may elect to take the dividend or equivalent equity distribution in cash, property, or stock.

b. An act incident to a judicially approved reorganization in which a security is issued in exchange for one or more outstanding securities, claims, or property interests, or partly in such exchange and partly for cash.

c. The solicitation of tenders of securities by an offeror in a tender offer in compliance with rule 162 adopted under the Securities Act of 1933, 17 C.F.R. §230.162.

23. *Nonissuer transactions involving specified foreign issuer securities traded on designated security exchanges.* A nonissuer transaction in an outstanding security by or through a broker-dealer registered or exempt from registration under this chapter, if the issuer is a reporting issuer in a foreign jurisdiction designated by this subsection or by rule adopted or order issued under this chapter; has been subject to continuous reporting requirements in the foreign jurisdiction for not less than one hundred eighty days before the transaction; and the security is listed on the foreign jurisdiction's securities exchange that has been designated by this subsection or by rule adopted or order issued under this chapter, or is a security of the same issuer that is of senior or substantially equal rank to the listed security or is a warrant or right to purchase or subscribe to any of the foregoing. For purposes of this subsection, Canada, together with its provinces and territories, is a designated foreign jurisdiction and the Toronto stock exchange, inc., is a designated securities exchange. After an administrative hearing in compliance with chapter 17A, the administrator, by rule adopted or order issued under this chapter, may revoke the designation of a securities exchange under this subsection, if the administrator finds that revocation is necessary or appropriate in the public interest and for the protection of investors.

24. *Intrastate crowdfunding.*

a. Definitions. As used in this subsection, unless the context otherwise requires:

(1) *"Intermediary"* means any of the following:

(a) A broker-dealer that is subject to the registration requirements of section 502.401 and that facilitates the offer and sale of securities by issuers to investors through an internet-based system that is open to and accessible by the general public.

(b) A business entity that is all of the following:

(i) A funding portal that is registered with the securities and exchange commission pursuant to the Securities Act of 1933, including as provided in 15 U.S.C. §77d-1.

(ii) A member of the financial industry regulatory authority, inc. pursuant to the Securities Exchange Act of 1934, including as provided in 15 U.S.C. §§78c and 78o-3, and 17 C.F.R. §227.400.

(c) A business entity that qualifies as an Iowa crowdfunding portal by meeting all of the following requirements:

(i) Is registered with the administrator as required by the administrator.

(ii) Is engaged in intrastate crowdfunding offers and sales of exempt securities in this state through an internet site.

(iii) Does not operate or facilitate a secondary market in securities.

(2) "*Intrastate crowdfunding*" means the offer or sale of a security by an issuer in a transaction that is available for purchase only by an Iowa resident or a business entity having its principal place of business in this state.

b. Exemption not available. The exemption in this subsection is not available to any of the following:

(1) A foreign issuer.

(2) An investment company, as defined in section 3 of the federal Investment Company Act of 1940.

(3) A development stage company that either has no specific business plan or purpose or has indicated that the company's business plan is to engage in a merger or acquisition with an unidentified company or companies, or other entity or person.

(4) A company with a class of securities registered under the federal Securities Exchange Act of 1934.

(5) Any person who is subject to a disqualifying event as described in the regulations adopted in accordance with section 926 of the federal Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, or in rules adopted by the administrator pursuant to chapter 17A.

c. Aggregate sales limit. The aggregate amount of securities sold to all investors by the issuer during the twelve-month period preceding the date of the offer or sale, including any amount sold in reliance upon the exemption in this subsection, shall not exceed five million dollars other than either of the following:

(1) Securities sold to Iowa resident institutional investors.

(2) Securities sold to the Iowa resident issuer's management.

d. Individual sales limit. The aggregate amount of securities sold to an investor by the issuer during the twelve-month period preceding the date of the offer or sale, including any amount sold in reliance upon the exemption in this subsection, shall not exceed five thousand dollars unless the investor is an accredited investor who resides in Iowa. For purposes of this individual sales limit, the following investors shall be treated as one investor:

(1) A relative, spouse, or relative of the spouse of an investor who has the same principal residence as the investor.

(2) A trust or estate in which an investor and any related person collectively have more than fifty percent of the beneficial interest, excluding contingent interests.

(3) A corporation or other organization of which an investor and any related person collectively are beneficial owners of more than fifty percent of the equity securities, excluding directors' qualifying shares, or equity interests.

e. Use of an intermediary. All offers and sales of securities made in reliance upon the exemption in this subsection shall be made through an intermediary's internet site.

f. Notice to administrator. Prior to the offer of any security in this state made in reliance upon the exemption in this subsection, the issuer shall file a notice with the administrator in a form and format approved by the administrator, and including the filing fee specified by rule, if any.

g. Rulemaking. The administrator shall adopt all rules necessary to implement the exemption in this subsection including but not limited to all of the following:

(1) Mandatory disclosures.

(2) Restrictions on advertising and communications.

(3) Target amount, offering period, and escrow requirements.

(4) Use and compensation of promoters.

(5) Restrictions on the sale of securities purchased under the exemption in this subsection.
(6) Sales reports.
(7) Limitations on the offering price.
(8) Duties of an intermediary which shall include providing the administrator with continuous investor-level access to the intermediary's internet site.
(9) Records maintenance.
(10) Duties and registration requirements for internet site operators.

[SS15, §1920-u1; C24, 27, §8526; C31, 35, §8581-c4; C39, §**8581.04;** C46, 50, 54, 58, 62, §502.4; C66, 71, 73, 75, §496B.18, 502.4; C77, 79, §496B.18, 502.202; C81, §502.202]

83 Acts, ch 95, §1, 2; 83 Acts, ch 169, §3; 87 Acts, ch 181, §2; 88 Acts, ch 1020, §1; 91 Acts, ch 40, §6 – 9; 91 Acts, ch 230, §6, 7; 96 Acts, ch 1025, §2, 3; 97 Acts, ch 114, §6; 98 Acts, ch 1119, §2; 99 Acts, ch 134, §4; 99 Acts, ch 166, §1; 2000 Acts, ch 1147, §34; 2003 Acts, ch 44, §90; 2004 Acts, ch 1161, §6, 68; 2008 Acts, ch 1123, §2; 2015 Acts, ch 128, §3, 49; 2017 Acts, ch 54, §76; 2018 Acts, ch 1074, §1 – 3
Referred to in §502.203, 502.204, 502.301, 502.302, 502.304, 502.402, 502.504
Subsection 2, paragraph e, subparagraph (1) amended
Subsection 24, paragraph a amended
Subsection 24, paragraph c amended

502.203 Additional exemptions and waivers.

A rule adopted or order issued under this chapter may exempt a security, transaction, or offer; a rule under this chapter may exempt a class of securities, transactions, or offers from any or all of the requirements of sections 502.301 through 502.306 and 502.504; and an order under this chapter may waive, in whole or in part, any or all of the conditions for an exemption or offer under sections 502.201 and 502.202.

[SS15, §1920-u1, -u13; C24, 27, §8526, 8554; C31, 35, §8581-c5; C39, §**8581.05;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §502.5; C77, 79, 81, §502.203]

83 Acts, ch 169, §4 – 7; 91 Acts, ch 40, §10 – 14; 96 Acts, ch 1025, §4, 5; 2001 Acts, ch 118, §3; 2004 Acts, ch 1161, §7, 68
Referred to in §502.204, 502.301, 502.302, 502.504, 502.608

502.204 Denial, suspension, revocation, condition, or limitation of exemptions.

1. *Enforcement-related powers.* Except with respect to a federal covered security or a transaction involving a federal covered security, an order under this chapter may deny, suspend application of, condition, limit, or revoke an exemption created under section 502.201, subsection 3, paragraph "c", or subsection 7, 8A, or 8B, or section 502.202, or an exemption or waiver created under section 502.203 with respect to a specific security, transaction, or offer. An order under this section may be issued only pursuant to the procedures in section 502.306, subsection 4, or section 502.604, and only prospectively.

2. *Knowledge of order required.* A person does not violate section 502.301, 502.303 through 502.306, 502.504, or 502.510 by an offer to sell, offer to purchase, sale, or purchase effected after the entry of an order issued under this section if the person did not know, and in the exercise of reasonable care could not have known, of the order.

[C31, 35, §8581-c4; C39, §**8581.04;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §502.4(5); C77, 79, 81, §502.204]

2004 Acts, ch 1161, §8, 68; 2005 Acts, ch 19, §75
Referred to in §502.201, 502.604

502.205 through 502.207A Repealed by 2004 Acts, ch 1161, §63, 68. See §502.302 – 502.304A, 502.503.

502.207B Legislative review and oversight. Repealed by 2001 Acts, ch 118, §58.

502.208 and 502.209 Repealed by 2004 Acts, ch 1161, §63, 68. See §502.305, 502.306.

502.210 Limits on securities registered by qualification. Repealed by 91 Acts, ch 40, §36.

502.211 through 502.218 Repealed by 2004 Acts, ch 1161, §63, 68. See §502.321B – 502.321I.

ARTICLE 3

REGISTRATION OF SECURITIES AND NOTICE FILING OF FEDERAL COVERED SECURITIES

502.301 Securities registration requirement.

It is unlawful for a person to offer or sell a security in this state unless one of the following applies:

1. The security is a federal covered security.
2. The security, transaction, or offer is exempted from registration under sections 502.201 through 502.203.
3. The security is registered under this chapter.

[SS15, §1920-u15; C24, 27, §8561, 8563; C31, 35, §8581-c11; C39, §**8581.11;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §502.11; C77, 79, 81, §502.301]

83 Acts, ch 169, §9; 91 Acts, ch 40, §19; 96 Acts, ch 1025, §7; 98 Acts, ch 1106, §3, 4, 24; 2004 Acts, ch 1161, §9, 68

Referred to in §502.201, 502.202, 502.203, 502.204, 502.509, 502.607, 502.608, 502.610, 502.701, 536A.22

502.302 Notice filing.

1. *Required filing of records.* With respect to a federal covered security, as defined in section 18(b)(2) of the Securities Act of 1933, 15 U.S.C. §77r(b)(2), that is not otherwise exempt under sections 502.201 through 502.203, a rule adopted or order issued under this chapter may require the filing of any or all of the following records:

a. Before the initial offer of a federal covered security in this state, all records that are part of a federal registration statement filed with the securities and exchange commission under the Securities Act of 1933 and a consent to service of process complying with section 502.611 signed by the issuer.

(1) A person who is the issuer of a federal covered security under section 18(b)(2) of the Securities Act of 1933 shall initially make a notice filing and annually renew a notice filing in this state.

(2) A notice filer shall pay a filing fee in the amount of four hundred dollars when the notice is filed.

b. After the initial offer of the federal covered security in this state, all records that are part of an amendment to a federal registration statement filed with the securities and exchange commission under the Securities Act of 1933.

2. *Notice filing effectiveness and renewal.* A notice filing under subsection 1 is effective for one year commencing on the later of the notice filing or the effectiveness of the offering filed with the securities and exchange commission. On or before expiration, the issuer may renew a notice filing by filing a copy of those records filed by the issuer with the securities and exchange commission that are required by rule or order under this chapter to be filed and by paying a renewal fee of four hundred dollars. A previously filed consent to service of process complying with section 502.611 may be incorporated by reference in a renewal. A renewed notice filing becomes effective upon the expiration of the filing being renewed.

3. *Notice filings for federal covered securities under section 18(b)(4)(F).* With respect to a security that is a federal covered security under section 18(b)(4)(F) of the Securities Act of 1933, 15 U.S.C. §77r(b)(4)(F), a rule under this chapter may require a notice filing by or on behalf of an issuer to include a copy of form D, including the appendix, as promulgated by the securities and exchange commission, and a consent to service of process complying with section 502.611 signed by the issuer not later than fifteen days after the first sale of the federal covered security in this state and the payment of a fee of one hundred dollars; and the payment of a fee of two hundred fifty dollars for any late filing.

4. *Stop orders.* Except with respect to a federal security under section 18(b)(1) of the

Securities Act of 1933, 15 U.S.C. §77r(b)(1), if the administrator finds that there is a failure to comply with a notice or fee requirement of this section, the administrator may issue a stop order suspending the offer and sale of a federal covered security in this state. If the deficiency is corrected, the stop order is void as of the time of its issuance and no penalty may be imposed by the administrator.

5. *Deposit of fees.* Fees collected under this section shall be deposited as provided in section 505.7.

[SS15, §1920-u15, -u16; C24, 27, §8561, 8563, 8571; C31, 35, §8581-c11, -c14; C39, §**8581.11, 8581.18;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §502.11, 502.18; C77, 79, 81, §502.302; 82 Acts, ch 1003, §2]

83 Acts, ch 169, §10, 18; 91 Acts, ch 40, §20 – 22; 94 Acts, ch 1031, §14; 96 Acts, ch 1025, §8; 97 Acts, ch 114, §10; 98 Acts, ch 1106, §5, 24; 99 Acts, ch 166, §2; 2001 Acts, ch 118, §5; 2004 Acts, ch 1161, §10, 68; 2009 Acts, ch 181, §57; 2015 Acts, ch 128, §4 – 7, 50, 51; 2018 Acts, ch 1074, §4

Referred to in §502.201, 502.202, 502.203, 502.305, 502.307, 502.610
Subsection 3 amended

502.303 Securities registration by coordination.

1. *Registration permitted.*

a. A security for which a registration statement has been filed under the Securities Act of 1933 in connection with the same offering may be registered by coordination under this section.

b. A proposed sale pursuant to the exemption contained in "Regulation A" as adopted under section 3(b) of the Securities Act of 1933 where such registration statement has not become effective or notification of proposed sale has not been qualified may be registered by coordination under this section.

2. *Required records.* A registration statement and accompanying records under this section must contain or be accompanied by all of the following records in addition to the information specified in section 502.305 and a consent to service of process complying with section 502.611:

a. A copy of the latest form of prospectus filed under the Securities Act of 1933.

b. A copy of the articles of incorporation and bylaws or their substantial equivalents currently in effect; a copy of any agreement with or among underwriters; a copy of any indenture or other instrument governing the issuance of the security to be registered; and a specimen, copy, or description of the security that is required by rule adopted or order issued under this chapter.

c. Copies of any other information or any other records filed by the issuer under the Securities Act of 1933 requested by the administrator.

d. An undertaking to forward each amendment to the federal prospectus, other than an amendment that delays the effective date of the registration statement, promptly after it is filed with the securities and exchange commission.

3. *Conditions for effectiveness of registration statement.* A registration statement under this section becomes effective simultaneously with or subsequent to the federal registration statement when all the following conditions are satisfied:

a. A stop order under subsection 4 or section 502.306 or issued by the securities and exchange commission is not in effect and a proceeding is not pending against the issuer under section 502.306.

b. The registration statement has been on file for at least twenty days or a shorter period provided by rule adopted or order issued under this chapter.

4. *Notice of federal registration statement effectiveness.* The registrant shall promptly notify the administrator in a record of the date when the federal registration statement becomes effective and the content of any price amendment and shall promptly file a record containing the price amendment. If the notice is not timely received, the administrator may issue a stop order, without prior notice or hearing, retroactively denying effectiveness to the registration statement or suspending its effectiveness until in compliance with this section. The administrator shall promptly notify the registrant of an order by telegram, telephone, or

electronic means and promptly confirm this notice by a record. If the registrant subsequently complies with the notice requirements of this section, the stop order is void as of the date of its issuance.

5. *Effectiveness of registration statement.* If the federal registration statement becomes effective before each of the conditions in this section is satisfied or is waived by the administrator, the registration statement is automatically effective under this chapter when all the conditions are satisfied or waived. If the registrant notifies the administrator of the date when the federal registration statement is expected to become effective, the administrator shall promptly notify the registrant by telegram, telephone, or electronic means and promptly confirm this notice by a record, indicating whether all the conditions are satisfied or waived and whether the administrator intends the institution of a proceeding under section 502.306. The notice by the administrator does not preclude the institution of such a proceeding.

[C31, §8581-c11, -c12; C35, §8581-c11, -c12, -f3; C39, §**8581.11, 8581.12, 8581.15;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §502.11, 502.12, 502.15; C77, 79, 81, §502.303]

83 Acts, ch 169, §11; 91 Acts, ch 40, §23; 97 Acts, ch 114, §11; 98 Acts, ch 1106, §6, 24; 2004 Acts, ch 1161, §11, 68

Referred to in §502.201, 502.202, 502.203, 502.204, 502.305, 502.306, 502.307, 502.607

502.304 Securities registration by qualification.

1. *Registration permitted.* A security may be registered by qualification under this section.

2. *Required records.* A registration statement under this section must contain the information or records specified in section 502.305, a consent to service of process complying with section 502.611, and, if required by rule adopted under this chapter, all of the following information or records:

a. With respect to the issuer and any significant subsidiary, its name, address, and form of organization; the state or foreign jurisdiction and date of its organization; the general character and location of its business; a description of its physical properties and equipment; and a statement of the general competitive conditions in the industry or business in which it is or will be engaged.

b. With respect to each director and officer of the issuer, and other person having a similar status or performing similar functions, the person's name, address, and principal occupation for the previous five years; the amount of securities of the issuer held by the person as of the thirtieth day before the filing of the registration statement; the amount of the securities covered by the registration statement to which the person has indicated an intention to subscribe; and a description of any material interest of the person in any material transaction with the issuer or a significant subsidiary effected within the previous three years or proposed to be effected.

c. With respect to persons covered by paragraph *"b"*, the aggregate sum of the remuneration paid to those persons during the previous twelve months and estimated to be paid during the next twelve months, directly or indirectly, by the issuer, and all predecessors, parents, subsidiaries, and affiliates of the issuer.

d. With respect to a person owning of record or owning beneficially, if known, ten percent or more of the outstanding shares of any class of equity security of the issuer, the information specified in paragraph *"b"* other than the person's occupation.

e. With respect to a promoter, if the issuer was organized within the previous three years, the information or records specified in paragraph *"b"*, any amount paid to the promoter within that period or intended to be paid to the promoter, and the consideration for the payment.

f. With respect to a person on whose behalf any part of the offering is to be made in a nonissuer distribution, the person's name and address; the amount of securities of the issuer held by the person as of the date of the filing of the registration statement; a description of any material interest of the person in any material transaction with the issuer or any significant subsidiary effected within the previous three years or proposed to be effected; and a statement of the reasons for making the offering.

g. The capitalization and long-term debt, on both a current and pro forma basis, of the

issuer and any significant subsidiary, including a description of each security outstanding or being registered or otherwise offered, and a statement of the amount and kind of consideration, whether in the form of cash, physical assets, services, patents, goodwill, or anything else of value, for which the issuer or any subsidiary has issued its securities within the previous two years or is obligated to issue its securities.

h. The kind and amount of securities to be offered; the proposed offering price or the method by which it is to be computed; any variation at which a proportion of the offering is to be made to a person or class of persons other than the underwriters, with a specification of the person or class; the basis on which the offering is to be made if otherwise than for cash; the estimated aggregate underwriting and selling discounts or commissions and finders' fees, including separately cash, securities, contracts, or anything else of value to accrue to the underwriters or finders in connection with the offering or, if the selling discounts or commissions are variable, the basis of determining them and their maximum and minimum amounts; the estimated amounts of other selling expenses, including legal, engineering, and accounting charges; the name and address of each underwriter and each recipient of a finder's fee; a copy of any underwriting or selling group agreement under which the distribution is to be made or the proposed form of any such agreement whose terms have not yet been determined; and a description of the plan of distribution of any securities that are to be offered otherwise than through an underwriter.

i. The estimated monetary proceeds to be received by the issuer from the offering; the purposes for which the proceeds are to be used by the issuer; the estimated amount to be used for each purpose; the order or priority in which the proceeds will be used for the purposes stated; the amounts of any funds to be raised from other sources to achieve the purposes stated; the sources of the funds; and, if a part of the proceeds is to be used to acquire property, including goodwill, otherwise than in the ordinary course of business, the names and addresses of the vendors, the purchase price, the names of any persons that have received commissions in connection with the acquisition, and the amounts of the commissions and other expenses in connection with the acquisition, including the cost of borrowing money to finance the acquisition.

j. A description of any stock options or other security options outstanding, or to be created in connection with the offering, and the amount of those options held or to be held by each person required to be named in paragraph *"b"*, *"d"*, *"e"*, *"f"*, or *"h"* and by any person that holds or will hold ten percent or more in the aggregate of those options.

k. The dates of, parties to, and general effect concisely stated of each managerial or other material contract made or to be made otherwise than in the ordinary course of business to be performed in whole or in part at or after the filing of the registration statement or that was made within the previous two years, and a copy of the contract.

l. A description of any pending litigation, action, or proceeding to which the issuer is a party and that materially affects its business or assets, and any litigation, action, or proceeding known to be contemplated by governmental authorities.

m. A copy of any prospectus, pamphlet, circular, form letter, advertisement, or other sales literature intended as of the effective date to be used in connection with the offering and any solicitation of interest used in compliance with section 502.202, subsection 17, paragraph *"b"*.

n. A specimen or copy of the security being registered, unless the security is uncertificated; a copy of the issuer's articles of incorporation and bylaws or their substantial equivalents, in effect; and a copy of any indenture or other instrument covering the security to be registered.

o. A signed or conformed copy of an opinion of counsel concerning the legality of the security being registered, with an English translation if it is in a language other than English, which states whether the security when sold will be validly issued, fully paid, and nonassessable and, if a debt security, a binding obligation of the issuer.

p. A signed or conformed copy of a consent of any accountant, engineer, appraiser, or other person whose profession gives authority for a statement made by the person, if the person is named as having prepared or certified a report or valuation, other than an official record, that is public, which is used in connection with the registration statement.

q. A balance sheet of the issuer as of a date within four months before the filing of the

registration statement; a statement of income and a statement of cash flows for each of the three fiscal years preceding the date of the balance sheet and for any period between the close of the immediately previous fiscal year and the date of the balance sheet, or for the period of the issuer's and any predecessor's existence if less than three years; and, if any part of the proceeds of the offering is to be applied to the purchase of a business, the financial statements that would be required if that business were the registrant.

r. Any additional information or records required by rule adopted or order issued under this chapter.

2A. *Reports and examinations.* The administrator may by rule or order require as a condition of registration by qualification, and at the expense of the applicant or registrant, that a report by an accountant, engineer, appraiser, or other professional person be filed. The administrator may also designate one or more employees of the securities and regulated industries bureau to make an examination of the business and records of an issuer of securities for which a registration statement has been filed by qualification, at the expense of the applicant or registrant.

3. *Conditions for effectiveness of registration statement.* A registration statement under this section becomes effective thirty days, or any shorter period provided by rule adopted or order issued under this chapter, after the date the registration statement or the last amendment other than a price amendment is filed, if any of the following applies:

a. A stop order is not in effect and a proceeding is not pending under section 502.306.

b. The administrator has not issued an order under section 502.306 delaying effectiveness.

c. The applicant or registrant has not requested that effectiveness be delayed.

4. *Delay of effectiveness of registration statement.* The administrator may delay effectiveness once for not more than ninety days if the administrator determines the registration statement is not complete in all material respects and promptly notifies the applicant or registrant of that determination. The administrator may also delay effectiveness for a further period of not more than thirty days if the administrator determines that the delay is necessary or appropriate.

5. *Prospectus distribution may be required.* A rule adopted or order issued under this chapter may require as a condition of registration under this section that a prospectus containing a specified part of the information or record specified in subsection 2 be sent or given to each person to whom an offer is made, before or concurrently, with the earliest of any of the following:

a. The first offer made in a record to the person otherwise than by means of a public advertisement, by or for the account of the issuer or another person on whose behalf the offering is being made or by an underwriter or broker-dealer that is offering part of an unsold allotment or subscription taken by the person as a participant in the distribution.

b. The confirmation of a sale made by or for the account of the person.

c. Payment pursuant to such a sale.

d. Delivery of the security pursuant to such a sale.

[SS15, §1920-u15; C24, 27, §8562; C31, 35, §8581-c13; C39, §**8581.14;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §502.14; C77, 79, 81, §502.304]

83 Acts, ch 169, §12, 13; 91 Acts, ch 40, §24 – 30; 94 Acts, ch 1031, §15; 96 Acts, ch 1025, §9 – 12; 97 Acts, ch 114, §12; 98 Acts, ch 1106, §7 – 12, 24; 99 Acts, ch 166, §3, 4; 2000 Acts, ch 1147, §16; 2001 Acts, ch 16, §6, 37; 2001 Acts, ch 118, §6 – 8; 2002 Acts, ch 1111, §4; 2004 Acts, ch 1161, §12, 68; 2006 Acts, ch 1117, §8

Referred to in §502.201, 502.202, 502.203, 502.204, 502.305, 502.307, 502.607

502.304A Expedited registration by filing for small issuers.

1. *Registration permitted.* A security meeting the conditions set forth in this section may be registered by filing as provided in this section.

2. *Conditions of the issuer.* In order to register under this section, the issuer must meet all of the following conditions:

a. The issuer must be a corporation, limited liability company, or partnership organized under the laws of one of the states or possessions of the United States which engages in or

proposes to engage in a business other than petroleum exploration or production mining or other extractive industries.

b. The securities must be offered and sold only on behalf of the issuer, and must not be used by any selling security holder to register securities for resale.

3. *Conditions for effectiveness of registration — required records and fee.* In order to register under this section, all of the following conditions must be satisfied:

a. The offering price for common stock, the exercise price if the securities are options, warrants, or rights for common stock, or the conversion price if the securities are convertible into common stock must be equal to or greater than one dollar per share. The issuer must not split its common stock, or declare a stock dividend, for two years after effectiveness of the registration, except that in connection with a subsequent registered public offering, the issuer may upon application and consent of the administrator take such action.

b. A commission, fee, or other remuneration shall not be paid or given, directly or indirectly, for the sale of the securities, except for a payment to a broker-dealer or agent registered under this chapter, or except for a payment as permitted by the administrator by rule or by order issued upon written application showing good cause for allowance of a commission, fee, or other remuneration.

c. The issuer or a broker-dealer offering or selling the securities is not or would not be disqualified under rule 505, 17 C.F.R. §230.505(b)(2)(iii), adopted under the federal Securities Act of 1933.

d. The aggregate offering price of the offering of securities by the issuer within or outside this state must not exceed one million dollars, less the aggregate offering price for all securities sold within twelve months before the start of, and during the offering of, the securities under rule 504, 17 C.F.R. §230.504, in reliance on any exemption under section 3(b) of the Securities Act of 1933 or in violation of section 5(a) of that Act; provided, that if rule 504, 17 C.F.R. §230.504, adopted under the Securities Act of 1933, is amended, the administrator may by rule increase the limit under this paragraph to conform to amendments to federal law, including but not limited to modification in the amount of the aggregate offering price.

e. An offering document meeting the disclosure requirements of rule 502(b)(2), 17 C.F.R. §230.502(b)(2), adopted under the Securities Act of 1933, must be delivered to each purchaser in the state prior to the sale of the securities, unless the administrator by rule or order provides for disclosure different from that rule.

f. The issuer must file with the administrator an application for registration and the offering document to be used in connection with the offer and sale of securities.

g. The issuer must pay to the administrator a fee of one hundred dollars and is not required to pay the filing fee set forth in section 502.305, subsection 2.

h. The fees collected under this subsection shall be deposited as provided in section 505.7.

4. *Effectiveness of registration.* Unless the administrator issues a stop order denying the effectiveness of the registration, as provided in section 502.306, the registration becomes effective on the fifth business day after the registration has been filed with the administrator, or earlier if the administrator permits a shorter time period between registration and effectiveness.

5. *Agent registration.* In connection with an offering registered under this section, a person may be registered as an agent of the issuer under section 502.402 by the filing of an application by the issuer with the administrator for the registration of the person as an agent of the issuer and the paying of a fee of ten dollars. Notwithstanding any other provision of this chapter, the registration of the agent shall be effective until withdrawn by the issuer or until the securities registered pursuant to the registration statement have all been sold, whichever occurs first. The registration of an agent shall become effective when ordered by the administrator or on the fifth business day after the agent's application has been filed with the administrator, whichever occurs first, and the administrator shall not impose further conditions upon the registration of the agent. However, the administrator may deny, revoke, suspend, or withdraw the registration of the agent at any time as provided in section 502.412. An agent registered solely pursuant to this section is entitled to sell only securities registered under this section.

6. *Inapplicable issuers.* This section is not applicable to any of the following issuers:

a. An investment company, including a mutual fund.

b. An issuer subject to the reporting requirements of section 13 or 15(d) of the Securities Exchange Act of 1934.

c. A direct participation program, unless otherwise permitted by the administrator by rule or order for good cause.

d. A blind pool or other offering for which the specific business or properties cannot now be described, unless the administrator determines that the blind pool is a community development, seed, or venture capital fund for which the administrator permits a waiver.

7. *Limits on stop orders.* Notwithstanding any other provision of this chapter, the administrator shall not deny effectiveness to or suspend or revoke the effectiveness of a registration under this section on the basis of section 502.306, subsection 1, paragraph *"h"*.

2004 Acts, ch 1161, §13, 68; 2005 Acts, ch 3, §76; 2009 Acts, ch 181, §58; 2014 Acts, ch 1092, §181

Referred to in §502.201, 502.202, 502.203, 502.204, 502.305, 502.607

502.305 Securities registration filings.

1. *Who may file.* A registration statement may be filed by the issuer, a person on whose behalf the offering is to be made, or a broker-dealer registered under this chapter.

2. *Filing.* Except as provided in section 502.302, subsection 3, and section 502.304A, subsection 3, paragraph *"g"*, a person who files a registration statement or a notice filing shall pay a filing fee as prescribed by rules adopted pursuant to chapter 17A. The administrator shall retain the filing fee even if the notice filing is withdrawn or the registration is withdrawn, denied, suspended, revoked, or abandoned. The fees collected under this subsection shall be deposited as provided in section 505.7. The administrator may adopt rules requiring a filing to be made electronically. The rules may provide for such electronic filing either directly with the administrator or with a designee of the administrator. The rules may require that the filer pay any reasonable costs charged by the designee of the administrator for processing the filings and that the filer submit any fees paid through the designee.

3. *Status of offering.* A registration statement filed under section 502.303 or 502.304 must specify all of the following:

a. The amount of securities to be offered in this state.

b. The states in which a registration statement or similar record in connection with the offering has been or is to be filed.

c. Any adverse order, judgment, or decree issued in connection with the offering by a state securities regulator, the securities and exchange commission, or a court.

4. *Incorporation by reference.* A record filed under this chapter or its predecessor chapter within five years preceding the filing of a registration statement may be incorporated by reference in the registration statement to the extent that the record is currently accurate.

5. *Nonissuer distribution.* In the case of a nonissuer distribution, information or a record shall not be required under subsection 9 or section 502.304, unless it is known to the person filing the registration statement or to the person on whose behalf the distribution is to be made or unless it can be furnished by those persons without unreasonable effort or expense.

6. *Escrow and impoundment.* A rule adopted or order issued under this chapter may require as a condition of registration that a security issued within the previous five years or to be issued to a promoter for a consideration substantially less than the public offering price or to a person for a consideration other than cash be deposited in escrow; and that the proceeds from the sale of the registered security in this state be impounded until the issuer receives a specified amount from the sale of the security either in this state or elsewhere. The conditions of any escrow or impoundment required under this subsection may be established by rule adopted or order issued under this chapter, but the administrator shall not reject a depository institution solely because of its location in another state.

7. *Form of subscription.* A rule adopted or order issued under this chapter may require as a condition of registration that a security registered under this chapter be sold only on a specified form of subscription or sale contract and that a signed or conformed copy of each

contract be filed under this chapter or preserved for a period specified by the rule or order, which shall not be longer than five years.

8. *Effective period.* Except while a stop order is in effect under section 502.306, a registration statement is effective for one year after its effective date, or for any longer period designated in an order issued under this chapter during which the security is being offered or distributed in a nonexempted transaction by or for the account of the issuer or other person on whose behalf the offering is being made or by an underwriter or broker-dealer that is still offering part of an unsold allotment or subscription taken as a participant in the distribution. For the purposes of a nonissuer transaction, all outstanding securities of the same class identified in the registration statement as a security registered under this chapter are considered to be registered while the registration statement is effective. If any securities of the same class are outstanding, a registration statement shall not be withdrawn until one year after its effective date. A registration statement may be withdrawn only with the approval of the administrator.

9. *Periodic reports.* While a registration statement is effective, a rule adopted or order issued under this chapter may require the person that filed the registration statement to file reports, not more often than quarterly, to keep the information or other record in the registration statement reasonably current and to disclose the progress of the offering.

98 Acts, ch 1106, §13, 24; 99 Acts, ch 166, §5; 2004 Acts, ch 1161, §14, 68; 2009 Acts, ch 181, §59; 2010 Acts, ch 1121, §3; 2016 Acts, ch 1122, §2, 3

Referred to in §502.201, 502.202, 502.203, 502.204, 502.303, 502.304, 502.304A, 502.306, 502.307, 502.607

502.306 Denial, suspension, and revocation of securities registration.

1. *Stop orders.* The administrator may issue a stop order denying effectiveness to, or suspending or revoking the effectiveness of, a registration statement if the administrator finds that the order is in the public interest and that any of the following apply:

a. The registration statement as of its effective date or before the effective date in the case of an order denying effectiveness, or a report under section 502.305, subsection 9, is incomplete in a material respect or contains a statement that, in the light of the circumstances under which it was made, was false or misleading with respect to a material fact.

b. This chapter or a rule adopted or order issued under this chapter or a condition imposed under this chapter has been willfully violated, in connection with the offering, by the person filing the registration statement; by the issuer, a partner, officer, or director of the issuer or a person having a similar status or performing a similar function; a promoter of the issuer; or a person directly or indirectly controlling or controlled by the issuer; but only if the person filing the registration statement is directly or indirectly controlled by or acting for the issuer; or by an underwriter.

c. The security registered or sought to be registered is the subject of a permanent or temporary injunction of a court of competent jurisdiction or an administrative stop order or similar order issued under any federal, foreign, or state law other than this chapter applicable to the offering, but the administrator shall not institute a proceeding against an effective registration statement under this paragraph more than one year after the date of the order or injunction on which it is based, and the administrator shall not issue an order under this paragraph on the basis of an order or injunction issued under the securities act of another state unless the order or injunction was based on conduct that would constitute, as of the date of the order, a ground for a stop order under this section.

d. The issuer's enterprise or method of business includes or would include activities that are unlawful where performed.

e. With respect to a security sought to be registered under section 502.303, there has been a failure to comply with the undertaking required by section 502.303, subsection 2, paragraph "*d*".

f. The applicant or registrant has not paid the filing fee, but the administrator shall void the order if the deficiency is corrected.

g. The offering is subject to any of the following:

(1) Will work or tend to work a fraud upon purchasers or would so operate.

(2) Has been or would be made with unreasonable amounts of underwriters' and sellers'

discounts, commissions, or other compensation, or promoters' profits or participations, or unreasonable amounts or kinds of options.

h. The financial condition of the issuer affects or would affect the soundness of the securities, except that applications for registration of securities by companies which are in the development stage shall not be denied based solely upon the financial condition of the company. For purposes of this paragraph, a "*development stage company*" is defined as a company which has been in existence for five years or less.

i. A person who is an issuer, correspondent, or applicant, as listed on the uniform application to register securities form known as "Form U-1", has abandoned the registration statement. The administrator may enter an order pursuant to this paragraph if a notice of abandonment is sent to the last known address of each person, and the person fails to take corrective action within the time specified by the administrator. The notice of abandonment shall state the reasons for the administrator's action, specify the corrective action required, and specify the time period for submitting a response. However, the time specified shall not be less than fifteen days.

2. *Enforcement of subsection 1, paragraph "g".* To the extent practicable, the administrator by rule adopted or order issued under this chapter shall publish standards that provide notice of conduct that violates subsection 1, paragraph "*g*".

3. *Institution of stop order.* The administrator shall not institute a stop order proceeding against an effective registration statement on the basis of conduct or a transaction known to the administrator when the registration statement became effective unless the proceeding is instituted within thirty days after the registration statement became effective.

4. *Summary process.* The administrator may summarily revoke, deny, postpone, or suspend the effectiveness of a registration statement pending final determination of an administrative proceeding. Upon the issuance of the order, the administrator shall promptly notify each person specified in subsection 5 that the order has been issued, the reasons for the revocation, denial, postponement, or suspension, and that within fifteen days after the receipt of a request in a record from the person the matter will be scheduled for a hearing. If a hearing is not requested and none is ordered by the administrator, within thirty days after the date of service of the order, the order becomes final. If a hearing is requested or ordered, the administrator, after notice of and opportunity for hearing for each person subject to the order, may modify or vacate the order or extend the order until final determination.

5. *Procedural requirements for stop order.* A stop order shall not be issued under this section without all of the following:

a. An appropriate notice to the applicant or registrant, the issuer, and the person on whose behalf the securities are to be or have been offered.

b. An opportunity for hearing.

c. Findings of fact and conclusions of law in a record in accordance with chapter 17A.

6. *Modification or vacation of stop order.* The administrator may modify or vacate a stop order issued under this section if the administrator finds that the conditions that caused its issuance have changed or that it is necessary or appropriate in the public interest or for the protection of investors.

2004 Acts, ch 1161, §15, 68; 2013 Acts, ch 90, §148; 2016 Acts, ch 1122, §4

Referred to in §502.201, 502.202, 502.203, 502.204, 502.303, 502.304, 502.304A, 502.305

502.307 Waiver and modification.

The administrator may waive or modify, in whole or in part, any or all of the requirements of sections 502.302, 502.303, and 502.304, subsection 2, or the requirement of any information or record in a registration statement or in a periodic report filed pursuant to section 502.305, subsection 9.

2004 Acts, ch 1161, §16, 68

ARTICLE 3A

TAKEOVER PROVISIONS

Referred to in §502.509

502.321A Special definitions.

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

1. *"Associate"* means a person acting jointly or in concert with another for the purpose of acquiring, holding or disposing of, or exercising any voting rights attached to the equity securities of a target company.

2. *"Beneficial owner"* includes, but is not limited to, any person who directly or indirectly, through any contract, arrangement, understanding, or relationship, has or shares the power to vote or direct the voting of a security or has or shares the power to dispose of or otherwise direct the disposition of the security. A person is the beneficial owner of securities beneficially owned by any relative or spouse or relative of the spouse residing in the home of the person, any trust or estate in which the person owns ten percent or more of the total beneficial interest or serves as trustee or executor, any corporation or entity in which the person owns ten percent or more of the equity, and any affiliate or associate of the person.

3. *"Beneficial ownership"* includes, but is not limited to, the right, exercisable within sixty days, to acquire securities through the exercise of options, warrants, or rights or the conversion of convertible securities. The securities subject to these options, warrants, rights, or conversion privileges held by a person are outstanding for the purpose of computing the percentage of outstanding securities of the class owned by the person, but are not outstanding for the purpose of computing the percentage of the class owned by any other person.

4. *"Equity security"* means any stock or similar security and includes any of the following:

a. Any security convertible, with or without consideration, into a stock or similar security.

b. Any warrant or right to subscribe to or purchase a stock or similar security.

c. Any security carrying a warrant or right to subscribe to or purchase a stock or similar security.

d. Any other security which the administrator deems to be of a similar nature and considers necessary or appropriate, according to rules prescribed by the administrator for the public interest and protection of investors, to be treated as an equity security.

5. *"Offeree"* means the beneficial owner, who is a resident of this state, of equity securities which an offeror offers to acquire in connection with a takeover offer.

6. *"Offeror"* means a person who makes or in any manner participates in making a takeover offer. It does not include a supervised financial institution or broker-dealer loaning funds to an offeror in the ordinary course of its business, or any supervised financial institution, broker-dealer, attorney, accountant, consultant, employee, or other person furnishing information or advice to or performing ministerial duties for an offeror, and who does not otherwise participate in the takeover offer.

7. *"Principal place of business"* means the executive office of a target company from which the officers, partners, or managers of the target company direct, control, and coordinate the activities of the target company.

8. *a. "Takeover offer"* means the offer to acquire any equity securities of a target company from a resident of this state pursuant to a tender offer or request or invitation for tenders, if after the acquisition of all securities acquired pursuant to the offer any of the following are true:

(1) The offeror would be directly or indirectly a beneficial owner of more than ten percent of any class of the outstanding equity securities of the target company.

(2) The beneficial ownership by the offeror of any class of the outstanding equity securities of the target company would be increased by more than five percent. However, this subparagraph does not apply if after the acquisition of all securities acquired pursuant to the offer, the offeror would not be directly or indirectly a beneficial owner of more than ten percent of any class of the outstanding equity securities of the target company.

b. "Takeover offer" does not include any of the following:

(1) An offer in connection with the acquisition of a security which, together with all other acquisitions by the offeror of securities of the same class of equity securities of the target company, would not result in the offeror having acquired more than two percent of this class of securities during the preceding twelve-month period.

(2) An offer by the target company to acquire its own equity securities if such offer is subject to section 13(e) of the Securities Exchange Act of 1934.

(3) An offer in which the target company is an insurance company or insurance holding company subject to regulation by the commissioner of insurance, a financial institution subject to regulation by the superintendent of banking or the superintendent of savings and loan associations, or a public utility subject to regulation by the utilities division of the department of commerce.

9. *"Target company"* means an issuer of publicly traded equity securities that has at least twenty percent of its equity securities beneficially held by residents of this state and has substantial assets in this state. For the purposes of this chapter, an equity security is publicly traded if a trading market exists for the security. A trading market exists if the security is traded on a national securities exchange, whether or not registered pursuant to the Securities Exchange Act of 1934, or on the over-the-counter market.

2004 Acts, ch 1161, §17, 68

502.321B Registration requirements — hearing.

1. *Takeover filing required.* It is unlawful for a person to make a takeover offer or to acquire any equity securities pursuant to the offer unless the offer is valid under this article. A takeover offer is effective when the offeror files with the administrator a registration statement containing the information prescribed in subsection 6. Not later than the date of filing of the registration statement, the offeror shall deliver a copy of the registration statement by certified mail to the target company at its principal place of business and publicly disclose the material terms of the proposed offer. Public disclosure shall require, at a minimum, that a copy of the registration statement be supplied to all broker-dealers maintaining an office in this state currently quoting the security.

2. *Registration statement filing.* The registration statement shall be filed on forms prescribed by the administrator, and shall be accompanied by a consent by the offeror to service of process and filing fee specified in section 502.321G, and contain all of the following information:

a. All information specified in subsection 6.

b. Two copies of all solicitation materials intended to be used in the takeover offer, and in the form proposed to be published, sent, or delivered to offerees.

c. Additional information as prescribed by the administrator by rule, pursuant to chapter 17A, prior to the making of the offer.

3. *Registration not approval.* Registration shall not be considered approval by the administrator, and any representation to the contrary is unlawful.

4. *Suspension authorized.* Within three calendar days of the date of filing of the registration statement, the administrator may, by order, summarily suspend the effectiveness of the takeover offer if the administrator determines that the registration does not contain all of the information specified in subsection 6 or that the takeover offer materials provided to offerees do not provide full disclosure to offerees of all material information concerning the takeover offer. The suspension shall remain in effect only until the determination following a hearing held pursuant to subsection 5.

5. *Hearing procedures.*

a. A hearing shall be scheduled by the administrator for each suspension provided under this section. The hearing shall be held within ten calendar days of the date of the suspension. The administrator's determination following the hearing shall be made within three calendar days after the hearing has been completed, but not more than sixteen days after the date of the suspension. However, the administrator may prescribe different time periods than those specified in this subsection by rule or order.

b. If, based upon the record of the hearing, the administrator finds that the registration statement fails to provide for full and fair disclosure of all material information concerning

the offer, or that the takeover is in violation of any of the provisions of this article, the administrator shall permanently suspend the effectiveness of the takeover offer. The administrator may provide an opportunity for the offeror to correct disclosure and other deficiencies identified by the administrator and to reinstate the takeover offer by filing a new or amended registration statement pursuant to this section.

6. *Required information.* The form required to be filed by subsection 2, paragraph *"a"*, shall contain all of the following information:

a. The identity and background of all persons on whose behalf the acquisition of any equity security of the target company has been or is to be effected.

b. The source and amount of funds or other consideration used or to be used in acquiring any equity security including, if applicable, a statement describing any securities which are being offered in exchange for the equity securities of the target company. If any part of the acquisition price is or will be represented by borrowed funds or other consideration, the information shall also include a description of the material terms of any financing arrangements and the names of the parties from whom the funds were or are to be borrowed.

c. If the offeror is other than a natural person, information concerning its organization and operations, including all of the following:

(1) The year, form, and jurisdiction of its organization.

(2) A description of each class of equity security and long-term debt.

(3) A description of the business conducted by the offeror and its subsidiaries and any material changes in the offeror or subsidiaries during the past three years.

(4) A description of the location and character of the principal properties of the offeror and its subsidiaries.

(5) A description of any pending and material legal or administrative proceedings in which the offeror or any of its affiliates is a party.

(6) The names of all directors and executive officers of the offeror and their material business activities and affiliations during the past five years.

(7) The financial statements of the offeror in a form and for periods of time as the administrator may prescribe by rule pursuant to section 17A.4, subsection 1.

d. If the offeror is a natural person, information concerning the offeror's identity and background, including business activities and affiliations during the past five years and a description of any pending and material legal or administrative proceedings in which the offeror is a party.

e. If the purpose of the acquisition is to gain control of the target company, the material terms of any plans or proposals which the offeror has, upon gaining control, to do any of the following:

(1) Liquidate the target company.

(2) Sell its assets.

(3) Effect its merger or consolidation.

(4) Change the location of its principal place of business or of a material portion of its business activities.

(5) Change its management or policies of employment.

(6) Materially alter its relationship with suppliers or customers or the community in which it operates.

(7) Make any other major changes in its business, corporate structure, management, or personnel.

(8) Other information which would materially affect the shareholders' evaluation of the acquisition.

f. The number of shares or units of any equity security of the target company owned beneficially by the offeror and any affiliate or associate of the offeror, together with the name and address of each affiliate or associate.

g. The material terms of any contract, arrangement, or understanding with any other person with respect to the equity securities of the target company by which the offeror has or will acquire any interest in additional equity securities of the target company, or is or will be obligated to transfer any interest in the equity securities to another.

h. Information required to be included in a tender offer statement pursuant to section

14(d) of the Securities Exchange Act of 1934 and the rules and regulations of the securities and exchange commission issued pursuant to the Act.

2004 Acts, ch 1161, §18, 68; 2012 Acts, ch 1023, §157

Referred to in §502.321D, 502.509

502.321C Filing of solicitation materials.

Copies of all advertisements, circulars, letters, or other materials disseminated by the offeror or the target company, soliciting or requesting the acceptance or rejection of a takeover offer, shall be filed with the administrator and sent to the target company or offeror not later than the time the solicitation or request materials are first published, sent, or given to the offerees. The administrator may prohibit the use of any materials deemed false or misleading.

2004 Acts, ch 1161, §19, 68

502.321D Fraudulent, deceptive, or manipulative acts and practices prohibited.

An offeror, target company, affiliate or associate of an offeror or target company, or broker-dealer acting on behalf of an offeror or target company shall not engage in a fraudulent, deceptive, or manipulative act or practice in connection with a takeover offer. For purposes of this section, a fraudulent, deceptive, or manipulative act or practice includes, but is not limited to, any of the following:

1. The publication or use in connection with a takeover offer of a false statement of a material fact, or the omission of a material fact which renders the statements made misleading.

2. The purchase of any of the equity securities of an officer, director, or beneficial owner of five percent or more of the equity securities of the target company by the offeror or the target company for a consideration greater than that to be paid to other shareholders, unless the terms of the purchase are disclosed in a registration statement filed pursuant to section 502.321B.

3. The refusal by a target company to permit an offeror who is a shareholder of record to examine or copy its list of shareholders, pursuant to the applicable corporation statutes, for the purpose of making a takeover offer.

4. The refusal by a target company to mail any solicitation materials published by the offeror to its security holders with reasonable promptness after receipt from the offeror of the materials, together with the reasonable expenses of postage and handling.

5. The solicitation of any offeree for acceptance or rejection of a takeover offer, or acquisition of any equity security pursuant to a takeover offer, when the offer is suspended under section 502.321B, provided, however, that the target company may communicate during a suspension with its equity security holders to the extent required to respond to the takeover offer made pursuant to the Securities Exchange Act of 1934.

2004 Acts, ch 1161, §20, 68

502.321E Limitations on offers and offerors.

1. *Same terms required.* A takeover offer shall contain substantially the same terms for shareholders residing within and outside this state.

2. *Offeree withdrawal of securities.* An offeror shall provide that any equity securities of a target company deposited or tendered pursuant to a takeover offer may be withdrawn by or on behalf of an offeree within seven days after the date the offer has become effective and after sixty days from the date the offer has become effective, or as otherwise determined by the administrator pursuant to a rule or order issued for the protection of the shareholders.

3. *Pro rata acceptance.* If an offeror makes a takeover offer for less than all the outstanding equity securities of any class and, within ten days after the offer has become effective and copies of the offer, or notice of any increase in the consideration offered, are first published or sent or given to equity security holders, the number of securities deposited or tendered pursuant to the offer is greater than the number of securities that the offeror has offered to accept and pay for, the securities shall be accepted pro rata, disregarding fractions, according to the number of securities deposited or tendered for each offeree.

4. *Increased consideration.* If an offeror varies the terms of a takeover offer before the offer's expiration date by increasing the consideration offered to equity security holders, the offeror shall pay the increased consideration for all equity securities accepted, whether the securities have been accepted by the offeror before or after the variation in the terms of the offer.

5. *Proceedings — stop offers or acquisitions.* An offeror shall not make a takeover offer or acquire any equity securities in this state pursuant to a takeover offer during the period of time that an administrator's proceeding alleging a violation of this chapter is pending against the offeror.

6. *Proceedings — halt moving of target company assets.* An offeror shall not acquire, remove, or exercise control, directly or indirectly, over any target company assets located in this state pursuant to a takeover offer during the period of time that an administrator's proceeding alleging a violation of this chapter is pending against the offeror.

7. *Acquisitions subsequent to takeover purchases.* An offeror shall not acquire from a resident of this state an equity security of any class of a target company at any time within two years following the last purchase of securities pursuant to a takeover offer with respect to that class, including, but not limited to, acquisitions made by purchase, exchange, merger, consolidation, partial or complete liquidation, redemption, reverse stock split, recapitalization, reorganization, or any other similar transaction, unless the holders of the equity securities are afforded, at the time of the acquisition, a reasonable opportunity to dispose of the securities to the offeror upon substantially equivalent terms as those provided in the earlier takeover offer.

2004 Acts, ch 1161, §21, 68

502.321F Administration — rules and orders.

1. *Exemption authority.* The administrator may by rule or order exempt from any provision of this article the following:

a. A proposed takeover offer or a category or type of takeover offer which the administrator determines does not have the purpose or effect of changing or influencing the control of a target company.

b. A proposed takeover offer for which the administrator determines that compliance with the sections is not necessary for the protection of the offerees.

c. A person from the requirement of filing statements.

2. *Conflicts with chapter 17A.* In the event of a conflict between the provisions of chapter 17A and the provisions of this article, the provisions of this article shall prevail.

2004 Acts, ch 1161, §22, 68

502.321G Fees.

The administrator shall charge a nonrefundable filing fee of two hundred fifty dollars for a registration statement filed by an offeror. The fee shall be deposited as provided in section 505.7.

2004 Acts, ch 1161, §23, 68; 2009 Acts, ch 181, §60

Referred to in §502.321B

502.321H Nonapplication of corporate takeover law.

If the target company is a public utility, public utility holding company, national banking association, bank holding company, or savings and loan association which is subject to regulation by a federal agency and the takeover of such company is subject to approval by the federal agency, this article does not apply.

2004 Acts, ch 1161, §24, 68

502.321I Application of securities law.

All of the provisions of this chapter which are not in conflict with this article apply to any takeover offer involving a target company.

2004 Acts, ch 1161, §25, 68

Referred to in §502.701

ARTICLE 4

BROKER-DEALERS, AGENTS, INVESTMENT ADVISERS, INVESTMENT ADVISER REPRESENTATIVES, AND FEDERAL COVERED INVESTMENT ADVISERS

502.401 Broker-dealer registration requirement and exemptions.

1. *Registration requirement.* It is unlawful for a person to transact business in this state as a broker-dealer unless the person is registered under this chapter as a broker-dealer or is exempt from registration as a broker-dealer under subsection 2 or 4.

2. *Exemptions from registration.* The following persons are exempt from the registration requirement of subsection 1:

a. A broker-dealer without a place of business in this state if its only transactions effected in this state are with any of the following:

(1) The issuer of the securities involved in the transactions.

(2) A broker-dealer registered as a broker-dealer under this chapter or not required to be registered as a broker-dealer under this chapter.

(3) An institutional investor.

(4) A nonaffiliated federal covered investment adviser with investments under management in excess of one hundred million dollars acting for the account of others pursuant to discretionary authority in a signed record.

(5) A bona fide preexisting customer whose principal place of residence is not in this state and the broker-dealer is registered as a broker-dealer under the Securities Exchange Act of 1934 or not required to be registered under the Securities Exchange Act of 1934 and is registered under the securities Act of the state in which the customer maintains a principal place of residence.

(6) A bona fide preexisting customer whose principal place of residence is in this state but was not present in this state when the customer relationship was established, if all of the following apply:

(a) The broker-dealer is registered under the Securities Exchange Act of 1934 or not required to be registered under the Securities Exchange Act of 1934 and is registered under the securities laws of the state in which the customer relationship was established and where the customer had maintained a principal place of residence.

(b) Within forty-five days after the customer's first transaction in this state, the broker-dealer files an application for registration as a broker-dealer in this state and a further transaction is not effected more than seventy-five days after the date on which the application is filed, or, if earlier, the date on which the administrator notifies the broker-dealer that the administrator has denied the application for registration or has stayed the pendency of the application for good cause.

(7) Not more than three customers in this state during the previous twelve months, in addition to those customers specified in this paragraph "*a*", if the broker-dealer is registered under the Securities Exchange Act of 1934 or not required to be registered under the Securities Exchange Act of 1934 and is registered under the securities Act of the state in which the broker-dealer has its principal place of business.

(8) Any other person exempted by rule adopted or order issued under this chapter.

b. A person that deals solely in United States government securities and is supervised as a dealer in government securities by the board of governors of the federal reserve system, the comptroller of the currency, the federal deposit insurance corporation, or the office of thrift supervision.

3. *Limits on employment or association.* It is unlawful for a broker-dealer, or for an issuer engaged in offering, offering to purchase, purchasing, or selling securities in this state, directly or indirectly, to employ or associate with an individual to engage in an activity related to securities transactions in this state if the registration of the individual is suspended or revoked or the individual is barred from employment or association with a broker-dealer, an issuer, an investment adviser, or a federal covered investment adviser by

an order of the administrator under this chapter, the securities and exchange commission, or a self-regulatory organization. A broker-dealer or issuer does not violate this subsection if the broker-dealer or issuer did not know, and in the exercise of reasonable care could not have known, of the suspension, revocation, or bar. Upon request from a broker-dealer or issuer and for good cause, an order under this chapter may modify or waive, in whole or in part, the application of the prohibitions of this subsection to the broker-dealer or issuer.

4. *Foreign transactions.* A rule adopted or order issued under this chapter may permit any of the following:

a. A broker-dealer that is registered in Canada or other foreign jurisdiction and that does not have a place of business in this state to effect transactions in securities with or for, or attempt to effect the purchase or sale of any securities by, any of the following:

(1) An individual from Canada or other foreign jurisdiction who is temporarily present in this state and with whom the broker-dealer had a bona fide customer relationship before the individual entered the United States.

(2) An individual from Canada or other foreign jurisdiction who is present in this state and whose transactions are in a self-directed tax advantaged retirement plan of which the individual is the holder or contributor in that foreign jurisdiction.

(3) An individual who is present in this state, with whom the broker-dealer customer relationship arose while the individual was temporarily or permanently residing in Canada or the other foreign jurisdiction.

b. An agent who represents a broker-dealer that is exempt under this subsection to effect transactions in securities or attempt to effect the purchase or sale of securities in this state as permitted for a broker-dealer described in paragraph *"a"*.

[C31, 35, §8581-c17; C39, §**8581.21;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §502.21; C77, 79, 81, §502.401]

2004 Acts, ch 1161, §26, 68

Referred to in §502.202, 502.402, 502.407, 502.509, 502.604, 502.608, 502.610

502.402 Agent registration requirement and exemptions.

1. *Registration requirement.* It is unlawful for an individual to transact business in this state as an agent unless the individual is registered under this chapter as an agent or is exempt from registration as an agent under subsection 2.

2. *Exemptions from registration.* The following individuals are exempt from the registration requirement of subsection 1:

a. An individual who represents a broker-dealer in effecting transactions in this state limited to those described in section 15(h)(2) of the Securities Exchange Act of 1934, 15 U.S.C. §78(h)(2).

b. An individual who represents a broker-dealer that is exempt under section 502.401, subsection 2 or 4.

c. An individual who represents an issuer with respect to an offer or sale of the issuer's own securities or those of the issuer's parent or any of the issuer's subsidiaries, and who is not compensated in connection with the individual's participation by the payment of commissions or other remuneration based, directly or indirectly, on transactions in those securities.

d. An individual who represents an issuer and who effects transactions in the issuer's securities exempted by section 502.202, other than section 502.202, subsection 11 or 14.

e. An individual who represents an issuer that effects transactions solely in federal covered securities of the issuer, but an individual who effects transactions in a federal covered security under section 18(b)(3) or 18(b)(4)(D) of the Securities Act of 1933, 15 U.S.C. §77r(b)(3) or 77r(b)(4)(D), is not exempt if the individual is compensated in connection with the agent's participation by the payment of commissions or other remuneration based, directly or indirectly, on transactions in those securities.

f. An individual who represents a broker-dealer registered in this state under section 502.401, subsection 1, or exempt from registration under section 502.401, subsection 2, in the offer and sale of securities for an account of a nonaffiliated federal covered investment adviser with investments under management in excess of one hundred million dollars acting for the account of others pursuant to discretionary authority in a signed record.

g. An individual who represents an issuer in connection with the purchase of the issuer's own securities.

h. An individual who represents an issuer and who restricts participation to performing clerical or ministerial acts.

i. Any other individual exempted by rule adopted or order issued under this chapter.

3. *Registration effective only while employed or associated.* The registration of an agent is effective only while the agent is employed by or associated with a broker-dealer registered under this chapter or an issuer that is offering, selling, or purchasing its securities in this state.

4. *Limit on employment or association.* It is unlawful for a broker-dealer, or an issuer engaged in offering, selling, or purchasing securities in this state, to employ or associate with an agent who transacts business in this state on behalf of broker-dealers or issuers unless the agent is registered under subsection 1 or exempt from registration under subsection 2.

5. *Limit on affiliations.* An individual shall not act as an agent for more than one broker-dealer or one issuer at a time, unless the broker-dealer or the issuer for which the agent acts is affiliated by direct or indirect common control or is authorized by rule or order under this chapter.

[C77, 79, 81, §502.402]

2004 Acts, ch 1161, §27, 68; 2008 Acts, ch 1123, §3

Referred to in §502.304A, 502.411, 502.412, 502.509, 502.608, 502.610

502.403 Investment adviser registration requirement and exemptions.

1. *Registration requirement.* It is unlawful for a person to transact business in this state as an investment adviser unless the person is registered under this chapter as an investment adviser or is exempt from registration as an investment adviser under subsection 2.

2. *Exemptions from registration.* All of the following persons are exempt from the registration requirement of subsection 1:

a. A person without a place of business in this state that is registered under the securities Act of the state in which the person has its principal place of business if its only clients in this state are any of the following:

(1) Federal covered investment advisers, investment advisers registered under this chapter, or broker-dealers registered under this chapter.

(2) Institutional investors.

(3) Bona fide preexisting clients whose principal places of residence are not in this state if the investment adviser is registered under the securities Act of the state in which the clients maintain principal places of residence.

(4) Any other client exempted by rule adopted or order issued under this chapter.

b. A person without a place of business in this state if the person has had, during the preceding twelve months, not more than five clients that are resident in this state in addition to those specified under paragraph *"a"*.

c. Any other person exempted by rule adopted or order issued under this chapter.

3. *Limits on employment or association.* It is unlawful for an investment adviser, directly or indirectly, to employ or associate with an individual to engage in an activity related to investment advice in this state if the registration of the individual is suspended or revoked or the individual is barred from employment or association with an investment adviser, federal covered investment adviser, or broker-dealer by an order under this chapter, the securities and exchange commission, or a self-regulatory organization, unless the investment adviser did not know, and in the exercise of reasonable care could not have known, of the suspension, revocation, or bar. Upon request from the investment adviser and for good cause, the administrator, by order, may waive, in whole or in part, the application of the prohibitions of this subsection to the investment adviser.

4. *Investment adviser representative registration required.* It is unlawful for an investment adviser to employ or associate with an individual required to be registered under this chapter as an investment adviser representative who transacts business in this state on

behalf of the investment adviser unless the individual is registered under section 502.404, subsection 1, or is exempt from registration under section 502.404, subsection 2.

[C77, 79, 81, §502.403]

2004 Acts, ch 1161, §28, 68

Referred to in §502.404, 502.407, 502.509, 502.604, 502.608, 502.610

502.404 Investment adviser representative registration requirement and exemptions.

1. *Registration requirement.* It is unlawful for an individual to transact business in this state as an investment adviser representative unless the individual is registered under this chapter as an investment adviser representative or is exempt from registration as an investment adviser representative under subsection 2.

2. *Exemptions from registration.* All of the following individuals are exempt from the registration requirement of subsection 1:

a. An individual who is employed by or associated with an investment adviser that is exempt from registration under section 502.403, subsection 2, or a federal covered investment adviser that is excluded from the notice filing requirements of section 502.405.

b. Any other individual exempted by rule adopted or order issued under this chapter.

3. *Registration effective only while employed or associated.* The registration of an investment adviser representative is not effective while the investment adviser representative is not employed by or associated with an investment adviser registered under this chapter or a federal covered investment adviser that has made or is required to make a notice filing under section 502.405.

4. *Limit on affiliations.* An individual may transact business as an investment adviser representative for more than one investment adviser or federal covered investment adviser unless a rule adopted or order issued under this chapter prohibits or limits an individual from acting as an investment adviser representative for more than one investment adviser or federal covered investment adviser.

5. *Limits on employment or association.* It is unlawful for an individual acting as an investment adviser representative, directly or indirectly, to conduct business in this state on behalf of an investment adviser or a federal covered investment adviser if the registration of the individual as an investment adviser representative is suspended or revoked or the individual is barred from employment or association with an investment adviser or a federal covered investment adviser by an order under this chapter, the securities and exchange commission, or a self-regulatory organization. Upon request from a federal covered investment adviser and for good cause, the administrator, by order issued, may waive, in whole or in part, the application of the requirements of this subsection to the investment adviser representative.

6. *Referral fees.* An investment adviser registered under this chapter, a federal covered investment adviser that has filed a notice under section 502.405, or a broker-dealer registered under this chapter is not required to employ or associate with an individual as an investment adviser representative if the only compensation paid to the individual for a referral of investment advisory clients is paid to an investment adviser registered under this chapter, a federal covered investment adviser who has filed a notice under section 502.405, or a broker-dealer registered under this chapter with whom the individual is employed or associated as an investment adviser representative.

[C77, 79, 81, §502.404]

83 Acts, ch 169, §14; 97 Acts, ch 23, §60; 2004 Acts, ch 1161, §29, 68; 2006 Acts, ch 1030, §61; 2007 Acts, ch 126, §87

Referred to in §502.403, 502.411, 502.412, 502.509, 502.608, 502.610

502.405 Federal covered investment adviser notice filing requirement.

1. *Notice filing requirement.* Except with respect to a federal covered investment adviser described in subsection 2, it is unlawful for a federal covered investment adviser to transact business in this state as a federal covered investment adviser unless the federal covered investment adviser complies with subsection 3.

2. *Notice filing requirement not required.* The following federal covered investment advisers are not required to comply with subsection 3:

a. A federal covered investment adviser without a place of business in this state if its only clients in this state are any of the following:

(1) Federal covered investment advisers, investment advisers registered under this chapter, and broker-dealers registered under this chapter.

(2) Institutional investors.

(3) Bona fide preexisting clients whose principal places of residence are not in this state.

(4) Other clients specified by rule adopted or order issued under this chapter.

b. A federal covered investment adviser without a place of business in this state if the person has had, during the preceding twelve months, not more than five clients that are resident in this state in addition to those specified under paragraph *"a"*.

c. Any other person excluded by rule adopted or order issued under this chapter.

3. *Notice filing procedure.* A person acting as a federal covered investment adviser, not excluded under subsection 2, shall file a notice, a consent to service of process complying with section 502.611, and such records as have been filed with the securities and exchange commission under the Investment Advisers Act of 1940 required by rule adopted or order issued under this chapter and pay the fees specified in section 502.410, subsection 5.

4. *Effectiveness of filing.* The notice under subsection 3 becomes effective upon its filing.

[SS15, §1920-u19; C24, 27, §8577; C31, 35, §8581-c21; C39, §**8581.26;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §502.26; C77, 79, 81, §502.405]

2004 Acts, ch 1161, §30, 68

Referred to in §502.404, 502.407, 502.408, 502.410, 502.610

502.406 Registration by broker-dealer, agent, investment adviser, and investment adviser representative.

1. *Application for initial registration.* A person shall register as a broker-dealer, agent, investment adviser, or investment adviser representative by filing an application and a consent to service of process complying with section 502.611, and paying the fee specified in section 502.410 and any reasonable fees charged by the designee of the administrator for processing the filing. The application must contain all of the following:

a. The information or record required for the filing of a uniform application.

b. Upon request by the administrator, any other financial or other information or record that the administrator determines is appropriate.

2. *Amendment.* If the information or record contained in an application filed under subsection 1 is or becomes inaccurate or incomplete in a material respect, the registrant shall promptly file a correcting amendment.

3. *Effectiveness of registration.* If an order is not in effect and a proceeding is not pending under section 502.412, registration becomes effective at noon on the forty-fifth day after a completed application is filed, unless the registration is denied. A rule adopted or order issued under this chapter may set an earlier effective date or may defer the effective date until noon on the forty-fifth day after the filing of any amendment completing the application.

4. *Registration renewal.* A registration is effective until midnight on December 31 of the year for which the application for registration is filed. Unless an order is in effect under section 502.412, a registration may be automatically renewed each year by filing such records as are required by rule adopted or order issued under this chapter, by paying the fee specified in section 502.410, and by paying costs charged by the designee of the administrator for processing the filings.

5. *Additional conditions or waivers.* A rule adopted or order issued under this chapter may impose such other conditions, not inconsistent with the National Securities Markets Improvement Act of 1996. An order or rule issued under this chapter may waive, in whole or

in part, specific requirements in connection with registration as are in the public interest and for the protection of investors.

[C24, 27, §8580; C31, 35, §8581-c24; C39, §**8581.29;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §502.29; C77, 79, 81, §502.406]

97 Acts, ch 114, §13; 98 Acts, ch 1106, §14, 24; 2004 Acts, ch 1161, §31, 68; 2018 Acts, ch 1074, §5

Referred to in §502.408
Subsection 5 amended

502.407 Succession and change in registration of broker-dealer or investment adviser.

1. *Succession.* A broker-dealer or investment adviser may succeed to the current registration of another broker-dealer or investment adviser or a notice filing of a federal covered investment adviser, and a federal covered investment adviser may succeed to the current registration of an investment adviser or notice filing of another federal covered investment adviser, by filing as a successor an application for registration pursuant to section 502.401 or 502.403 or a notice pursuant to section 502.405 for the unexpired portion of the current registration or notice filing.

2. *Organizational change.* A broker-dealer or investment adviser that changes its form of organization or state of incorporation or organization may continue its registration by filing an amendment to its registration if the change does not involve a material change in its financial condition or management. The amendment becomes effective when filed or on a date designated by the registrant in its filing. The new organization is a successor to the original registrant for the purposes of this chapter. If there is a material change in financial condition or management, the broker-dealer or investment adviser shall file a new application for registration. A predecessor registered under this chapter shall stop conducting its securities business other than winding down transactions and shall file for withdrawal of broker-dealer or investment adviser registration within forty-five days after filing its amendment to effect succession.

3. *Name change.* A broker-dealer or investment adviser that changes its name may continue its registration by filing an amendment to its registration. The amendment becomes effective when filed or on a date designated by the registrant.

4. *Change of control.* A change of control of a broker-dealer or investment adviser may be made in accordance with a rule adopted or order issued under this chapter.

[SS15, §1920-u21; C24, 27, §8579; C31, 35, §8581-c23; C39, §**8581.28;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §502.28; C77, 79, 81, §502.407]

87 Acts, ch 53, §11; 2004 Acts, ch 1161, §32, 68

502.408 Termination of employment or association of agent and investment adviser representative and transfer of employment or association.

1. *Notice of termination.* If an agent registered under this chapter terminates employment by or association with a broker-dealer or issuer, or if an investment adviser representative registered under this chapter terminates employment by or association with an investment adviser or federal covered investment adviser, or if either registrant terminates activities that require registration as an agent or investment adviser representative, the broker-dealer, issuer, investment adviser, or federal covered investment adviser shall promptly file a notice of termination. If the registrant learns that the broker-dealer, issuer, investment adviser, or federal covered investment adviser has not filed the notice, the registrant may do so.

2. *Transfer of employment or association.* If an agent registered under this chapter terminates employment by or association with a broker-dealer registered under this chapter and begins employment by or association with another broker-dealer registered under this chapter, or if an investment adviser representative registered under this chapter terminates employment by or association with an investment adviser registered under this chapter or a federal covered investment adviser that has filed a notice under section 502.405 and begins employment by or association with another investment adviser registered under this chapter or a federal covered investment adviser that has filed a notice under section 502.405, then

upon the filing by or on behalf of the registrant, within thirty days after the termination, of an application for registration that complies with the requirement of section 502.406, subsection 1, and payment of the filing fee required under section 502.410, the registration of the agent or investment adviser representative is one of the following:

a. Immediately effective as of the date of the completed filing, if the agent's central registration depository record or successor record or the investment adviser representative's investment adviser registration depository record or successor record does not contain a new or amended disciplinary disclosure within the previous twelve months.

b. Temporarily effective as of the date of the completed filing, if the agent's central registration depository record or successor record or the investment adviser representative's investment adviser registration depository record or successor record contains a new or amended disciplinary disclosure within the preceding twelve months.

3. *Withdrawal of temporary registration.* The administrator may withdraw a temporary registration if there are or were grounds for discipline as specified in section 502.412 and the administrator does so within thirty days after the filing of the application. If the administrator does not withdraw the temporary registration within the thirty-day period, registration becomes automatically effective on the thirty-first day after filing.

4. *Power to prevent registration.* The administrator may prevent the effectiveness of a transfer of an agent or investment adviser representative under subsection 2, paragraph *"a"* or *"b"*, based on the public interest and the protection of investors.

5. *Termination of registration or application for registration.* If the administrator determines that a registrant or applicant for registration is no longer in existence or has ceased to act as a broker-dealer, agent, investment adviser, or investment adviser representative, or is the subject of an adjudication of incapacity or is subject to the control of a committee, conservator, or guardian, or cannot reasonably be located, a rule adopted or order issued under this chapter may require that the registration be canceled or terminated or the application denied. The administrator may reinstate a canceled or terminated registration, with or without hearing, and may make the registration retroactive.

98 Acts, ch 1106, §15, 24; 2004 Acts, ch 1161, §33, 68

502.409 Withdrawal of registration of broker-dealer, agent, investment adviser, and investment adviser representative — cessation of business — abandoned filings.

1. *Withdrawal of registration.* Withdrawal of registration by a broker-dealer, agent, investment adviser, or investment adviser representative becomes effective sixty days after the filing of the application to withdraw or within any shorter period as provided by rule adopted or order issued under this chapter unless a revocation or suspension proceeding is pending when the application is filed. If a proceeding is pending, withdrawal becomes effective when and upon such conditions as required by rule adopted or order issued under this chapter. The administrator may institute a disciplinary action under section 502.412, including an action to revoke, suspend, condition, or limit the registration of a registrant, censure, impose a bar, or impose a civil penalty, within two years after the withdrawal became effective automatically and issue a disciplinary order as of the last date on which registration was effective if a proceeding is not pending.

2. *Ceasing to do business and abandoned filings.* If the administrator finds that any registrant or applicant for registration is no longer in existence or has ceased to do business as a broker-dealer, agent, investment adviser, or investment adviser representative, or is subject to an adjudication of mental incompetence or to the control of a committee, conservator, or guardian, or cannot be located after search, the administrator may by order revoke the registration or application. If the administrator finds that the applicant for registration or registrant has abandoned the application or registration, the administrator may enter an order of abandonment, and limit or eliminate further consideration of the application or registration, as provided by the administrator. The administrator may enter an order under this subsection if notice is sent to the applicant or registrant, and either the administrator does not receive a response by the applicant or registrant within forty-five

days from the date that the notice was delivered, or action is not taken by the applicant or registrant within the time specified by the administrator in the notice, whichever is later.

2004 Acts, ch 1161, §34, 68; 2009 Acts, ch 145, §2; 2014 Acts, ch 1007, §2

502.410 Filing fees.

1. *Broker-dealers.* A person shall pay a fee of two hundred dollars when initially filing an application for registration as a broker-dealer and a fee of two hundred dollars when filing a renewal of registration as a broker-dealer. If the filing results in a denial or withdrawal, the administrator shall retain the fee.

2. *Agents.* The fee for an individual is forty dollars when filing an application for registration as an agent, a fee of forty dollars when filing a renewal of registration as an agent, and a fee of forty dollars when filing for a change of registration as an agent. Of each forty-dollar fee collected, ten dollars is appropriated to the securities investor education and financial literacy training fund established under section 502.601, subsection 5. If the filing results in a denial or withdrawal, the administrator shall retain the fee.

3. *Investment advisers.* A person shall pay a fee of one hundred dollars when filing an application for registration as an investment adviser and a fee of one hundred dollars when filing a renewal of registration as an investment adviser. If the filing results in a denial or withdrawal, the administrator shall retain the fee.

4. *Investment adviser representatives.*

a. The fee for an individual is thirty dollars when filing an application for registration as an investment adviser representative, a fee of thirty dollars when filing a renewal of registration as an investment adviser representative, and a fee of thirty dollars when filing a change of registration as an investment adviser representative. If the filing results in a denial or withdrawal, the administrator shall retain the fee.

b. However, an investment adviser representative is not required to pay a filing fee if the investment adviser is a sole proprietorship or the substantial equivalent and the investment adviser representative is the same individual as the investment adviser.

5. *Federal covered investment advisers.* A federal covered investment adviser required to file a notice under section 502.405 shall pay an initial fee of one hundred dollars and an annual notice fee of one hundred dollars.

6. *Payment.* A person required to pay a filing or notice fee under this section may transmit the fee through or to a designee as a rule or order provides under this chapter.

7. *Deposit of fees.* Except as otherwise provided in subsection 2, fees collected under this section shall be deposited as provided in section 505.7.

2004 Acts, ch 1161, §35, 68; 2008 Acts, ch 1123, §4; 2009 Acts, ch 181, §61

Referred to in §502.405, 502.406, 502.408, 502.601

502.411 Postregistration requirements.

1. *Financial requirements.* Subject to section 15(h) of the Securities Exchange Act of 1934, 15 U.S.C. §78o(h), or section 222 of the Investment Advisers Act of 1940, 15 U.S.C. §80b-22, a rule adopted or order issued under this chapter may establish minimum financial requirements for broker-dealers registered or required to be registered under this chapter and investment advisers registered or required to be registered under this chapter.

2. *Financial reports.* Subject to section 15(h) of the Securities Exchange Act of 1934, 15 U.S.C. §78o(h), or section 222(b) of the Investment Advisers Act of 1940, 15 U.S.C. §80b-22, a broker-dealer registered or required to be registered under this chapter and an investment adviser registered or required to be registered under this chapter shall file such financial reports as are required by a rule adopted or order issued under this chapter. If the information contained in a record filed under this subsection is or becomes inaccurate or incomplete in a material respect, the registrant shall promptly file a correcting amendment. The administrator may, by rule, assess a reasonable charge for the late filing of a financial report under this subsection.

3. *Recordkeeping.* Subject to section 15(h) of the Securities Exchange Act of 1934, 15 U.S.C. §78o(h), or section 222 of the Investment Advisers Act of 1940, 15 U.S.C. §80b-22, all of the following apply:

a. A broker-dealer registered or required to be registered under this chapter and an investment adviser registered or required to be registered under this chapter shall make and maintain the accounts, correspondence, memoranda, papers, books, and other records required by rule adopted or order issued under this chapter.

b. Broker-dealer records required to be maintained under paragraph *"a"* may be maintained in any form of data storage acceptable under section 17(a) of the Securities Exchange Act of 1934, 15 U.S.C. §78q(a), if they are readily accessible to the administrator.

c. Investment adviser records required to be maintained under paragraph *"a"* may be maintained in any form of data storage required by rule adopted or order issued under this chapter.

4. *Audits or inspections.* The records of a broker-dealer registered or required to be registered under this chapter and of an investment adviser registered or required to be registered under this chapter are subject to such reasonable periodic, special, or other audits or inspections by a representative of the administrator, within or without this state, as the administrator considers necessary or appropriate in the public interest and for the protection of investors. An audit or inspection may be made at any time and without prior notice. The administrator may copy, and remove for audit or inspection copies of, all records the administrator reasonably considers necessary or appropriate to conduct the audit or inspection. The administrator may assess a reasonable charge for conducting an audit or inspection under this subsection.

5. *Custody and discretionary authority bond or insurance.* Subject to section 15(h) of the Securities Exchange Act of 1934, 15 U.S.C. §78o(h), or section 222 of the Investment Advisers Act of 1940, 15 U.S.C. §80b-22, a rule adopted or order issued under this chapter may require a broker-dealer or investment adviser that has custody of or discretionary authority over funds or securities of a customer or client to obtain insurance or post a bond or other satisfactory form of security in an amount the administrator shall prescribe. The administrator may determine the requirements of the insurance, bond, or other satisfactory form of security. Insurance or a bond or other satisfactory form of security shall not be required of a broker-dealer registered under this chapter whose net capital exceeds, or of an investment adviser registered under this chapter whose minimum financial requirements exceed, the amounts required by rule or order under this chapter. The insurance, bond, or other satisfactory form of security must permit an action by a person to enforce any liability on the insurance, bond, or other satisfactory form of security if instituted within the time limitations in section 502.509, subsection 10, paragraph *"b"*.

6. *Requirements for custody.* Subject to section 15(h) of the Securities Exchange Act of 1934, 15 U.S.C. §78o(h), or section 222 of the Investment Advisers Act of 1940, 15 U.S.C. §80b-22, an agent shall not have custody of funds or securities of a customer except under the supervision of a broker-dealer and an investment adviser representative shall not have custody of funds or securities of a client except under the supervision of an investment adviser or a federal covered investment adviser. A rule adopted or order issued under this chapter may prohibit, limit, or impose conditions on a broker-dealer regarding custody of funds or securities of a customer and on an investment adviser regarding custody of securities or funds of a client.

7. *Investment adviser brochure rule.* With respect to an investment adviser registered or required to be registered under this chapter, a rule adopted or order issued under this chapter may require that information or other records be furnished or disseminated to clients or prospective clients in this state as necessary or appropriate in the public interest and for the protection of investors and advisory clients.

8. *Continuing education.* A rule adopted or order issued under this chapter may require an individual registered under section 502.402 or 502.404 to participate in a continuing education program approved by the securities and exchange commission and administered by a self-regulatory organization or, in the absence of such a program, a rule adopted or order issued under this chapter may require continuing education for an individual registered under section 502.404.

2004 Acts, ch 1161, §36, 68

Referred to in §502.412, 502.509, 502.607

502.412 Denial, revocation, suspension, withdrawal, restriction, condition, or limitation of registration.

1. *Disciplinary conditions — applicants.* If the administrator finds that the order is in the public interest and subsection 4 authorizes the action, an order issued under this chapter may deny an application, or may condition or limit registration of an applicant to be a broker-dealer, agent, investment adviser, or investment adviser representative, and, if the applicant is a broker-dealer or investment adviser, of a partner, officer, director, or person having a similar status or performing similar functions, or a person directly or indirectly in control, of the broker-dealer or investment adviser.

2. *Disciplinary conditions — registrants.* If the administrator finds that the order is in the public interest and subsection 4 authorizes the action, an order issued under this chapter may revoke, suspend, condition, or limit the registration of a registrant and, if the registrant is a broker-dealer or investment adviser, of a partner, officer, director, or person having a similar status or performing similar functions, or a person directly or indirectly in control, of the broker-dealer or investment adviser. However, the administrator shall not do any of the following:

a. Institute a revocation or suspension proceeding under this subsection based solely on an order issued under a law of another state that is reported to the administrator or a designee of the administrator more than one year after the date of the order on which it is based.

b. Under subsection 4, paragraph "*e*", subparagraph (1) or (2), issue an order on the basis of an order issued under the securities Act of another state unless the other order was based on conduct for which subsection 4 would authorize the action had the conduct occurred in this state.

3. *Disciplinary penalties — registrants.* If the administrator finds that the order is in the public interest and subsection 4, paragraphs "*a*" through "*f*", "*h*", "*i*", "*j*", "*l*", or "*m*", authorizes the action, an order under this chapter may censure, impose a bar, or impose a civil penalty in an amount not to exceed a maximum of ten thousand dollars for a single violation or one million dollars for more than one violation, or in an amount as agreed to by the parties, on a registrant, and, if the registrant is a broker-dealer or investment adviser, on a partner, officer, director, or person having a similar status or performing similar functions, or on a person directly or indirectly in control, of the broker-dealer or investment adviser.

4. *Grounds for discipline.* A person may be disciplined under subsections 1 through 3 if any of the following applies:

a. The person has filed an application for registration in this state under this chapter or chapter 502, Code 2003 and Code Supplement 2003, within the previous ten years, which, as of the effective date of registration or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained a statement that, in light of the circumstances under which it was made, was false or misleading with respect to a material fact.

b. The person willfully violated or willfully failed to comply with this chapter or chapter 502, Code 2003 and Code Supplement 2003, or a rule adopted or order issued under this chapter or chapter 502, Code 2003 and Code Supplement 2003, within the previous ten years.

c. The person has been convicted of a felony or within the previous ten years has been convicted of a misdemeanor involving a security, a commodity future or option contract, or an aspect of a business involving securities, commodities, investments, franchises, insurance, banking, or finance.

d. The person is enjoined or restrained by a court of competent jurisdiction in an action instituted by the administrator under this chapter or chapter 502, Code 2003 and Code Supplement 2003, a state, the securities and exchange commission, or the United States from engaging in or continuing an act, practice, or course of business involving an aspect of a business involving securities, commodities, investments, franchises, insurance, banking, or finance.

e. The person is the subject of an order, issued after notice and opportunity for hearing, by any of the following:

(1) The securities or other financial services regulator of a state or the securities and exchange commission or other federal agency denying, revoking, barring, or suspending

registration as a broker-dealer, agent, investment adviser, federal covered investment adviser, or investment adviser representative.

(2) The securities regulator of a state or the securities and exchange commission against a broker-dealer, agent, investment adviser, investment adviser representative, or federal covered investment adviser.

(3) The securities and exchange commission or a self-regulatory organization suspending or expelling the registrant from membership in the self-regulatory organization.

(4) A court adjudicating a United States postal service fraud order.

(5) The insurance regulator of a state denying, suspending, or revoking registration as an insurance agent or insurance producer.

(6) A depository institution regulator or financial services regulator suspending or barring the person from the depository institution or other financial services business.

f. The person is the subject of an adjudication or determination, after notice and opportunity for hearing, by the securities and exchange commission, the commodity futures trading commission, the federal trade commission, a federal depository institution regulator, or a depository institution, insurance, or other financial services regulator of a state that the person willfully violated the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Advisers Act of 1940, the Investment Company Act of 1940, or the Commodity Exchange Act, the securities or commodities law of a state, or a federal or state law under which a business involving investments, franchises, insurance, banking, or finance is regulated.

g. The person is insolvent, either because the person's liabilities exceed the person's assets or because the person cannot meet the person's obligations as they mature, but the administrator shall not enter an order against an applicant or registrant under this paragraph without a finding of insolvency as to the applicant or registrant.

h. The person refuses to allow or otherwise impedes the administrator from conducting an audit or inspection under section 502.411, subsection 4, or refuses access to a registrant's office to conduct an audit or inspection under section 502.411, subsection 4.

i. The person has failed to reasonably supervise an agent, investment adviser representative, or other individual, if the agent, investment adviser representative, or other individual was subject to the person's supervision and committed a violation of this chapter or chapter 502, Code 2003 and Code Supplement 2003, or a rule adopted or order issued under this chapter or chapter 502, Code 2003 and Code Supplement 2003, within the previous ten years.

j. The person has not paid the proper filing fee within thirty days after having been notified by the administrator of a deficiency, but the administrator shall vacate an order under this paragraph when the deficiency is corrected.

k. The person after notice and opportunity for a hearing has been found within the previous ten years to have done any of the following:

(1) By a court of competent jurisdiction to have willfully violated the laws of a foreign jurisdiction under which the business of securities, commodities, investment, franchises, insurance, banking, or finance is regulated.

(2) To have been the subject of an order of a securities regulator of a foreign jurisdiction denying, revoking, or suspending the right to engage in the business of securities as a broker-dealer, agent, investment adviser, investment adviser representative, or similar person.

(3) To have been suspended or expelled from membership by or participation in a securities exchange or securities association operating under the securities laws of a foreign jurisdiction.

l. The person is the subject of a cease and desist order issued by the securities and exchange commission or issued under the securities, commodities, investment, franchise, banking, finance, or insurance laws of a state.

m. The person has engaged in dishonest or unethical practices in the securities, commodities, investment, franchise, banking, finance, or insurance business within the previous ten years.

n. The person is not qualified on the basis of factors such as training, experience, and

knowledge of the securities business. However, in the case of an application by an agent for a broker-dealer that is a member of a self-regulatory organization or by an individual for registration as an investment adviser representative, a denial order shall not be based on this paragraph if the individual has successfully completed all examinations required by subsection 5. The administrator may require an applicant for registration under section 502.402 or 502.404 who has not been registered in a state within the two years preceding the filing of an application in this state to successfully complete an examination.

5. *Examinations.* A rule adopted or order issued under this chapter may require that an examination, including an examination developed or approved by an organization of securities regulators, be successfully completed by a class of individuals or all individuals. An order issued under this chapter may waive, in whole or in part, an examination as to an individual and a rule adopted under this chapter may waive, in whole or in part, an examination as to a class of individuals if the administrator determines that the examination is not necessary or appropriate in the public interest and for the protection of investors.

6. *Summary process.* The administrator may suspend or deny an application summarily; restrict, condition, limit, or suspend a registration; or censure, bar, or impose a civil penalty on a registrant before final determination of an administrative proceeding. Upon the issuance of an order, the administrator shall promptly notify each person subject to the order that the order has been issued, the reasons for the action, and that within fifteen days after the receipt of a request in a record from the person the matter will be scheduled for a hearing. If a hearing is not requested and none is ordered by the administrator within thirty days after the date of service of the order, the order becomes final by operation of law. If a hearing is requested or ordered, the administrator, after notice of and opportunity for hearing to each person subject to the order, may modify or vacate the order or extend the order until final determination. Section 17A.18A is inapplicable to a summary order issued under this subsection.

7. *Procedural requirements.* An order issued shall not be issued under this section, except under subsection 6, without all of the following:

a. Appropriate notice to the applicant or registrant.

b. Opportunity for hearing.

c. Findings of fact and conclusions of law in a record in accordance with chapter 17A.

8. *Control person liability.* A person that controls, directly or indirectly, a person not in compliance with this section may be disciplined by order of the administrator under subsections 1 through 3 to the same extent as the noncomplying person, unless the controlling person did not know, and in the exercise of reasonable care could not have known, of the existence of conduct that is a ground for discipline under this section.

9. *Limit on investigation or proceeding.* The administrator shall not institute a proceeding under subsection 1, 2, or 3 based solely on material facts actually known by the administrator unless an investigation or the proceeding is instituted within two years after the administrator actually acquires knowledge of the material facts.

2004 Acts, ch 1161, §37, 68; 2005 Acts, ch 3, §77; 2006 Acts, ch 1117, §9, 10; 2013 Acts, ch 124, §4; 2014 Acts, ch 1092, §110; 2015 Acts, ch 128, §8, 50, 51

Referred to in §502.304A, 502.406, 502.408, 502.409

ARTICLE 5

FRAUD AND LIABILITIES

502.501 General fraud.

It is unlawful for a person, in connection with the offer, sale, or purchase of a security, directly or indirectly:

1. To employ a device, scheme, or artifice to defraud;

2. To make an untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or

3. To engage in an act, practice, or course of business that operates or would operate as a fraud or deceit upon another person.

[C77, 79, 81, §502.501]

87 Acts, ch 53, §12; 97 Acts, ch 114, §14; 98 Acts, ch 1106, §16, 24; 2004 Acts, ch 1161, §38, 68

Referred to in §502.508, 502.610

502.501A Prohibited transactions of broker-dealers and agents.

A broker-dealer or agent shall not effect a transaction in, or induce or attempt to induce the purchase or sale of, any security in this state by means of any manipulative, deceptive, or other fraudulent scheme, device, or contrivance, fictitious quotation, or in violation of this chapter. A broker-dealer or agent shall not recommend to a customer the purchase, sale, or exchange of a security without reasonable grounds to believe that the transaction or recommendation is suitable for the customer based upon reasonable inquiry concerning the customer's investment objectives, financial situation and needs, and other relevant information known by the broker-dealer.

2004 Acts, ch 1161, §39, 68

502.502 Prohibited conduct in providing investment advice.

1. *Fraud in providing investment advice.* It is unlawful for a person that advises others for compensation, either directly or indirectly or through publications or writings, as to the value of securities or the advisability of investing in, purchasing, or selling securities or that, for compensation and as part of a regular business, issues or promulgates analyses or reports relating to securities to do any of the following:

a. Employ a device, scheme, or artifice to defraud another person.

b. Engage in an act, practice, or course of business that operates or would operate as a fraud or deceit upon another person.

2. *Rules defining fraud.* A rule adopted under this chapter may define an act, practice, or course of business of an investment adviser or an investment adviser representative, other than a supervised person of a federal covered investment adviser, as fraudulent, deceptive, or manipulative, and prescribe means reasonably designed to prevent investment advisers and investment adviser representatives, other than supervised persons of a federal covered investment adviser, from engaging in acts, practices, and courses of business defined as fraudulent, deceptive, or manipulative.

3. *Rules specifying contents of advisory contract.* A rule adopted under this chapter may specify the contents of an investment advisory contract entered into, extended, or renewed by an investment adviser.

[C31, 35, §8581-c18; C39, §**8581.23;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §502.23; C77, 79, 81, §502.502]

96 Acts, ch 1025, §13; 2004 Acts, ch 1161, §40, 68

Referred to in §502.508, 502.610

502.502A Advisory misconduct. Repealed by 2004 Acts, ch 1161, §63, 68. See §502.509.

502.503 Evidentiary burden.

1. *Civil.* In a civil action or administrative proceeding under this chapter, a person claiming an exemption, exception, preemption, or exclusion has the burden to prove the applicability of the claim.

2. *Criminal.* In a criminal proceeding under this chapter, a person claiming an exemption, exception, preemption, or exclusion has the burden of going forward with evidence of the claim.

[C77, 79, 81, §502.503]

98 Acts, ch 1106, §18, 19, 24; 99 Acts, ch 166, §6; 2004 Acts, ch 1161, §41, 68

502.504 Filing of sales and advertising literature.

1. *Filing requirement.* Except as otherwise provided in subsection 2, a rule adopted or order issued under this chapter may require the filing of a prospectus, pamphlet, circular,

form letter, advertisement, sales literature, or other advertising record relating to a security or investment advice, addressed or intended for distribution to prospective investors, including clients or prospective clients of a person registered or required to be registered as an investment adviser under this chapter.

2. *Excluded communications.* This section does not apply to sales and advertising literature specified in subsection 1 which relates to a federal covered security, a federal covered investment adviser, or a security or transaction exempted by section 502.201, 502.202, or 502.203 except as required pursuant to section 502.201, subsection 7.

2A. *Authority to prohibit false advertising.* The administrator may by rule or order prohibit the publication, circulation, or use of any advertising deemed false or misleading.

[C77, 79, 81, §502.504]

99 Acts, ch 166, §7; 2004 Acts, ch 1161, §42, 68

Referred to in §502.201, 502.202, 502.203, 502.204, 536A.22

502.505 Misleading filings.

It is unlawful for a person to make or cause to be made, in a record that is used in an action or proceeding or filed under this chapter, a statement that, at the time and in the light of the circumstances under which it is made, is false or misleading in a material respect, or, in connection with the statement, to omit to state a material fact necessary to make the statement made, in the light of the circumstances under which it was made, not false or misleading.

[C77, 79, 81, §502.505]

2004 Acts, ch 1161, §43, 68

Referred to in §502.610

502.506 Misrepresentations concerning registration or exemption — official endorsements prohibited.

1. *Certain representations not allowed.* The filing of an application for registration, a registration statement, a notice filing under this chapter, the registration of a person, the notice filing by a person, or the registration of a security under this chapter does not constitute a finding by the administrator that a record filed under this chapter is true, complete, and not misleading. The filing or registration or the availability of an exemption, exception, preemption, or exclusion for a security or a transaction does not mean that the administrator has passed upon the merits or qualifications of, or recommended or given approval to, a person, security, or transaction. It is unlawful to make, or cause to be made, to a purchaser, customer, client, or prospective customer or client a representation inconsistent with this section.

1A. *Official endorsement prohibited.* A state official or employee of the state shall not use such person's name in an official capacity in connection with the endorsement or recommendation of the organization or the promotion of any issuer or in the sale to the public of its securities, and no one shall use the stationery of the state or of any official thereof in connection with any such transaction.

[C77, 79, 81, §502.506]

2004 Acts, ch 1161, §44, 68

Referred to in §502.509, 502.610

502.506A Misstatements in publicity prohibited.

It is unlawful for any person to make or cause to be made, in any public report or press release, or in other information which is either made generally available to the public or used in opposition to a tender offer, any statement of a material fact relating to a target company or made in connection with a takeover offer which is, at the time and in the light of the circumstances under which it is made, false or misleading, if it is reasonably foreseeable that such statement will induce other persons to buy, sell, or hold securities of the target company.

2004 Acts, ch 1161, §45, 68

502.507 Qualified immunity.

A broker-dealer, agent, investment adviser, federal covered investment adviser, or investment adviser representative is not liable to another broker-dealer, agent, investment

adviser, federal covered investment adviser, or investment adviser representative for defamation relating to a statement that is contained in a record required by the administrator, or designee of the administrator, the securities and exchange commission, or a self-regulatory organization, unless the person knew, or should have known at the time that the statement was made, that it was false in a material respect or the person acted in reckless disregard of the statement's truth or falsity.

[C77, 79, 81, §502.507]

2004 Acts, ch 1161, §46, 68

502.508 Criminal penalties.

1. *Criminal penalties.*

a. Except as provided in paragraph "*b*", a person who willfully violates any provision of this chapter, or any rule adopted or order issued under this chapter, is guilty of a class "D" felony.

b. A person who willfully violates section 502.501 or section 502.502, subsection 1, resulting in a loss of more than ten thousand dollars is guilty of a class "C" felony.

2. *Criminal reference not required.* The attorney general or the proper county attorney, with or without a reference from the administrator, may institute criminal proceedings under this chapter.

3. *No limitation on other criminal enforcement.* This chapter does not limit the power of this state to punish a person for conduct that constitutes a crime under other laws of this state.

2004 Acts, ch 1161, §47, 68; 2005 Acts, ch 19, §76

502.509 Civil liability.

1. *Securities Litigation Uniform Standards Act.* Enforcement of civil liability under this section is subject to the Securities Litigation Uniform Standards Act of 1998.

2. *Liability of seller to purchaser.* A person is liable to the purchaser if the person sells a security in violation of section 502.301 or, by means of an untrue statement of a material fact or an omission to state a material fact necessary in order to make the statement made, in light of the circumstances under which it is made, not misleading, the purchaser not knowing the untruth or omission and the seller not sustaining the burden of proof that the seller did not know and, in the exercise of reasonable care, could not have known of the untruth or omission. An action under this subsection is governed by the following:

a. The purchaser may maintain an action to recover the consideration paid for the security, less the amount of any income received on the security, and interest at the legal rate from the date of the purchase, costs, and reasonable attorney fees determined by the court, upon the tender of the security, or for actual damages as provided in paragraph "*c*".

b. The tender referred to in paragraph "*a*" may be made any time before entry of judgment. Tender requires only notice in a record of ownership of the security and willingness to exchange the security for the amount specified. A purchaser that no longer owns the security may recover actual damages as provided in paragraph "*c*".

c. Actual damages in an action arising under this subsection are the amount that would be recoverable upon a tender less the value of the security when the purchaser disposed of it, and interest at the legal rate from the date of the purchase, costs, and reasonable attorney fees determined by the court.

3. *Liability of purchaser to seller.* A person is liable to the seller if the person buys a security by means of an untrue statement of a material fact or omission to state a material fact necessary in order to make the statement made, in light of the circumstances under which it is made, not misleading, the seller not knowing of the untruth or omission, and the purchaser not sustaining the burden of proof that the purchaser did not know, and in the exercise of reasonable care, could not have known of the untruth or omission. An action under this subsection is governed by all of the following:

a. The seller may maintain an action to recover the security, and any income received on the security, costs, and reasonable attorney fees determined by the court, upon the tender of the purchase price, or for actual damages as provided in paragraph "*c*".

b. The tender referred to in paragraph *"a"* may be made any time before entry of judgment. Tender requires only notice in a record of the present ability to pay the amount tendered and willingness to take delivery of the security for the amount specified. If the purchaser no longer owns the security, the seller may recover actual damages as provided in paragraph *"c"*.

c. Actual damages in an action arising under this subsection are the difference between the price at which the security was sold and the value the security would have had at the time of the sale in the absence of the purchaser's conduct causing liability, and interest at the legal rate from the date of the sale of the security, costs, and reasonable attorney fees determined by the court.

4. *Liability of unregistered broker-dealer and agent.* A person acting as a broker-dealer or agent that sells or buys a security in violation of section 502.401, subsection 1, section 502.402, subsection 1, or section 502.506 is liable to the customer. The customer, if a purchaser, may maintain an action for recovery of actual damages as specified in subsection 2, paragraphs *"a"* through *"c"*, or, if a seller, for a remedy as specified in subsection 3, paragraphs *"a"* through *"c"*.

5. *Liability of unregistered investment adviser and investment adviser representative.* A person acting as an investment adviser or investment adviser representative that provides investment advice for compensation in violation of section 502.403, subsection 1, section 502.404, subsection 1, or section 502.506 is liable to the client. The client may maintain an action to recover the consideration paid for the advice, interest at the legal rate from the date of payment, costs, and reasonable attorney fees determined by the court and taxed as court costs.

6. *Liability for investment advice.* A person that receives directly or indirectly any consideration for providing investment advice to another person and that employs a device, scheme, or artifice to defraud the other person or engages in an act, practice, or course of business that operates or would operate as a fraud or deceit on the other person is liable to the other person. An action under this subsection is governed by all of the following:

a. The person defrauded may maintain an action to recover the consideration paid for the advice and the amount of any actual damages caused by the fraudulent conduct, interest at the legal rate from the date of the fraudulent conduct, costs, and reasonable attorney fees determined by the court, less the amount of any income received as a result of the fraudulent conduct.

b. This subsection does not apply to a broker-dealer or its agents if the investment advice provided is solely incidental to transacting business as a broker-dealer and no special compensation is received for the investment advice.

7. *Joint and several liability.* The following persons are liable jointly and severally with and to the same extent as persons liable under subsections 2 through 6:

a. A person that directly or indirectly controls a person liable under subsections 2 through 6, unless the controlling person sustains the burden of proof that the person did not know, and in the exercise of reasonable care could not have known, of the existence of conduct by reason of which the liability is alleged to exist.

b. An individual who is a managing partner, executive officer, or director of a person liable under subsections 2 through 6, including an individual having a similar status or performing similar functions, unless the individual sustains the burden of proof that the individual did not know and, in the exercise of reasonable care could not have known, of the existence of conduct by reason of which the liability is alleged to exist.

c. An individual who is an employee of or associated with a person liable under subsections 2 through 6 or a person, whether an employee of such person or otherwise, who materially aids in the act or transaction constituting the violation, and who materially aids the conduct giving rise to the liability, unless the individual sustains the burden of proof that the individual did not know and, in the exercise of reasonable care could not have known, of the existence of conduct by reason of which the liability is alleged to exist.

d. A person that is a broker-dealer, agent, investment adviser, or investment adviser representative that materially aids the conduct giving rise to the liability under subsections 2 through 6, unless the person sustains the burden of proof that the person did not know

and, in the exercise of reasonable care could not have known, of the existence of conduct by reason of which liability is alleged to exist.

8. *Right of contribution.* A person liable under this section has a right of contribution as in cases of contract against any other person liable under this section for the same conduct.

9. *Survival of cause of action.* A cause of action under this section survives the death of an individual who might have been a plaintiff or defendant.

10. *Statute of limitations.* A person shall not obtain relief under any of the following:

a. Under subsection 2 for violation of section 502.301, or under subsection 4 or 5, unless the action is instituted within one year after the violation occurred.

b. Under subsection 2, other than for violation of section 502.301, or under subsection 3 or 6, unless the action is instituted within the earlier of two years after discovery of the facts constituting the violation or five years after the violation.

11. *No enforcement of violative contract.* A person that has made, or has engaged in the performance of, a contract in violation of this chapter or a rule adopted or order issued under this chapter, or that has acquired a purported right under the contract with knowledge of conduct by reason of which its making or performance was in violation of this chapter, shall not base an action on the contract.

12. *No contractual waiver.* A condition, stipulation, or provision binding a person purchasing or selling a security or receiving investment advice to waive compliance with this chapter or a rule adopted or order issued under this chapter is void.

13. *Survival of other rights or remedies.* The rights and remedies provided by this chapter are in addition to any other rights or remedies that may exist, but this chapter does not create a cause of action not specified in this section or section 502.411, subsection 5.

13A. *Informational filing with the administrator.* A copy of any suit or arbitration action filed under this section shall be served upon the administrator within twenty days of the filing in the form and manner prescribed by the administrator by rule or order, provided that all of the following apply:

a. The failure to comply with this provision shall not invalidate the action which is the subject of the suit.

b. The suit or arbitration action has not been filed in a record with the central registration depository or the investment adviser registration depository.

13B. *Liability for takeover violations.*

a. Any person who violates section 502.321B shall be liable to the person selling the security to such violator, which seller may sue either at law or in equity to recover the security, costs, and reasonable attorney fees, plus any income or distributions, in cash or in kind, received by the purchaser thereon, upon tender of the consideration received, or for damages if the purchaser no longer owns the security. Damages shall be the excess of the value of the security when the purchaser disposed of it, plus interest at the legal rate from the date of disposition, over the consideration paid for the security. Tender requires only notice of willingness to pay the amount specified in exchange for the security. Any notice may be given by service as in civil actions or by certified mail to the last known address of the person liable.

b. In addition to other remedies provided in this chapter, in a proceeding alleging a violation of article 3A, the court may provide that all shares acquired from a resident of this state in violation of any provision of this chapter or rule or order issued pursuant to this chapter be denied voting rights for one year after acquisition, that the shares be nontransferable on the books of the target company, or that during this one-year period the target company have the option to call the shares for redemption either at the price at which the shares were acquired or at book value per share as of the last day of the fiscal quarter ended prior to the date of the call for redemption, which redemption shall occur on the date set in the call notice but not later than sixty days after the call notice is given.

2004 Acts, ch 1161, §48, 68; 2012 Acts, ch 1023, §157

Referred to in §502.411, 502.510, 502.610

502.510 Rescission offers.

A purchaser, seller, or recipient of investment advice may not maintain an action under section 502.509 if all of the following apply:

1. The purchaser, seller, or recipient of investment advice receives in a record, before the action is instituted, any of the following:

a. An offer stating the respect in which liability under section 502.509 may have arisen and fairly advising the purchaser, seller, or recipient of investment advice of that person's rights in connection with the offer, and any financial or other information necessary to correct all material misrepresentations or omissions in the information that was required by this chapter to be furnished to that person at the time of the purchase, sale, or investment advice.

b. If the basis for relief under this section may have been a violation of section 502.509, subsection 2, an offer to repurchase the security for cash, payable on delivery of the security, equal to the consideration paid, and interest at the legal rate from the date of the purchase, less the amount of any income received on the security; or, if the purchaser no longer owns the security, an offer to pay the purchaser upon acceptance of the offer damages in an amount that would be recoverable upon a tender, less the value of the security when the purchaser disposed of it, and interest at the legal rate from the date of the purchase in cash equal to the damages computed in the manner provided in this subsection.

c. If the basis for relief under this section may have been a violation of section 502.509, subsection 3, an offer to tender the security, on payment by the seller of an amount equal to the purchase price paid, less income received on the security by the purchaser and interest at the legal rate from the date of the sale; or if the purchaser no longer owns the security, an offer to pay the seller upon acceptance of the offer, in cash, damages in the amount of the difference between the price at which the security was purchased and the value the security would have had at the time of the purchase in the absence of the purchaser's conduct that may have caused liability and interest at the legal rate of interest from the date of the sale.

d. If the basis for relief under this section may have been a violation of section 502.509, subsection 4; and if the customer is a purchaser, an offer to pay as specified in paragraph "*b*"; or, if the customer is a seller, an offer to tender or to pay as specified in paragraph "c".

e. If the basis for relief under this section may have been a violation of section 502.509, subsection 5, an offer to reimburse in cash the consideration paid for the advice and interest at the legal rate from the date of payment.

f. If the basis for relief under this section may have been a violation of section 502.509, subsection 6, an offer to reimburse in cash the consideration paid for the advice, the amount of any actual damages that may have been caused by the conduct, and interest at the legal rate from the date of the violation causing the loss.

2. The offer under subsection 1 states that it must be accepted by the purchaser, seller, or recipient of investment advice within thirty days after the date of its receipt by the purchaser, seller, or recipient of investment advice or any shorter period, of not less than three days, that the administrator, by order, specifies.

3. The offeror has the present ability to pay the amount offered or to tender the security under subsection 1.

4. The offer under subsection 1 is delivered to the purchaser, seller, or recipient of investment advice, or sent in a manner that ensures receipt by the purchaser, seller, or recipient of investment advice.

5. The purchaser, seller, or recipient of investment advice that accepts the offer under subsection 1 in a record within the period specified under subsection 2 is paid in accordance with the terms of the offer.

6. If the basis for relief under this section alleges a violation of section 502.509 which employed a device, scheme, or artifice to defraud, made an untrue statement of a material fact necessary in order to make the statement made, in light of the circumstances under which it was made, not misleading, or engaged in an act, practice, or course of business that operated or would operate as a fraud or deceit on another person, the offer is filed with the

administrator ten business days before the offering and conforms in form and content with a rule prescribed by the administrator.

2004 Acts, ch 1161, §49, 68; 2006 Acts, ch 1117, §11; 2017 Acts, ch 54, §76
Referred to in §502.202, 502.204, 502.610

ARTICLE 6
ADMINISTRATION AND JUDICIAL REVIEW

502.601 Administration.

1. *Administration.* This chapter shall be administered by the commissioner of insurance of this state. The administrator shall appoint a deputy administrator who shall be exempt from the merit system provisions of chapter 8A, subchapter IV. The deputy administrator is the principal operations officer of the securities and regulated industries bureau of the insurance division of the department of commerce. The deputy administrator is responsible to the administrator for the routine administration of this chapter and the management of the securities and regulated industries bureau. In the absence of the administrator, whether because of vacancy in the office, by reason of absence, physical disability, or other cause, the deputy administrator shall be the acting administrator and shall, for that period, have and exercise the authority conferred upon the administrator. The administrator may by order delegate to the deputy administrator any or all of the functions assigned to the administrator under this chapter. The administrator shall employ officers, attorneys, accountants, and other employees as needed for the administration of this chapter.

2. *Unlawful use of records or information.* It is unlawful for the administrator or an officer, employee, or designee of the administrator to use for personal benefit or the benefit of others records or other information obtained by or filed with the administrator that are not public under section 502.607, subsection 2. This chapter does not authorize the administrator or an officer, employee, or designee of the administrator to disclose the record or information, except in accordance with section 502.602, section 502.607, subsection 3, or section 502.608.

3. *No privilege or exemption created or diminished.* This chapter does not create or diminish a privilege or exemption that exists at common law, by statute or rule, or otherwise.

4. *Investor education and financial literacy.* The administrator may develop and implement investor education and financial literacy initiatives to inform the public about investing in securities, with particular emphasis on the prevention and detection of securities fraud. In developing and implementing these initiatives, the administrator may collaborate with public and nonprofit organizations with an interest in investor education and financial literacy. The administrator may accept a grant or donation from a person who is not affiliated with the securities industry or from a nonprofit organization, regardless of whether the organization is affiliated with the securities industry, to develop and implement investor education and financial literacy initiatives. This subsection does not authorize the administrator to require participation or monetary contributions of a registrant in an investor education or financial literacy program.

5. *The securities investor education and financial literacy training fund.* A securities investor education and financial literacy training fund is created in the state treasury under the control of the administrator to provide moneys for the purposes specified in subsection 4. All moneys received by the state by reason of civil penalties pursuant to this chapter and the moneys appropriated to the fund pursuant to section 502.410, subsection 2, shall be deposited in the securities investor education and financial literacy training fund. Notwithstanding section 12C.7, interest or earnings on moneys deposited into the fund shall be credited to the fund. Notwithstanding section 8.33, unencumbered or unobligated moneys remaining in the fund shall not revert but shall be available for expenditure for the following fiscal year. However, if, on June 30, unencumbered or unobligated moneys remaining in the

fund exceed five hundred thousand dollars, moneys in excess of that amount shall revert to the general fund of the state in the same manner as provided in section 8.33.

[SS15, §1920-u, -u10; C24, 27, §8525, 8550; C31, 35, §8581-c2; C39, §**8581.02;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §502.2; C77, 79, 81, §502.601]

83 Acts, ch 169, §15; 91 Acts, ch 258, §55; 2003 Acts, ch 145, §268; 2004 Acts, ch 1161, §50, 68; 2005 Acts, ch 3, §78; 2006 Acts, ch 1117, §12; 2008 Acts, ch 1123, §5, 6

Referred to in §502.102, 502.410, 516E.1, 516E.19, 523D.1

502.602 Investigations and subpoenas.

1. *Authority to investigate.* The administrator may do any of the following:

a. Conduct public or private investigations within or outside of this state which the administrator considers necessary or appropriate to determine whether a person has violated, is violating, or is about to violate this chapter or a rule adopted or order issued under this chapter, or to aid in the enforcement of this chapter or in the adoption of rules and forms under this chapter.

b. Require or permit a person to testify, file a statement, or produce a record, under oath or otherwise as the administrator determines, as to all the facts and circumstances concerning a matter to be investigated or about which an action or proceeding is to be instituted.

c. Notwithstanding section 502.607, subsection 2, publish a record concerning an action, proceeding, or an investigation under, or a violation of, this chapter or a rule adopted or order issued under this chapter if the administrator determines it is necessary or appropriate in the public interest and for the protection of investors.

2. *Administrator powers to investigate.* For the purpose of an investigation under this chapter, the administrator or the administrator's designated officer may administer oaths and affirmations, subpoena witnesses, seek compulsion of attendance, take evidence, require the filing of statements, and require the production of any records that the administrator considers relevant or material to the investigation, all of which may be enforced pursuant to chapter 17A.

3. *Procedure and remedies for noncompliance.* If a person does not appear or refuses to testify, file a statement, or produce records, or otherwise does not obey a subpoena as required by the administrator under this chapter, the administrator may apply to the Polk county district court or the district court for the county in which the person resides or is located or a court of another state to enforce compliance. The court may do any of the following:

a. Hold the person in contempt.

b. Order the person to appear before the administrator.

c. Order the person to testify about the matter under investigation or in question.

d. Order the production of records.

e. Grant injunctive relief, including restricting or prohibiting the offer or sale of securities or the providing of investment advice.

f. Impose a civil penalty of an amount not to exceed a maximum of five thousand dollars for a single violation or five hundred thousand dollars for more than one violation.

g. Grant any other necessary or appropriate relief.

4. *Application for relief.* This section does not preclude a person from applying to district court or a court of another state for relief from a request to appear, testify, file a statement, produce records, or obey a subpoena.

5. *Use immunity procedure.* An individual is not excused from attending, testifying, filing a statement, producing a record or other evidence, or obeying a subpoena of the administrator under this chapter or in an action or proceeding instituted by the administrator under this chapter on the ground that the required testimony, statement, record, or other evidence, directly or indirectly, may tend to incriminate the individual or subject the individual to a criminal fine, penalty, or forfeiture. If the individual refuses to testify, file a statement, or produce a record or other evidence on the basis of the individual's privilege against self-incrimination, the administrator may apply to the district court to compel the testimony, the filing of the statement, the production of the record, or the giving of other evidence. The testimony, record, or other evidence compelled under such an order shall

not be used, directly or indirectly, against the individual in a criminal case, except in a prosecution for perjury or contempt or otherwise failing to comply with the order.

6. *Assistance to securities regulator of another jurisdiction.* At the request of the securities regulator of another state or a foreign jurisdiction, the administrator may provide assistance if the requesting regulator states that it is conducting an investigation to determine whether a person has violated, is violating, or is about to violate a law or rule of the other state or foreign jurisdiction relating to securities matters that the requesting regulator administers or enforces. The administrator may provide the assistance by using the authority to investigate and the powers conferred by this section as the administrator determines is necessary or appropriate. The assistance may be provided without regard to whether the conduct described in the request would also constitute a violation of this chapter or other law of this state if occurring in this state. In deciding whether to provide the assistance, the administrator may consider whether the requesting regulator is permitted and has agreed to provide assistance reciprocally within its state or foreign jurisdiction to the administrator on securities matters when requested, whether compliance with the request would violate or prejudice the public policy of this state, and the availability of resources and employees of the administrator to carry out the request for assistance.

[SS15, §1590-u2; C24, 27, §8527; C31, 35, §8581-c8; C39, §**8581.07(4);** C46, 50, 54, 58, 62, 66, 71, 73, 75, §502.7(2, d); C77, 79, 81, §502.602]

97 Acts, ch 114, §15; 98 Acts, ch 1106, §20, 24; 2004 Acts, ch 1161, §51, 68; 2007 Acts, ch 137, §3; 2009 Acts, ch 133, §167

Referred to in §502.601, 502.607

502.603 Civil enforcement.

1. *Civil action instituted by administrator.* If the administrator believes that a person has engaged, is engaging, or is about to engage in an act, practice, or course of business constituting a violation of this chapter or a rule adopted or order issued under this chapter or that a person has, is, or is about to engage in an act, practice, or course of business that materially aids a violation of this chapter or a rule adopted or order issued under this chapter, the administrator may maintain an action in the county in which the person against whom the action is being brought resides, has a principal place of business, or is doing business, or in the county where the transaction or any substantial portion of the transaction which is the subject of the action occurred, or in the county in which one or more of the victims of the transaction which is the subject of the action resides, to enjoin the act, practice, or course of business and to enforce compliance with this chapter or a rule adopted or order issued under this chapter.

2. *Relief available.* In an action under this section and on a proper showing, the court may do any of the following:

a. Issue a permanent or temporary injunction, restraining order, or declaratory judgment.

b. Order other appropriate or ancillary relief, which may include any of the following:

(1) Ordering an asset freeze, accounting, writ of attachment, writ of general or specific execution, and appointment of a receiver or conservator, that may be the administrator, for the defendant or the defendant's assets.

(2) Ordering the administrator to take charge and control of a defendant's property, including investment accounts and accounts in a depository institution, rents, and profits; to collect debts; and to acquire and dispose of property.

(3) Imposing a civil penalty not to exceed a maximum of five thousand dollars for a single violation or five hundred thousand dollars for more than one violation; an order of rescission, restitution, or disgorgement directed to a person that has engaged in an act, practice, or course of business constituting a violation of this chapter or the predecessor chapter or a rule adopted or order issued under this chapter or the predecessor chapter.

(4) Ordering the payment of prejudgment and postjudgment interest.

c. Order such other relief as the court considers appropriate.

3. *No bond required.* The administrator shall not be required to post a bond in an action or proceeding under this chapter.

[C31, 35, §8581-c17; C39, §**8581.21;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §502.21(1 – 4); C77, 79, 81, §502.603]

83 Acts, ch 169, §16; 91 Acts, ch 40, §31; 94 Acts, ch 1031, §16; 2001 Acts, ch 118, §9; 2004 Acts, ch 1161, §52, 68; 2007 Acts, ch 137, §4; 2017 Acts, ch 54, §76

Referred to in §502.604A

502.603A Cooperation with other agencies. Repealed by 2004 Acts, ch 1161, §63, 68. See §502.608.

502.604 Administrative enforcement.

1. *Issuance of an order or notice.* If the administrator determines that a person has engaged, is engaging, or is about to engage in an act, practice, or course of business constituting a violation of this chapter or a rule adopted or order issued under this chapter or that a person has materially aided, is materially aiding, or is about to materially aid an act, practice, or course of business constituting a violation of this chapter or a rule adopted or order issued under this chapter, the administrator may do any of the following:

a. Issue an order directing the person to cease and desist from engaging in the act, practice, or course of business or to take other action necessary or appropriate to comply with this chapter.

b. Issue an order denying, suspending, revoking, or conditioning the exemptions for a broker-dealer under section 502.401, subsection 2, paragraph *"a"*, subparagraph (4) or (6), or an investment adviser under section 502.403, subsection 2, paragraph *"a"*, subparagraph (3).

c. Issue an order under section 502.204.

2. *Summary process.* An order under subsection 1 is effective on the date of issuance. Upon issuance of the order, the administrator shall promptly serve each person subject to the order with a copy of the order and a notice that the order has been entered. The order must include a statement of any restitution order, civil penalty, or costs of investigation the administrator will seek, a statement of the reasons for the order, and notice that, within thirty days after receipt of a request in a record from the person, the matter will be scheduled for a hearing. If a person subject to the order does not request a hearing and none is ordered by the administrator within thirty days after the date of service of the order, the order, including an order for restitution, the imposition of a civil penalty, or a requirement for payment of costs of investigation sought in the order, becomes final as to that person by operation of law. If a hearing is requested or ordered, the administrator, after notice of and opportunity for hearing to each person subject to the order, may modify or vacate the order or extend it until final determination.

3. *Procedure for final order.* If a hearing is requested or ordered pursuant to subsection 2, a hearing must be held pursuant to chapter 17A. A final order shall not be issued unless the administrator makes findings of fact and conclusions of law in a record in accordance with chapter 17A. The final order may make final, vacate, or modify the order issued under subsection 1.

4. *Civil penalty — restitution — corrective action.* In a final order under subsection 3, the administrator may impose a civil penalty up to an amount not to exceed a maximum of ten thousand dollars for a single violation or one million dollars for more than one violation, or in an amount as agreed to by the parties, order restitution, or take other corrective action as the administrator deems necessary and appropriate to accomplish compliance with the laws of the state relating to all securities business transacted in the state.

5. *Costs.* In a final order, the administrator may charge the actual cost of an investigation or proceeding for a violation of this chapter or a rule adopted or order issued under this chapter.

5A. *Failure to obey cease and desist order.* A person who fails to obey a valid cease and desist order issued by the administrator under this section may, after notice and opportunity for a hearing, be subject to a civil penalty in an amount of not less than one thousand dollars

and not to exceed ten thousand dollars for violating the order. Each day the failure to obey the cease and desist order occurs or continues constitutes a separate violation of the order. The penalties provided in this subsection are in addition to, and not exclusive of, other remedies that may be available.

6. *Filing of certified final order with court — effect of filing.* If a petition for judicial review of a final order is not filed in accordance with section 502.609, the administrator may file a certified copy of the final order with the clerk of a court of competent jurisdiction. The order so filed has the same effect as a judgment of the court and may be recorded, enforced, or satisfied in the same manner as a judgment of the court.

7. *Enforcement by court — further civil penalty.* If a person does not comply with an order under this section, the administrator may petition the Polk county district court or the district court for the county in which the person resides or is located to enforce the order. The court shall not require the administrator to post a bond in an action or proceeding under this section. If the court finds, after service and opportunity for hearing, that the person was not in compliance with the order, the court may adjudge the person in civil contempt of the order. The court may impose a further civil penalty against the person for contempt in an amount not less than three thousand dollars but not greater than ten thousand dollars for each violation and may grant any other relief the court determines is just and proper in the circumstances.

[C31, 35, §8581-c17; C39, §**8581.21;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §502.21(5); C77, 79, 81, §502.604]

91 Acts, ch 40, §33; 96 Acts, ch 1025, §14; 99 Acts, ch 166, §8; 2000 Acts, ch 1147, §17; 2001 Acts, ch 118, §10, 11; 2004 Acts, ch 1161, §53, 68; 2007 Acts, ch 137, §5; 2011 Acts, ch 70, §1; 2013 Acts, ch 124, §5, 6

Referred to in §502.204, 502.604A

502.604A Limited law enforcement authority.

The administrator or the administrator's designee, when carrying out the provisions of section 502.603 or 502.604, may develop, share, and receive information related to any law enforcement purpose, including any criminal investigation. The administrator or designee shall not have the authority to issue criminal subpoenas or make arrests. The administrator or designee shall not be considered a peace officer, including as provided in chapter 801.

91 Acts, ch 40, §34; 94 Acts, ch 1031, §17; 2004 Acts, ch 1161, §54, 68

502.604B Limited law enforcement authority. Repealed by 2004 Acts, ch 1161, §63, 68. See §502.604A.

502.605 Rules, forms, orders, interpretative opinions, and hearings.

1. *Issuance and adoption of forms, orders, and rules.* Pursuant to chapter 17A, the administrator may do any of the following:

a. Issue forms and orders and, after notice and comment, may adopt and amend rules necessary or appropriate to carry out this chapter and may repeal rules, including rules and forms governing registration statements, applications, notice filings, reports, and other records.

b. Define terms, whether or not used in this chapter, but those definitions shall not be inconsistent with this chapter.

c. Classify securities, persons, and transactions and adopt different requirements for different classes.

2. *Findings and cooperation.* Under this chapter, a rule or form shall not be adopted or amended, or an order issued or amended, unless the administrator finds that the rule, form, order, or amendment is necessary or appropriate in the public interest or for the protection of investors and is consistent with the purposes intended by this chapter. In adopting, amending, and repealing rules and forms, section 502.608 applies in order to achieve uniformity among the states and coordination with federal laws in the form and content of registration statements, applications, reports, and other records, including the adoption of uniform rules, forms, and procedures.

3. *Financial statements.* Subject to section 15(h) of the Securities Exchange Act and section 222 of the Investment Advisers Act of 1940, the administrator may require that a financial statement filed under this chapter be prepared in accordance with generally accepted accounting principles in the United States and comply with other requirements specified by rule adopted or order issued under this chapter. A rule adopted or order issued under this chapter may establish any of the following:

a. Subject to section 15(h) of the Securities Exchange Act and section 222 of the Investment Advisers Act of 1940, the form and content of financial statements required under this chapter.

b. Whether unconsolidated financial statements must be filed.

c. Whether required financial statements must be audited by an independent certified public accountant.

4. *Interpretative opinions.* The administrator may provide interpretative opinions or issue determinations that the administrator will not institute a proceeding or an action under this chapter against a specified person for engaging in a specified act, practice, or course of business if the determination is consistent with this chapter. A rule adopted or order issued under this chapter may establish a reasonable charge for interpretative opinions or determinations that the administrator will not institute an action or a proceeding under this chapter.

5. *Effect of compliance.* A penalty under this chapter shall not be imposed for, and liability does not arise from, conduct that is engaged in or omitted in good faith believing it conforms to a rule, form, or order of the administrator under this chapter.

6. *Presumption for public hearings.* A hearing in an administrative proceeding under this chapter must be conducted in public unless the administrator for good cause consistent with this chapter determines that the hearing will not be so conducted.

[SS15, §1920-u19, -u20, -u21; C24, 27, §8577 – 8579; C31, 35, §8581-c21, -c22, -c23; C39, §**8581.26 – 8581.28;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §502.26 – 502.28; C77, 79, 81, §502.605]

2000 Acts, ch 1147, §18; 2001 Acts, ch 118, §13, 14; 2004 Acts, ch 1161, §55, 68

502.606 Administrative files and opinions.

1. *Public register of filings.* The administrator shall maintain, or designate a person to maintain, a register of applications for registration of securities; registration statements; notice filings; applications for registration of broker-dealers, agents, investment advisers, and investment adviser representatives; notice filings by federal covered investment advisers that are or have been effective under this chapter or the predecessor chapter; notices of claims of exemption from registration or notice filing requirements contained in a record; orders issued under this chapter or the predecessor chapter; and interpretative opinions or no action determinations issued under this chapter.

2. *Public availability.* The administrator shall make all rules, forms, interpretative opinions, and orders available to the public.

3. *Copies of public records.* The administrator shall furnish a copy of a record that is a public record or a certification that the public record does not exist to a person that so requests. A rule adopted under this chapter may establish a reasonable charge for furnishing the record or certification. A copy of the record certified or a certificate by the administrator of a record's nonexistence is prima facie evidence of a record or its nonexistence.

[SS15, §1920-u17; C24, 27, §8575; C31, 35, §8581-c19; C39, §**8581.24;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §502.24; C77, 79, 81, §502.606]

2004 Acts, ch 1161, §56, 68

502.607 Public records — confidentiality.

1. *Presumption of public records.* Except as otherwise provided in subsection 2, records obtained by the administrator or filed under this chapter, including a record contained in or filed with a registration statement, application, notice filing, or report, are public records and are available for public examination.

2. *Nonpublic records.* Notwithstanding chapter 22, the following records are not public records and are not available for public examination under subsection 1:

a. A record obtained by the administrator in connection with an audit or inspection under section 502.411, subsection 4, or an investigation under section 502.602.

b. A part of a record filed in connection with a registration statement under sections 502.301 and 502.303 through 502.305 or a record under section 502.411, subsection 4, that contains trade secrets or confidential information if the person filing the registration statement or report has asserted a claim of confidentiality or privilege that is authorized by law.

c. A record that is not required to be provided to the administrator or filed under this chapter and is provided to the administrator only on the condition that the record will not be subject to public examination or disclosure.

d. A nonpublic record received from a person specified in section 502.608, subsection 1.

e. Any social security number, residential address unless used as a business address, and residential telephone number unless used as a business telephone number, contained in a record that is filed.

f. A record obtained by the administrator through a designee that the administrator determines by rule or order has been appropriately expunged from its own records by that designee, if the administrator finds that such expungement is in the public interest and does not impair investor protection.

3. *Administrator discretion to disclose.* If disclosure is for the purpose of a civil, administrative, or criminal investigation, action, or proceeding or to a person specified in section 502.608, subsection 1, the administrator may disclose a record obtained in connection with an audit or inspection under section 502.411, subsection 4, or a record obtained in connection with an investigation under section 502.602.

[C35, §8581-f6; C39, §**8581.22;** C46, 50, 54, 58, 62, §502.22; C66, 71, 73, 75, §502.2, 502.22; C77, 79, 81, §502.607]

97 Acts, ch 114, §16; 2004 Acts, ch 1161, §57, 68

Referred to in §22.7(43), 502.601, 502.602, 502.608

502.608 Uniformity and cooperation with other agencies.

1. *Objective of uniformity.* The administrator shall, in its discretion, cooperate, coordinate, consult, and, subject to section 502.607, share records and information with the securities regulator of another state, Canada, a Canadian province or territory, a foreign jurisdiction, the securities and exchange commission, the United States department of justice, the commodity futures trading commission, the federal trade commission, the securities investor protection corporation, a self-regulatory organization, a national or international organization of securities regulators, a federal or state banking and insurance regulator, and a governmental law enforcement agency to effectuate greater uniformity in securities matters among the federal government, self-regulatory organizations, states, and foreign governments.

2. *Policies to consider.* In cooperating, coordinating, consulting, and sharing records and information under this section and in acting by rule, order, or waiver under this chapter, the administrator shall, in its discretion, take into consideration in carrying out the public interest, all of the following general policies:

a. Maximizing effectiveness of regulation for the protection of investors.

b. Maximizing uniformity in federal and state regulatory standards.

c. Minimizing burdens on the business of capital formation, without adversely affecting essentials of investor protection.

3. *Subjects for cooperation.* The cooperation, coordination, consultation, and sharing of records and information authorized by this section includes all of the following:

a. Establishing or employing one or more designees as a central depository for registration and notice filings under this chapter and for records required or allowed to be maintained under this chapter.

b. Developing and maintaining uniform forms.

c. Conducting a joint examination or investigation.

d. Holding a joint administrative hearing.

e. Instituting and prosecuting a joint civil or administrative proceeding.

f. Sharing and exchanging personnel.

g. Coordinating registrations under sections 502.301 and 502.401 through 502.404 and exemptions under section 502.203.

h. Sharing and exchanging records, subject to section 502.607.

i. Formulating rules, statements of policy, guidelines, forms, and interpretative opinions and releases.

j. Formulating common systems and procedures.

k. Notifying the public of proposed rules, forms, statements of policy, and guidelines.

l. Attending conferences and other meetings among securities regulators, which may include representatives of governmental and private sector organizations involved in capital formation, deemed necessary or appropriate to promote or achieve uniformity.

m. Developing and maintaining a uniform exemption from registration for small issuers, and taking other steps to reduce the burden of raising investment capital by small businesses.

[C31, 35, §8581-c11, -c26; C39, §**8581.11, 8581.31;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §502.11, 502.31; C77, 79, 81, §502.608]

83 Acts, ch 169, §17; 97 Acts, ch 114, §17; 98 Acts, ch 1106, §21, 24; 2002 Acts, ch 1111, §5; 2004 Acts, ch 1161, §58, 68

Referred to in §502.601, 502.605, 502.607

502.609 Judicial review of orders.

A final order issued by the administrator under this chapter is subject to judicial review in accordance with chapter 17A.

[SS15, §1920-u5; C24, 27, §8534, 8535; C31, 35, §8581-c9; C39, §**8581.09;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §502.9; C77, 79, 81, §502.609]

91 Acts, ch 40, §35; 97 Acts, ch 114, §18; 2000 Acts, ch 1147, §19; 2004 Acts, ch 1161, §59, 68

Referred to in §502.604

502.610 Jurisdiction.

1. *Sales and offers to sell.* Sections 502.301, 502.302, section 502.401, subsection 1, section 502.402, subsection 1, section 502.403, subsection 1, section 502.404, subsection 1, and sections 502.501, 502.506, 502.509, and 502.510 do not apply to a person that sells or offers to sell a security unless the offer to sell or the sale is made in this state or the offer to purchase or the purchase is made and accepted in this state.

2. *Purchases and offers to purchase.* Section 502.401, subsection 1, section 502.402, subsection 1, section 502.403, subsection 1, section 502.404, subsection 1, and sections 502.501, 502.506, 502.509, and 502.510 do not apply to a person that purchases or offers to purchase a security unless the offer to purchase or the purchase is made in this state or the offer to sell or the sale is made and accepted in this state.

3. *Offers in this state.* For the purpose of this section, an offer to sell or to purchase a security is made in this state, whether or not either party is then present in this state, if any of the following apply to the offer:

a. The offer originates from within this state.

b. The offer is directed by the offeror to a place in this state and received at the place to which it is directed.

4. *Acceptances in this state.* For the purpose of this section, an offer to purchase or to sell is accepted in this state, whether or not either party is then present in this state, if all of the following apply to the acceptance:

a. The acceptance is communicated to the offeror in this state and the offeree reasonably believes the offeror to be present in this state and the acceptance is received at the place in this state to which it is directed.

b. The acceptance has not previously been communicated to the offeror, orally or in a record, outside this state.

5. *Publications, radio, television, or electronic communications.* An offer to sell or to purchase is not made in this state when a publisher circulates or there is circulated on the publisher's behalf in this state a bona fide newspaper or other publication of general, regular,

and paid circulation that is not published in this state, or that is published in this state but has had more than two-thirds of its circulation outside this state during the previous twelve months or when a radio or television program or other electronic communication originating outside this state is received in this state. A radio or television program, or other electronic communication, is considered as having originated in this state if either the broadcast studio or the originating source of transmission is located in this state, unless any of the following apply:

a. The program or communication is syndicated and distributed from outside this state for redistribution to the general public in this state.

b. The program or communication is supplied by a radio, television, or other electronic network with the electronic signal originating from outside this state for redistribution to the general public in this state.

c. The program or communication is an electronic communication that originates outside this state and is captured for redistribution to the general public in this state by a community antenna or cable, radio, cable television, or other electronic system.

d. The program or communication consists of an electronic communication that originates in this state, but which is not intended for distribution to the general public in this state.

6. *Investment advice and misrepresentations.* Section 502.403, subsection 1, section 502.404, subsection 1, section 502.405, subsection 1, and sections 502.502, 502.505, and 502.506 apply to a person if the person engages in an act, practice, or course of business instrumental in effecting prohibited or actionable conduct in this state, whether or not either party is then present in this state.

[C77, 79, 81, §502.610]

98 Acts, ch 1106, §22, 24; 2004 Acts, ch 1161, §60, 68; 2013 Acts, ch 30, §118

502.611 Service of process.

1. *Signed consent to service of process.* A consent to service of process required by this chapter must be signed and filed in the form required by a rule or order under this chapter. A consent appointing the administrator as a person's agent for service of process in a noncriminal action or proceeding against the person, or the person's successor or personal representative under this chapter or a rule adopted or order issued under this chapter after the consent is filed, has the same force and validity as if the service of process were made personally on the person filing the consent. A person that has filed a consent complying with this subsection in connection with a previous application for registration or notice filing need not file an additional consent.

2. *Conduct constituting appointment of agent for service of process.* If a person, including a nonresident of this state, engages in an act, practice, or course of business prohibited or made actionable by this chapter or a rule adopted or order issued under this chapter and the person has not filed a consent to service of process under subsection 1, the act, practice, or course of business constitutes the appointment of the administrator as the person's agent for service of process in a noncriminal action or proceeding against the person or the person's successor or personal representative.

3. *Procedure for service of process.* If service of process is made on the administrator under subsection 1 or 2 it shall be made as provided in section 505.30, but is not effective unless all of the following apply:

a. The plaintiff, which may be the administrator, shall promptly send notice of the service of process and a copy of the service of process by certified mail to the defendant or respondent at the address set forth in the consent to service of process or, if a consent to service of process has not been filed, to the defendant's or respondent's last known principal place of business.

b. The plaintiff shall file an affidavit of compliance with this subsection in the action or proceeding on or before the return day of the service of process, if any, or within the time that the court, or the administrator in a proceeding before the administrator, allows.

4. *Service of process in an administrative proceeding or civil action by administrator.* Service of process pursuant to subsection 3 may be used in a proceeding before the administrator or by the administrator in a civil action in which the administrator is the moving party.

5. *Opportunity to defend.* If process is served under subsection 3, the court, or the administrator in a proceeding before the administrator, shall order continuances as are necessary or appropriate to afford the defendant or respondent reasonable opportunity to defend.

[C77, 79, 81, §502.611]

90 Acts, ch 1196, §5; 2004 Acts, ch 1161, §61, 68; 2018 Acts, ch 1018, §1

Referred to in §502.201, 502.302, 502.303, 502.304, 502.405, 502.406

Section amended

502.612 Severability clause.

If any provision of this chapter or its application to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of this chapter that can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

2004 Acts, ch 1161, §62, 68

ARTICLE 7

JOINT INVESTMENT TRUSTS

502.701 Public joint investment trusts.

1. A joint investment trust organized pursuant to chapter 28E for the purposes of joint investment of public funds is subject to the jurisdiction and authority of the administrator, including all requirements of this chapter, except the registration provisions of sections 502.301 and 502.321I.

2. The administrator may make examinations within or without the state, of the business and records of each joint investment trust, at the times and in the scope as the administrator determines. The administrator shall have the authority to contract for outside professional services in the conduct of examinations. The examinations may be made without prior notice to the joint investment trust or the trust's investment advisor. The administrator may copy all records the administrator feels are necessary to conduct the examination. The expense reasonably attributable to the examination shall be paid by the joint investment trusts whose business is examined. For the purpose of avoiding unnecessary duplication of examinations, the administrator may cooperate with other regulatory authorities.

92 Acts, ch 1156, §41; 2005 Acts, ch 19, §124, 126

CHAPTER 502A

COMMODITIES CODE

Referred to in §505.28, 505.29, 669.14

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SUBCHAPTER I

502A.1 Definitions.

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

1. *"Administrator"* means the administrator of the securities and regulated industries bureau of the insurance division of the department of commerce.

2. *"Board of trade"* means a person or group of persons engaged in buying or selling any commodity or receiving the same for sale on consignment, whether the person or group of persons is characterized as a board of trade, exchange, or other form of marketplace.

3. *"CFTC rule"* means a regulation or order of the commodity futures trading commission in effect on July 1, 1990, and all subsequent amendments, additions or other revisions to the regulation or order, unless the administrator, within ten days following the effective date of the amendment, addition, or revision, disallows the application to this chapter in whole or in part by rule or order.

4. *a.* *"Commodity"* means, except as otherwise specified by the administrator by rule or order: an agricultural, grain, or livestock product or by-product; a metal or mineral, including a precious metal; a gem or gemstone, whether characterized as precious, semiprecious or otherwise; a fuel, whether liquid, gaseous or otherwise; a foreign currency; and all other goods, articles, products, or items of any kind.

b. The term *"commodity"* does not include any of the following:

(1) A numismatic coin whose fair market value is at least fifteen percent higher than the value of the metal it contains.

(2) Real property or any timber, agricultural, or livestock product grown or raised on real property and offered or sold by the owner or lessee of such real property.

(3) Any work of art offered or sold by art dealers, at public auction, or offered or sold through a private sale by the owner of the work of art.

5. *"Commodity contract"* means an account, agreement, or contract for the purchase or sale, primarily for speculation or investment purposes and not for use or consumption by the offeree or purchaser, of one or more commodities, whether for immediate or subsequent delivery or whether delivery is intended by the parties, and whether characterized as a cash contract, deferred shipment or deferred delivery contract, forward contract, futures contract, installment or margin contract, leverage contract, or otherwise. A commodity contract offered or sold, in the absence of evidence to the contrary, shall be presumed to be offered or sold for speculation or investment purposes. A commodity contract does not include a contract or agreement which requires, and under which the purchaser receives, within twenty-eight days from the payment in good funds of any portion of the purchase

price, physical delivery of the total amount of each commodity to be purchased under the contract or agreement.

6. *"Commodity Exchange Act"* means the federal Commodity Exchange Act, as amended to July 1, 1990, codified at 7 U.S.C. §1 et seq., and all subsequent amendments, additions, or other revisions to the Act, unless the administrator, within ten days following the effective date of the amendment, addition, or revision, disallows its application to this chapter in whole or in part by rule or order.

7. *"Commodity futures trading commission"* or *"CFTC"* means the independent regulatory agency established by the United States Congress to administer the Commodity Exchange Act.

8. *"Commodity merchant"* means any of the following as defined or described in the Commodity Exchange Act or by CFTC rule:

a. A futures commission merchant.

b. A commodity pool operator.

c. A commodity trading adviser.

d. An introducing broker.

e. A leverage transaction merchant.

f. An associated person of any of the persons listed in paragraphs *"a"* through *"e"*.

g. A floor broker.

h. Any other person, other than a futures association, required to register with the commodity futures trading commission.

9. *"Commodity option"* means an account, agreement, or contract giving a party to the account, agreement, or contract the right but not the obligation to purchase or sell one or more commodities or one or more commodity contracts, whether characterized as an option, privilege, indemnity, bid, offer, put, call, advance guaranty, decline guaranty or otherwise, but shall not include an option traded on a national securities exchange registered with the United States securities and exchange commission.

10. *"Financial institution"* means a bank, savings institution, or trust company organized under, or supervised pursuant to, the laws of the United States or of any state.

11. *"Offer"* includes every offer to sell, offer to purchase, or offer to enter into a commodity contract or commodity option.

12. *"Person"* means a person as defined in section 4.1, but does not include a contract market designated by the commodity futures trading commission or any clearinghouse of the CFTC or a national securities exchange registered with the securities and exchange commission, or any employee, officer, or director of a contract market, clearinghouse, or exchange acting solely in that capacity.

13. *"Precious metal"* means one or more of the following in either coin, bullion, or other form:

a. Silver.

b. Gold.

c. Platinum.

d. Palladium.

e. Copper.

f. Such other items as the administrator may specify by rule or order.

14. *"Sale"* or *"sell"* includes every sale, contract of sale, contract to sell, or disposition, for value.

90 Acts, ch 1169, §1; 2006 Acts, ch 1117, §13; 2012 Acts, ch 1023, §157
Referred to in §502A.22

502A.2 Unlawful commodity transactions.

Except as otherwise provided in section 502A.3 or 502A.4, a person shall not sell or purchase, or offer to sell or purchase, a commodity under a commodity contract, or under a commodity option, or offer to enter into, or enter into as seller or purchaser, a commodity contract or commodity option.

90 Acts, ch 1169, §2
Referred to in §502A.3, 502A.4, 502A.6, 502A.19, 502A.22

502A.3 Exempt person transactions.

1. The prohibitions in section 502A.2 do not apply to a transaction in which any of the following persons, or any employee, officer, or director of a listed person acting solely in that capacity, is the purchaser or seller:

a. A person registered with the commodity futures trading commission as a futures commission merchant or as a leverage transaction merchant whose activities require such registration.

b. A person registered with the securities and exchange commission as a broker-dealer whose activities require such registration.

c. A person affiliated with, and whose obligations and liabilities under the transaction are guaranteed by, a person referred to in paragraph *"a"* or *"b"*.

d. A person who is a member of a contract market designated by the commodity futures trading commission, or any CFTC clearinghouse.

e. A financial institution.

f. A person registered under the laws of this state as a securities broker-dealer whose activities require such registration.

2. This exemption provided by this section does not apply to any transaction or activity which is prohibited by the Commodity Exchange Act or CFTC rule.

90 Acts, ch 1169, §3; 2012 Acts, ch 1023, §100
Referred to in §502A.2, 502A.4, 502A.6

502A.4 Exempt transactions.

1. Section 502A.2 does not apply to any of the following:

a. An account, agreement, or transaction within the exclusive jurisdiction of the commodity futures trading commission as granted under the Commodity Exchange Act.

b. A commodity contract, offered or sold by a qualified seller as defined in subsection 2, for the purchase of one or more precious metals which requires, and under which the purchaser receives, within twenty-eight days from the payment in good funds of any portion of the purchase price, physical delivery of the quantity of the precious metals purchased by the payment. For purposes of this paragraph, physical delivery shall be deemed to have occurred if both of the following conditions are satisfied:

(1) Within twenty-eight days, the required quantity of precious metals purchased by the payment is delivered, whether in specifically segregated or fungible bulk form, into the possession of a depository, other than the seller, which is any of the following:

(a) A financial institution.

(b) A depository the warehouse receipts of which are recognized for delivery purposes for any commodity on a contract market designated by the commodity futures trading commission.

(c) A storage facility licensed or regulated by the United States or any agency of the United States.

(d) A depository designated by the administrator.

(2) The depository or a qualified seller issues and the purchaser receives, a certificate, document of title, confirmation, or other instrument evidencing that the required quantity of precious metals has been delivered to the depository and is being and will continue to be held by the depository on the purchaser's behalf, free and clear of all liens and encumbrances, other than liens of the purchaser, tax liens, liens agreed to by the purchaser, or liens of the depository for fees and expenses, which have previously been disclosed to the purchaser.

c. For the purposes of paragraph *"b"*, a depository other than the seller shall not include a financial institution which makes loans to enable the borrower to finance the purchase of one or more precious metals if any of the following apply:

(1) The financial institution knows that the seller arranged for a commission, brokerage, or referral fee for the extension of credit by the financial institution.

(2) The financial institution is a person related to the seller, unless the relationship is remote or is not a factor in the transaction.

(3) The seller guarantees the loan or otherwise assumes the risk of loss by the financial institution upon the loan.

(4) The financial institution directly supplies the seller with the contract document used by the borrower to evidence the loan, and the seller has knowledge of the credit terms and participates in the preparation of the document.

(5) The loan is conditioned upon the borrower's purchase of the precious metals from a particular seller, but the financial institution's payment of proceeds of the loan to the seller does not in itself establish that the loan was so conditioned.

(6) The financial institution otherwise knowingly participates with the seller in the sale. The fact that the financial institution takes a security interest in the precious metals sold or makes the proceeds of the loan payable to the seller does not in itself constitute knowing participation in the sale.

d. A commodity contract solely between persons engaged in producing, processing, using commercially or handling as merchants, the commodity which is the subject of the contract, or any by-product of the commodity.

e. A commodity contract under which the offeree or the purchaser is a person under section 502A.3, an insurance company, an investment company as defined in the federal Investment Company Act of 1940, 15 U.S.C. §80a-1 et seq., or an employee pension and profit sharing or benefit plan other than a self-employed individual retirement plan, or individual retirement account.

2. For the purposes of subsection 1, paragraph *"b"*, a qualified seller is a person who satisfies all of the following conditions:

a. Is a seller of precious metals and has a tangible net worth of at least five million dollars, or has an affiliate who has unconditionally guaranteed the obligations and liabilities of the seller and the affiliate has a tangible net worth of at least five million dollars.

b. Has stored precious metals with one or more depositories on behalf of customers for at least the previous three years.

c. Prior to any offer, files with the administrator a sworn notice of intent to act as a qualified seller under subsection 1, paragraph *"b"*, and annually files a new notice. A notice of intent to act as a qualified seller must contain all of the following:

(1) The seller's name and address, names of its directors, officers, controlling shareholders, partners, principals, and other controlling persons.

(2) The address of its principal place of business, state and date of incorporation or organization, and the name and address of seller's registered agent in this state.

(3) A statement that the seller, or a person affiliated with the seller who has guaranteed the obligations and liabilities of the seller, has a tangible net worth of at least five million dollars.

(4) Depository information including all of the following:

(a) The name and address of the depository or depositories that the seller intends to use.

(b) The name and address of each and every depository where the seller has stored precious metals on behalf of customers for the previous three years.

(c) Independent verification from each and every depository named in subparagraph division (b) that the seller has in fact stored precious metals on behalf of the seller's customers for the previous three years and a statement of total deposits made during this period.

(5) Financial statements for the seller, or the person affiliated with the seller who has guaranteed the obligations and liabilities of the seller, for the past three years, audited by an independent certified public accountant, together with the accountant's reports.

(6) A statement describing the details of all civil, criminal, or administrative proceedings currently pending or adversely resolved against the seller or its directors, officers, controlling shareholders, partners, principals, or other controlling persons during the past ten years including all of the following in subparagraph divisions (a) through (d), or if not applicable, subparagraph division (e):

(a) Civil litigation and administrative proceedings involving securities or commodities violations, or fraud.

(b) Criminal proceedings.

(c) Denials, suspensions, or revocations of securities or commodities, licenses, or registrations.

(d) Suspensions or expulsions from membership in, or associations with, self-regulatory organizations registered under the Securities Exchange Act of 1934, or the Commodities Exchange Act.

(e) A statement that there were no such proceedings.

d. Notifies the administrator within fifteen days of any material changes in the information provided in the notice of intent.

e. Annually furnishes to each purchaser for whom the seller is then storing precious metals, and to the administrator, a report by an independent certified public accountant of the accountant's examination of the seller's precious metals storage program.

3. The administrator may, upon request by the seller, waive any of the exempt transaction requirements of this section, conditionally or unconditionally.

4. The administrator may, by order, deny, suspend, revoke, or place limitations on the authority to engage in business as a qualified seller under subsection 1, paragraph *"b"* if the administrator finds that the order is in the public interest and that the person, the person's officers, directors, partners, agents, servants or employees, a person occupying a similar status or performing similar functions, a person who directly or indirectly controls or is controlled by the seller, or any of them, the seller's affiliates or subsidiaries meets any of the following conditions:

a. Has filed a notice of intention under subsection 2 with the administrator or the designee of the administrator which was incomplete in any material respect or contained any statement which was, in light of the circumstances under which it was made, false or misleading with respect to any material fact.

b. Has, within the last ten years, pled guilty or nolo contendere to, or been convicted of any crime indicating a lack of fitness to engage in the investment commodity business.

c. Has been permanently or temporarily enjoined by any court of competent jurisdiction from engaging in, or continuing, any conduct or practice which injunction indicates a lack of fitness to engage in the investment commodities business.

d. Is the subject of an order of the administrator denying, suspending, or revoking the person's license as a securities broker-dealer, sales representative, or investment adviser.

e. Is the subject of any of the following orders which are currently effective and which were issued within the last five years:

(1) An order by the securities agency or administrator of another state, Canadian province or territory, the securities and exchange commission, or the commodity futures trading commission, entered after notice and opportunity for hearing, denying, suspending, or revoking the person's registration as a futures commission merchant, commodity trading adviser, commodity pool operator, securities broker-dealer, sales representative, or investment adviser, or the substantial equivalent of those terms.

(2) Suspension or expulsion from membership in, or association with, a self-regulatory organization registered under the federal Securities Exchange Act of 1934 or the Commodity Exchange Act.

(3) A United States postal service fraud order.

(4) A cease and desist order entered after notice and opportunity of hearing by the administrator or the securities agency or administrator of any other state, Canadian province or territory, the United States securities and exchange commission, or the commodity futures trading commission.

(5) An order entered by the commodity futures trading commission denying, suspending, or revoking registration under the Commodity Exchange Act.

f. Has engaged in an unethical or dishonest act or practice in the investment commodities or securities business.

g. Has failed reasonably to supervise sales representatives or employees.

5. If the public interest or the protection of investors so requires, the administrator may, by order, summarily deny or suspend the exemption for a qualified seller. Upon the entry of the order, the administrator shall promptly notify the person claiming such status that an order has been entered and the reasons for the order and that within thirty days after the receipt of a written request the matter will be set for hearing. Section 502A.20 applies with respect to all subsequent proceedings.

6. If the administrator finds that any applicant or qualified seller is no longer in existence or has ceased to do business or is subject to an adjudication of mental incompetence or to the control of a committee, conservator, or guardian, or cannot be located after reasonable search, the administrator may, by order, deny or revoke the exemption for a qualified seller.

7. The administrator may issue rules or orders prescribing the terms and conditions of all transactions and contracts covered by this chapter which are not within the exclusive jurisdiction of the commodity futures trading commission as granted by the Commodity Exchange Act, exempting and conditionally or unconditionally and otherwise implementing this chapter for the protection of purchasers and sellers of commodities.

90 Acts, ch 1169, §4; 2009 Acts, ch 41, §263; 2015 Acts, ch 30, §162
Referred to in §502A.2, 502A.6, 502A.22

502A.5 Unlawful commodity activities.

1. A person shall not engage in a trade or business or otherwise act as a commodity merchant unless the person is either of the following:

a. Registered or temporarily licensed with the commodity futures trading commission for each activity constituting the person as a commodity merchant and the registration or temporary license has not expired, been suspended, or revoked.

b. Exempt from such registration by virtue of the Commodity Exchange Act or of a CFTC rule.

2. A board of trade shall not trade, or provide a place for the trading of, any commodity contract or commodity option required to be traded on or subject to the rules of a contract market designated by the commodity futures trading commission unless the board of trade has been so designated for the commodity contract or commodity option and the designation has not been vacated, suspended, or revoked.

90 Acts, ch 1169, §5
Referred to in §502A.19

502A.6 Fraudulent conduct.

A person shall not directly or indirectly do any of the following in or in connection with the purchase or sale of, the offer to sell, the offer to purchase, the offer to enter into, or the entry into of, a commodity contract or commodity option subject to section 502A.2, 502A.3, 502A.4, subsection 1, paragraph *"b"*, or section 502A.4, subsection 1, paragraph *"d"*:

1. Cheat or defraud, or attempt to cheat or defraud, another person or employ any device, scheme, or artifice to defraud another person.

2. Make a false report or enter a false record.

3. Make an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.

4. Engage in a transaction, act, practice, or course of business, including, without limitation, any form of advertising or solicitation, which operates or would operate as a fraud or deceit upon any person.

5. Misappropriate or convert the funds, security, or property of another person.

90 Acts, ch 1169, §6
Referred to in §502A.19

502A.7 Liability of principals, controlling persons, and others.

1. The act, omission, or failure of an official, agent, or other person acting for an individual, association, partnership, corporation, or trust within the scope of the person's employment or office shall be deemed the act, omission, or failure of the individual, association, partnership, corporation, or trust, as well as of the person.

2. A person who directly or indirectly controls another person liable under this chapter, a partner, officer, or director of the other person, a person occupying a similar status or performing similar functions, and an employee of such other person who materially aids in the violation, is liable jointly and severally with and to the same extent as the other person, unless the person who is liable by virtue of this provision sustains the burden of proof that

the person did not know, and in exercise of reasonable care could not have known, of the existence of the facts by reason of which the liability is alleged to exist.

90 Acts, ch 1169, §7

502A.8 Securities laws unaffected.

This chapter does not impair, derogate, or otherwise affect the authority or powers of the administrator under chapter 502 or the application of any provision of chapter 502 to a person or transaction subject to that chapter.

90 Acts, ch 1169, §8

502A.9 Purpose.

This chapter may be construed and implemented to effectuate its general purpose to protect investors, to prevent and prosecute illegal and fraudulent schemes involving commodity contracts and to maximize coordination with federal and other states' laws and the administration and enforcement of those laws. This chapter is not intended to create any rights or remedies upon which actions may be brought by private persons against persons who violate this chapter.

90 Acts, ch 1169, §9

502A.10 Reserved.

SUBCHAPTER II

502A.11 Investigations.

1. The administrator may make investigations, within or without this state, as the administrator finds necessary or appropriate to do either or both of the following:

a. Determine whether any person has violated, or is about to violate this chapter or any rule or order of the administrator.

b. Aid in enforcement of this chapter.

2. The administrator may publish information concerning a violation of this chapter or any rule or order of the administrator.

3. For purposes of an investigation or proceeding under this chapter, the administrator or any officer or employee designated by rule or order, may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the administrator finds to be relevant or material to the inquiry.

4. *a.* If a person does not give testimony or produce the documents required by the administrator or a designated employee pursuant to an administrative subpoena, the administrator or designated employee may apply for a court order compelling compliance with the subpoena or the giving of the required testimony.

b. The request for order of compliance may be addressed to either of the following:

(1) The Polk county district trial court or the district court where service may be obtained on the person refusing to testify or produce, if the person is within this state.

(2) The appropriate court of the state having jurisdiction over the person refusing to testify or produce, if the person is outside this state.

90 Acts, ch 1169, §10

Referred to in §502A.12, 502A.15

502A.12 Enforcement of chapter.

1. If the administrator believes, whether or not based upon an investigation conducted under section 502A.11, that a person has engaged or is about to engage in an act or practice constituting a violation of this chapter or a rule or order issued under this chapter, the administrator may do any or all of the following:

a. Issue a cease and desist order.

b. Issue an order imposing a civil penalty in amount which may not exceed ten thousand

dollars for a single violation or one hundred thousand dollars for multiple violations in a single proceeding or a series of related proceedings.

c. Initiate any of the actions specified in subsection 2.

2. The administrator may institute any or all of the following actions in the appropriate courts of this state, or in the appropriate courts of another state, in addition to any legal or equitable remedies otherwise available:

a. A declaratory judgment.

b. An action for a prohibitory or mandatory injunction to enjoin the violation and to ensure compliance with this chapter or a rule or order of the administrator.

c. An action for disgorgement.

d. An action for appointment of a receiver or conservator for the defendant or the defendant's assets.

e. An action for restitution.

90 Acts, ch 1169, §11

502A.13 Power of court to grant relief.

1. *a.* Upon a proper showing by the administrator that a person has violated, or is about to violate, this chapter or a rule or order of the administrator, a court of competent jurisdiction may grant appropriate legal or equitable remedies.

b. Upon showing of violation of this chapter or a rule or order of the administrator, the court, in addition to traditional legal and equitable remedies, including temporary restraining orders, permanent or temporary prohibitory or mandatory injunctions, and writs of prohibition or mandamus, may grant any or all of the following special remedies:

(1) Imposition of a civil penalty in amount which may not exceed ten thousand dollars for any single violation or one hundred thousand dollars for multiple violations in a single proceeding or a series of related proceedings.

(2) Disgorgement.

(3) Declaratory judgment.

(4) Restitution to investors wishing restitution.

(5) Appointment of a receiver or conservator for the defendant or the defendant's assets.

c. Appropriate remedies when the defendant is shown only about to violate this chapter or a rule or order of the administrator shall be limited to any or all of the following:

(1) A temporary restraining order.

(2) A temporary or permanent injunction.

(3) A writ of prohibition or mandamus.

(4) An order appointing a receiver or conservator for the defendant or the defendant's assets.

2. The court shall not require the administrator to post a bond in any official action under this chapter.

3. *a.* Upon a proper showing by the administrator or securities or commodity agency of another state that a person, other than a government or governmental agency or instrumentality, has violated, or is about to violate, the commodity code of that state or a rule or order of the administrator or securities or commodity agency of that state, the district court may grant appropriate legal and equitable remedies.

b. Upon showing of a violation of the securities or commodity act of the foreign state or a rule or order of the administrator or securities or commodity agency of the foreign state, the court, in addition to traditional legal or equitable remedies including temporary restraining orders, permanent or temporary prohibitory or mandatory injunctions and writs of prohibition or mandamus, may grant either or both of the following special remedies:

(1) Disgorgement.

(2) Appointment of a receiver, conservator, or ancillary receiver or conservator for the defendant or the defendant's assets located in this state.

c. Appropriate remedies when the defendant is shown only about to violate the securities or commodity act of the foreign state or a rule or order of the administrator or securities or commodity agency of the foreign state shall be limited to any or all of the following:

(1) A temporary restraining order.

(2) A temporary or permanent injunction.
(3) A writ of prohibition or mandamus.
(4) An order appointing a receiver, conservator, or ancillary receiver or conservator for the defendant or the defendant's assets located in this state.
90 Acts, ch 1169, §12

502A.14 Criminal penalties.
1. A person who willfully violates either of the following shall, upon conviction, be fined not more than twenty thousand dollars or be imprisoned not more than ten years, or both, for each violation.
a. This chapter.
b. A rule or order of the administrator under this chapter.
2. A person convicted of violating a rule or order under this chapter may be fined, but may not be imprisoned, if the person proves the person had no knowledge of the rule or order.
3. The administrator may refer such evidence as is available concerning violations of this chapter or any rule or order of the administrator to the attorney general or the proper county attorney, who may, with or without such a reference from the administrator, institute the appropriate criminal proceedings under this chapter.
4. This chapter does not limit the power of the state to proceed against a person for conduct which constitutes a breach of duty, a crime, or a violation under common law, rule, or another statute. An action pursuant to this chapter is not an election of remedies, and an aggrieved person or the state retains any other common law or statutory causes of action which may exist against a person alleged to have violated this chapter or against a person convicted of such a violation.
90 Acts, ch 1169, §13

502A.15 Administration of chapter.
1. This chapter shall be administered by the administrator of the securities and regulated industries bureau of the insurance division of the department of commerce.
2. The administrator or any employees of the administrator shall not use any information which is filed with or obtained by the administrator which is not public information for personal gain or benefit, and the administrator or any employees of the administrator shall not conduct any securities or commodity dealings based upon any such information, even though public, if there has not been a sufficient period of time for the securities or commodity markets to assimilate such information.
3. *a.* Except as provided in paragraph *"b"*, all information collected, assembled, or maintained by the administrator is public information and is available for the examination of the public as provided by chapter 22.
b. The following are exceptions to paragraph *"a"* and are confidential:
(1) Information obtained in an investigation pursuant to section 502A.11, unless published pursuant to section 502A.11, subsection 2.
(2) Information made confidential by chapter 22.
(3) Information obtained from federal agencies which cannot be disclosed under federal law.
c. The administrator in the administrator's discretion may disclose any information made confidential under paragraph *"b"* to persons identified in section 502A.16, subsection 1.
d. This chapter does not create or derogate any privilege which exists at common law, by statute or otherwise when documentary or other evidence is sought under subpoena directed to the administrator or any employee of the administrator.
90 Acts, ch 1169, §14; 2006 Acts, ch 1117, §14

502A.16 Cooperation with other agencies.
1. To encourage uniform application and interpretation of this chapter and securities regulation and enforcement in general, the administrator and the employees of the administrator may cooperate, including bearing the expense of the cooperation, with the securities agencies or administrator of another jurisdiction, Canadian province or territory or

such other agencies administering this chapter, the commodity futures trading commission, the United States securities and exchange commission, any self-regulatory organization established under the Commodity Exchange Act or the federal Securities Exchange Act of 1934, any national or international organization of commodities or securities officials or agencies, and any governmental law enforcement agency.

2. The cooperation authorized by subsection 1 shall include, but need not be limited to, any or all of the following:

a. Making joint examinations or investigations.

b. Holding joint administrative hearings.

c. Filing and prosecuting joint litigation.

d. Sharing and exchanging personnel.

e. Sharing and exchanging information and documents.

f. Formulating and adopting mutual regulations, statements of policy, guidelines, proposed statutory changes, and releases.

g. Issuing and enforcing subpoenas at the request of the agency administering this chapter in another jurisdiction, the securities agency of another jurisdiction, the commodity futures trading commission or the United States securities and exchange commission if the information sought would also be subject to lawful subpoena for conduct occurring in this state.

90 Acts, ch 1169, §15
Referred to in §502A.15

502A.17 General authority to adopt rules, forms, and orders.

1. In addition to specific authority granted elsewhere in this chapter, the administrator may adopt rules and forms, pursuant to chapter 17A, and issue orders as are necessary to administer this chapter. Rules or forms to be adopted shall include, but need not be limited to, the following:

a. Rules defining any terms, whether or not used in this chapter, insofar as the definitions are not inconsistent with the provisions of this chapter.

b. For the purpose of rules or forms, the administrator may classify commodities and commodity contracts, persons, and matters within the administrator's jurisdiction.

2. Unless specifically provided in this chapter, a rule, form, or order shall not be adopted or issued unless the administrator finds that the action is both of the following:

a. Necessary or appropriate in the public interest or for the protection of investors.

b. Consistent with the purposes fairly intended by the policy of this chapter.

3. All rules and forms of the administrator shall be published as provided in chapter 17A.

4. A provision of this chapter imposing any liability shall not apply to an act done or omitted in good faith in conformity with a rule or form adopted or order issued by the administrator, notwithstanding that the rule, order, or form may later be amended, or rescinded, or be determined by judicial or other authority to be invalid for any reason.

90 Acts, ch 1169, §16

502A.18 Consent to service of process.

When a person, including a nonresident of this state, engages in conduct prohibited or made actionable by this chapter or any rule or order of the administrator, the conduct shall constitute the appointment of the administrator as the person's attorney to receive service of any lawful process in a noncriminal proceeding against the person, a successor, or personal representative, which grows out of that conduct and which is brought under this chapter or any rule or order of the administrator with the same force and validity as if served personally.

90 Acts, ch 1169, §17

502A.19 Chapter scope.

1. Sections 502A.2, 502A.5, and 502A.6 apply to a person who sells or offers to sell when either of the following occurs:

a. An offer to sell is made in this state.

b. An offer to buy is made and accepted in this state.

2. Sections 502A.2, 502A.5, and 502A.6 apply to a person who buys or offers to buy when either of the following occur:

a. An offer to buy is made in this state.

b. An offer to sell is made and accepted in this state.

3. For the purpose of this section, an offer to sell or to buy is made in this state, whether or not either party is then present in this state, when either of the following occurs:

a. The offer originates from this state.

b. The offer is directed by the offeror to this state and received at the place to which it is directed, or at any post office in this state in the case of a mailed offer.

4. For the purpose of this section, an offer to buy or to sell is accepted in this state when the acceptance satisfies both of the following conditions:

a. The acceptance is communicated to the offeror in this state.

b. The acceptance has not previously been communicated to the offeror, orally or in writing, outside this state; and acceptance is communicated to the offeror in this state, whether or not either party is then present in this state, when the offeree directs it to the offeror in this state, reasonably believing the offeror to be in this state and it is received at the place to which it is directed, or at any post office in this state in the case of a mailed acceptance.

5. An offer to sell or to buy is not made in this state when either of the following occurs:

a. The publisher circulates or there is circulated on the publisher's behalf in this state any bona fide newspaper or other publication of general, regular, and paid circulation which is not published in this state, or which is published in this state but has had more than two-thirds of its circulation outside this state during the past twelve months.

b. A radio or television program originating outside this state is received in this state.

90 Acts, ch 1169, §18

502A.20 Effect of pending judicial review.

The filing of a petition for judicial review pursuant to chapter 17A does not, unless specifically ordered by the court, operate as a stay of the administrator's order, and the administrator may enforce or ask the court to enforce the order pending the outcome of the review proceedings.

90 Acts, ch 1169, §19

Referred to in §502A.4

502A.21 Pleading exemptions.

It is not necessary for the state to plead the absence of an exemption under this chapter in a complaint, information, or indictment, or a writ or proceeding brought under this chapter. The burden of proof of a claimed exemption is upon the party claiming the exemption.

90 Acts, ch 1169, §20

502A.22 Affirmative defense.

It is an affirmative defense in a complaint, information, indictment, writ, or proceeding brought under this chapter alleging a violation of section 502A.2 based solely on the failure in an individual case to make physical delivery within the applicable time period under section 502A.1, subsection 5, or section 502A.4, subsection 1, paragraph *"b"* if both of the following apply:

1. Failure to make physical delivery was due solely to factors beyond the control of the seller, the seller's officers, directors, partners, agents, servants, or employees, every person occupying a similar status or performing similar functions, every person who directly or indirectly controls or is controlled by the seller, or any of them, the seller's affiliates, subsidiaries, or successors.

2. Physical delivery was completed within a reasonable time under the applicable circumstances.

90 Acts, ch 1169, §21

CHAPTER 503

RESERVED

SUBTITLE 5

NONPROFIT CORPORATIONS

Referred to in §491.39

CHAPTER 504

REVISED IOWA NONPROFIT CORPORATION ACT

Referred to in §7D.15, 10B.4, 10B.7, 10D.1, 15.106B, 15.107, 15.293A, 15E.64, 16.134, 84A.1C, 123.173A, 135D.4, 135D.5, 190C.6, 217.41, 225C.13, 303.3, 306.46, 331.427, 331.441, 357A.1, 357A.11, 357A.15, 357A.20, 357A.22A, 357A.23, 357A.24, 423.3, 423.4, 425.11, 476.1, 476.27, 480.3, 490.1701, 497.22, 498.24, 499.5, 499.5A, 499.49, 500.3, 501A.102, 501B.14, 504B.1, 504B.6, 504C.1, 509.1, 513C.10, 514.1, 514.2, 514.5, 514.13, 514.14, 514.15, 514.19, 514.23, 515.1, 547.1, 558.72, 616.10, 633.63, 669.14, 716.6B, 717F.7

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GENERAL PROVISIONS

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SHORT TITLE AND APPLICATIONS

504.101 Short title.

This chapter shall be known and may be cited as the *"Revised Iowa Nonprofit Corporation Act"*.

2004 Acts, ch 1049, §1, 192

504.102 Reservation of power to amend or repeal.

The general assembly has power to amend or repeal all or part of this chapter at any time and all domestic and foreign corporations subject to this chapter are governed by the amendment or repeal.

2004 Acts, ch 1049, §2, 192

504.103 through 504.110 Reserved.

PART 2

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504.111 Filing requirements.

1. A document must satisfy the requirements of this section, and of any other section that adds to or varies these requirements, to be entitled to filing by the secretary of state.
2. This chapter must require or permit filing the document in the office of the secretary of state.
3. The document must contain the information required by this chapter. It may contain other information as well.
4. The document must be typewritten or printed. If the document is electronically transmitted, it must be in a format that can be retrieved or reproduced in typewritten or printed form.
5. The document must be in the English language. However, a corporate name need not be in English if written in English letters or Arabic or Roman numerals. The certificate of existence required of foreign corporations need not be in English if accompanied by a reasonably authenticated English translation.
6. The document must be executed by one of the following:

a. The presiding officer of the board of directors of a domestic or foreign corporation, its president, or by another of its officers.

b. If directors have not been selected or the corporation has not been formed, by an incorporator.

c. If the corporation is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.

7. The person executing a document shall sign it and state beneath or opposite the signature the person's name and the capacity in which the person signs. The document may contain a corporate seal, an attestation, an acknowledgment, or a verification.
8. If the secretary of state has prescribed a mandatory form for a document under section 504.112, the document must be in or on the prescribed form.
9. The document must be delivered to the office of the secretary of state for filing.

Delivery may be made by electronic transmission if and to the extent permitted by the secretary of state. If it is filed in typewritten or printed form and not transmitted electronically, the secretary of state may require one exact or conformed copy to be delivered with the document, except as provided in sections 504.503 and 504.1509.

10. When the document is delivered to the office of the secretary of state for filing, the correct filing fee, and any franchise tax, license fee, or penalty, shall be paid in a manner permitted by the secretary of state.

11. The secretary of state may adopt rules for the electronic filing of documents and the certification of electronically filed documents.

12. Whenever a provision of this chapter permits any of the terms of a plan or a filed document to be dependent on facts objectively ascertainable outside the plan or filed document, all of the following provisions apply:

a. The manner in which the facts will operate upon the terms of the plan or filed document shall be set forth in the plan or filed document.

b. The facts may include any of the following:

(1) Any of the following that is available in a nationally recognized news or information medium either in print or electronically: statistical or market indices, market prices of any security or group of securities, interest rates, currency exchange rates, or similar economic or financial data.

(2) A determination or action by any person or body, including the corporation or any other party to a plan or filed document.

(3) The terms of, or actions taken under, an agreement to which the corporation is a party, or any other agreement or document.

c. As used in this subsection, all of the following apply:

(1) *"Filed document"* means a document filed with the secretary of state under any provision of this chapter except subchapter XV or section 504.1613.

(2) *"Plan"* means a plan of entity conversion or merger.

2004 Acts, ch 1049, §3, 192; 2005 Acts, ch 19, §77; 2015 Acts, ch 45, §2
Referred to in §504.116, 504.1104

504.112 Forms.

1. The secretary of state may prescribe and furnish on request forms for an application for a certificate of existence, a foreign corporation's application for a certificate of authority to transact business in this state, a foreign corporation's application for a certificate of withdrawal, and the biennial report. If the secretary of state so requires, use of these forms is mandatory.

2. The secretary of state may prescribe and furnish on request forms for other documents required or permitted to be filed by this chapter, but their use is not mandatory.

2004 Acts, ch 1049, §4, 192
Referred to in §504.111

504.113 Filing, service, and copying fees.

1. The secretary of state shall collect the following fees, as provided by the secretary of state, when the documents described in this subsection are delivered for filing:

DOCUMENT	FEE
a. Articles of incorporation	$ __
b. Application for use of indistinguishable name	$ __
c. Application for reserved name	$ __
d. Notice of transfer of reserved name	$ __
e. Application for registered name	$ __
f. Application for renewal of registered name	$ __
g. Corporation's statement of change of registered agent or registered office or both	$ __

h. Agent's statement of change of registered office for each affected corporation not to exceed a total of ..... $ __
i. Agent's statement of resignation ..... No fee
j. Amendment of articles of incorporation ..... $ __
k. Restatement of articles of incorporation with amendments ..... $ __
l. Articles of merger ..... $ __
m. Articles of dissolution ..... $ __
n. Articles of revocation of dissolution ..... $ __
o. Certificate of administrative dissolution ..... $ __
p. Application for reinstatement following administrative dissolution ..... $ __
q. Certificate of reinstatement ..... No fee
r. Certificate of judicial dissolution ..... No fee
s. Application for certificate of authority ..... $ __
t. Application for amended certificate of authority ..... $ __
u. Application for certificate of withdrawal ..... $ __
v. Certificate of revocation of authority to transact business ..... No fee
w. Biennial report ..... $ __
x. Articles of correction ..... $ __
y. Application for certificate of existence or authorization ..... $ __
z. Any other document required or permitted to be filed by this chapter ..... $ __

2. The secretary of state shall collect a fee upon being served with process under this chapter. The party to a proceeding causing service of process is entitled to recover the fee paid the secretary of state as costs if the party prevails in the proceeding.

3. The secretary of state shall collect fees for copying and certifying the copy of any filed document relating to a domestic or foreign corporation.

2004 Acts, ch 1049, §5, 192
Authority to refund fees; 2012 Acts, ch 1131, §28; 2013 Acts, ch 135, §24, 52; 2015 Acts, ch 141, §22, 60, 67, 68; 2017 Acts, ch 171, §23, 50

504.114 Effective date of document.

1. Except as provided in subsection 2 and section 504.115, a document is effective at the later of the following times:

a. At the date and time of filing, as evidenced by such means as the secretary of state may use for the purpose of recording the date and time of filing.

b. At the time specified in the document as its effective time on the date it is filed.

2. A document may specify a delayed effective time and date, and if it does so the document becomes effective at the time and date specified. If a delayed effective date but no time is specified, the document is effective at the close of business on that date. A delayed effective date for a document shall not be later than the ninetieth day after the date filed.

2004 Acts, ch 1049, §6, 192
Referred to in §504.1104, 504.1613

504.115 Correcting filed document.

1. A domestic or foreign corporation may correct a document filed by the secretary of state if the document satisfies one of the following:

a. The document contains an inaccuracy.

b. The document was defectively executed, attested, sealed, verified, or acknowledged.

c. The electronic transmission was defective.

2. A document is corrected by doing both of the following:

a. By preparing articles of correction that satisfy all of the following requirements:

(1) Describe the document, including its filing date, or attach a copy of the document to the articles.

(2) Specify the inaccuracy or defect to be corrected.

(3) Correct the incorrect statement or defective execution.

b. By delivering the articles of correction to the secretary of state for filing.

3. Articles of correction are effective on the effective date of the document they correct except as to persons relying on the uncorrected document and adversely affected by the correction. As to those persons, articles of correction are effective when filed.

2004 Acts, ch 1049, §7, 192; 2005 Acts, ch 3, §79

Referred to in §504.114

504.116 Filing duty of secretary of state.

1. If a document delivered to the office of the secretary of state for filing satisfies the requirements of section 504.111, the secretary of state shall file it.

2. The secretary of state files a document by recording the document as filed on the date and the time of receipt. After filing a document, except as provided in sections 504.504, 504.1510, and 504.1613, the secretary of state shall deliver to the domestic or foreign corporation or its representative a copy of the document with an acknowledgment of the date and time of filing.

3. Upon refusing to file a document, the secretary of state shall return it to the domestic or foreign corporation or its representative, together with a brief, written explanation of the reason or reasons for the refusal.

4. The secretary of state's duty to file documents under this section is ministerial. Filing or refusal to file a document does not do any of the following:

a. Affect the validity or invalidity of the document in whole or in part.

b. Relate to the correctness or incorrectness of information contained in the document.

c. Create a presumption that the document is valid or invalid or that information contained in the document is correct or incorrect.

2004 Acts, ch 1049, §8, 192

504.117 Appeal from secretary of state's refusal to file document.

1. If the secretary of state refuses to file a document delivered for filing to the secretary of state's office, the domestic or foreign corporation may appeal the refusal to the district court in the county where the corporation's principal office, or if there is none in this state, its registered office, is or will be located. The appeal is commenced by petitioning the court to compel filing the document and by attaching to the petition the document and the secretary of state's explanation of the refusal to file.

2. The court may summarily order the secretary of state to file the document or take other action the court considers appropriate.

3. The court's final decision may be appealed as in other civil proceedings.

2004 Acts, ch 1049, §9, 192

504.118 Evidentiary effect of copy of filed document.

A certificate from the secretary of state delivered with a copy of a document filed by the secretary of state is conclusive evidence that the original document is on file with the secretary of state.

2004 Acts, ch 1049, §10, 192

504.119 Certificate of existence.

1. Any person may apply to the secretary of state to furnish a certificate of existence for a domestic or foreign corporation.

2. The certificate of existence shall set forth all of the following:

a. The domestic corporation's corporate name or the foreign corporation's corporate name used in this state.

b. That the domestic corporation is duly incorporated under the laws of this state, the date of its incorporation, and the period of its duration if less than perpetual; or that the foreign corporation is authorized to transact business in this state.

c. That all fees have been paid.

d. That its most recent biennial report required by section 504.1613 has been delivered to the secretary of state.

e. That articles of dissolution have not been filed.

f. Other facts of record in the office of the secretary of state that may be requested by the applicant.

3. Subject to any qualification stated in the certificate, a certificate of existence issued by the secretary of state may be relied upon as conclusive evidence that the domestic or foreign corporation is in good standing in this state.

2004 Acts, ch 1049, §11, 192

504.120 Penalty for signing false document.

1. A person commits an offense by signing a document the person knows is false in any material respect with intent that the document be delivered to the secretary of state for filing.

2. An offense under this section is a serious misdemeanor punishable by a fine not to exceed one thousand dollars.

2004 Acts, ch 1049, §12, 192

504.121 through 504.130 Reserved.

PART 3

SECRETARY OF STATE

504.131 Powers.

The secretary of state has all powers reasonably necessary to perform the duties required of the secretary of state's office by this chapter.

2004 Acts, ch 1049, §13, 192

504.132 Secretary of state — internet site.

The secretary of state shall place on the secretary of state's internet site a link to a free internet site with completed internal revenue service forms 990 and 990EZ.

2008 Acts, ch 1184, §72

504.133 through 504.140 Reserved.

PART 4

DEFINITIONS

504.141 Chapter definitions.

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

1. *"Approved by the members"* or *"approval by the members"* means approved or ratified by the affirmative vote of a majority of the votes represented and voting at a duly held meeting at which a quorum is present, which affirmative votes also constitute a majority of the required quorum, or by a written ballot or written consent in conformity with this chapter or by the affirmative vote, written ballot, or written consent of such greater proportion, including the votes of all the members of any class, unit, or grouping as may be provided in the articles, bylaws, or this chapter for any specified member action.

2. *"Articles of incorporation"* or *"articles"* includes amended and restated articles of incorporation and articles of merger.

3. *"Board"* or *"board of directors"* means the board of directors of a corporation except that no person or group of persons are the board of directors because of powers delegated to that person or group pursuant to section 504.801.

4. *"Bylaws"* means the code or codes of rules other than the articles adopted pursuant to this chapter for the regulation or management of the affairs of a corporation irrespective of the name or names by which such rules are designated.

5. *"Class"* means a group of memberships which have the same rights with respect to voting, dissolution, redemption, and transfer. For purposes of this section, rights shall be considered the same if they are determined by a formula applied uniformly.

6. *"Corporation"* means a public benefit, mutual benefit, or religious corporation.

7. *"Delegates"* means those persons elected or appointed to vote in a representative assembly for the election of a director or directors or on other matters.

8. *"Deliver"* or *"delivery"* means any method of delivery used in conventional commercial practice, including delivery in person, by mail, commercial delivery, and electronic transmission.

9. *"Directors"* means individuals, designated in the articles or bylaws or elected by the incorporators, and their successors and individuals elected or appointed by any other name or title to act as members of the board.

10. *"Distribution"* means the payment of a dividend or any part of the income or profit of a corporation to its members, directors, or officers.

11. *"Domestic corporation"* means a corporation.

12. *"Domestic unincorporated entity"* means an unincorporated entity whose internal affairs are governed by the laws of this state.

13. *"Effective date of notice"* is defined in section 504.142.

14. *"Electronic transmission"* or *"electronically transmitted"* means any process of communication not directly involving the physical transfer of paper that is suitable for the retention, retrieval, and reproduction of information by the recipient.

15. *"Employee"* does not include an officer or director of a corporation who is not otherwise employed by the corporation.

16. *"Entity"* includes a domestic or foreign business corporation; domestic or foreign nonprofit corporation; domestic or foreign unincorporated entity; estate; trust; state; the United States; governmental subdivision; and foreign government.

17. *"File"*, *"filed"*, or *"filing"* means filed in the office of the secretary of state.

18. *"Foreign corporation"* means a corporation organized under laws other than the laws of this state which would be a nonprofit corporation if formed under the laws of this state.

19. *"Foreign unincorporated entity"* means an unincorporated entity whose internal affairs are governed by an organic law of a jurisdiction other than this state.

20. *"Governmental subdivision"* includes an authority, county, district, and municipality.

21. *"Includes"* denotes a partial definition.

22. *"Individual"* includes the estate of an incompetent individual.

23. *"Means"* denotes a complete definition.

24. *"Member"* means a person who on more than one occasion, pursuant to the provisions of a corporation's articles or bylaws, has a right to vote for the election of a director or directors of a corporation, irrespective of how a member is defined in the articles or bylaws of the corporation. A person is not a member because of any of the following:

a. The person's rights as a delegate.

b. The person's rights to designate a director.

c. The person's rights as a director.

25. *"Membership"* refers to the rights and obligations a member or members have pursuant to a corporation's articles, bylaws, and this chapter.

26. *"Mutual benefit corporation"* means a domestic or foreign corporation that is required to be a mutual benefit corporation pursuant to section 504.1705.

27. *"Notice"* is defined in section 504.142.

28. *"Organic law"* means a statute principally governing the internal affairs of a domestic or foreign business corporation, nonprofit corporation, or unincorporated entity.

29. *"Organic record"* means a public organic record or private organic record.

30. *"Person"* includes any individual or entity.

31. *"Principal office"* means the office in or out of this state so designated in the biennial report filed pursuant to section 504.1613 where the principal offices of a domestic or foreign corporation are located.

32. *"Private organic record"* means any record, other than a public organic record, if any, that determines the internal governance of an unincorporated entity. Where a private organic record has been amended or restated, *"private organic record"* means the private organic record as last amended or restated.

33. *"Proceeding"* includes a civil suit and criminal, administrative, or investigatory actions.

34. *"Public benefit corporation"* means a domestic or foreign corporation that is required to be a public benefit corporation pursuant to section 504.1705.

35. *"Public organic record"* means the record, if any, that is filed of public record, to create an unincorporated entity. Where a public organic record has been amended or restated, *"public organic record"* means the public organic record as last amended or restated.

36. *"Record"* means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

37. *"Record date"* means the date established under subchapter VI or VII on which a corporation determines the identity of its members for the purposes of this chapter.

38. *"Religious corporation"* means a domestic or foreign corporation that engages in religious activity as one of the corporation's principal purposes.

39. *"Secretary"* means the corporate officer to whom the board of directors has delegated responsibility under section 504.841, subsection 2, for custody of the minutes of the directors' and members' meetings and for authenticating the records of the corporation.

40. *"Sign"* or *"signature"* includes a manual, facsimile, conformed, or electronic signature.

41. *"State"*, when referring to a part of the United States, includes a state and commonwealth and their agencies and governmental subdivisions, and a territory and insular possession and their agencies and governmental subdivisions of the United States.

42. *a.* *"Unincorporated entity"* means an organization or other legal entity that is not a corporation and that either has a separate legal existence or has the power to acquire an estate in real property in the entity's own name. *"Unincorporated entity"* includes a general partnership, limited liability company, limited partnership, business or statutory trust, joint stock association, and unincorporated nonprofit association.

b. *"Unincorporated entity"* does not include a domestic or foreign business corporation, a nonprofit corporation, an estate, a trust, a governmental subdivision, a state, the United States, or a foreign government.

43. *"United States"* includes a district, authority, bureau, commission, department, and any other agency of the United States.

44. *"Vote"* includes authorization by written ballot and written consent.

45. *"Voting power"* means the total number of votes entitled to be cast for the election of directors at the time the determination of voting power is made, excluding a vote that is contingent upon the happening of a condition or event that has not occurred at the time. When a class is entitled to vote as a class for directors, the determination of voting power of the class shall be based on the percentage of the number of directors the class is entitled to elect out of the total number of authorized directors.

2004 Acts, ch 1049, §14, 192; 2005 Acts, ch 19, §78; 2012 Acts, ch 1049, §1, 2
Referred to in §9H.1, 123.173A, 504.611

504.142 Notice.

1. Notice under this chapter must be in writing unless oral notice is reasonable under the circumstances. Notice by electronic transmission is written notice.

2. Subject to subsection 1, notice may be communicated in person, by mail, or other method of delivery; or by telephone, voice mail, or other electronic means. If these forms of

personal notice are impracticable, notice may be communicated by a newspaper of general circulation in the area where published or by radio, television, or other form of public broadcast communication.

3. Oral notice is effective when communicated if communicated in a comprehensible manner.

4. Written notice by a domestic or foreign corporation to its member, if in a comprehensible form, is effective according to one of the following:

a. Upon deposit in the United States mail, if mailed postpaid and correctly addressed to the member's address shown in the corporation's current record of members.

b. When electronically transmitted to the member in a manner authorized by the member.

5. Except as provided in subsection 4, written notice, if in a comprehensible form, is effective at the earliest of the following:

a. When received.

b. Five days after its deposit in the United States mail, if mailed correctly addressed and with first class postage affixed.

c. On the date shown on the return receipt, if sent by registered or certified mail, return receipt requested, and the receipt is signed by or on behalf of the addressee.

d. Thirty days after its deposit in the United States mail, if mailed correctly addressed and with other than first class, registered, or certified postage affixed.

6. Written notice is correctly addressed to a member of a domestic or foreign corporation if addressed to the member's address shown in the corporation's current list of members.

7. A written notice or report delivered as part of a newsletter, magazine, or other publication regularly sent to members shall constitute a written notice or report if addressed or delivered to the member's address shown in the corporation's current list of members, or in the case of members who are residents of the same household and who have the same address in the corporation's current list of members, if addressed or delivered to one of such members, at the address appearing on the current list of members.

8. Written notice is correctly addressed to a domestic or foreign corporation authorized to transact business in this state, other than in its capacity as a member, if addressed to its registered agent or to its secretary at its principal office shown in its most recent biennial report or, in the case of a foreign corporation that has not yet delivered a biennial report, in its application for a certificate of authority.

9. If section 504.705, subsection 2, or any other provision of this chapter prescribes notice requirements for particular circumstances, those requirements govern. If articles or bylaws prescribe notice requirements not inconsistent with this section or other provisions of this chapter, those requirements govern.

2004 Acts, ch 1049, §15, 192; 2005 Acts, ch 19, §79, 80
Referred to in §504.141

504.143 through 504.150 Reserved.

PART 5

JUDICIAL RELIEF

504.151 Judicial relief.

1. If for any reason it is impractical or impossible for a corporation to call or conduct a meeting of its members, delegates, or directors, or otherwise obtain their consent, in the manner prescribed by its articles, bylaws, or this chapter, then upon petition of a director, officer, delegate, member, or the attorney general, the district court may order that such a meeting be called or that a written ballot or other form of obtaining the vote of members, delegates, or directors be authorized, in such a manner as the court finds fair and equitable under the circumstances.

2. The court shall, in an order issued pursuant to this section, provide for a method of notice reasonably designed to give actual notice to all persons who would be entitled to

notice of a meeting held pursuant to the articles, bylaws, and this chapter, whether or not the method results in actual notice to all such persons or conforms to the notice requirements that would otherwise apply. In a proceeding under this section, the court may determine who the members or directors are.

3. An order issued pursuant to this section may dispense with any requirement relating to the holding of or voting at meetings or obtaining votes, including any requirement as to quorums or as to the number or percentage of votes needed for approval, that would otherwise be imposed by the articles, bylaws, or this chapter.

4. Whenever practical, an order issued pursuant to this section shall limit the subject matter of meetings or other forms of consent authorized to items, including amendments to the articles or bylaws, the resolution of which will or may enable the corporation to continue managing its affairs without further resort to this section; provided, however, that an order under this section may also authorize the obtaining of whatever votes and approvals are necessary for the dissolution, merger, or sale of assets.

5. A meeting or other method of obtaining the vote of members, delegates, or directors conducted pursuant to an order issued under this section, and which complies with all the provisions of such order, is for all purposes a valid meeting or vote, as the case may be, and shall have the same force and effect as if it complied with every requirement imposed by the articles, bylaws, and this chapter.

2004 Acts, ch 1049, §16, 192

504.152 through 504.200 Reserved.

SUBCHAPTER II

ORGANIZATION

504.201 Incorporators.

One or more persons may act as the incorporator or incorporators of a corporation by delivering articles of incorporation to the secretary of state for filing.

2004 Acts, ch 1049, §17, 192

Referred to in §15E.64

504.202 Articles of incorporation.

1. The articles of incorporation shall set forth all of the following:

a. A corporate name for the corporation that satisfies the requirements of section 504.401.

b. The address of the corporation's initial registered office and the name of its initial registered agent at that office.

c. The name and address of each incorporator.

d. Whether the corporation will have members. A corporation incorporated prior to January 1, 2005, may state whether it will have members in either the articles of incorporation or in the corporate bylaws.

e. For corporations incorporated after January 1, 2005, provisions not inconsistent with law regarding the distribution of assets on dissolution.

2. The articles of incorporation may set forth any of the following:

a. The purpose for which the corporation is organized, which may be, either alone or in combination with other purposes, the transaction of any lawful activity.

b. The names and addresses of the individuals who are to serve as the initial directors.

c. Provisions not inconsistent with law regarding all of the following:

(1) Managing and regulating the affairs of the corporation.

(2) Defining, limiting, and regulating the powers of the corporation, its board of directors, and members, or any class of members.

(3) The characteristics, qualifications, rights, limitations, and obligations attaching to each or any class of members.

d. (1) A provision eliminating or limiting the liability of a director to the corporation or

its members for money damages for any action taken, or any failure to take any action, as a director, except liability for any of the following:

(a) The amount of a financial benefit received by a director to which the director is not entitled.

(b) An intentional infliction of harm on the corporation or its members.

(c) A violation of section 504.835.

(d) An intentional violation of criminal law.

(2) A provision set forth in the articles of incorporation pursuant to this paragraph shall not eliminate or limit the liability of a director for an act or omission that occurs prior to the date when the provision becomes effective. The absence of a provision eliminating or limiting the liability of a director pursuant to this paragraph shall not affect the applicability of section 504.901.

e. A provision permitting or requiring a corporation to indemnify a director for liability, as defined in section 504.851, subsection 5, to a person for any action taken, or any failure to take any action, as a director except liability for any of the following:

(1) Receipt of a financial benefit to which the person is not entitled.

(2) Intentional infliction of harm on the corporation or its members.

(3) A violation of section 504.835.

(4) Intentional violation of criminal law.

f. Any provision that under this chapter is required or permitted to be set forth in the bylaws.

3. An incorporator named in the articles must sign the articles.

4. The articles of incorporation need not set forth any of the corporate powers enumerated in this chapter.

2004 Acts, ch 1049, §18, 192; 2005 Acts, ch 19, §81, 82; 2012 Acts, ch 1023, §157
Referred to in §504.832, 504.852, 504.854, 504.901

504.203 Incorporation.

1. Unless a delayed effective date is specified, the corporate existence begins when the articles of incorporation are filed.

2. The secretary of state's filing of the articles of incorporation is conclusive proof that the incorporators satisfied all conditions precedent to incorporation except in a proceeding by the state to cancel or revoke the incorporation or involuntarily dissolve the corporation.

2004 Acts, ch 1049, §19, 192

504.204 Liability for preincorporation transactions.

All persons purporting to act as or on behalf of a corporation, knowing there was no incorporation under this chapter, are jointly and severally liable for all liabilities created while so acting.

2004 Acts, ch 1049, §20, 192

504.205 Organization of corporation.

1. After incorporation:

a. If initial directors are named in the articles of incorporation, the initial directors shall hold an organizational meeting, at the call of a majority of the directors, to complete the organization of the corporation by appointing officers, adopting bylaws, and carrying on any other business brought before the meeting.

b. If initial directors are not named in the articles, the incorporator or incorporators shall hold an organizational meeting at the call of a majority of the incorporators to do one of the following:

(1) Elect directors and complete the organization of the corporation.

(2) Elect a board of directors who shall complete the organization of the corporation.

2. Action required or permitted by this chapter to be taken by incorporators at an organizational meeting may be taken without a meeting if the action taken is evidenced by one or more written consents describing the action taken and signed by each incorporator.

3. An organizational meeting may be held in or out of this state in accordance with section 504.821.

2004 Acts, ch 1049, §21, 192

504.206 Bylaws.

1. The incorporators or board of directors of a corporation shall adopt bylaws for the corporation.

2. The bylaws may contain any provision for regulating and managing the affairs of the corporation that is not inconsistent with law or the articles of incorporation.

2004 Acts, ch 1049, §22, 192

504.207 Emergency bylaws and powers.

1. Unless the articles provide otherwise, the directors of a corporation may adopt, amend, or repeal bylaws to be effective only in an emergency as described in subsection 4. The emergency bylaws, which are subject to amendment or repeal by the members, may provide special procedures necessary for managing the corporation during the emergency, including all of the following:

a. How to call a meeting of the board.

b. Quorum requirements for the meeting.

c. Designation of additional or substitute directors.

2. All provisions of the regular bylaws consistent with the emergency bylaws remain effective during the emergency. The emergency bylaws are not effective after the emergency ends.

3. Corporate action taken in good faith in accordance with the emergency bylaws does both of the following:

a. Binds the corporation.

b. Shall not be used to impose liability on a corporate director, officer, employee, or agent.

4. An emergency exists for purposes of this section if a quorum of the corporation's directors cannot readily be assembled because of some catastrophic event.

2004 Acts, ch 1049, §23, 192

See also §504.303

504.208 through 504.300 Reserved.

SUBCHAPTER III

PURPOSES AND POWERS

504.301 Purposes.

1. Every corporation incorporated under this chapter has the purpose of engaging in any lawful activity unless a more limited purpose is set forth in the articles of incorporation.

2. A corporation engaging in an activity that is subject to regulation under another statute of this state may incorporate under this chapter only if incorporation under this chapter is not prohibited by the other statute. The corporation shall be subject to all limitations of the other statute.

2004 Acts, ch 1049, §24, 192

Referred to in §504.401

504.302 General powers.

Unless its articles of incorporation provide otherwise, every corporation has perpetual duration and succession in its corporate name and has the same powers as an individual to do all things necessary or convenient to carry out its affairs, including without limitation all of the following powers:

1. Sue and be sued, complain, and defend in its corporate name.

2. Have a corporate seal, which may be altered at will, and to use it, or a facsimile of it, by impressing, affixing, or in any other manner reproducing it.

3. Make and amend bylaws not inconsistent with its articles of incorporation or with the laws of this state, for regulating and managing the affairs of the corporation.

4. Purchase, receive, lease, or otherwise acquire, and own, hold, improve, use, and otherwise deal with real or personal property, or any legal or equitable interest in property, wherever located.

5. Sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of all or any part of its property.

6. Purchase, receive, subscribe for, or otherwise acquire, own, hold, vote, use, sell, mortgage, lend, pledge, or otherwise dispose of, and deal in and with, shares or other interests in, or obligations of, any entity.

7. Make contracts and guarantees, incur liabilities, borrow money, issue notes, bonds, and other obligations, and secure any of its obligations by mortgage or pledge of any of its property, franchises, or income.

8. Lend money, invest and reinvest its funds, and receive and hold real and personal property as security for repayment, except as limited by section 504.833.

9. Be a promoter, partner, member, associate, or manager of any partnership, joint venture, trust, or other entity.

10. Conduct its activities, locate offices, and exercise the powers granted by this chapter in or out of this state.

11. Elect or appoint directors, officers, employees, and agents of the corporation, define their duties, and fix their compensation.

12. Pay pensions and establish pension plans, pension trusts, and other benefit and incentive plans for any or all of its current or former directors, officers, employees, and agents.

13. Make donations not inconsistent with law for the public welfare or for charitable, religious, scientific, or educational purposes and for other purposes that further the corporate interest.

14. Impose dues, assessments, and admission and transfer fees upon its members.

15. Establish conditions for admission of members, admit members, and issue memberships.

16. Carry on a business.

17. Serve as a trustee of a trust of which the corporation is a beneficiary.

18. Do all things necessary or convenient, not inconsistent with law, to further the activities and affairs of the corporation.

2004 Acts, ch 1049, §25, 192; 2015 Acts, ch 45, §3

504.303 Emergency powers.

1. In anticipation of or during an emergency as described in subsection 4, the board of directors of a corporation may do both of the following:

a. Modify lines of succession to accommodate the incapacity of any director, officer, employee, or agent.

b. Relocate the principal office, designate alternative principal offices or regional offices, or authorize an officer to do so.

2. During an emergency described in subsection 4, unless emergency bylaws provide otherwise, all of the following shall apply:

a. Notice of a meeting of the board of directors need be given only to those directors whom it is practicable to reach and such notice may be given in any practicable manner, including by publication and radio.

b. One or more officers of the corporation present at a meeting of the board of directors may be deemed to be directors for the meeting, in order of rank and within the same rank in order of seniority, as necessary to achieve a quorum.

3. Corporate action taken in good faith during an emergency under this section to further the ordinary affairs of the corporation does both of the following:

a. Binds the corporation.

b. Shall not be used to impose liability on a corporate director, officer, employee, or agent.

4. An emergency exists for purposes of this section if a quorum of the corporation's directors cannot readily be assembled because of some catastrophic event.

2004 Acts, ch 1049, §26, 192

See also §504.207

504.304 Ultra vires.

1. Except as provided in subsection 2, the validity of corporate action shall not be challenged on the ground that the corporation lacks or lacked power to act.

2. A corporation's power to act may be challenged in a proceeding against the corporation to enjoin an act when a third party has not acquired rights. The proceeding may be brought by the attorney general, a director, or by a member or members in a derivative proceeding.

3. A corporation's power to act may be challenged in a proceeding against an incumbent or former director, officer, employee, or agent of the corporation. The proceeding may be brought by a director, the corporation, directly, derivatively, or through a receiver, a trustee or other legal representative, or in the case of a public benefit corporation, by the attorney general.

2004 Acts, ch 1049, §27, 192; 2004 Acts, ch 1175, §384

504.305 through 504.400 Reserved.

SUBCHAPTER IV

NAMES

504.401 Corporate name.

1. A corporate name shall not contain language stating or implying that the corporation is organized for a purpose other than that permitted by section 504.301 and its articles of incorporation.

2. Except as authorized by subsections 3 and 4, a corporate name must be distinguishable upon the records of the secretary of state from:

a. The corporate name of any other nonprofit or business corporation incorporated or authorized to do business in this state.

b. A name reserved, registered, or protected as follows:

(1) For a limited liability partnership, section 486A.1001 or 486A.1002.

(2) For a limited partnership, section 488.108, 488.109, or 488.810.

(3) For a business corporation, section 490.401, 490.402, 490.403, or 490.1422.

(4) For a limited liability company under chapter 489, section 489.108, 489.109, or 489.706.

(5) For a nonprofit corporation, this section or section 504.402, 504.403, or 504.1423.

c. The fictitious name of a foreign business or nonprofit corporation authorized to transact business in this state because its real name is unavailable.

3. A corporation may apply to the secretary of state for authorization to use a name that is not distinguishable upon the secretary of state's records from one or more of the names described in subsection 2. The secretary of state shall authorize use of the name applied for if either of the following applies:

a. The other corporation consents to the use of the name in writing and submits an undertaking in a form satisfactory to the secretary of state to change its name to a name that is distinguishable upon the records of the secretary of state from the name of the applying corporation.

b. The applicant delivers to the secretary of state a certified copy of a final judgment from a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.

4. A corporation may use the name, including the fictitious name, of another domestic or foreign business or nonprofit corporation that is being used in this state if the other corporation is incorporated or authorized to do business in this state and the proposed user

corporation submits documentation to the satisfaction of the secretary of state establishing any of the following conditions:

a. The user corporation has merged with the other corporation.

b. The user corporation has been formed by reorganization of the other corporation.

c. The user corporation has acquired all or substantially all of the assets, including the corporate name, of the other corporation.

5. This chapter does not control the use of fictitious names; however, if a corporation or a foreign corporation uses a fictitious name in this state, it shall deliver to the secretary of state for filing a copy of the resolution of its board of directors, certified by its secretary, adopting the fictitious name.

2004 Acts, ch 1049, §28, 192; 2004 Acts, ch 1049, §191; 2005 Acts, ch 19, §83, 84; 2006 Acts, ch 1089, §46; 2008 Acts, ch 1162, §145, 154, 155

Referred to in §488.108, 490.401, 504.202, 504.403, 504.1423, 504.1506

504.402 Reserved name.

1. A person may reserve the exclusive use of a corporate name, including a fictitious name for a foreign corporation whose corporate name is not available by delivering an application to the secretary of state for filing. Upon finding that the corporate name applied for is available, the secretary of state shall reserve the name for the applicant's exclusive use for a nonrenewable one hundred twenty-day period.

2. The owner of a reserved corporate name may transfer the reservation to another person by delivering to the secretary of state a signed notice of the transfer that states the name and address of the transferee.

2004 Acts, ch 1049, §29, 192

Referred to in §488.108, 490.401, 504.401, 504.403, 504.1506, 524.310

504.403 Registered name.

1. A foreign corporation may register its corporate name, or its corporate name with any change required by section 504.1506, if the name is distinguishable upon the records of the secretary of state from both of the following:

a. The corporate name of a nonprofit or business corporation incorporated or authorized to do business in this state.

b. A name reserved, registered, or protected as follows:

(1) For a limited liability partnership, section 486A.1001 or 486A.1002.

(2) For a limited partnership, section 488.108, 488.109, or 488.810.

(3) For a business corporation, section 490.401, 490.402, 490.403, or 490.1422.

(4) For a limited liability company under chapter 489, section 489.108, 489.109, or 489.706.

(5) For a nonprofit corporation, this section or section 504.401, 504.402, or 504.1423.

2. A foreign corporation shall register its corporate name, or its corporate name with any change required by section 504.1506, by delivering to the secretary of state an application that does both of the following:

a. Sets forth its corporate name, or its corporate name with any change required by section 504.1506, the state or country and date of its incorporation, and a brief description of the nature of the activities in which it is engaged.

b. Is accompanied by a certificate of existence, or a document of similar import, from the state or country of incorporation.

3. The name is registered for the applicant's exclusive use upon the effective date of the application.

4. A foreign corporation whose registration is effective may renew it for successive years by delivering to the secretary of state for filing a renewal application which complies with the requirements of subsection 2, between October 1 and December 31 of the preceding year. The renewal application renews the registration for the following calendar year.

5. A foreign corporation whose registration is effective may thereafter qualify as a foreign corporation under that name or consent in writing to the use of that name by a corporation thereafter incorporated under this chapter or by another foreign corporation thereafter authorized to transact business in this state. The registration terminates when the

domestic corporation is incorporated or the foreign corporation qualifies or consents to the qualification of another foreign corporation under the registered name.

2004 Acts, ch 1049, §30, 192; 2004 Acts, ch 1049, §191; 2005 Acts, ch 19, §85; 2006 Acts, ch 1089, §47; 2008 Acts, ch 1162, §146, 154, 155

Referred to in §488.108, 490.401, 504.401, 504.1506, 524.310

504.404 through 504.500 Reserved.

SUBCHAPTER V

OFFICE AND AGENT

504.501 Registered office and registered agent.

A corporation shall continuously maintain both of the following in this state:

1. A registered office with the same address as that of the registered agent.
2. A registered agent, who may be any of the following:

a. An individual who resides in this state and whose business office is identical with the registered office.

b. A domestic business corporation, domestic limited liability company, or domestic nonprofit corporation whose business office is identical to the registered office.

c. A foreign business corporation, foreign limited liability company, or foreign nonprofit corporation authorized to transact business in this state whose business office is identical to the registered office.

2004 Acts, ch 1049, §31, 192; 2015 Acts, ch 45, §4

504.502 Change of registered office or registered agent.

1. A corporation may change its registered office or registered agent by delivering to the secretary of state for filing a statement of change that sets forth all of the following:

a. The name of the corporation.

b. If the current registered office is to be changed, the address of the new registered office.

c. If the current registered agent is to be changed, the name of the new registered agent and the new agent's written consent, either on the statement or attached to it, to the change.

d. That after the change or changes are made, the addresses of its registered office and the office of its registered agent will be identical.

2. If the address of a registered agent's business office is changed, the registered agent may change the address of the registered office of any corporation for which the registered agent is the registered agent by notifying the corporation in writing of the change and by signing, either manually or in facsimile, and delivering to the secretary of state for filing, a statement that complies with the requirements of subsection 1 and recites that the corporation has been notified of the change.

3. If a registered agent changes the registered agent's business address to another place, the registered agent may change the address of the registered office of any corporation for which the registered agent is the registered agent by filing a statement as required in subsection 2 for each corporation, or by filing a single statement for all corporations named in the notice, except that it need be signed, either manually or in facsimile, only once by the registered agent and must recite that a copy of the statement has been mailed to each corporation named in the notice.

2004 Acts, ch 1049, §32, 192

Referred to in §504.1613

504.503 Resignation of registered agent.

1. *a.* A registered agent may resign as registered agent by signing and delivering to the secretary of state for filing a signed original statement of resignation. The statement may include a statement that the registered office is also discontinued.

b. The registered agent shall send a copy of the statement of resignation by certified mail to the corporation at its principal office and to the registered office, if not discontinued.

The registered agent shall certify to the secretary of state that copies have been sent to the corporation, including the date the copies were sent.

2. The agency appointment is terminated, and the registered office discontinued if so provided, on the date the statement was filed.

2004 Acts, ch 1049, §33, 192; 2012 Acts, ch 1023, §157
Referred to in §504.111, 504.1613

504.504 Service on corporation.

1. A corporation's registered agent is the corporation's agent for service of process, notice, or demand required or permitted by law to be served on the corporation.

2. If a corporation has no registered agent, or the agent cannot with reasonable diligence be served, the corporation may be served by registered or certified mail, return receipt requested, addressed to the secretary of the corporation at its principal office shown in the most recent biennial report filed pursuant to section 504.1613. Service is perfected under this subsection on the earliest of any of the following:

a. The date the corporation receives the mail.

b. The date shown on the return receipt, if signed on behalf of the corporation.

c. Five days after its deposit in the United States mail, if mailed and correctly addressed with first class postage affixed.

3. This section does not prescribe the only means, or necessarily the required means, of serving a corporation. A corporation may also be served in any other manner permitted by law.

2004 Acts, ch 1049, §34, 192
Referred to in §504.116, 504.1422, 504.1423, 504.1424

504.505 through 504.600 Reserved.

SUBCHAPTER VI

MEMBERS AND MEMBERSHIPS

Referred to in §504.141

PART 1

ADMISSION OF MEMBERS

504.601 Admission.

1. The articles or bylaws may establish criteria or procedures for admission of members.

2. A person shall not be admitted as a member without the person's consent or affirmative action evidencing consent.

2004 Acts, ch 1049, §35, 192

504.602 Consideration.

Except as provided in its articles or bylaws, a corporation may admit members for no consideration or for such consideration as is determined by the board.

2004 Acts, ch 1049, §36, 192

504.603 No requirement of members.

A corporation is not required to have members.

2004 Acts, ch 1049, §37, 192

504.604 through 504.610 Reserved.

PART 2

TYPES OF MEMBERSHIPS — MEMBERS' RIGHTS AND OBLIGATIONS

504.611 Differences in rights and obligations of members.

All members shall have the same rights and obligations with respect to voting, dissolution, redemption, and transfer, unless the articles or bylaws establish classes of membership with different rights or obligations. All members shall have the same rights and obligations with respect to any other matters, except as set forth in or authorized by the articles or bylaws. A person that does not meet the qualifications for a member under section 504.141, subsection 24, and is identified as a member in the articles or bylaws of the corporation shall have only those rights set forth for such a member in the articles or bylaws of the corporation.

2004 Acts, ch 1049, §38, 192

504.612 Transfers.

1. Except as set forth in or authorized by the articles or bylaws, a member of a mutual benefit corporation shall not transfer a membership or any right arising therefrom.
2. A member of a public benefit or religious corporation shall not transfer a membership or any right arising therefrom.
3. Where transfer rights have been provided, a restriction on them shall not be binding with respect to a member holding a membership issued prior to the adoption of the restriction unless the restriction is approved by the members and the affected member.

2004 Acts, ch 1049, §39, 192

504.613 Member's liability to third parties.

A member of a corporation is not, as such, personally liable for the acts, debts, liabilities, or obligations of the corporation.

2004 Acts, ch 1049, §40, 192

504.614 Member's liability for dues, assessments, and fees.

A member may become liable to the corporation for dues, assessments, or fees. However, an article or bylaw provision or a resolution adopted by the board authorizing or imposing dues, assessments, or fees does not, of itself, create liability.

2004 Acts, ch 1049, §41, 192

504.615 Creditor's action against member.

1. A proceeding shall not be brought by a creditor to reach the liability, if any, of a member to the corporation unless final judgment has been rendered in favor of the creditor against the corporation and execution has been returned unsatisfied in whole or in part or unless such proceeding would be useless.
2. All creditors of the corporation, with or without reducing their claims to judgment, may intervene in any creditor's proceeding brought under subsection 1 to reach and apply unpaid amounts due the corporation. Any or all members who owe amounts to the corporation may be joined in such proceeding.

2004 Acts, ch 1049, §42, 192

504.616 through 504.620 Reserved.

PART 3

RESIGNATION AND TERMINATION

504.621 Resignation.

1. A member may resign at any time.
2. The resignation of a member does not relieve the member from any obligations the

member may have to the corporation as a result of obligations incurred or commitments made prior to resignation.

2004 Acts, ch 1049, §43, 192

504.622 Termination, expulsion, or suspension.

1. A membership in a public benefit or mutual benefit corporation may be terminated or suspended for the reasons and in the manner provided in the articles of incorporation or bylaws.

2. To the extent the articles of incorporation or bylaws do not address the termination or suspension of a member, a member of a public benefit or mutual benefit corporation shall not be expelled or suspended, and a membership or memberships in such a corporation shall not be terminated or suspended except pursuant to a procedure which is fair and reasonable and is carried out in good faith.

3. A procedure is fair and reasonable when either of the following occurs:

a. The articles or bylaws set forth a procedure which provides both of the following:

(1) Not less than fifteen days' prior written notice of the expulsion, suspension, or termination and the reasons therefor.

(2) An opportunity for the member to be heard, orally or in writing, not less than five days before the effective date of the expulsion, suspension, or termination by a person or persons authorized to decide that the proposed expulsion, termination, or suspension not take place.

b. The procedure requires consideration of all relevant facts and circumstances surrounding the expulsion, suspension, or termination by a person or persons authorized to make a decision regarding the proposed expulsion, termination, or suspension.

4. Any written notice given by mail pursuant to this section must be given by first class or certified mail sent to the last address of the member shown on the corporation's records.

5. A proceeding challenging an expulsion, suspension, or termination, including a proceeding alleging defective notice, must be commenced within one year after the effective date of the expulsion, suspension, or termination.

6. A member who has been expelled or suspended may be liable to the corporation for dues, assessments, or fees as a result of obligations incurred or commitments made prior to expulsion or suspension.

2004 Acts, ch 1049, §44, 192; 2012 Acts, ch 1049, §3, 4

Referred to in §504.1032

504.623 Purchase of memberships.

1. A public benefit or religious corporation shall not purchase any of its memberships or any right arising therefrom.

2. A mutual benefit corporation may purchase the membership of a member who resigns or whose membership is terminated for the amount and pursuant to the conditions set forth in or authorized by its articles or bylaws. A payment shall not be made in violation of subchapter XIII.

2004 Acts, ch 1049, §45, 192

504.624 through 504.630 Reserved.

PART 4

DERIVATIVE PROCEEDINGS

504.631 Derivative proceedings — definition.

In this part, unless the context otherwise requires, "*derivative proceeding*" means a civil suit in the right of a domestic corporation or, to the extent provided in section 504.638, in the right of a foreign corporation.

2004 Acts, ch 1049, §46, 192

Referred to in §504.810

504.632 Standing.

A derivative proceeding may be brought by any of the following persons:

1. A member or members of the corporation representing five percent or more of the voting power of the corporation or by fifty members, whichever is less.

2. A director of the corporation.

2004 Acts, ch 1049, §47, 192

504.633 Demand.

A derivative proceeding shall not be commenced until both of the following have occurred:

1. A written demand has been made upon the corporation to take suitable action.

2. Ninety days have expired from the date the demand was made, unless the member or director has earlier been notified that the demand has been rejected by the corporation or unless irreparable injury to the corporation would result by waiting for the expiration of the ninety-day period.

2004 Acts, ch 1049, §48, 192

Referred to in §504.810

504.634 Stay of proceedings.

If a corporation commences an inquiry into the allegations made in a demand or complaint, the court may stay any derivative proceeding for a period of time as the court deems appropriate.

2004 Acts, ch 1049, §49, 192

Referred to in §504.638, 504.810

504.635 Dismissal.

1. A derivative proceeding shall be dismissed by the court on motion by the corporation if one of the groups specified in subsection 2 or 6 has determined in good faith after conducting a reasonable inquiry upon which its conclusions are based that the maintenance of the derivative proceeding is not in the best interests of the corporation. A corporation moving to dismiss on this basis shall submit in support of the motion a short and concise statement of the reasons for its determination.

2. Unless a panel is appointed pursuant to subsection 6, the determination in subsection 1 shall be made by one of the following:

a. A majority vote of independent directors present at a meeting of the board of directors if the independent directors constitute a quorum.

b. A majority vote of a committee consisting of two or more independent directors appointed by majority vote of independent directors present at a meeting of the board of directors, whether or not such independent directors constitute a quorum.

3. None of the following shall by itself cause a director to be considered not independent for purposes of this section:

a. The nomination or election of the director by persons who are defendants in the derivative proceeding or against whom action is demanded.

b. The naming of the director as a defendant in the derivative proceeding or as a person against whom action is demanded.

c. The approval by the director of the act being challenged in the derivative proceeding or demand if the act resulted in no personal benefit to the director.

4. *a.* If a derivative proceeding is commenced after a determination has been made rejecting a demand by a member or director, the complaint shall allege with particularity facts establishing one of the following:

(1) That a majority of the board of directors did not consist of independent directors at the time the determination was made.

(2) That the requirements of subsection 1 have not been met.

b. All discovery and other proceedings shall be stayed during the pendency of any motion to dismiss unless the court finds upon the motion of any party that particularized discovery is necessary to preserve evidence or prevent undue prejudice to that party.

5. If a majority of the board of directors does not consist of independent directors at the time the determination is made, the corporation shall have the burden of proving that the

requirements of subsection 1 have been met. If a majority of the board of directors consists of independent directors at the time the determination is made, the plaintiff shall have the burden of proving that the requirements of subsection 1 have not been met.

6. The court may appoint a panel of one or more independent persons upon motion by the corporation to make a determination whether the maintenance of the derivative proceeding is in the best interests of the corporation. In such case, the plaintiff shall have the burden of proving that the requirements of subsection 1 have not been met.

2004 Acts, ch 1049, §50, 192; 2012 Acts, ch 1023, §157
Referred to in §504.810

504.636 Discontinuance or settlement.

A derivative proceeding shall not be discontinued or settled without the court's approval. If the court determines that a proposed discontinuance or settlement will substantially affect the interests of a corporation's member or class of members or director, the court shall direct that notice be given to the members or director affected.

2004 Acts, ch 1049, §51, 192
Referred to in §504.638, 504.810

504.637 Payment of expenses.

On termination of a derivative proceeding, the court may do either of the following:

1. Order the corporation to pay the plaintiff's reasonable expenses, including attorney fees incurred in the proceeding, if it finds that the proceeding has resulted in a substantial benefit to the corporation.

2. Order the plaintiff to pay any defendant's reasonable expenses, including attorney fees incurred in defending the proceeding, if it finds that the proceeding was commenced or maintained without reasonable cause or for an improper purpose.

2004 Acts, ch 1049, §52, 192
Referred to in §504.638, 504.810

504.638 Applicability to foreign corporations.

In any derivative proceeding in the right of a foreign corporation, the matters covered by this part shall be governed by the laws of the jurisdiction of incorporation of the foreign corporation except that sections 504.634, 504.636, and 504.637 shall apply.

2004 Acts, ch 1049, §53, 192
Referred to in §504.631, 504.810

504.639 and 504.640 Reserved.

PART 5

DELEGATES

504.641 Delegates.

1. A corporation may provide in its articles or bylaws for delegates having some or all of the authority of members.

2. The articles or bylaws may set forth provisions relating to all of the following:

a. The characteristics, qualifications, rights, limitations, and obligations of delegates including their selection and removal.

b. Calling, noticing, holding, and conducting meetings of delegates.

c. Carrying on corporate activities during and between meetings of delegates.

2004 Acts, ch 1049, §54, 192

504.642 through 504.700 Reserved.

SUBCHAPTER VII

MEMBERS' MEETINGS AND VOTING

Referred to in §504.141

PART 1

MEETINGS AND ACTION WITHOUT MEETINGS

504.701 Annual and regular meetings.

1. Except in the case of a corporation with members that holds meetings only of delegates and not of the members, a corporation with members shall hold a membership meeting annually at a time stated in or fixed in accordance with the bylaws. The articles of incorporation or bylaws of a corporation with members that holds meetings only of delegates and not of members may provide for meetings of delegates to be held less frequently than annually but at least once every six years.

2. A corporation with members may hold regular membership meetings at the times stated in or fixed in accordance with the bylaws.

3. Annual or regular membership meetings may be held in or out of this state at the place stated in or fixed in accordance with the bylaws. If a place is not stated in or fixed in accordance with the bylaws, annual and regular meetings shall be held at the corporation's principal office.

4. At the annual meeting all of the following shall occur:

a. The president and chief financial officer shall report on the activities and financial condition of the corporation.

b. The members shall consider and act upon such other matters as may be raised consistent with the notice requirements of sections 504.705 and 504.713, subsection 4.

5. At regular meetings, the members shall consider and act upon such matters as may be raised consistent with the notice requirements of sections 504.705 and 504.713, subsection 4.

6. The failure to hold an annual or regular meeting at a time stated in or fixed in accordance with a corporation's bylaws does not affect the validity of any corporate action.

7. The articles of incorporation or bylaws may provide that an annual or regular meeting of members is not required to be held at a geographic location if the meeting is held by means of the internet or other electronic communications technology in a manner pursuant to which the members have the opportunity to read or hear the proceedings substantially concurrent with the occurrence of the proceedings, vote on matters submitted to the members, pose questions, and make comments.

2004 Acts, ch 1049, §55, 192; 2012 Acts, ch 1049, §5; 2015 Acts, ch 45, §5

504.702 Special meeting.

1. A corporation with members shall hold a special meeting of members when either of the following occurs:

a. At the call of its board or the person or persons authorized to do so by the corporation's articles or bylaws.

b. Except as provided in the articles or bylaws of a corporation, if the holders of at least five percent of the voting power of any corporation sign, date, and deliver to any corporate officer one or more written demands for the meeting describing the purpose for which it is to be held. Unless otherwise provided in the articles of incorporation, a written demand for a special meeting may be revoked by a writing to that effect received by the corporation prior to the receipt by the corporation of demands sufficient in number to require the holding of a special meeting.

2. The close of business on the thirtieth day before delivery of the demand for a special meeting to any corporate officer is the record date for the purpose of determining whether the five percent requirement of subsection 1, paragraph "*b*", has been met.

3. If a notice for a special meeting demanded under subsection 1, paragraph *"b"*, is not given pursuant to section 504.705 within thirty days after the date the written demand or demands are delivered to a corporate officer, regardless of the requirements of subsection 4, a person signing the demand may set the time and place of the meeting and give notice pursuant to section 504.705.

4. Special meetings of members may be held in or out of this state at a place stated in or fixed in accordance with the bylaws. If a place is not stated or fixed in accordance with the bylaws, special meetings shall be held at the corporation's principal office.

5. Only those matters that are within the purpose described in the meeting notice required by section 504.705 may be considered at a special meeting of members.

6. The articles of incorporation or bylaws may provide that a special meeting of members is not required to be held at a geographic location if the meeting is held by means of the internet or other electronic communications technology in a manner pursuant to which the members have the opportunity to read or hear the proceedings substantially concurrent with the occurrence of the proceedings, vote on matters submitted to the members, pose questions, and make comments.

2004 Acts, ch 1049, §56, 192; 2006 Acts, ch 1089, §48; 2012 Acts, ch 1049, §6
Referred to in §504.703

504.703 Court-ordered meeting.

1. The district court of the county where a corporation's principal office is located or, if none is located in this state, where its registered office is located, may summarily order a meeting to be held when any of the following occurs:

a. On application of any member or other person entitled to participate in an annual or regular meeting of the corporation, if an annual meeting was not held within the earlier of six months after the end of the corporation's fiscal year or fifteen months after its last annual meeting.

b. On application of any member or other person entitled to participate in a regular meeting of the corporation, if a regular meeting was not held within forty days after the date it was required to be held.

c. On application of a member who signed a demand for a special meeting valid under section 504.702, or a person entitled to call a special meeting, if any of the following applies:

(1) The notice of the special meeting was not given within thirty days after the date the demand was delivered to a corporate officer.

(2) The special meeting was not held in accordance with the notice.

2. The court may fix the time and place of the meeting, specify a record date for determining members entitled to notice of and to vote at the meeting, prescribe the form and content of the meeting notice, fix the quorum required for specific matters to be considered at the meeting or direct that the votes represented at the meeting constitute a quorum for action on those matters, and enter other orders necessary to accomplish the purpose of the meeting.

3. If the court orders a meeting, it may also order the corporation to pay the member's costs, including reasonable attorney fees, incurred to obtain the order.

2004 Acts, ch 1049, §57, 192
Referred to in §504.704

504.704 Action by written consent.

1. Unless limited or prohibited by the articles or bylaws of the corporation, action required or permitted by this chapter to be approved by the members of a corporation may be approved without a meeting of members if the action is approved by members holding at least eighty percent of the voting power. The action must be evidenced by one or more written consents describing the action taken, signed by those members representing at least eighty percent of the voting power, and delivered to the corporation for inclusion in the minutes or filing with the corporate records. A written consent may be revoked by a writing to that effect received by the corporation prior to the receipt by the corporation of unrevoked written consents sufficient in number to take corporation action.

2. If not otherwise determined under section 504.703 or 504.707, the record date for determining members entitled to take action without a meeting is the date the first member signs the consent under subsection 1.

3. A consent signed under this section has the effect of a meeting vote and may be described as such in any document filed with the secretary of state.

4. Written notice of member approval pursuant to this section shall be given to all members who have not signed the written consent. If written notice is required, member approval pursuant to this section shall be effective ten days after such written notice is given.

2004 Acts, ch 1049, §58, 192; 2005 Acts, ch 19, §86

504.705 Notice of meeting.

1. A corporation shall give notice consistent with its bylaws of meetings of members in a fair and reasonable manner.

2. Any notice which conforms to the requirements of subsection 3 is fair and reasonable, but other means of giving notice may also be fair and reasonable when all the circumstances are considered. However, notice of matters referred to in subsection 3, paragraph *"b"*, must be given as provided in subsection 3.

3. Notice is fair and reasonable if all of the following occur:

a. The corporation notifies its members of the place, date, and time of each annual, regular, and special meeting of members not more than sixty days and not less than ten days, or if notice is mailed by other than first class or registered mail, not less than thirty days, before the date of the meeting.

b. The notice of an annual or regular meeting includes a description of any matter or matters which must be considered for approval by the members under sections 504.833, 504.859, 504.1003, 504.1022, 504.1104, 504.1202, and 504.1402.

c. The notice of a special meeting includes a description of the purpose for which the meeting is called.

4. Unless the bylaws require otherwise, if an annual, regular, or special meeting of members is adjourned to a different date, time, or place, notice need not be given of the new date, time, or place, if the new date, time, or place is announced at the meeting before adjournment. If a new record date for the adjourned meeting is or must be fixed under section 504.707, however, notice of the adjourned meeting must be given under this section to the members of record as of the new record date.

5. When giving notice of an annual, regular, or special meeting of members, a corporation shall give notice of a matter a member intends to raise at the meeting if requested in writing to do so by a person entitled to call a special meeting and if the request is received by the secretary or president of the corporation at least ten days before the corporation gives notice of the meeting.

2004 Acts, ch 1049, §59, 192; 2005 Acts, ch 19, §87

Referred to in §504.142, 504.701, 504.702, 504.1003, 504.1022, 504.1103, 504.1202, 504.1402

504.706 Waiver of notice.

1. A member may waive any notice required by this chapter, the articles, or bylaws before or after the date and time stated in the notice. The waiver must be in writing, be signed by the member entitled to the notice, and be delivered to the corporation for inclusion in the minutes or filing with the corporate records.

2. A member's attendance at a meeting does all of the following:

a. Waives objection to lack of notice or defective notice of the meeting, unless the member at the beginning of the meeting objects to holding the meeting or transacting business at the meeting.

b. Waives objection to consideration of a particular matter at the meeting that is not within the purpose described in the meeting notice, unless the member objects to considering the matter when it is presented.

2004 Acts, ch 1049, §60, 192; 2005 Acts, ch 19, §88

504.707 Record date — determining members entitled to notice and vote.

1. The bylaws of a corporation may fix or provide the manner of fixing a date as the record date for determining the members entitled to notice of a members' meeting. If the bylaws do not fix or provide for fixing such a record date, the board may fix a future date as such a record date. If a record date is not fixed, members at the close of business on the business day preceding the day on which notice is given, or if notice is waived, at the close of business on the business day preceding the day on which the meeting is held, are entitled to notice of the meeting.

2. The bylaws of a corporation may fix or provide the manner of fixing a date as the record date for determining the members entitled to vote at a members' meeting. If the bylaws do not fix or provide for fixing such a record date, the board may fix a future date as such a record date. If a record date is not fixed, members on the date of the meeting who are otherwise eligible to vote are entitled to vote at the meeting.

3. The bylaws may fix or provide the manner for determining a date as the record date for the purpose of determining the members entitled to exercise any rights in respect of any other lawful action. If the bylaws do not fix or provide for fixing such a record date, the board may fix in advance such a record date. If a record date is not fixed, members at the close of business on the day on which the board adopts the resolution relating thereto, or the sixtieth day prior to the date of such other action, whichever is later, are entitled to exercise such rights.

4. A record date fixed under this section shall not be more than seventy days before the meeting or action requiring a determination of members occurs.

5. A determination of members entitled to notice of or to vote at a membership meeting is effective for any adjournment of the meeting unless the board fixes a new date for determining the right to notice or the right to vote, which it must do if the meeting is adjourned to a date more than seventy days after the record date for determining members entitled to notice of the original meeting.

6. If a court orders a meeting adjourned to a date more than one hundred twenty days after the date fixed for the original meeting, it may provide that the original record date for notice or voting continues in effect or it may fix a new record date for notice or voting.

2004 Acts, ch 1049, §61, 192
Referred to in §504.704, 504.705

504.708 Action by written ballot.

1. Unless prohibited or limited by the articles or bylaws, any action which may be taken at any annual, regular, or special meeting of members may be taken without a meeting if the corporation delivers a written ballot to every member entitled to vote on the matter.

2. A written ballot shall do both of the following:

a. Set forth each proposed action.

b. Provide an opportunity to vote for or against each proposed action.

3. Approval by written ballot pursuant to this section shall be valid only when the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action, and the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot.

4. All solicitations for votes by written ballot shall do all of the following:

a. Indicate the number of responses needed to meet the quorum requirements.

b. State the percentage of approvals necessary to approve each matter other than election of directors.

c. Specify the time by which a ballot must be received by the corporation in order to be counted.

5. Except as otherwise provided in the articles or bylaws, a written ballot shall not be revoked.

6. Unless prohibited by the articles or bylaws, a written ballot may be delivered and a vote may be cast on that ballot by electronic transmission. An electronic transmission of a written

ballot shall contain or be accompanied by information indicating that a member, a member's agent, or a member's attorney authorized the electronic transmission of the ballot.

2004 Acts, ch 1049, §62, 192

504.709 Conduct of meetings.

1. At each meeting of members, an individual shall preside as chair. The chair shall be appointed as follows:

a. As provided in the articles of incorporation or bylaws.

b. In the absence of a provision in the articles of incorporation or bylaws, by the board of directors.

c. In the absence of both a provision in the articles of incorporation or bylaws and an appointment of the chair by the board, by the members at the meeting.

2. Except as provided in the articles of incorporation or bylaws, the chair shall determine the order of business and shall have the authority to establish rules for the conduct of the meeting.

3. Any rules adopted for, and the conduct of, the meeting shall be fair to the members.

4. The chair of the meeting shall announce at the meeting when the polls close for each matter voted upon. If no announcement is made, the polls shall be deemed to have closed upon the final adjournment of the meeting. After the polls are closed, no ballots, proxies, or votes, or any otherwise permissible revocations or changes thereto may be accepted.

2012 Acts, ch 1049, §7

504.710 Reserved.

PART 2

VOTING

504.711 Members' list for meeting.

1. After fixing a record date for a notice of a meeting, a corporation shall prepare an alphabetical list of the names of all its members who are entitled to notice of the meeting. The list must show the address of each member and number of votes each member is entitled to cast at the meeting. The corporation shall prepare on a current basis through the time of the membership meeting a list of members, if any, who are entitled to vote at the meeting, but not entitled to notice of the meeting. This list shall be prepared on the same basis as and be part of the list of members.

2. Except as set forth in section 504.1602, subsection 6, the list of members must be available for inspection by any member for the purpose of communication with other members concerning the meeting, beginning two business days after notice is given of the meeting for which the list was prepared and continuing through the meeting, at the corporation's principal office or at a reasonable place identified in the meeting notice in the city where the meeting will be held. Except as set forth in section 504.1602, subsection 6, a member, a member's agent, or a member's attorney is entitled on written demand to inspect and, subject to the limitations of section 504.1602, subsection 3, and section 504.1605, to copy the list, at a reasonable time and at the member's expense, during the period it is available for inspection.

3. Except as set forth in section 504.1602, subsection 6, a corporation shall make the list of members available at the meeting, and any member, a member's agent, or a member's attorney is entitled to inspect the list at any time during the meeting or any adjournment.

4. Except as set forth in section 504.1602, subsection 6, if a corporation refuses to allow a member, a member's agent, or a member's attorney to inspect the list of members before or at the meeting or copy the list as permitted by subsection 2, the district court of the county where a corporation's principal office is located or, if none is located in this state, where its registered office is located, on application of the member, may summarily order the inspection or copying of the membership list at the corporation's expense, may postpone the meeting

for which the list was prepared until the inspection or copying is complete, and may order the corporation to pay the member's costs, including reasonable attorney fees incurred to obtain the order.

5. Unless a written demand to inspect and copy a membership list has been made under subsection 2 prior to the membership meeting and a corporation improperly refuses to comply with the demand, refusal or failure to comply with this section does not affect the validity of action taken at the meeting.

6. The articles or bylaws of a religious corporation may limit or abolish the rights of a member under this section to inspect and copy any corporate record.

2004 Acts, ch 1049, §63, 192
Referred to in §504.1602

504.712 Voting entitlement generally.

1. Except as provided in the articles of incorporation or bylaws, each member shall be entitled to one vote on each matter submitted to a vote of members.

2. Unless the articles or bylaws provide otherwise, if a membership stands of record in the names of two or more persons, the persons' acts with respect to voting shall have the following effect:

a. If only one votes, such act binds all.

b. If more than one votes, the vote shall be divided on a pro rata basis.

2004 Acts, ch 1049, §64, 192; 2015 Acts, ch 45, §6

504.713 Quorum requirements.

1. Unless this chapter or the articles or bylaws of a corporation provide for a higher or lower quorum, ten percent of the votes entitled to be cast on a matter must be represented at a meeting of members to constitute a quorum on that matter.

2. A bylaw amendment to decrease the quorum for any member action may be approved by the members or, unless prohibited by the bylaws, by the board.

3. A bylaw amendment to increase the quorum required for any member action must be approved by the members.

4. Unless one-third or more of the voting power is present in person or by proxy, the only matters that may be voted upon at an annual or regular meeting of members are those matters that are described in the meeting notice.

2004 Acts, ch 1049, §65, 192; 2005 Acts, ch 19, §89
Referred to in §504.701

504.714 Voting requirements.

1. Unless this chapter or the articles or bylaws of a corporation require a greater vote or voting by class, if a quorum is present, the affirmative vote of the votes represented and voting, which affirmative votes also constitute a majority of the required quorum, is the act of the members.

2. A bylaw amendment to increase or decrease the vote required for any member action must be approved by the members.

2004 Acts, ch 1049, §66, 192; 2005 Acts, ch 19, §90

504.715 Proxies.

1. Unless the articles or bylaws of a corporation prohibit or limit proxy voting, a member or the member's agent or attorney in fact may appoint a proxy to vote or otherwise act for the member by signing an appointment form or by an electronic transmission. An electronic transmission must contain or be accompanied by information from which it can be determined that the member, the member's agent, or the member's attorney in fact authorized the electronic transmission.

2. An appointment of a proxy is effective when a signed appointment form or an electronic transmission of an appointment form is received by the secretary or other officer or agent authorized to tabulate votes. An appointment is valid for eleven months unless a different period is expressly provided for in the appointment. However, a proxy shall not be valid for more than three years from its date of execution.

3. An appointment of a proxy is revocable by the member.

4. The death or incapacity of the member appointing a proxy does not affect the right of the corporation to accept the proxy's authority unless notice of the death or incapacity is received by the secretary or other officer or agent authorized to tabulate votes before the proxy exercises authority under the appointment.

5. Appointment of a proxy is revoked by the person appointing the proxy if either of the following occurs:

a. The person appointing the proxy attends any meeting and votes in person.

b. The person appointing the proxy signs and delivers or sends through electronic transmission to the secretary or other officer or agent authorized to tabulate proxy votes either a writing or electronic transmission stating that the appointment of the proxy is revoked or a subsequent appointment form.

6. Subject to section 504.718 and any express limitation on the proxy's authority appearing on the face of the appointment form, a corporation is entitled to accept the proxy's vote or other action as that of the member making the appointment.

2004 Acts, ch 1049, §67, 192

504.716 Cumulative voting for directors.

1. If the articles or bylaws of a corporation provide for cumulative voting by members, members may so vote, by multiplying the number of votes the members are entitled to cast by the number of directors for whom they are entitled to vote, and casting the product for a single candidate or distributing the product among two or more candidates.

2. A director elected by cumulative voting may be removed by the members without cause if the requirements of section 504.808 are met unless the votes cast against removal, or not consenting in writing to such removal, would be sufficient to elect such director if voted cumulatively at an election at which the same total number of votes were cast or, if such action is taken by written ballot, all memberships entitled to vote were voted, and the entire number of directors authorized at the time of the director's most recent election were then being elected.

3. Members shall not cumulatively vote if the directors and members are identical.

2004 Acts, ch 1049, §68, 192

504.717 Other methods of electing directors.

A corporation may provide in its articles or bylaws for election of directors by members or delegates on the basis of chapter or other organizational unit, by region or other geographic unit, by preferential voting, or by any other reasonable method.

2004 Acts, ch 1049, §69, 192

504.718 Corporation's acceptance of votes.

1. If the name signed on a vote, consent, waiver, or proxy appointment corresponds to the name of a member, the corporation if acting in good faith is entitled to accept the vote, consent, waiver, or proxy appointment and give it effect as the act of the member.

2. If the name signed on a vote, consent, waiver, or proxy appointment does not correspond to the record name of a member, the corporation if acting in good faith is nevertheless entitled to accept the vote, consent, waiver, or proxy appointment and give it effect as the act of the member if any of the following is applicable:

a. The member is an entity and the name signed purports to be that of an officer or agent of the entity.

b. The name signed purports to be that of an attorney in fact of the member, and if the corporation requests, evidence acceptable to the corporation of the signatory's authority to sign for the member has been presented with respect to the vote, consent, waiver, or proxy appointment.

c. Two or more persons hold the membership as cotenants or fiduciaries and the name signed purports to be the name of at least one of the coholders and the person signing appears to be acting on behalf of all the coholders.

d. In the case of a mutual benefit corporation:

(1) The name signed purports to be that of an administrator, executor, guardian, or conservator representing the member, and if the corporation requests, evidence of fiduciary status acceptable to the corporation has been presented with respect to the vote, consent, waiver, or proxy appointment.

(2) The name signed purports to be that of a receiver or trustee in bankruptcy of the member, and if the corporation requests, evidence of this status acceptable to the corporation has been presented with respect to the vote, consent, waiver, or proxy appointment.

3. The corporation is entitled to reject a vote, consent, waiver, or proxy appointment if the secretary or other officer or agent authorized to tabulate votes, acting in good faith, has reasonable basis for doubt about the validity of the signature on it or about the signatory's authority to sign for the member.

4. The corporation and its officer or agent who accepts or rejects a vote, consent, waiver, or proxy appointment in good faith and in accordance with the standards of this section are not liable in damages to the member for the consequences of the acceptance or rejection.

5. Corporate action based on the acceptance or rejection of a vote, consent, waiver, or proxy appointment under this section is valid unless a court of competent jurisdiction determines otherwise.

2004 Acts, ch 1049, §70, 192
Referred to in §504.715

504.719 Inspectors of election.

1. A corporation with members may appoint one or more inspectors to act at a meeting of members and to make a report in the form of a record of the inspectors' determinations. Each inspector shall execute the duties of inspector impartially and according to the best of the inspector's ability.

2. The inspectors shall do all of the following:

a. Ascertain the number of members and their voting power.

b. Determine the members present at the meeting.

c. Determine the validity of proxies and ballots.

d. Count all votes.

e. Determine the result of the voting.

3. An inspector may, but is not required to, be a director, member, officer, or employee of the corporation. A person who is a candidate for an office to be filled at the meeting shall not be an inspector at that meeting.

2012 Acts, ch 1049, §8; 2012 Acts, ch 1138, §71

504.720 Reserved.

PART 3

VOTING AGREEMENTS

504.721 Voting agreements.

1. Two or more members of a corporation may provide for the manner in which they will vote by signing an agreement for that purpose. For public benefit corporations, such agreements must have a reasonable purpose not inconsistent with the corporation's public or charitable purposes.

2. A voting agreement created under this section is specifically enforceable.

2004 Acts, ch 1049, §71, 192

504.722 through 504.800 Reserved.

SUBCHAPTER VIII

DIRECTORS AND OFFICERS

Referred to in §504.1405

PART 1

BOARD OF DIRECTORS

504.801 Requirement for and duties of board.

1. Each corporation must have a board of directors.

2. Except as otherwise provided in this chapter or subsection 3, all corporate powers shall be exercised by or under the authority of, and the affairs of the corporation managed under the direction of, and subject to the oversight of, its board of directors.

3. The articles of incorporation may authorize a person or persons to exercise some or all of the powers which would otherwise be exercised by a board. To the extent so authorized, any such person or persons shall have the duties and responsibilities of the directors, and the directors shall be relieved to that extent from such duties and responsibilities.

2004 Acts, ch 1049, §72, 192; 2007 Acts, ch 126, §88; 2012 Acts, ch 1049, §9

Referred to in §504.141, 504.826

504.802 Qualifications of directors.

All directors of a corporation must be individuals. The articles or bylaws may prescribe other qualifications for directors.

2004 Acts, ch 1049, §73, 192

504.803 Number of directors.

1. The board of directors of a corporation must consist of one or more individuals, with the number specified in or fixed in accordance with the articles or bylaws.

2. The number of directors may be increased or decreased from time to time by amendment to or in the manner prescribed in the articles or bylaws.

2004 Acts, ch 1049, §74, 192

504.804 Election, designation, and appointment of directors.

1. If the corporation has members, all the directors, except the initial directors, shall be elected at the first annual meeting of members, and at each annual meeting thereafter, unless the articles or bylaws provide some other time or method of election, or provide that some of the directors are appointed by some other person or designated.

2. If a corporation does not have members, all the directors, except the initial directors, shall be elected, appointed, or designated as provided in the articles or bylaws. If no method of designation or appointment is set forth in the articles or bylaws, the directors other than the initial directors shall be elected by the board.

2004 Acts, ch 1049, §75, 192

504.805 Terms of directors generally.

1. The articles or bylaws of a corporation may specify the terms of directors. If the term is not specified in the articles or bylaws, the term of a director is one year. Except for designated or appointed directors, and except as otherwise provided in the articles or bylaws, the terms of directors shall not exceed five years. Directors may be elected for successive terms.

2. A decrease in the number or term of directors does not shorten an incumbent director's term.

3. Except as provided in the articles or bylaws, both of the following apply:

a. The term of a director filling a vacancy in the office of a director elected by members expires at the next election of directors by members.

b. The term of a director filling any other vacancy expires at the end of the unexpired term which such director is filling.

4. Despite the expiration of a director's term, the director continues to serve until the director's successor is elected, designated, or appointed, and qualifies, or until there is a decrease in the number of directors.

2004 Acts, ch 1049, §76, 192; 2015 Acts, ch 45, §7

504.806 Staggered terms for directors.

The articles or bylaws of a corporation may provide for staggering the terms of directors by dividing the total number of directors into groups. The terms of the several groups need not be uniform.

2004 Acts, ch 1049, §77, 192

504.807 Resignation of directors.

1. A director of a corporation may resign at any time by delivering written notice to the board of directors, its presiding officer, or the president or secretary.

2. A resignation is effective when the notice is effective unless the notice specifies a later effective date. If a resignation is made effective at a later date, the board may fill the pending vacancy before the effective date if the board provides that the successor does not take office until the effective date.

2004 Acts, ch 1049, §78, 192

Referred to in §504.811

504.808 Removal of directors elected by members or directors.

1. The members of a corporation may remove one or more directors elected by the members without cause.

2. If a director is elected by a class, chapter, or other organizational unit or by region or other geographic grouping, the director may be removed only by the members of that class, chapter, unit, or grouping.

3. Except as provided in subsection 9, a director may be removed under subsection 1 or 2 only if the number of votes cast to remove the director would be sufficient to elect the director at a meeting to elect directors.

4. If cumulative voting is authorized, a director shall not be removed if the number of votes, or if the director was elected by a class, chapter, unit, or grouping of members, the number of votes of that class, chapter, unit, or grouping, sufficient to elect the director under cumulative voting is voted against the director's removal.

5. A director elected by members may be removed by the members only at a meeting called for the purpose of removing the director and the meeting notice must state that the purpose, or one of the purposes, of the meeting is the removal of the director.

6. For the purpose of computing whether a director is protected from removal under subsections 2 through 4, it should be assumed that the votes against removal are cast in an election for the number of directors of the group to which the director to be removed belonged on the date of that director's election.

7. An entire board of directors may be removed under subsections 1 through 5.

8. A director elected by the board may be removed without cause by the vote of two-thirds of the directors then in office or such greater number as is set forth in the articles or bylaws. However, a director elected by the board to fill the vacancy of a director elected by the members may be removed without cause by the members, but not by the board.

9. If at the beginning of a director's term on the board the articles or bylaws provide that a director may be removed for missing a specified number of board meetings, the board may remove the director for failing to attend the specified number of meetings. The director may be removed only if a majority of the directors then in office votes for the removal.

10. The articles or bylaws of a corporation may do both of the following:

a. Limit the application of this section.

b. Set forth the vote and procedures by which the board or any person may remove with or without cause a director elected by the members or the board.

2004 Acts, ch 1049, §79, 192; 2006 Acts, ch 1089, §49

Referred to in §504.716

504.809 Removal of designated or appointed directors.

1. A designated director of a corporation may be removed by an amendment to the articles or bylaws deleting or changing the designation.

2. *a.* Except as otherwise provided in the articles or bylaws, an appointed director may be removed without cause by the person appointing the director.

b. The person removing the appointed director shall do so by giving written notice of the removal to the director and either the presiding officer of the board or the corporation's president or secretary.

c. A removal of an appointed director is effective when the notice is effective unless the notice specifies a future effective date.

2004 Acts, ch 1049, §80, 192

504.810 Removal of directors by judicial proceeding.

1. The district court of the county where a corporation's principal office is located or if there is no principal office located in this state, where the registered office is located, may remove a director of the corporation from office in a proceeding commenced by or in the right of the corporation by a member or director if the court finds both of the following apply:

a. A director engaged in fraudulent conduct with respect to the corporation or its members, grossly abused the position of director, or intentionally inflicted harm on the corporation.

b. Upon consideration of the director's course of conduct and the inadequacy of other available remedies, the court determines that removal is in the best interest of the corporation.

2. A member or a director who proceeds by or in the right of a corporation pursuant to subsection 1 shall comply with all of the requirements of section 504.631 and sections 504.633 through 504.638.

3. The court, in addition to removing a director, may bar the director from serving on the board for a period of time prescribed by the court.

4. This section does not limit the equitable powers of the court to order other relief that the court determines is appropriate.

5. The articles or bylaws of a religious corporation may limit or prohibit the application of this section.

2004 Acts, ch 1049, §81, 192; 2005 Acts, ch 19, §122, 126

504.811 Vacancy on board.

1. Unless the articles or bylaws of a corporation provide otherwise, and except as provided in subsections 2 and 3, if a vacancy occurs on the board of directors, including a vacancy resulting from an increase in the number of directors, any of the following may occur:

a. The members, if any, may fill the vacancy. If the vacant office was held by a director elected by a class, chapter, or other organizational unit or by region or other geographic grouping, only members of the class, chapter, unit, or grouping are entitled to vote to fill the vacancy if it is filled by the members.

b. The board of directors may fill the vacancy.

c. If the directors remaining in office constitute fewer than a quorum of the board, they may fill the vacancy by the affirmative vote of a majority of all the directors remaining in office.

2. Unless the articles or bylaws provide otherwise, if a vacant office was held by an appointed director, only the person who appointed the director may fill the vacancy.

3. If a vacant office was held by a designated director, the vacancy shall be filled as provided in the articles or bylaws. In the absence of an applicable article or bylaw provision, the vacancy shall be filled by the board.

4. A vacancy that will occur at a specific later date by reason of a resignation effective at a later date under section 504.807, subsection 2, or otherwise, may be filled before the vacancy occurs, but the new director shall not take office until the vacancy occurs.

2004 Acts, ch 1049, §82, 192

504.812 Compensation of directors.

Unless the articles or bylaws of a corporation provide otherwise, a board of directors may fix the compensation of directors.

2004 Acts, ch 1049, §83, 192

504.813 through 504.820 Reserved.

PART 2

MEETINGS AND ACTION OF THE BOARD

504.821 Regular and special meetings.

1. If the time and place of a directors' meeting is fixed by the bylaws or the board, the meeting is a regular meeting. All other meetings are special meetings.
2. A board of directors may hold regular or special meetings in or out of this state.
3. Unless the articles or bylaws provide otherwise, a board may permit any or all directors to participate in a regular or special meeting by, or conduct the meeting through the use of, any means of communication by which all directors participating may simultaneously hear each other during the meeting. A director participating in a meeting by this means is deemed to be present in person at the meeting.

2004 Acts, ch 1049, §84, 192
Referred to in §504.205, 504.826

504.822 Action without meeting.

1. Except to the extent the articles or bylaws of a corporation require that action by the board of directors be taken at a meeting, action required or permitted by this chapter to be taken by the board of directors may be taken without a meeting if each director signs a consent describing the action to be taken and delivers it to the corporation.
2. Action taken under this section is the act of the board of directors when one or more consents signed by all the directors are delivered to the corporation. The consent may specify the time at which the action taken is to be effective. A director's consent may be withdrawn by revocation signed by the director and delivered to the corporation prior to the delivery to the corporation of unrevoked written consents signed by all of the directors.
3. A consent signed under this section has the effect of action taken at a meeting of the board of directors and may be described as such in any document.

2004 Acts, ch 1049, §85, 192; 2005 Acts, ch 19, §91
Referred to in §504.826

504.823 Call and notice of meetings.

1. Unless the articles or bylaws of a corporation, or subsection 3, provide otherwise, regular meetings of the board may be held without notice.
2. Unless the articles, bylaws, or subsection 3 provide otherwise, special meetings of the board must be preceded by at least two days' notice to each director of the date, time, and place, but not the purpose, of the meeting.
3. In corporations without members, any board action to remove a director or to approve a matter which would require approval by the members if the corporation had members shall not be valid unless each director is given at least seven days' written notice that the matter will be voted upon at a directors' meeting or unless notice is waived pursuant to section 504.824.
4. Unless the articles or bylaws provide otherwise, the presiding officer of the board, the president, or twenty percent of the directors then in office may call and give notice of a meeting of the board.

2004 Acts, ch 1049, §86, 192
Referred to in §504.826, 504.1002, 504.1021, 504.1103, 504.1202, 504.1401, 504.1402

504.824 Waiver of notice.

1. A director may at any time waive any notice required by this chapter, the articles, or bylaws. Except as provided in subsection 2, the waiver must be in writing, signed by the director entitled to the notice, and filed with the minutes or the corporate records.

2. A director's attendance at or participation in a meeting waives any required notice of the meeting unless the director, upon arriving at the meeting or prior to the vote on a matter not noticed in conformity with this chapter, the articles, or bylaws, objects to lack of notice and does not thereafter vote for or assent to the objected-to action.

2004 Acts, ch 1049, §87, 192; 2005 Acts, ch 19, §92
Referred to in §504.823, 504.826

504.825 Quorum and voting.

1. Except as otherwise provided in this chapter, or the articles or bylaws of a corporation, a quorum of a board of directors consists of a majority of the directors in office immediately before a meeting begins.

2. The articles or bylaws shall not authorize a quorum of fewer than one-third of the number of directors in office.

3. If a quorum is present when a vote is taken, the affirmative vote of a majority of directors present is the act of the board unless a greater vote is required by this chapter, the articles of incorporation, or bylaws.

4. A director who is present at a meeting of the board of directors when corporate action is taken is considered to have assented to the action taken unless any of the following applies:

a. The director objects at the beginning of the meeting, or promptly upon arrival, to holding the meeting or transacting business at the meeting.

b. The director dissents or abstains from the action and any of the following applies:

(1) The dissent or abstention is entered in the minutes of the meeting.

(2) The director delivers notice in the form of a record of the director's dissent or abstention to the presiding officer of the meeting before the meeting's adjournment or to the corporation promptly after adjournment of the meeting.

5. The right of dissent or abstention is not available to a director who votes in favor of the action taken.

2004 Acts, ch 1049, §88, 192; 2005 Acts, ch 19, §93; 2015 Acts, ch 45, §8
Referred to in §504.826, 504.854

504.826 Committees of the board.

1. Unless prohibited or limited by the articles or bylaws of a corporation, the board of directors may create one or more committees of the board and appoint members of the board to serve on them. Each committee shall have two or more directors, who serve at the pleasure of the board.

2. The creation of a committee and appointment of members to it must be approved by the greater of either of the following:

a. A majority of all the directors in office when the action is taken.

b. The number of directors required by the articles or bylaws to take action under section 504.825.

3. Sections 504.821 through 504.825, which govern meetings, action without meetings, notice and waiver of notice, and quorum and voting requirements of the board, apply to committees of the board and their members as well.

4. To the extent specified by the board of directors or in the articles or bylaws, each committee of the board may exercise the board's authority under section 504.801.

5. A committee of the board shall not, however, do any of the following:

a. Authorize distributions.

b. Approve or recommend to members dissolution, merger, or the sale, pledge, or transfer of all or substantially all of the corporation's assets.

c. Elect, appoint, or remove directors or fill vacancies on the board or on any of its committees.

d. Adopt, amend, or repeal the articles or bylaws.

6. The creation of, delegation of authority to, or action by a committee does not alone constitute compliance by a director with the standards of conduct described in section 504.831.

7. A corporation may create or authorize the creation of one or more advisory committees whose members are not required to be directors. An advisory committee is not a committee of the board of directors and shall not exercise any powers of the board.

2004 Acts, ch 1049, §89, 192; 2012 Acts, ch 1049, §10
Referred to in §504.1601

504.827 through 504.830 Reserved.

PART 3

STANDARDS OF CONDUCT

504.831 General standards for directors.

1. Each member of the board of directors of a corporation, when discharging the duties of a director, shall act in conformity with all of the following:

a. In good faith.

b. In a manner the director reasonably believes to be in the best interests of the corporation.

2. The members of the board of directors or a committee of the board, when becoming informed in connection with their decision-making functions or when devoting attention to their oversight functions, shall discharge their duties with the care that a person in a like position would reasonably believe appropriate under similar circumstances.

2A. In discharging board or committee duties, a director shall disclose, or cause to be disclosed, to the other board or committee members information which the director knows is not already known by them but is known by the director to be material to the discharge of their decision-making or oversight functions, except that disclosure is not required to the extent that the director reasonably believes that doing so would violate a duty imposed under law, a legally enforceable obligation of confidentiality, or a professional ethics rule.

3. In discharging board or committee duties, a director who does not have knowledge that makes reliance unwarranted is entitled to rely on the performance by any of the persons specified in subsection 5, paragraph *"a"*, to whom the board may have delegated, formally or informally by course of conduct, the authority or duty to perform one or more of the board's functions that are delegable under applicable law.

4. In discharging board or committee duties, a director who does not have knowledge that makes reliance unwarranted is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by any of the persons specified in subsection 5.

5. A director is entitled to rely, in accordance with subsection 3 or 4, on any of the following:

a. One or more officers or employees of the corporation whom the director reasonably believes to be reliable and competent in the functions performed or the information, opinions, reports, or statements provided by the officer or employee.

b. Legal counsel, public accountants, or other persons as to matters involving skills or expertise the director reasonably believes are either of the following:

(1) Matters within the particular person's professional or expert competence.

(2) Matters as to which the particular person merits confidence.

c. A committee of the board or advisory committee of which the director is not a member, as to matters within the committee's or advisory committee's jurisdiction, if the director reasonably believes the committee or advisory committee merits confidence.

d. In the case of religious corporations, religious authorities and ministers, priests, rabbis, or other persons whose position or duties in the religious organization the director believes

justify reliance and confidence and whom the director believes to be reliable and competent in the matters presented.

6. A director shall not be deemed to be a trustee with respect to the corporation or with respect to any property held or administered by the corporation, including without limit, property that may be subject to restrictions imposed by the donor or transferor of such property.

2004 Acts, ch 1049, §90, 192; 2007 Acts, ch 15, §1; 2012 Acts, ch 1049, §11; 2015 Acts, ch 45, §9

Referred to in §347.13, 504.826, 504.835

504.832 Standards of liability for directors.

1. A director shall not be liable to the corporation or its members for any decision to take or not to take action, or any failure to take any action, as director, unless the party asserting liability in a proceeding establishes both of the following:

a. That section 504.202, subsection 2, paragraph *"d"*, or section 504.901 or the protection afforded by section 504.833 or 504.836, if interposed as a bar to the proceeding by the director, does not preclude liability.

b. That the challenged conduct consisted or was the result of one of the following:

(1) Action not in good faith.

(2) A decision that satisfies one of the following:

(a) That the director did not reasonably believe to be in the best interests of the corporation.

(b) As to which the director was not informed to an extent the director reasonably believed appropriate in the circumstances.

(3) A lack of objectivity due to the director's familial, financial, or business relationship with, or lack of independence due to the director's domination or control by, another person having a material interest in the challenged conduct which also meets both of the following criteria:

(a) Which relationship or which domination or control could reasonably be expected to have affected the director's judgment respecting the challenged conduct in a manner adverse to the corporation.

(b) After a reasonable expectation to such effect has been established, the director shall not have established that the challenged conduct was reasonably believed by the director to be in the best interests of the corporation.

(4) A sustained failure of the director to devote attention to ongoing oversight of the business and affairs of the corporation, or a failure to devote timely attention, by making, or causing to be made, appropriate inquiry, when particular facts and circumstances of significant concern materialize that would alert a reasonably attentive director to the need therefor.

(5) Receipt of a financial benefit to which the director was not entitled or any other breach of the director's duties to deal fairly with the corporation and its members that is actionable under applicable law.

2. *a.* A party seeking to hold a director liable for money damages shall also have the burden of establishing both of the following:

(1) That harm to the corporation or its members has been suffered.

(2) The harm suffered was proximately caused by the director's challenged conduct.

b. A party seeking to hold a director liable for other money payment under a legal remedy, such as compensation for the unauthorized use of corporate assets, shall also have whatever burden of persuasion that may be called for to establish that the payment sought is appropriate in the circumstances.

c. A party seeking to hold a director liable for other money payment under an equitable remedy, such as profit recovery by or disgorgement to the corporation, shall also have whatever burden of persuasion that may be called for to establish that the equitable remedy sought is appropriate in the circumstances.

3. This section shall not do any of the following:

a. In any instance where fairness is at issue, such as consideration of the fairness of a

transaction to the corporation under section 504.833, alter the burden of proving the fact or lack of fairness otherwise applicable.

b. Alter the fact or lack of liability of a director under another section of this chapter, such as the provisions governing the consequences of a transactional interest under section 504.833 or an unlawful distribution under section 504.835.

c. Affect any rights to which the corporation or a member may be entitled under another statute of this state or the United States.

2004 Acts, ch 1049, §91, 192; 2005 Acts, ch 19, §94, 95; 2018 Acts, ch 1136, §6
Referred to in §504.843
Subsection 1, paragraph a amended

504.833 Director conflict of interest.

1. A conflict of interest transaction is a transaction with the corporation in which a director of the corporation has a direct or indirect interest. A conflict of interest transaction is not voidable by the corporation on the basis of the director's interest in the transaction if the transaction was fair at the time it was entered into or is approved as provided in subsection 2.

2. A transaction in which a director of a corporation has a conflict of interest may be approved if either of the following occurs:

a. The material facts of the transaction and the director's interest were disclosed or known to the board of directors or a committee of the board and the board or committee of the board authorized, approved, or ratified the transaction.

b. The material facts of the transaction and the director's interest were disclosed or known to the members and they authorized, approved, or ratified the transaction.

3. For the purposes of this section, a director of the corporation has an indirect interest in a transaction under either of the following circumstances:

a. If another entity in which the director has a material interest or in which the director is a general partner is a party to the transaction.

b. If another entity of which the director is a director, officer, or trustee is a party to the transaction.

4. For purposes of subsection 2, a conflict of interest transaction is authorized, approved, or ratified if it receives the affirmative vote of a majority of the directors on the board or on a committee of the board who have no direct or indirect interest in the transaction, but a transaction shall not be authorized, approved, or ratified under this section by a single director. If a majority of the directors on the board who have no direct or indirect interest in the transaction vote to authorize, approve, or ratify the transaction, a quorum is present for the purpose of taking action under this section. The presence of, or a vote cast by, a director with a direct or indirect interest in the transaction does not affect the validity of any action taken under subsection 2, paragraph *"a"*, if the transaction is otherwise approved as provided in subsection 2.

5. For purposes of subsection 2, paragraph *"b"*, a conflict of interest transaction is authorized, approved, or ratified by the members if it receives a majority of the votes entitled to be counted under this subsection. Votes cast by or voted under the control of a director who has a direct or indirect interest in the transaction, and votes cast by or voted under the control of an entity described in subsection 3, paragraph *"a"*, shall not be counted in a vote of members to determine whether to authorize, approve, or ratify a conflict of interest transaction under subsection 2, paragraph *"b"*. The vote of these members, however, is counted in determining whether the transaction is approved under other sections of this chapter. A majority of the voting power, whether or not present, that is entitled to be counted in a vote on the transaction under this subsection constitutes a quorum for the purpose of taking action under this section.

6. The articles, bylaws, or a resolution of the board may impose additional requirements on conflict of interest transactions.

2004 Acts, ch 1049, §92, 192; 2005 Acts, ch 19, §96, 97
Referred to in §504.302, 504.705, 504.832, 504.836

504.834 Loans to or guarantees for directors and officers.

1. A corporation shall not lend money to or guarantee the obligation of a director or officer of the corporation.

2. This section does not apply to the situation where the director or officer is a full-time employee of the corporation and involves any of the following:

a. An advance to pay reimbursable expenses reasonably expected to be incurred by a director or officer.

b. An advance to pay premiums on a policy of life insurance if the advance is secured by the policy's death benefit proceeds or cash surrender value, or both.

c. Advances pursuant to part 5 of this subchapter.

d. Loans or advances pursuant to employee benefit plans.

e. A loan secured by the principal residence of an officer.

f. A loan to pay relocation expenses of an officer.

3. The fact that a loan or guarantee is made in violation of this section does not affect the borrower's liability on the loan.

2004 Acts, ch 1049, §93, 192; 2015 Acts, ch 45, §10; 2016 Acts, ch 1073, §141

504.835 Liability for unlawful distributions.

1. Unless a director complies with the applicable standards of conduct described in section 504.831, a director who votes for or assents to a distribution made in violation of this chapter is personally liable to the corporation for the amount of the distribution that exceeds what could have been distributed without violating this chapter.

2. A director held liable for an unlawful distribution under subsection 1 is entitled to contribution from both of the following:

a. Every other director who voted for or assented to the distribution without complying with the applicable standards of conduct described in section 504.831.

b. Each person who received an unlawful distribution for the amount of the distribution whether or not the person receiving the distribution knew it was made in violation of this chapter.

2004 Acts, ch 1049, §94, 192; 2005 Acts, ch 19, §98, 99
Referred to in §504.202, 504.832, 504.901

504.836 Business opportunities.

1. A director's taking advantage, directly or indirectly, of a business opportunity shall not be the subject of equitable relief, or give rise to an award of damages or other sanctions against the director, in a proceeding by or in the right of a corporation on the ground that such opportunity should have first been offered to the corporation, if before becoming legally obligated respecting the business opportunity, the director brings the opportunity to the attention of the corporation and action is taken by the directors, a committee of the directors, or the members disclaiming the corporation's interest in the opportunity in compliance with the procedures set forth in section 504.833, as if the decision being made concerned a conflict of interest transaction.

2. In any proceeding seeking equitable relief or other remedy, based upon an alleged improper taking advantage of a business opportunity by a director, the fact that the director did not employ the procedure described in subsection 1 before taking advantage of the opportunity shall not create an inference that the opportunity should have first been presented to the corporation, or alter the burden of proof otherwise applicable to establish that the director breached a duty to the corporation under the circumstances.

2012 Acts, ch 1049, §12
Referred to in §504.832

504.837 through 504.840 Reserved.

PART 4

OFFICERS

504.841 Required officers.

1. Unless otherwise provided in the articles or bylaws of a corporation, a corporation shall have a president, a secretary, a treasurer, and such other officers as are appointed by the board. An officer may appoint one or more officers if authorized by the bylaws or the board of directors.

2. The bylaws or the board shall delegate to one of the officers responsibility for preparing minutes of the directors' and members' meetings and for authenticating records of the corporation.

3. The same individual may simultaneously hold more than one office in a corporation.

2004 Acts, ch 1049, §95, 192

Referred to in §504.141

504.842 Duties and authority of officers.

Each officer of a corporation has the authority and shall perform the duties set forth in the bylaws or, to the extent consistent with the bylaws, the duties and authority prescribed in a resolution of the board or by direction of an officer authorized by the board to prescribe the duties and authority of other officers.

2004 Acts, ch 1049, §96, 192

504.843 Standards of conduct for officers.

1. An officer, when performing in such capacity, shall act in conformity with all of the following:

a. In good faith.

b. With the care that a person in a like position would reasonably exercise under similar circumstances.

c. In a manner the officer reasonably believes to be in the best interests of the corporation and its members, if any.

2. In discharging the officer's duties, an officer who does not have knowledge that makes reliance unwarranted is entitled to rely on any of the following:

a. The performance of properly delegated responsibilities by one or more employees of the corporation whom the officer reasonably believes to be reliable and competent in performing the responsibilities delegated.

b. Information, opinions, reports, or statements, including financial statements and other financial data, prepared or presented by one or more officers or employees of the corporation whom the officer reasonably believes to be reliable and competent in the matters presented.

c. Legal counsel, public accountants, or other persons retained by the corporation as to matters involving the skills or expertise the officer reasonably believes are within the person's professional or expert competence, or as to which the particular person merits confidence.

d. In the case of religious corporations, religious authorities and ministers, priests, rabbis, or other persons whose position or duties in the religious organization the officer believes justify reliance and confidence and whom the officer believes to be reliable and competent in the matters presented.

3. An officer shall not be liable as an officer to the corporation or its members for any decision to take or not to take action, or any failure to take any action, if the duties of the officer are performed in compliance with this section. Whether an officer who does not comply with this section shall have liability will depend in such instance on applicable law, including those principles of sections 504.832 and 504.901 that have relevance.

2004 Acts, ch 1049, §97, 192

504.844 Resignation and removal of officers.

1. An officer of a corporation may resign at any time by delivering notice to the corporation. A resignation is effective when the notice is effective unless the notice specifies

a future effective time. If a resignation is made effective at a future time and the board or appointing officer accepts the future effective time, its board or appointing officer may fill the pending vacancy before the effective time if the board or appointing officer provides that the successor does not take office until the effective time.

2. An officer may be removed at any time with or without cause by any of the following:

a. The board of directors.

b. The officer who appointed such officer, unless the bylaws or the board of directors provide otherwise.

c. Any other officer if authorized by the bylaws or the board of directors.

d. In this section, *"appointing officer"* means the officer, including any successor to that officer, who appointed the officer resigning or being removed.

2004 Acts, ch 1049, §98, 192

504.845 Contract rights of officers.

1. The appointment of an officer of a corporation does not itself create contract rights.

2. An officer's removal does not affect the officer's contract rights, if any, with the corporation. An officer's resignation does not affect the corporation's contract rights, if any, with the officer.

2004 Acts, ch 1049, §99, 192

504.846 Officers' authority to execute documents.

1. A contract or other instrument in writing executed or entered into between a corporation and any other person is not invalidated as to the corporation by any lack of authority of the signing officers in the absence of actual knowledge on the part of the other person that the signing officers had no authority to execute the contract or other instrument if it is signed by any two officers in category 1 or by one officer in category 1 and one officer in category 2 as set out in subsection 2.

2. *a.* Category 1 officers include the presiding officer of the board and the president.

b. Category 2 officers include a vice president and the secretary, treasurer, and executive director.

2004 Acts, ch 1049, §100, 192

504.847 through 504.850 Reserved.

PART 5

INDEMNIFICATION

Referred to in §504.834

504.851 Definitions.

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

1. *"Corporation"* includes any domestic or foreign predecessor entity of a corporation in a merger.

2. *"Director"* or *"officer"* means an individual who is or was a director or officer of a corporation or an individual who, while a director or officer of a corporation, is or was serving at the corporation's request as a director, officer, partner, trustee, employee, or agent of another foreign or domestic business or nonprofit corporation, partnership, joint venture, trust, employee benefit plan, or other entity. A *"director"* or *"officer"* is considered to be serving an employee benefit plan at the corporation's request if the director's or officer's duties to the corporation also impose duties on, or otherwise involve services by, the director or officer to the plan or to participants in or beneficiaries of the plan. *"Director"* or *"officer"* includes, unless the context otherwise requires, the estate or personal representative of a director or officer.

3. *"Disinterested director"* means a director who at the time of a vote referred to in section

504.854, subsection 3, or a vote or selection referred to in section 504.856, subsection 2 or 3, is not either of the following:

a. A party to the proceeding.

b. An individual having a familial, financial, professional, or employment relationship with the director whose indemnification or advance for expenses is the subject of the decision being made, which relationship would, in the circumstances, reasonably be expected to exert an influence on the director's judgment when voting on the decision being made.

4. *"Expenses"* includes attorney fees.

5. *"Liability"* means the obligation to pay a judgment, settlement, penalty, or fine including an excise tax assessed with respect to an employee benefit plan, or reasonable expenses actually incurred with respect to a proceeding.

6. *"Official capacity"* means either of the following:

a. When used with respect to a director, the office of director in a corporation.

b. When used with respect to an officer, as contemplated in section 504.857, the office in a corporation held by the officer. *"Official capacity"* does not include service for any other foreign or domestic business or nonprofit corporation or any partnership, joint venture, trust, employee benefit plan, or other entity.

7. *"Party"* means an individual who was, is, or is threatened to be made a defendant or respondent in a proceeding.

8. *"Proceeding"* means any threatened, pending, or completed action, suit, or proceeding whether civil, criminal, administrative, or investigative and whether formal or informal.

2004 Acts, ch 1049, §101, 192; 2005 Acts, ch 19, §123, 126
Referred to in §504.202

504.852 Permissible indemnification.

1. Except as otherwise provided in this section, a corporation may indemnify an individual who is a party to a proceeding because the individual is a director against liability incurred in the proceeding if all of the following apply:

a. The individual acted in good faith.

b. The individual reasonably believed either of the following:

(1) In the case of conduct in the individual's official capacity, that the individual's conduct was in the best interests of the corporation.

(2) In all other cases, that the individual's conduct was at least not opposed to the best interests of the corporation.

c. In the case of any criminal proceeding, the individual had no reasonable cause to believe the individual's conduct was unlawful.

d. The individual engaged in conduct for which broader indemnification has been made permissible or obligatory under a provision of the articles of incorporation as authorized by section 504.202, subsection 2, paragraph *"e"*.

2. A director's conduct with respect to an employee benefit plan for a purpose the director reasonably believed to be in the interests of the participants in and beneficiaries of the plan is conduct that satisfies the requirements of subsection 1, paragraph *"b"*, subparagraph (2).

3. The termination of a proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent is not, of itself, determinative that the director did not meet the relevant standard of conduct described in this section.

4. Unless ordered by a court under section 504.855, subsection 1, paragraph *"b"*, a corporation shall not indemnify a director under this section under either of the following circumstances:

a. In connection with a proceeding by or in the right of the corporation, except for reasonable expenses incurred in connection with the proceeding if it is determined that the director has met the relevant standard of conduct under subsection 1.

b. In connection with any proceeding with respect to conduct for which the director was adjudged liable on the basis that the director received a financial benefit to which the director was not entitled, whether or not involving action in the director's official capacity.

2004 Acts, ch 1049, §102, 192; 2005 Acts, ch 19, §100
Referred to in §504.854, 504.855, 504.856, 504.859, 504.1612

504.853 Mandatory indemnification.

A corporation shall indemnify a director who was wholly successful, on the merits or otherwise, in the defense of any proceeding to which the director was a party because the director is or was a director of the corporation against reasonable expenses actually incurred by the director in connection with the proceeding.

2004 Acts, ch 1049, §103, 192
Referred to in §504.854, 504.855, 504.857, 504.1612

504.854 Advance for expenses.

1. A corporation may, before final disposition of a proceeding, advance funds to pay for or reimburse the reasonable expenses incurred by a director who is a party to a proceeding because the person is a director if the person delivers all of the following to the corporation:

a. A written affirmation of the director's good faith belief that the director has met the relevant standard of conduct described in section 504.852 or that the proceeding involved conduct for which liability has been eliminated under a provision of the articles of incorporation as authorized by section 504.202, subsection 2, paragraph *"d"*.

b. The director's written undertaking to repay any funds advanced if the director is not entitled to mandatory indemnification under section 504.853 and it is ultimately determined under section 504.855 or 504.856 that the director has not met the relevant standard of conduct described in section 504.852.

2. The undertaking required by subsection 1, paragraph *"b"*, must be an unlimited general obligation of the director but need not be secured and may be accepted without reference to the financial ability of the director to make repayment.

3. Authorizations under this section shall be made according to one of the following:

a. By the board of directors as follows:

(1) If there are two or more disinterested directors, by a majority vote of all the disinterested directors, a majority of whom shall for such purpose constitute a quorum, or by a majority of the members of a committee of two or more disinterested directors appointed by such vote.

(2) If there are fewer than two disinterested directors, by the vote necessary for action by the board in accordance with section 504.825, subsection 3, in which authorization directors who do not qualify as disinterested directors may participate.

b. By the members, but the director, who at the time does not qualify as a disinterested director, shall not vote as a member or on behalf of a member.

2004 Acts, ch 1049, §104, 192; 2004 Acts, ch 1175, §385; 2015 Acts, ch 45, §11
Referred to in §504.851, 504.855, 504.859, 504.1612

504.855 Court-ordered indemnification.

1. A director who is a party to a proceeding because the person is a director may apply for indemnification or an advance for expenses to the court conducting the proceeding or to another court of competent jurisdiction. After receipt of an application, and after giving any notice the court considers necessary, the court shall do one of the following:

a. Order indemnification if the court determines that the director is entitled to mandatory indemnification under section 504.853.

b. Order indemnification or advance for expenses if the court determines that the director is entitled to indemnification or advance for expenses pursuant to a provision authorized by section 504.859, subsection 1.

c. Order indemnification or advance for expenses if the court determines, in view of all the relevant circumstances, that it is fair and reasonable to do one of the following:

(1) To indemnify the director.

(2) To indemnify or advance expenses to the director, even if the director has not met the relevant standard of conduct set forth in section 504.852, subsection 1, failed to comply with section 504.854, or was adjudged liable in a proceeding referred to in section 504.852, subsection 4, paragraph *"a"* or *"b"*, but if the director was adjudged so liable the director's indemnification shall be limited to reasonable expenses incurred in connection with the proceeding.

2. If the court determines that the director is entitled to indemnification under subsection 1, paragraph *"a"*, or to indemnification or advance for expenses under subsection 1, paragraph *"b"*, it shall also order the corporation to pay the director's reasonable expenses incurred in connection with obtaining court-ordered indemnification or advance for expenses. If the court determines that the director is entitled to indemnification or advance for expenses under subsection 1, paragraph *"c"*, it may also order the corporation to pay the director's reasonable expenses to obtain court-ordered indemnification or advance for expenses.

2004 Acts, ch 1049, §105, 192
Referred to in §504.852, 504.854, 504.857, 504.1612

504.856 Determination and authorization of indemnification.

1. A corporation shall not indemnify a director under section 504.852 unless authorized for a specific proceeding after a determination has been made that indemnification of the director is permissible because the director has met the standard of conduct set forth in section 504.852.

2. The determination shall be made by any of the following:

a. If there are two or more disinterested directors, by the board of directors by a majority vote of all the disinterested directors, a majority of whom shall for such purpose constitute a quorum, or by a majority of the members of a committee of two or more disinterested directors appointed by such vote.

b. By special legal counsel under one of the following circumstances:

(1) Selected in the manner prescribed in paragraph *"a"*.

(2) If there are fewer than two disinterested directors, selected by the board in which selection directors who do not qualify as disinterested directors may participate.

c. By the members of a corporation, but directors who are at the time parties to the proceeding shall not vote on the determination.

3. Authorization of indemnification shall be made in the same manner as the determination that indemnification is permissible, except that if there are fewer than two disinterested directors or if the determination is made by special legal counsel, authorization of indemnification shall be made by those entitled under subsection 2, paragraph *"b"*, to select special legal counsel.

2004 Acts, ch 1049, §106, 192; 2005 Acts, ch 19, §101
Referred to in §504.851, 504.854, 504.859

504.857 Indemnification of officers.

1. A corporation may indemnify and advance expenses under this part to an officer of the corporation who is a party to a proceeding because the person is an officer, according to all of the following:

a. To the same extent as to a director.

b. If the person is an officer but not a director, to such further extent as may be provided by the articles of incorporation, the bylaws, a resolution of the board of directors, or contract, except for either of the following:

(1) Liability in connection with a proceeding by or in the right of the corporation other than for reasonable expenses incurred in connection with the proceeding.

(2) Liability arising out of conduct that constitutes any of the following:

(a) Receipt by the officer of a financial benefit to which the officer is not entitled.

(b) An intentional infliction of harm on the corporation or the members.

(c) An intentional violation of criminal law.

2. The provisions of subsection 1, paragraph *"b"*, shall apply to an officer who is also a director if the basis on which the officer is made a party to a proceeding is an act or omission solely as an officer.

3. An officer of a corporation who is not a director is entitled to mandatory indemnification under section 504.853, and may apply to a court under section 504.855 for indemnification or

an advance for expenses, in each case to the same extent to which a director may be entitled to indemnification or advance for expenses under those provisions.

2004 Acts, ch 1049, §107, 192; 2005 Acts, ch 19, §102
Referred to in §504.851

504.858 Insurance.

A corporation may purchase and maintain insurance on behalf of an individual who is a director or officer of the corporation, or who, while a director or officer of the corporation, serves at the request of the corporation as a director, officer, partner, trustee, employee, or agent of another domestic business or nonprofit corporation, partnership, joint venture, trust, employee benefit plan, or other entity, against liability asserted against or incurred by the individual in that capacity or arising from the individual's status as a director or officer, whether or not the corporation would have power to indemnify or advance expenses to that individual against the same liability under this part.

2004 Acts, ch 1049, §108, 192

504.859 Application of part.

1. A corporation may, by a provision in its articles of incorporation or bylaws or in a resolution adopted or a contract approved by its board of directors or members, obligate itself in advance of the act or omission giving rise to a proceeding to provide indemnification in accordance with section 504.852 or advance funds to pay for or reimburse expenses in accordance with section 504.854. Any such obligatory provision shall be deemed to satisfy the requirements for authorization referred to in section 504.854, subsection 3, and in section 504.856, subsection 2 or 3. Any such provision that obligates the corporation to provide indemnification to the fullest extent permitted by law shall be deemed to obligate the corporation to advance funds to pay for or reimburse expenses in accordance with section 504.854 to the fullest extent permitted by law, unless the provision specifically provides otherwise.

2. Any provision pursuant to subsection 1 shall not obligate the corporation to indemnify or advance expenses to a director of a predecessor of the corporation, pertaining to conduct with respect to the predecessor, unless otherwise specifically provided. Any provision for indemnification or advance for expenses in the articles of incorporation, bylaws, or a resolution of the board of directors or members of a predecessor of the corporation in a merger or in a contract to which the predecessor is a party, existing at the time the merger takes effect, shall be governed by section 504.1104.

3. A corporation may, by a provision in its articles of incorporation, limit any of the rights to indemnification or advance for expenses created by or pursuant to this part.

4. This part does not limit a corporation's power to pay or reimburse expenses incurred by a director or an officer in connection with the director's or officer's appearance as a witness in a proceeding at a time when the director or officer is not a party.

5. This part does not limit a corporation's power to indemnify, advance expenses to, or provide or maintain insurance on behalf of an employee or agent.

2004 Acts, ch 1049, §109, 192
Referred to in §504.705, 504.855

504.860 Exclusivity of part.

A corporation may provide indemnification or advance expenses to a director or an officer only as permitted by this part.

2004 Acts, ch 1049, §110, 192

504.861 through 504.900 Reserved.

SUBCHAPTER IX

PERSONAL LIABILITY

504.901 Personal liability.

1. Except as otherwise provided in this chapter, a director, officer, employee, or member of a corporation is not liable for the corporation's debts or obligations and a director, officer, member, or other volunteer is not personally liable in that capacity to any person for any action taken or failure to take any action in the discharge of the person's duties except liability for any of the following:

a. The amount of any financial benefit to which the person is not entitled.

b. An intentional infliction of harm on the corporation or the members.

c. A violation of section 504.835.

d. An intentional violation of criminal law.

2. A provision set forth in the articles of incorporation eliminating or limiting the liability of a director to the corporation or its members for money damages for any action taken, or any failure to take any action, pursuant to section 504.202, subsection 2, paragraph "*d*", shall not affect the applicability of this section.

2004 Acts, ch 1049, §111, 192; 2005 Acts, ch 19, §103; 2006 Acts, ch 1089, §50

Referred to in §504.202, 504.832, 504.843

504.902 through 504.1000 Reserved.

SUBCHAPTER X

AMENDMENT OF ARTICLES OF INCORPORATION AND BYLAWS

PART 1

ARTICLES OF INCORPORATION

504.1001 Authority to amend.

A corporation may amend its articles of incorporation at any time to add or change a provision that is required or permitted in the articles as of the effective date of the amendment or to delete a provision that is not required to be contained in the articles of incorporation.

2004 Acts, ch 1049, §112, 192; 2006 Acts, ch 1089, §51

504.1002 Amendment by directors.

1. Unless the articles of incorporation provide otherwise, a corporation's board of directors may adopt amendments to the corporation's articles of incorporation without member approval for any of the following purposes:

a. To extend the duration of the corporation if it was incorporated at a time when limited duration was required by law.

b. To delete the names and addresses of the initial directors.

c. To delete the name and address of the initial registered agent or registered office, if a statement of change is on file with the secretary of state.

d. To change the corporate name by substituting the word "corporation", "incorporated", "company", "limited", or the abbreviation "corp.", "inc.", "co.", or "ltd.", for a similar word or abbreviation in the name, or by adding, deleting, or changing a geographical attribution to the name.

e. To make any other change expressly permitted by this subchapter to be made by director action.

2. If a corporation has no members, its incorporators, until directors have been chosen,

and thereafter its board of directors, may adopt one or more amendments to the corporation's articles subject to any approval required pursuant to section 504.1031. The corporation shall provide notice of any meeting at which an amendment is to be voted upon. The notice shall be in accordance with section 504.823, subsection 3. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider a proposed amendment to the articles and contain or be accompanied by a copy or summary of the amendment or state the general nature of the amendment. The amendment must be approved by a majority of the directors in office at the time the amendment is adopted.

2004 Acts, ch 1049, §113, 192; 2006 Acts, ch 1089, §52
Referred to in §504.1003

504.1003 Amendment by directors and members.

1. Unless this chapter, the articles or bylaws of a corporation, the members acting pursuant to subsection 2, or the board of directors acting pursuant to subsection 3 require a greater vote or voting by class, or unless the articles or bylaws impose other requirements, an amendment to the corporation's articles must be approved by all of the following to be adopted:

a. The board if the corporation is a public benefit or religious corporation and the amendment does not relate to the number of directors, the composition of the board, the term of office of directors, or the method or way in which directors are elected or selected.

b. Except as provided in section 504.1002, subsection 1, by the members by two-thirds of the votes cast by the members or a majority of the members' voting power that could be cast, whichever is less.

c. In writing by any person or persons whose approval is required by a provision of the articles authorized by section 504.1031.

2. The members may condition the adoption of an amendment on receipt of a higher percentage of affirmative votes or on any other basis.

3. If the board initiates an amendment to the articles or board approval is required by subsection 1 to adopt an amendment to the articles, the board may condition the amendment's adoption on receipt of a higher percentage of affirmative votes or any other basis.

4. If the board or the members seek to have the amendment approved by the members at a membership meeting, the corporation shall give notice to its members of the proposed membership meeting in writing in accordance with section 504.705. The notice must state that the purpose, or one of the purposes, of the meeting is to consider the proposed amendment and contain or be accompanied by a copy or summary of the amendment.

5. If the board or the members seek to have the amendment approved by the members by written consent or written ballot, the material soliciting the approval shall contain or be accompanied by a copy or summary of the amendment.

2004 Acts, ch 1049, §114, 192
Referred to in §504.705, 504.1006

504.1004 Class voting by members on amendments.

1. Unless the articles or bylaws of the corporation provide otherwise, the members of a class in a public benefit corporation are entitled to vote as a class on a proposed amendment to the articles if the amendment would change the rights of that class as to voting in a manner different than such amendment affects another class or members of another class.

2. Unless the articles or bylaws of the corporation provide otherwise, the members of a class in a mutual benefit corporation are entitled to vote as a class on a proposed amendment to the articles if the amendment would do any of the following:

a. Affect the rights, privileges, preferences, restrictions, or conditions of that class as to voting, dissolution, redemption, or transfer of memberships in a manner different than such amendment would affect another class.

b. Change the rights, privileges, preferences, restrictions, or conditions of that class as to voting, dissolution, redemption, or transfer by changing the rights, privileges, preferences, restrictions, or conditions of another class.

c. Increase or decrease the number of memberships authorized for that class.

d. Increase the number of memberships authorized for another class.

e. Effect an exchange, reclassification, or termination of the memberships of that class.

f. Authorize a new class of memberships.

3. The members of a class of a religious corporation are entitled to vote as a class on a proposed amendment to the articles only if a class vote is provided for in the articles or bylaws.

4. Unless the articles or bylaws of the corporation provide otherwise, if a class is to be divided into two or more classes as a result of an amendment to the articles of a public benefit or mutual benefit corporation, the amendment must be approved by the members of each class that would be created by the amendment.

5. Except as provided in the articles or bylaws of a religious corporation, if a class vote is required to approve an amendment to the articles of the corporation, the amendment must be approved by the members of the class by two-thirds of the votes cast by the class or a majority of the voting power of the class, whichever is less.

2004 Acts, ch 1049, §115, 192

Referred to in §504.1103

504.1005 Articles of amendment.

After an amendment to the articles of incorporation has been adopted and approved in the manner required by this chapter and by the articles of incorporation or bylaws, the corporation amending its articles shall deliver to the secretary of state, for filing, articles of amendment setting forth:

1. The name of the corporation.
2. The text of each amendment adopted.
3. The date of each amendment's adoption.
4. If approval by members was not required, a statement that the amendment was duly approved by the incorporators or by the board of directors, as the case may be, and that member approval was not required.
5. If approval by members was required, a statement that the amendment was duly approved by the members in the manner required by this chapter, the articles of incorporation, and bylaws.
6. If approval of the amendment by some person or persons other than the members, the board, or the incorporators is required pursuant to section 504.1031, a statement that the approval was obtained.

2004 Acts, ch 1049, §116, 192; 2006 Acts, ch 1089, §53, 54

Referred to in §504.1006

504.1006 Restated articles of incorporation.

1. A corporation's board of directors may restate the corporation's articles of incorporation at any time with or without approval by members or any other person, to consolidate all amendments into a single document.
2. If the restated articles include one or more new amendments that require approval by the members or any other person, the amendments must be adopted as provided in section 504.1003.
3. If the restatement includes an amendment requiring approval pursuant to section 504.1031, the board must submit the restatement for such approval.
4. A corporation that restates its articles of incorporation shall deliver to the secretary of state for filing articles of restatement setting forth the name of the corporation and the text of the restated articles of incorporation together with a certificate stating that the restated articles consolidate all amendments into a single document. If a new amendment is included in the restated articles, the corporation shall include the statement required in section 504.1005.
5. Duly adopted restated articles of incorporation supersede the original articles of incorporation and all amendments to the original articles of incorporation.
6. The secretary of state may certify restated articles of incorporation as the articles of

incorporation currently in effect without including the certificate information required by subsection 4.

2004 Acts, ch 1049, §117, 192; 2006 Acts, ch 1089, §55

504.1007 Amendment pursuant to judicial reorganization.

1. A corporation's articles may be amended without board approval or approval by the members or approval required pursuant to section 504.1031 to carry out a plan of reorganization ordered or decreed by a court of competent jurisdiction under the authority of law of the United States.

2. An individual or individuals designated by the court shall deliver to the secretary of state articles of amendment setting forth all of the following:

a. The name of the corporation.

b. The text of each amendment approved by the court.

c. The date of the court's order or decree approving the articles of amendment.

d. The title of the reorganization proceeding in which the order or decree was entered.

e. A statement that the court had jurisdiction of the proceeding under federal statute.

3. This section does not apply after entry of a final decree in the reorganization proceeding even though the court retains jurisdiction of the proceeding for limited purposes unrelated to consummation of the reorganization plan.

2004 Acts, ch 1049, §118, 192; 2006 Acts, ch 1089, §56

504.1008 Effect of amendment and restatement.

An amendment to the articles of incorporation does not affect a cause of action existing against or in favor of the corporation, a proceeding to which the corporation is a party, any requirement or limitation imposed upon the corporation, or any property held by it by virtue of any trust upon which such property is held by the corporation, or the existing rights of persons other than members of the corporation. An amendment changing a corporation's name does not abate a proceeding brought by or against the corporation in its former name.

2004 Acts, ch 1049, §119, 192; 2005 Acts, ch 19, §104; 2006 Acts, ch 1089, §57

504.1009 through 504.1020 Reserved.

PART 2

BYLAWS

504.1021 Amendment by directors.

If a corporation has no members, its incorporators, until directors have been chosen, and thereafter its board of directors, may adopt one or more amendments to the corporation's bylaws subject to any approval required pursuant to section 504.1031. The corporation shall provide notice of any meeting of directors at which an amendment is to be approved. The notice must be given in accordance with section 504.823, subsection 3. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider a proposed amendment to the bylaws and contain or be accompanied by a copy or summary of the amendment or state the general nature of the amendment. The amendment must be approved by a majority of the directors in office at the time the amendment is adopted.

2004 Acts, ch 1049, §120, 192

504.1022 Amendment by directors and members.

1. Unless this chapter, the articles, bylaws, the members acting pursuant to subsection 2, or the board of directors acting pursuant to subsection 3, require a greater vote or voting by class, or the articles or bylaws provide otherwise, an amendment to a corporation's bylaws must be approved by all of the following to be adopted:

a. By the board if the corporation is a public benefit or religious corporation and the

amendment does not relate to the number of directors, the composition of the board, the term of office of directors, or the method or way in which directors are elected or selected.

b. By the members by two-thirds of the votes cast or a majority of the voting power, whichever is less.

c. In writing by any person or persons whose approval is required by a provision of the articles authorized by section 504.1031.

2. The members may condition the amendment's adoption on its receipt of a higher percentage of affirmative votes or on any other basis.

3. If the board initiates an amendment to the bylaws or board approval is required by subsection 1 to adopt an amendment to the bylaws, the board may condition the amendment's adoption on receipt of a higher percentage of affirmative votes or on any other basis.

4. If the board or the members seek to have the amendment approved by the members at a membership meeting, the corporation shall give notice to its members of the proposed membership meeting in writing in accordance with section 504.705. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider the proposed amendment and contain or be accompanied by a copy or summary of the amendment.

5. If the board or the members seek to have the amendment approved by the members by written consent or written ballot, the material soliciting the approval shall contain or be accompanied by a copy or summary of the amendment.

2004 Acts, ch 1049, §121, 192
Referred to in §504.705

504.1023 Class voting by members on amendments.

1. Unless the articles or bylaws of the corporation provide otherwise, the members of a class in a public benefit corporation are entitled to vote as a class on a proposed amendment to the bylaws if the amendment would change the rights of that class as to voting in a manner different than such amendment affects another class or members of another class.

2. Unless the articles or bylaws of the corporation provide otherwise, members of a class in a mutual benefit corporation are entitled to vote as a class on a proposed amendment to the bylaws if the amendment would do any of the following:

a. Affect the rights, privileges, preferences, restrictions, or conditions of that class as to voting, dissolution, redemption, or transfer of memberships in a manner different than such amendment would affect another class.

b. Change the rights, privileges, preferences, restrictions, or conditions of that class as to voting, dissolution, redemption, or transfer by changing the rights, privileges, preferences, restrictions, or conditions of another class.

c. Increase or decrease the number of memberships authorized for that class.

d. Increase the number of memberships authorized for another class.

e. Effect an exchange, reclassification, or termination of all or part of the memberships of that class.

f. Authorize a new class of memberships.

3. The members of a class of a religious corporation are entitled to vote as a class on a proposed amendment to the bylaws only if a class vote is provided for in the articles or bylaws.

4. Unless the articles or bylaws of the corporation provide otherwise, if a class is to be divided into two or more classes as a result of an amendment to the bylaws, the amendment must be approved by the members of each class that would be created by the amendment.

5. Unless the articles or bylaws of the corporation provide otherwise, if a class vote is required to approve an amendment to the bylaws, the amendment must be approved by the members of the class by two-thirds of the votes cast by the class or a majority of the voting power of the class, whichever is less.

2004 Acts, ch 1049, §122, 192
Referred to in §504.1103

504.1024 through 504.1030 Reserved.

PART 3

ARTICLES OF INCORPORATION AND BYLAWS

504.1031 Approval by third persons.

The articles of a corporation may require that an amendment to the articles or bylaws be approved in writing by a specified person or persons other than the board. Such a provision in the articles may only be amended with the approval in writing of the person or persons specified in the provision.

2004 Acts, ch 1049, §123, 192

Referred to in §504.1002, 504.1003, 504.1005, 504.1006, 504.1007, 504.1021, 504.1022, 504.1103, 504.1202, 504.1402

504.1032 Amendment terminating members or redeeming or canceling memberships.

1. Unless the articles or bylaws provide otherwise, an amendment to the articles or bylaws of a public benefit or mutual benefit corporation which would terminate all members or any class of members or redeem or cancel all memberships or any class of memberships must meet the requirements of this chapter and this section.

2. Before adopting a resolution proposing such an amendment, the board of a mutual benefit corporation shall give notice of the general nature of the amendment to the members.

3. After adopting a resolution proposing such an amendment, the notice to members proposing such amendment shall include one statement of up to five hundred words opposing the proposed amendment, if such statement is submitted by any five members or members having three percent or more of the voting power, whichever is less, not later than twenty days after the board has voted to submit such amendment to the members for their approval. In public benefit corporations, the production and mailing costs of the statement opposing the proposed amendment shall be paid by the requesting members. In mutual benefit corporations, the production and mailing costs of the statement opposing the proposed amendment shall be paid by the corporation.

4. Any such amendment shall be approved by the members by two-thirds of the votes cast by each class.

5. The provisions of section 504.622 shall not apply to any amendment meeting the requirements of this chapter and this section.

2004 Acts, ch 1049, §124, 192

504.1033 through 504.1100 Reserved.

SUBCHAPTER XI

MERGER

504.1101 Approval of plan of merger.

1. Subject to the limitations set forth in section 504.1102, one or more nonprofit corporations may merge with or into any one or more business corporations or nonprofit corporations or unincorporated entities, if the plan of merger is approved as provided in section 504.1103.

2. The plan of merger shall set forth all of the following:

a. The name of each corporation or unincorporated entity planning to merge and the name of the surviving corporation or unincorporated entity into which each plans to merge.

b. The terms and conditions of the planned merger.

c. The manner and basis, if any, of converting the memberships of each public benefit or religious corporation into memberships of the surviving corporation or unincorporated entity.

d. If the merger involves a mutual benefit corporation, the manner and basis, if any, of converting memberships of each merging corporation into memberships, obligations, or securities of the surviving or any other corporation or unincorporated entity or into cash or other property in whole or in part.

3. The plan of merger may set forth any of the following:

a. Any amendments to the articles of incorporation or bylaws of the surviving corporation or organic record of the surviving unincorporated entity to be effected by the planned merger.

b. Other provisions relating to the planned merger.

2004 Acts, ch 1049, §125, 192; 2005 Acts, ch 19, §105; 2012 Acts, ch 1049, §13 – 15; 2013 Acts, ch 90, §149

Referred to in §504.1106

504.1102 Limitations on mergers by public benefit or religious corporations.

1. Without the prior approval of the district court, a public benefit or religious corporation may merge only with one of the following:

a. A public benefit or religious corporation.

b. A foreign corporation which would qualify under this chapter as a public benefit or religious corporation.

c. A wholly owned foreign or domestic business or mutual benefit corporation, provided the public benefit or religious corporation is the surviving corporation and continues to be a public benefit or religious corporation after the merger.

d. A business or mutual benefit corporation or an unincorporated entity, provided that all of the following apply where the public benefit or religious corporation is not the surviving entity in the merger:

(1) On or prior to the effective date of the merger, assets with a value equal to the greater of the fair market value of the net tangible and intangible assets, including goodwill, of the public benefit or religious corporation or the fair market value of the public benefit or religious corporation if it were to be operated as a business concern are transferred or conveyed to one or more persons who would have received its assets under section 504.1405, subsection 1, paragraphs *"e"* and *"f"*, had it dissolved.

(2) The business or mutual benefit corporation or unincorporated entity shall return, transfer, or convey any assets held by it upon condition requiring return, transfer, or conveyance, which condition occurs by reason of the merger, in accordance with such condition.

(3) The merger is approved by a majority of directors of the public benefit or religious corporation who are not and will not become members or shareholders in or officers, employees, agents, or consultants of the surviving entity.

2. Without the prior approval of the district court in a proceeding in which a guardian ad litem has been appointed to represent the interests of the corporation, a member of a public benefit or religious corporation shall not receive or keep anything as a result of a merger other than a membership in the surviving public benefit or religious corporation. The court shall approve the transaction if it is in the public interest.

2004 Acts, ch 1049, §126, 192; 2005 Acts, ch 19, §106; 2012 Acts, ch 1049, §16, 17

Referred to in §504.1101, 504.1106

504.1103 Action on plan by board, members, and third persons.

1. Unless this chapter, the articles, bylaws, or the board of directors or members acting pursuant to subsection 3 require a greater vote or voting by class, or the articles or bylaws impose other requirements, a plan of merger for a corporation must be approved by all of the following to be adopted:

a. The board.

b. The members, if any, by two-thirds of the votes cast or a majority of the voting power, whichever is less.

c. In writing by any person or persons whose approval is required by a provision of the articles authorized by section 504.1031 for an amendment to the articles or bylaws.

2. If the corporation does not have members, the merger must be approved by a majority of the directors in office at the time the merger is approved. In addition, the corporation shall provide notice of any directors' meeting at which such approval is to be obtained in accordance with section 504.823, subsection 3. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider the proposed merger.

3. The board may condition its submission of the proposed merger, and the members may condition their approval of the merger, on receipt of a higher percentage of affirmative votes or on any other basis.

4. If the board seeks to have the plan approved by the members at a membership meeting, the corporation shall give notice to its members of the proposed membership meeting in accordance with section 504.705. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider the plan of merger and contain or be accompanied by a copy or summary of the plan. The copy or summary of the plan for members of the surviving corporation shall include any provision that, if contained in a proposed amendment to the articles of incorporation or bylaws, would entitle members to vote on the provision. The copy or summary of the plan for members of the disappearing corporation shall include a copy or summary of the articles and bylaws which will be in effect immediately after the merger takes effect.

5. If the board seeks to have the plan approved by the members by written consent or written ballot, the material soliciting the approval shall contain or be accompanied by a copy or summary of the plan. The copy or summary of the plan for members of the surviving corporation shall include any provision that, if contained in a proposed amendment to the articles of incorporation or bylaws, would entitle members to vote on the provision. The copy or summary of the plan for members of the disappearing corporation shall include a copy or summary of the articles and bylaws which will be in effect immediately after the merger takes effect.

6. Voting by a class of members is required on a plan of merger if the plan contains a provision that, if contained in a proposed amendment to articles of incorporation or bylaws, would entitle the class of members to vote as a class on the proposed amendment under section 504.1004 or 504.1023. The plan must be approved by a class of members by two-thirds of the votes cast by the class or a majority of the voting power of the class, whichever is less.

7. After a merger is adopted, and at any time before articles of merger are filed, the planned merger may be abandoned subject to any contractual rights without further action by members or other persons who approved the plan in accordance with the procedure set forth in the plan of merger or, if none is set forth, in the manner determined by the board of directors.

2004 Acts, ch 1049, §127, 192
Referred to in §504.1101, 504.1104, 504.1106

504.1104 Articles of merger.

1. After a plan of merger has been adopted and approved as required by this chapter, articles of merger shall be signed on behalf of each party to the merger by an officer or other duly authorized representative. The articles shall set forth all of the following:

a. The names of the parties to the merger.

b. If the articles of incorporation of the survivor of a merger are amended, or if a new corporation is created as a result of the merger, the amendments to the articles of incorporation of the survivor or the articles of incorporation of the new corporation.

c. If the plan of merger required approval by the members of a domestic nonprofit corporation that was a party to the merger, a statement that the plan was duly approved by the members and, if voting by any separate voting group was required, by each such separate voting group, in the manner required by this chapter and the articles of incorporation or bylaws.

d. If the plan of merger did not require approval by the members of the domestic nonprofit corporation that was a party to the merger, a statement to that effect.

e. If approval of the plan by some person or persons other than the members of the board is required pursuant to section 504.1103, subsection 1, paragraph "*c*", a statement that the approval was obtained.

f. As to each foreign nonprofit corporation or eligible entity that was a party to the merger, a statement that the participation of the foreign corporation or eligible entity was duly authorized as required by the organic law of the corporation or eligible entity.

2. Terms of the articles of merger may be dependent on facts objectively ascertainable outside the articles in accordance with section 504.111, subsection 12.

3. Articles of merger must be delivered to the secretary of state for filing by the survivor of the merger and shall take effect at the effective time provided in section 504.114. Articles of merger filed under this section may be combined with any filing required under the organic law of any domestic eligible entity involved in the transaction if the combined filing satisfies the requirements of both this section and the other organic law.

2004 Acts, ch 1049, §128, 192; 2015 Acts, ch 45, §12
Referred to in §504.705, 504.859, 504.1106

504.1105 Effect of merger.

When a merger takes effect, all of the following occur:

1. Every other corporation party to the merger merges into the surviving corporation and the separate existence of every corporation except the surviving corporation ceases.

2. The title to all real estate and other property owned by each corporation party to the merger is vested in the surviving corporation without reversion or impairment subject to any and all conditions to which the property was subject prior to the merger.

3. The surviving corporation has all the liabilities and obligations of each corporation party to the merger.

4. A proceeding pending against any corporation party to the merger may be continued as if the merger did not occur or the surviving corporation may be substituted in the proceeding for the corporation whose existence ceased.

5. The articles of incorporation and bylaws of the surviving corporation are amended to the extent provided in the plan of merger.

2004 Acts, ch 1049, §129, 192

504.1106 Merger with foreign corporation or foreign unincorporated entity.

1. Except as provided in section 504.1102, one or more foreign business or nonprofit corporations or foreign unincorporated entities may merge with one or more domestic nonprofit corporations if all of the following conditions are met:

a. The merger is permitted by the law of the state or country under whose law each foreign corporation is incorporated or foreign unincorporated entity is organized and each foreign corporation or foreign unincorporated entity complies with that law in effecting the merger.

b. The foreign corporation or foreign unincorporated entity complies with section 504.1104 if it is the surviving corporation of the merger.

c. Each domestic nonprofit corporation complies with the applicable provisions of sections 504.1101 through 504.1103 and, if it is the surviving corporation of the merger, with section 504.1104.

2. Upon the merger taking effect, the surviving foreign business or nonprofit corporation, or foreign unincorporated entity, is deemed to have irrevocably appointed the secretary of state as its agent for service of process in any proceeding brought against it.

2004 Acts, ch 1049, §130, 192; 2012 Acts, ch 1049, §18, 19

504.1107 Bequests, devises, and gifts.

Any bequest, devise, gift, grant, or promise contained in a will or other instrument of donation, subscription, or conveyance, that is made to a constituent corporation and which takes effect or remains payable after the merger, inures to the surviving corporation unless the will or other instrument otherwise specifically provides.

2004 Acts, ch 1049, §131, 192

504.1108 Conversion.

A corporation organized under this chapter that is an insurance company may voluntarily elect to be organized as a mutual insurance company under chapter 490 or 491 pursuant to the procedures set forth in section 514.23.

2004 Acts, ch 1049, §132, 192

504.1109 through 504.1200 Reserved.

SUBCHAPTER XII
SALE OF ASSETS

504.1201 Sale of assets in regular course of activities and mortgage of assets.

1. A corporation may, on the terms and conditions and for the consideration determined by the board of directors, do either of the following:

a. Sell, lease, exchange, or otherwise dispose of all, or substantially all, of its property in the usual and regular course of its activities.

b. Mortgage, pledge, dedicate to the repayment of indebtedness, whether with or without recourse, or otherwise encumber any or all of its property, whether or not in the usual and regular course of its activities.

2. Unless the articles require it, approval of the members or any other persons of a transaction described in subsection 1 is not required.

2004 Acts, ch 1049, §133, 192

504.1202 Sale of assets other than in regular course of activities.

1. A corporation may sell, lease, exchange, or otherwise dispose of all, or substantially all, of its property, with or without the goodwill, other than in the usual and regular course of its activities on the terms and conditions and for the consideration determined by the corporation's board if the proposed transaction is authorized by subsection 2.

2. Unless this chapter, the articles, bylaws, or the board of directors or members acting pursuant to subsection 4 require a greater vote or voting by a class or the articles or bylaws impose other requirements, the proposed transaction to be authorized must be approved by all of the following:

a. The board.

b. The members by two-thirds of the votes cast or a majority of the voting power, whichever is less.

c. In writing by any person or persons whose approval is required by a provision of the articles authorized by section 504.1031 for an amendment to the articles or bylaws.

3. If the corporation does not have members, the transaction must be approved by a vote of a majority of the directors in office at the time the transaction is approved. In addition, the corporation shall provide notice of any directors' meeting at which such approval is to be obtained in accordance with section 504.823, subsection 3. The notice shall also state that the purpose, or one of the purposes, of the meeting is to consider the sale, lease, exchange, or other disposition of all, or substantially all, of the property or assets of the corporation and contain or be accompanied by a copy or summary of a description of the transaction.

4. The board may condition its submission of the proposed transaction, and the members may condition their approval of the transaction, on receipt of a higher percentage of affirmative votes or on any other basis.

5. If the corporation seeks to have the transaction approved by the members at a membership meeting, the corporation shall give notice to its members of the proposed membership meeting in accordance with section 504.705. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider the sale, lease, exchange, or other disposition of all, or substantially all, of the property or assets of the corporation and contain or be accompanied by a copy or summary of a description of the transaction.

6. If the board is required to have the transaction approved by the members by written consent or written ballot, the material soliciting the approval shall contain or be accompanied by a copy or summary of a description of the transaction.

7. After a sale, lease, exchange, or other disposition of property is authorized, the transaction may be abandoned, subject to any contractual rights, without further action by the members or any other person who approved the transaction in accordance with the

procedure set forth in the resolution proposing the transaction or, if none is set forth, in the manner determined by the board of directors.

2004 Acts, ch 1049, §134, 192
Referred to in §504.705

504.1203 through 504.1300 Reserved.

SUBCHAPTER XIII

DISTRIBUTIONS

Referred to in §504.623

504.1301 Prohibited distributions.

Except as authorized by section 504.1302, a corporation shall not make any distributions.

2004 Acts, ch 1049, §135, 192

504.1302 Authorized distributions.

1. A mutual benefit corporation may purchase its memberships if, after the purchase is completed, both of the following apply:

a. The corporation will be able to pay its debts as they become due in the usual course of its activities.

b. The corporation's total assets will at least equal the sum of its total liabilities.

2. Corporations may make distributions upon dissolution in conformity with subchapter XIV.

2004 Acts, ch 1049, §136, 192
Referred to in §504.1301

504.1303 through 504.1400 Reserved.

SUBCHAPTER XIV

DISSOLUTION

Referred to in §504.1302

PART 1

VOLUNTARY DISSOLUTION

504.1401 Dissolution by incorporators or directors and third persons.

1. A majority of the incorporators of a corporation that has no directors and no members or a majority of the directors of a corporation that has no members may, subject to any approval required by the articles or bylaws, dissolve the corporation by delivering articles of dissolution to the secretary of state.

2. The corporation shall give notice of any meeting at which dissolution will be approved. The notice must be in accordance with section 504.823, subsection 3. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider dissolution of the corporation.

3. The incorporators or directors in approving dissolution shall adopt a plan of dissolution indicating to whom the assets owned or held by the corporation will be distributed after all creditors have been paid.

2004 Acts, ch 1049, §137, 192

504.1402 Dissolution by directors, members, and third persons.

1. Unless this chapter, the articles, bylaws, or the board of directors or members acting

pursuant to subsection 3 require a greater vote or voting by class or the articles or bylaws impose other requirements, dissolution is authorized if it is approved by all of the following:

a. The board.

b. The members, if any, by two-thirds of the votes cast or a majority of the voting power, whichever is less.

c. In writing by any person or persons whose approval is required by a provision of the articles authorized by section 504.1031 for an amendment to the articles or bylaws.

2. If the corporation does not have members, dissolution must be approved by a vote of a majority of the directors in office at the time the transaction is approved. In addition, the corporation shall provide notice of any directors' meeting at which such approval is to be obtained in accordance with section 504.823, subsection 3. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider dissolution of the corporation and contain or be accompanied by a copy or summary of the plan of dissolution.

3. The board may condition its submission of the proposed dissolution, and the members may condition their approval of the dissolution, on receipt of a higher percentage of affirmative votes or on any other basis.

4. If the board seeks to have dissolution approved by the members at a membership meeting, the corporation shall give notice to its members of the proposed membership meeting in accordance with section 504.705. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider dissolving the corporation and must contain or be accompanied by a copy or summary of the plan of dissolution.

5. If the board seeks to have the dissolution approved by the members by written consent or written ballot, the material soliciting the approval shall contain or be accompanied by a copy or summary of the plan of dissolution.

6. The plan of dissolution shall indicate to whom the assets owned or held by the corporation will be distributed after all creditors have been paid.

2004 Acts, ch 1049, §138, 192
Referred to in §504.705, 504.1403

504.1403 Articles of dissolution.

1. At any time after dissolution is authorized, a corporation may dissolve by delivering articles of dissolution to the secretary of state setting forth all of the following:

a. The name of the corporation.

b. The date dissolution was authorized.

c. A statement that dissolution was approved by a sufficient vote of the board.

d. If approval of members was not required, a statement to that effect and a statement that dissolution was approved by a sufficient vote of the board of directors or incorporators.

e. If approval by members was required, both of the following:

(1) The designation, number of memberships outstanding, number of votes entitled to be cast by each class entitled to vote separately on dissolution, and number of votes of each class indisputably voting on dissolution.

(2) Either the total number of votes cast for and against dissolution by each class entitled to vote separately on dissolution or the total number of undisputed votes cast for dissolution by each class and a statement that the number cast for dissolution by each class was sufficient for approval by that class.

f. If approval of dissolution by some person or persons other than the members, the board, or the incorporators is required pursuant to section 504.1402, subsection 1, paragraph "*c*", a statement that the approval was obtained.

2. A corporation is dissolved upon the effective date of its articles of dissolution.

2004 Acts, ch 1049, §139, 192
Referred to in §504.1404

504.1404 Revocation of dissolution.

1. A corporation may revoke its dissolution within one hundred twenty days of its effective date.

2. Revocation of dissolution must be authorized in the same manner as the dissolution was

authorized unless that authorization permitted revocation by action of the board of directors alone, in which event the board of directors may revoke the dissolution without action by the members or any other person.

3. After the revocation of dissolution is authorized, the corporation may revoke the dissolution by delivering to the secretary of state for filing, articles of revocation of dissolution, together with a copy of its articles of dissolution, that set forth all of the following:

a. The name of the corporation.

b. The effective date of the dissolution that was revoked.

c. The date that the revocation of dissolution was authorized.

d. If the corporation's board of directors or incorporators revoked the dissolution, a statement to that effect.

e. If the corporation's board of directors revoked a dissolution authorized by the members alone or in conjunction with another person or persons, a statement that revocation was permitted by action of the board of directors alone pursuant to that authorization.

f. If member or third-person action was required to revoke the dissolution, the information required by section 504.1403, subsection 1, paragraphs "*e*" and "*f*".

4. Revocation of dissolution is effective upon the effective date of the articles of revocation of dissolution.

5. When the revocation of dissolution is effective, it relates back to and takes effect as of the effective date of the dissolution and the corporation resumes carrying on its activities as if dissolution had never occurred.

2004 Acts, ch 1049, §140, 192

504.1405 Effect of dissolution.

1. A dissolved corporation continues its corporate existence but shall not carry on any activities except those appropriate to wind up and liquidate its affairs, including all of the following:

a. Preserving and protecting its assets and minimizing its liabilities.

b. Discharging or making provision for discharging its liabilities and obligations.

c. Disposing of its properties that will not be distributed in kind.

d. Returning, transferring, or conveying assets held by the corporation upon a condition requiring return, transfer, or conveyance, which condition occurs by reason of the dissolution, in accordance with such condition.

e. Transferring, subject to any contractual or legal requirements, its assets as provided in or authorized by its articles of incorporation or bylaws.

f. If the corporation is a public benefit or religious corporation, and a provision has not been made in its articles or bylaws for distribution of assets on dissolution, transferring, subject to any contractual or legal requirement, its assets to one or more persons described in section 501(c)(3) of the Internal Revenue Code, or if the dissolved corporation is not described in section 501(c)(3) of the Internal Revenue Code, to one or more public benefit or religious corporations.

g. If the corporation is a mutual benefit corporation and a provision has not been made in its articles or bylaws for distribution of assets on dissolution, transferring its assets to its members or, if it has no members, those persons whom the corporation holds itself out as benefiting or serving.

h. Doing every other act necessary to wind up and liquidate its assets and affairs.

2. Dissolution of a corporation does not do any of the following:

a. Transfer title to the corporation's property.

b. Subject its directors or officers to standards of conduct different from those prescribed in subchapter VIII.

c. Change quorum or voting requirements for its board or members; change provisions for selection, resignation, or removal of its directors or officers or both; or change provisions for amending its bylaws.

d. Prevent commencement of a proceeding by or against the corporation in its corporate name.

e. Abate or suspend a proceeding pending by or against the corporation on the effective date of dissolution.

f. Terminate the authority of the registered agent.

2004 Acts, ch 1049, §141, 192

Referred to in §504.1102, 504.1422, 504.1434

504.1406 Known claims against dissolved corporation.

1. A dissolved corporation may dispose of the known claims against it by following the procedure described in this section.

2. The dissolved corporation shall notify its known claimants in writing of the dissolution at any time after the effective date of the dissolution. The written notice must do all of the following:

a. Describe information that must be included in a claim.

b. Provide a mailing address where a claim may be sent.

c. State the deadline, which shall not be fewer than one hundred twenty days from the effective date of the written notice, by which the dissolved corporation must receive the claim.

d. State that the claim will be barred if not received by the deadline.

3. A claim against the dissolved corporation is barred if either of the following occurs:

a. A claimant who was given written notice under subsection 2 does not deliver the claim to the dissolved corporation by the deadline.

b. A claimant whose claim was rejected by the dissolved corporation does not commence a proceeding to enforce the claim within ninety days from the effective date of the rejection notice.

4. For purposes of this section, *"claim"* does not include a contingent liability or a claim based on an event occurring after the effective date of dissolution.

2004 Acts, ch 1049, §142, 192

Referred to in §504.1407, 504.1422, 504.1434

504.1407 Unknown claims against dissolved corporation.

1. A dissolved corporation may also publish notice of its dissolution and request that persons with claims against the corporation present them in accordance with the notice.

2. The notice must do all of the following:

a. Be published one time in a newspaper of general circulation in the county where the dissolved corporation's principal office is located or, if none is located in this state, where its registered office is or was last located.

b. Describe the information that must be included in a claim and provide a mailing address where the claim may be sent.

c. State that a claim against the corporation will be barred unless a proceeding to enforce the claim is commenced within five years after publication of the notice.

3. If the dissolved corporation publishes a newspaper notice in accordance with subsection 2, the claim of each of the following claimants is barred unless the claimant commences a proceeding to enforce the claim against the dissolved corporation within five years after the publication date of the newspaper notice:

a. A claimant who did not receive written notice under section 504.1406.

b. A claimant whose claim was timely sent to the dissolved corporation but not acted on.

c. A claimant whose claim is contingent or based on an event occurring after the effective date of dissolution.

4. A claim may be enforced under this section to the following extent, as applicable:

a. Against the dissolved corporation, to the extent of its undistributed assets.

b. If the assets have been distributed in liquidation, against any person, other than a creditor of the corporation, to whom the corporation distributed its property to the extent of the distributee's pro rata share of the claim or the corporate assets distributed to such person in liquidation, whichever is less, but the distributee's total liability for all claims under this section shall not exceed the total amount of assets distributed to the distributee.

2004 Acts, ch 1049, §143, 192

Referred to in §504.1422, 504.1434

504.1408 through 504.1420 Reserved.

PART 2

ADMINISTRATIVE DISSOLUTION

504.1421 Grounds for administrative dissolution.

The secretary of state may commence a proceeding under section 504.1422 to administratively dissolve a corporation if any of the following occurs:

1. The corporation does not deliver its biennial report to the secretary of state, in a form that meets the requirements of section 504.1613, within sixty days after the report is due.
2. The corporation is without a registered agent or registered office in this state for sixty days or more.
3. The corporation does not notify the secretary of state within sixty days that its registered agent or registered office has been changed, that its registered agent has resigned, or that its registered office has been discontinued.
4. The corporation's period of duration, if any, stated in its articles of incorporation expires.

2004 Acts, ch 1049, §144, 192
Referred to in §504.1422

504.1422 Procedure for and effect of administrative dissolution.

1. Upon determining that one or more grounds exist under section 504.1421 for dissolving a corporation, the secretary of state shall serve the corporation with written notice of that determination under section 504.504.
2. If the corporation does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the secretary of state that each ground determined by the secretary of state does not exist within at least sixty days after service of notice is perfected under section 504.504, the secretary of state may administratively dissolve the corporation by signing a certificate of dissolution that recites the ground or grounds for dissolution and its effective date. The secretary of state shall file the original of the certificate of dissolution and serve a copy on the corporation under section 504.504.
3. A corporation that is administratively dissolved continues its corporate existence but shall not carry on any activities except those necessary to wind up and liquidate its affairs pursuant to section 504.1405 and notify its claimants pursuant to sections 504.1406 and 504.1407.
4. The administrative dissolution of a corporation does not terminate the authority of its registered agent.
5. The secretary of state's administrative dissolution of a corporation pursuant to this section appoints the secretary of state as the corporation's agent for service of process in any proceeding based on a cause of action which arose during the time the corporation was authorized to transact business in this state. Service of process on the secretary of state under this subsection is service on the corporation. Upon receipt of process, the secretary of state shall serve a copy of the process on the corporation as provided in section 504.504. This subsection does not preclude service on the corporation's registered agent, if any.

2004 Acts, ch 1049, §145, 192; 2004 Acts, ch 1175, §386
Referred to in §504.1421, 504.1423

504.1423 Reinstatement following administrative dissolution.

1. A corporation administratively dissolved under section 504.1422 may apply to the secretary of state for reinstatement at any time after the effective date of dissolution. The application must state all of the following:

a. The name of the corporation and the effective date of its administrative dissolution.
b. That the ground or grounds for dissolution either did not exist or have been eliminated.
c. If the application is received more than five years after the effective date of dissolution, state the corporation's name satisfies the requirements of section 504.401.

d. The federal tax identification number of the corporation.

2. *a.* The secretary of state shall refer the federal tax identification number contained in the application for reinstatement to the departments of revenue and workforce development. The departments of revenue and workforce development shall report to the secretary of state the tax status of the corporation. If either department reports to the secretary of state that a filing delinquency or liability exists against the corporation, the secretary of state shall not cancel the certificate of dissolution until the filing delinquency or liability is satisfied.

b. (1) If the secretary of state determines that the application contains the information required by subsection 1, that a delinquency or liability reported pursuant to paragraph *"a"* has been satisfied, and that all of the application information is correct, the secretary of state shall cancel the certificate of dissolution and prepare a certificate of reinstatement reciting that determination and the effective date of reinstatement, file the document, and deliver a copy to the corporation under section 504.504.

(2) If the corporate name in subsection 1, paragraph *"c"*, is different from the corporate name in subsection 1, paragraph *"a"*, the certificate of reinstatement shall constitute an amendment to the articles of incorporation insofar as it pertains to the corporate name. A corporation shall not relinquish the right to retain its corporate name if the reinstatement is effective within five years of the effective date of the corporation's dissolution.

3. When reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative dissolution and the corporation shall resume carrying on its activities as if the administrative dissolution had never occurred.

2004 Acts, ch 1049, §146, 192; 2006 Acts, ch 1089, §58 – 60; 2010 Acts, ch 1040, §5
Referred to in §488.108, 490.401, 504.401, 504.403

504.1424 Appeal from denial of reinstatement.

1. The secretary of state, upon denying a corporation's application for reinstatement following administrative dissolution, shall serve the corporation under section 504.504 with a written notice that explains the reason or reasons for denial.

2. The corporation may appeal the denial of reinstatement to the district court within ninety days after service of the notice of denial is perfected by petitioning to set aside the dissolution and attaching to the petition copies of the secretary of state's certificate of dissolution, the corporation's application for reinstatement, and the secretary of state's notice of denial of reinstatement.

3. The court may summarily order the secretary of state to reinstate the dissolved corporation or may take other action the court considers appropriate.

4. The court's final decision may be appealed as in other civil proceedings.

2004 Acts, ch 1049, §147, 192

504.1425 through 504.1430 Reserved.

PART 3

JUDICIAL DISSOLUTION

504.1431 Grounds for judicial dissolution.

1. The district court may dissolve a corporation in any of the following ways:

a. In a proceeding brought by the attorney general, if any of the following is established:

(1) The corporation obtained its articles of incorporation through fraud.

(2) The corporation has continued to exceed or abuse the authority conferred upon it by law.

b. Except as provided in the articles or bylaws of a religious corporation, in a proceeding brought by fifty members or members holding five percent of the voting power, whichever is less, or by a director or any person specified in the articles, if any of the following is established:

(1) The directors are deadlocked in the management of the corporate affairs, and the members, if any, are unable to break the deadlock.

(2) The directors or those in control of the corporation have acted, are acting, or will act in a manner that is illegal, oppressive, or fraudulent.

(3) The members are deadlocked in voting power and have failed, for a period that includes at least two consecutive annual meeting dates, to elect successors to directors whose terms have, or would otherwise have, expired.

(4) The corporate assets are being misapplied or wasted.

c. In a proceeding brought by a creditor, if either of the following is established:

(1) The creditor's claim has been reduced to judgment, the execution on the judgment is returned unsatisfied, and the corporation is insolvent.

(2) The corporation has admitted in writing that the creditor's claim is due and owing and the corporation is insolvent.

d. In a proceeding brought by the corporation to have its voluntary dissolution continued under court supervision.

2. Prior to dissolving a corporation, the court shall consider whether:

a. There are reasonable alternatives to dissolution.

b. Dissolution is in the public interest, if the corporation is a public benefit corporation.

c. Dissolution is the best way of protecting the interests of members, if the corporation is a mutual benefit corporation.

2004 Acts, ch 1049, §148, 192

Referred to in §504.1432, 504.1434

504.1432 Procedure for judicial dissolution.

1. Venue for a proceeding brought by the attorney general to dissolve a corporation lies in Polk county. Venue for a proceeding brought by any other party named in section 504.1431 lies in the county where a corporation's principal office is located or, if none is located in this state, where its registered office is or was last located.

2. It is not necessary to make directors or members parties to a proceeding to dissolve a corporation unless relief is sought against them individually.

3. A court in a proceeding brought to dissolve a corporation may issue injunctions, appoint a receiver or custodian pendente lite with all powers and duties the court directs, take other action required to preserve the corporate assets wherever located, or carry on the activities of the corporation until a full hearing can be held.

2004 Acts, ch 1049, §149, 192

504.1433 Receivership or custodianship.

1. A court in a judicial proceeding brought to dissolve a public benefit or mutual benefit corporation may appoint one or more receivers to wind up and liquidate, or one or more custodians to manage, the affairs of the corporation. The court shall hold a hearing, after notifying all parties to the proceeding and any interested persons designated by the court, before appointing a receiver or custodian. The court appointing a receiver or custodian has exclusive jurisdiction over the corporation and all of its property wherever located.

2. The court may appoint an individual, or a domestic or foreign business or nonprofit corporation authorized to transact business in this state, as a receiver or custodian. The court may require the receiver or custodian to post bond, with or without sureties, in an amount the court directs.

3. The court shall describe the powers and duties of the receiver or custodian in its appointing order, which may be amended, including the following:

a. The receiver or custodian may dispose of all or any part of the assets of the corporation wherever located, at a public or private sale, if authorized by the court. However, the receiver's or custodian's power to dispose of the assets of the corporation is subject to any trust and other restrictions that would be applicable to the corporation. The receiver or custodian may sue and defend in the receiver's or custodian's name as receiver or custodian of the corporation, as applicable, in all courts of this state.

b. The custodian may exercise all of the powers of the corporation, through or in place

of its board of directors or officers, to the extent necessary to manage the affairs of the corporation in the best interests of its members and creditors.

4. The court during a receivership may redesignate the receiver a custodian, and during a custodianship may redesignate the custodian a receiver, if doing so is in the best interests of the corporation, its members, and creditors.

5. The court during the receivership or custodianship may order compensation paid and expense disbursements or reimbursements made to the receiver or custodian and to the receiver's or custodian's attorney from the assets of the corporation or proceeds from the sale of the assets.

2004 Acts, ch 1049, §150, 192

504.1434 Decree of dissolution.

1. If after a hearing the court determines that one or more grounds for judicial dissolution described in section 504.1431 exist, the court may enter a decree dissolving the corporation and specifying the effective date of the dissolution, and the clerk of the court shall deliver a certified copy of the decree to the secretary of state, who shall file it.

2. After entering the decree of dissolution, the court shall direct the winding up of the corporation's affairs and liquidation of the corporation in accordance with section 504.1405 and the notification of its claimants in accordance with sections 504.1406 and 504.1407.

2004 Acts, ch 1049, §151, 192

Referred to in §602.8102(70)

504.1435 through 504.1440 Reserved.

PART 4

MISCELLANEOUS

504.1441 Deposit with state treasurer.

Assets of a dissolved corporation which should be transferred to a creditor, claimant, or member of the corporation who cannot be found or who is not competent to receive them shall be reduced to cash subject to known trust restrictions and deposited with the treasurer of state for safekeeping. However, in the treasurer of state's discretion, property may be received and held in kind. When the creditor, claimant, or member furnishes satisfactory proof of entitlement to the amount deposited or property held in kind, the treasurer of state shall deliver to the creditor, member, or other person or to the representative of the creditor, member, or other person that amount or property.

2004 Acts, ch 1049, §152, 192

504.1442 through 504.1500 Reserved.

SUBCHAPTER XV

FOREIGN CORPORATIONS

Referred to in §504.111

PART 1

CERTIFICATE OF AUTHORITY

504.1501 Authority to transact business required.

1. A foreign corporation shall not transact business in this state until it obtains a certificate of authority from the secretary of state.

2. The following activities, among others, do not constitute transacting business within the meaning of subsection 1:

a. Maintaining, defending, or settling any proceeding.

b. Holding meetings of the board of directors or members or carrying on other activities concerning internal corporate affairs.

c. Maintaining bank accounts.

d. Maintaining offices or agencies for the transfer, exchange, or registration of memberships or securities or maintaining trustees or depositaries with respect to those securities.

e. Selling through independent contractors.

f. Soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside this state before they become contracts.

g. Creating or acquiring indebtedness, mortgages, or security interests in real or personal property.

h. Securing or collecting debts or enforcing mortgages or security interests in property securing the debts.

i. Owning, without more, real or personal property.

j. Conducting an isolated transaction that is completed within thirty days and that is not one in the course of repeated transactions of a like nature.

k. Transacting business in interstate commerce.

2004 Acts, ch 1049, §153, 192

504.1502 Consequences of transacting business without authority.

1. A foreign corporation transacting business in this state without a certificate of authority shall not maintain a proceeding in any court in this state until it obtains a certificate of authority.

2. The successor to a foreign corporation that transacted business in this state without a certificate of authority and the assignee of a cause of action arising out of that business shall not maintain a proceeding on that cause of action in any court in this state until the foreign corporation or its successor obtains a certificate of authority.

3. A court may stay a proceeding commenced by a foreign corporation, its successor, or assignee until the court determines whether the foreign corporation or its successor requires a certificate of authority. If it so determines, the court may further stay the proceeding until the foreign corporation or its successor obtains the certificate.

4. A foreign corporation is liable for a civil penalty of an amount not to exceed a total of one thousand dollars if it transacts business in this state without a certificate of authority. The attorney general may collect all penalties due under this subsection.

5. Notwithstanding subsections 1 and 2, the failure of a foreign corporation to obtain a certificate of authority does not impair the validity of its corporate acts or prevent it from defending any proceeding in this state.

2004 Acts, ch 1049, §154, 192

504.1503 Application for certificate of authority.

1. A foreign corporation may apply for a certificate of authority to transact business in this state by delivering an application to the secretary of state. The application must set forth all of the following:

a. The name of the foreign corporation or, if its name is unavailable for use in this state, a corporate name that satisfies the requirements of section 504.1506.

b. The name of the state or country under whose law it is incorporated.

c. The date of incorporation and period of duration.

d. The address of its principal office.

e. The address of its registered office in this state and the name of its registered agent at that office.

f. The names and usual business or home addresses of its current directors and officers.

g. Whether the foreign corporation has members.

2. The foreign corporation shall deliver the completed application to the secretary of state,

and shall also deliver to the secretary of state a certificate of existence or a document of similar import duly authenticated by the secretary of state or other official having custody of corporate records in the state or country under whose law it is incorporated which is dated no earlier than ninety days prior to the date the application is filed with the secretary of state.

2004 Acts, ch 1049, §155, 192
Referred to in §504.1504

504.1504 Amended certificate of authority.

1. A foreign corporation authorized to transact business in this state shall obtain an amended certificate of authority from the secretary of state if it changes any of the following:

a. Its corporate name.

b. The period of its duration.

c. The state or country of its incorporation.

2. The requirements of section 504.1503 for obtaining an original certificate of authority apply to obtaining an amended certificate under this section.

2004 Acts, ch 1049, §156, 192
Referred to in §504.1506

504.1505 Effect of certificate of authority.

1. A certificate of authority authorizes the foreign corporation to which it is issued to transact business in this state subject, however, to the right of the state to revoke the certificate as provided in this chapter.

2. A foreign corporation with a valid certificate of authority has the same rights and has the same privileges as and, except as otherwise provided by this chapter, is subject to the same duties, restrictions, penalties, and liabilities now or later imposed on a domestic corporation of like character.

3. This chapter does not authorize this state to regulate the organization or internal affairs of a foreign corporation authorized to transact business in this state.

2004 Acts, ch 1049, §157, 192

504.1506 Corporate name of foreign corporation.

1. If the corporate name of a foreign corporation does not satisfy the requirements of section 504.401, the foreign corporation, to obtain or maintain a certificate of authority to transact business in this state, may use a fictitious name to transact business in this state if the corporation's real name is unavailable and it delivers to the secretary of state for filing a copy of the resolution of its board of directors, certified by its secretary, adopting the fictitious name.

2. Except as authorized by subsections 3 and 4, the corporate name of a foreign corporation, including a fictitious name, must be distinguishable upon the records of the secretary of state from all of the following:

a. The corporate name of a nonprofit or business corporation incorporated or authorized to transact business in this state.

b. A corporate name reserved, registered, or protected as provided in section 490.402 or 490.403 or section 504.402 or 504.403.

c. The fictitious name of another foreign business or nonprofit corporation authorized to transact business in this state.

3. A foreign corporation may apply to the secretary of state for authorization to use in this state the name of another corporation incorporated or authorized to transact business in this state that is not distinguishable upon the records of the secretary of state from the name applied for. The secretary of state shall authorize use of the name applied for if either of the following applies:

a. The other corporation consents to the use in writing and submits an undertaking in a form satisfactory to the secretary of state to change its name to a name that is distinguishable upon the records of the secretary of state from the name of the applying corporation.

b. The applicant delivers to the secretary of state a certified copy of a final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.

4. A foreign corporation may use in this state the name, including the fictitious name, of another domestic or foreign business or nonprofit corporation that is used in this state if the other corporation is incorporated or authorized to transact business in this state and the foreign corporation has filed documentation satisfactory to the secretary of state of the occurrence of any of the following:

a. The foreign corporation has merged with the other corporation.

b. The foreign corporation has been formed by reorganization of the other corporation.

c. The foreign corporation has acquired all or substantially all of the assets, including the corporate name, of the other corporation.

5. If a foreign corporation authorized to transact business in this state changes its corporate name to one that does not satisfy the requirements of section 504.401, it shall not transact business in this state under the changed name until it adopts a name satisfying the requirements of section 504.401 and obtains an amended certificate of authority under section 504.1504.

2004 Acts, ch 1049, §158, 192; 2006 Acts, ch 1089, §61

Referred to in §504.403, 504.1503

504.1507 Registered office and registered agent of foreign corporation.

Each foreign corporation authorized to transact business in this state shall continuously maintain in this state both of the following:

1. A registered office with the same address as that of its registered agent.

2. A registered agent, who may be any of the following:

a. An individual who resides in this state and whose office is identical to the registered office.

b. A domestic business or nonprofit corporation whose office is identical to the registered office.

c. A foreign business or nonprofit corporation authorized to transact business in this state whose office is identical to the registered office.

2004 Acts, ch 1049, §159, 192

504.1508 Change of registered office or registered agent of foreign corporation.

1. A foreign corporation authorized to transact business in this state may change its registered office or registered agent by delivering to the secretary of state for filing a statement of change that sets forth all of the following that apply:

a. The name of its registered office or registered agent.

b. If the current registered office is to be changed, the address of its new registered office.

c. If the current registered agent is to be changed, the name of its new registered agent and the new agent's written consent to the appointment, either on the statement or attached to it.

d. That after the change or changes are made, the addresses of its registered office and the office of its registered agent will be identical.

2. If a registered agent changes the address of its business office, the agent may change the address of the registered office of any foreign corporation for which the agent is the registered agent by notifying the corporation in writing of the change and signing either manually or in facsimile and delivering to the secretary of state for filing a statement of change that complies with the requirements of subsection 1 and recites that the corporation has been notified of the change.

3. If a registered agent changes the registered agent's business address to another place, the registered agent may change the address of the registered office of any corporation for which the registered agent is the registered agent by filing a statement as required in subsection 2 for each corporation, or by filing a single statement for all corporations named in the notice, except that it must be signed either manually or in facsimile only by the registered agent and must recite that a copy of the statement has been mailed to each corporation named in the notice.

4. A corporation may also change its registered office or registered agent in its biennial report as provided in section 504.1613.

2004 Acts, ch 1049, §160, 192
Referred to in §504.1531

504.1509 Resignation of registered agent of foreign corporation.

1. *a.* The registered agent of a foreign corporation may resign as agent by signing and delivering to the secretary of state for filing the original statement of resignation. The statement of resignation may include a statement that the registered office is also discontinued.

b. The registered agent shall send a copy of the statement of resignation by certified mail to the corporation at its principal office and to the registered office, if not discontinued. The registered agent shall certify to the secretary of state that the copies have been sent to the corporation, including the date the copies were sent.

2. The agency appointment is terminated, and the registered office discontinued if so provided, on the date on which the statement is filed with the secretary of state.

2004 Acts, ch 1049, §161, 192; 2012 Acts, ch 1023, §157
Referred to in §504.111, 504.1531

504.1510 Service on foreign corporation.

1. The registered agent of a foreign corporation authorized to transact business in this state is the corporation's agent for service of process, notice, or demand required or permitted by law to be served on the foreign corporation.

2. A foreign corporation may be served by registered or certified mail, return receipt requested, addressed to the secretary of the foreign corporation at its principal office shown in its application for a certificate of authority or in its most recent biennial report filed under section 504.1613 if any of the following conditions apply:

a. The foreign corporation has no registered agent or its registered agent cannot with reasonable diligence be served.

b. The foreign corporation has withdrawn from transacting business in this state under section 504.1521.

c. The foreign corporation has had its certificate of authority revoked under section 504.1532.

3. Service is perfected under subsection 2 at the earliest of any of the following:

a. The date the foreign corporation receives the mail.

b. The date shown on the return receipt, if signed on behalf of the foreign corporation.

c. Five days after its deposit in the United States mail, as evidenced by the postmark, if mailed postpaid and correctly addressed.

4. This section does not prescribe the only means, or necessarily the required means, of serving a foreign corporation. A foreign corporation may also be served in any other manner permitted by law.

2004 Acts, ch 1049, §162, 192
Referred to in §504.116, 504.1532, 504.1533

504.1511 through 504.1520 Reserved.

PART 2

WITHDRAWAL

504.1521 Withdrawal of foreign corporation.

1. A foreign corporation authorized to transact business in this state shall not withdraw from this state until it obtains a certificate of withdrawal from the secretary of state.

2. A foreign corporation authorized to transact business in this state may apply for a certificate of withdrawal by delivering an application to the secretary of state for filing. The application shall set forth all of the following:

a. The name of the foreign corporation and the name of the state or country under whose law it is incorporated.

b. That it is not transacting business in this state and that it surrenders its authority to transact business in this state.

c. That it revokes the authority of its registered agent to accept service on its behalf and appoints the secretary of state as its agent for service of process in any proceeding based on a cause of action arising during the time it was authorized to do business in this state.

d. A mailing address to which the secretary of state may mail a copy of any process served on the secretary of state under paragraph "c".

3. After the withdrawal of the corporation is effective, service of process on the secretary of state under this section is service on the foreign corporation. Upon receipt of process, the secretary of state shall mail a copy of the process to the foreign corporation at the mailing address set forth in its application for withdrawal.

2004 Acts, ch 1049, §163, 192
Referred to in §504.1510

504.1522 through 504.1530 Reserved.

PART 3

REVOCATION OF CERTIFICATE OF AUTHORITY

504.1531 Grounds for revocation.

1. The secretary of state may commence a proceeding under section 504.1532 to revoke the certificate of authority of a foreign corporation authorized to transact business in this state if any of the following applies:

a. The foreign corporation does not deliver the biennial report to the secretary of state in a form that meets the requirements of section 504.1613 within sixty days after it is due.

b. The foreign corporation is without a registered agent or registered office in this state for sixty days or more.

c. The foreign corporation does not inform the secretary of state under section 504.1508 or 504.1509 that its registered agent or registered office has changed, that its registered agent has resigned, or that its registered office has been discontinued within ninety days of the change, resignation, or discontinuance.

d. An incorporator, director, officer, or agent of the foreign corporation signed a document that such person knew was false in any material respect with intent that the document be delivered to the secretary of state for filing.

e. The secretary of state receives a duly authenticated certificate from the secretary of state or other official having custody of corporate records in the state or country under whose law the foreign corporation is incorporated, stating that it has been dissolved or disappeared as the result of a merger.

2. The attorney general may commence a proceeding under section 504.1532 to revoke the certificate of authority of a foreign corporation authorized to transact business in this state if the corporation has continued to exceed or abuse the authority conferred upon it by law.

2004 Acts, ch 1049, §164, 192
Referred to in §504.1532

504.1532 Procedure for and effect of revocation.

1. The secretary of state, upon determining that one or more grounds exist under section 504.1531 for revocation of a certificate of authority, shall serve the foreign corporation with written notice of that determination under section 504.1510.

2. The attorney general, upon determining that one or more grounds exist under section 504.1531, subsection 2, for revocation of a certificate of authority, shall request the secretary

of state to serve, and the secretary of state shall serve, the foreign corporation with written notice of that determination under section 504.1510.

3. If the foreign corporation does not correct each ground for revocation or demonstrate to the reasonable satisfaction of the secretary of state or attorney general that each ground for revocation determined by the secretary of state or attorney general does not exist within sixty days after service of the notice is perfected under section 504.1510, the secretary of state may revoke the foreign corporation's certificate of authority by signing a certificate of revocation that recites the ground or grounds for revocation and its effective date. The secretary of state shall file the original of the certificate and serve a copy on the foreign corporation under section 504.1510.

4. The authority of a foreign corporation to transact business in this state ceases on the date shown on the certificate revoking its certificate of authority.

5. The secretary of state's revocation of a foreign corporation's certificate of authority appoints the secretary of state the foreign corporation's agent for service of process in any proceeding based on a cause of action that arose during the time the foreign corporation was authorized to transact business in this state. Service of process on the secretary of state under this subsection is service on the foreign corporation. Upon receipt of process, the secretary of state shall mail a copy of the process to the secretary of the foreign corporation at its principal office shown in its most recent biennial report or in any subsequent communications received from the corporation stating the current mailing address of its principal office or, if none are on file, in its application for a certificate of authority.

6. Revocation of a foreign corporation's certificate of authority does not terminate the authority of the registered agent of the corporation.

2004 Acts, ch 1049, §165, 192
Referred to in §504.1510, 504.1531

504.1533 Appeal from revocation.

1. A foreign corporation may appeal the secretary of state's revocation of its certificate of authority to the district court within thirty days after the service of the certificate of revocation is perfected under section 504.1510 by petitioning to set aside the revocation and attaching to the petition copies of its certificate of authority and the secretary of state's certificate of revocation.

2. The court may summarily order the secretary of state to reinstate the certificate of authority or may take any other action the court considers appropriate.

3. The court's final decision may be appealed as in other civil proceedings.

2004 Acts, ch 1049, §166, 192

504.1534 through 504.1600 Reserved.

SUBCHAPTER XVI

RECORDS AND REPORTS

PART 1

RECORDS

504.1601 Corporate records.

1. A corporation shall keep as permanent records minutes of all meetings of its members and board of directors, a record of all actions taken by the members or directors without a meeting, and a record of all actions taken by committees of the board of directors as authorized by section 504.826, subsection 4.

2. A corporation shall maintain appropriate accounting records.

3. A corporation or its agent shall maintain a record of its members in a form that permits

preparation of a list of the names and addresses of all members, in alphabetical order by class, showing the number of votes each member is entitled to vote.

4. A corporation shall maintain its records in written form or in another form capable of conversion into written form within a reasonable time.

5. A corporation shall keep a copy of all of the following records:

a. Its articles or restated articles of incorporation and all amendments to them currently in effect.

b. Its bylaws or restated bylaws and all amendments to them currently in effect.

c. Resolutions adopted by its board of directors relating to the characteristics, qualifications, rights, limitations, and obligations of members or any class or category of members.

d. The minutes of all meetings of members and records of all actions approved by the members for the past three years.

e. All written communications to members generally within the past three years, including the financial statements furnished for the past three years under section 504.1611.

f. A list of the names and business or home addresses of its current directors and officers.

g. Its most recent biennial report delivered to the secretary of state under section 504.1613.

2004 Acts, ch 1049, §167, 192

Referred to in §504.1602

504.1602 Inspection of records by members.

1. Subject to subsection 5, a member is entitled to inspect and copy, at a reasonable time and location specified by the corporation, any of the records of the corporation described in section 504.1601, subsection 5, if the member gives the corporation written notice or a written demand at least five business days before the date on which the member wishes to inspect and copy.

2. Subject to subsections 5 and 6, a member is entitled to inspect and copy, at a reasonable time and reasonable location specified by the corporation, any of the following records of the corporation if the member meets the requirements of subsection 3 and gives the corporation written notice at least ten business days before the date on which the member wishes to inspect and copy:

a. Excerpts from any records required to be maintained under section 504.1601, subsection 1, to the extent not subject to inspection under subsection 1 of this section.

b. Accounting records of the corporation.

c. The membership list.

3. A member may inspect and copy the records identified in subsection 2 only if all of the following apply:

a. The member's demand is made in good faith and for a proper purpose.

b. The member describes with reasonable particularity the purpose of the demand and the records the member desires to inspect.

c. The records are directly connected to the purpose described.

d. The board consents, if consent is required by section 504.1605.

4. This section does not affect either of the following:

a. The right of a member to inspect records under section 504.711 or, if the member is in litigation with the corporation, to the same extent as any other litigant.

b. The power of a court, independently of this chapter, to compel the production of corporate records for examination.

5. The articles or bylaws of a religious corporation may limit or abolish the right of a member under this section to inspect and copy any corporate record.

6. A corporation may, within ten business days after receiving a demand for inspection of a membership list under section 504.711 or subsection 2 of this section, respond to the demand with a written proposal offering a reasonable alternative to the demand for inspection that will achieve the purpose of the demand without providing access to or a copy of the membership list. A proposal offering an alternative that reasonably and in a timely manner accomplishes a proper purpose identified in a demand for inspection shall be considered to offer a reasonable alternative. A proposal for a reasonable alternative that has been accepted by the person

making the demand for inspection shall cease to be considered a reasonable alternative if the terms of the proposal are not carried out by the corporation within a reasonable time after acceptance of the proposal. For the purposes of this subsection, a reasonable alternative may include, but is not limited to, a communication prepared by a member and mailed by the corporation at the expense of the member.

2004 Acts, ch 1049, §168, 192

Referred to in §504.711, 504.1603, 504.1604

504.1603 Scope of inspection right.

1. A member's agent or attorney has the same inspection and copying rights as the member the agent or attorney represents.

2. The right to copy records under section 504.1602 includes, if reasonable, the right to receive copies made by photographic, xerographic, or other means.

3. The corporation may impose a reasonable charge, covering the costs of labor and material, for copies of any documents provided to the member. The charge shall not exceed the estimated cost of production or reproduction of the records.

4. The corporation may comply with a member's demand to inspect the record of members under section 504.1602, subsection 2, paragraph "*c*", by providing the member with a list of its members that was compiled no earlier than the date of the member's demand.

2004 Acts, ch 1049, §169, 192

504.1604 Court-ordered inspection.

1. If a corporation does not allow a member who complies with section 504.1602, subsection 1, to inspect and copy any records required by that subsection to be available for inspection, the district court in the county where the corporation's principal office is located or, if none is located in this state, where its registered office is located, may summarily order inspection and copying of the records demanded at the corporation's expense upon application of the member.

2. If a corporation does not within a reasonable time allow a member to inspect and copy any other records, or propose a reasonable alternative to such inspection and copying, the member who complies with section 504.1602, subsections 2 and 3, may apply to the district court in the county where the corporation's principal office is located or, if none is located in this state, where its registered office is located, for an order to permit inspection and copying of the records demanded. The court shall dispose of an application under this subsection on an expedited basis.

3. If the court orders inspection and copying of the records demanded or other relief deemed appropriate by the court, it shall also order the corporation to pay the member's costs, including reasonable attorney fees incurred, to obtain the order unless the corporation proves that it refused inspection in good faith because it had a reasonable basis for doubt about the right of the member to inspect the records demanded.

4. If the court orders inspection and copying of the records demanded or other relief deemed appropriate by the court, it may impose reasonable restrictions on the use or distribution of the records by the demanding member.

2004 Acts, ch 1049, §170, 192

504.1605 Limitations on use of corporate records.

Without consent of the board, no corporate record may be obtained or used by any person for any purpose unrelated to a member's interest as a member. Without limiting the generality of the foregoing, without the consent of the board, corporate records, including without limitation a membership list or any part thereof, shall not be used for any of the following:

1. To solicit money or property unless such money or property will be used solely to solicit the votes of the members in an election to be held by the corporation.

2. For any commercial purpose.

3. For sale to or purchase by any person.

4. For any purpose that is detrimental to the interests of the corporation.

2004 Acts, ch 1049, §171, 192
Referred to in §504.711, 504.1602

504.1606 Inspection of records by directors.

1. A director of a corporation is entitled to inspect and copy the books, records, and documents of the corporation at any reasonable time to the extent reasonably related to the performance of the director's duties as a director, including duties as a member of a committee, but not for any other purpose or in any manner that would violate any duty to the corporation.

2. The district court of the county where the corporation's principal office, or if none in this state, its registered office, is located may order inspection and copying of the books, records, and documents at the corporation's expense, upon application of a director who has been refused such inspection rights, unless the corporation establishes that the director is not entitled to such inspection rights. The court shall dispose of an application under this subsection on an expedited basis.

3. If an order is issued, the court may include provisions protecting the corporation from undue burden or expense and prohibiting the director from using information obtained upon exercise of the inspection rights in a manner that would violate a duty to the corporation, and may also order the corporation to reimburse the director for the director's costs, including reasonable counsel fees, incurred in connection with the application.

2004 Acts, ch 1049, §172, 192

504.1607 Exception to notice requirement.

1. Whenever notice is required to be given under any provision of this chapter to any member, such notice shall not be required to be given if notice of two consecutive annual meetings, and all notices of meetings during the period between such two consecutive annual meetings, have been sent to the member at the member's address as shown on the records of the corporation and have been returned as undeliverable.

2. If the member delivers to the corporation a written notice setting forth the member's then-current address, the requirement that notice be given to the member shall be reinstated.

2006 Acts, ch 1089, §62

504.1608 through 504.1610 Reserved.

PART 2

REPORTS

504.1611 Financial statements for members.

1. Except as provided in the articles or bylaws of a religious corporation, a corporation upon written demand from a member shall furnish that member the corporation's latest annual financial statements, which may be consolidated or combined statements of the corporation and one or more of its subsidiaries or affiliates, as appropriate, that include a balance sheet as of the end of the fiscal year and a statement of operations for that year.

2. If annual financial statements are reported upon by a public accountant, the accountant's report must accompany them.

2004 Acts, ch 1049, §173, 192
Referred to in §504.1601

504.1612 Report of indemnification to members.

If a corporation indemnifies or advances expenses to a director under section 504.852, 504.853, 504.854, or 504.855 in connection with a proceeding by or in the right of the corporation, the corporation shall report the indemnification or advance in writing to the members with or before the notice of the next meeting of members.

2004 Acts, ch 1049, §174, 192

504.1613 Biennial report for secretary of state.

1. Each domestic corporation, and each foreign corporation authorized to transact business in this state, shall deliver to the secretary of state for filing a biennial report on a form prescribed and furnished by the secretary of state that sets forth all of the following:

a. The name of the corporation and the state or country under whose law it is incorporated.

b. The address of the corporation's registered office and the name of the corporation's registered agent at that office in this state, together with the consent of any new registered agent.

c. The address of the corporation's principal office.

d. The names and addresses of the president, secretary, treasurer, and one member of the board of directors.

e. Whether or not the corporation has members.

2. The information in the biennial report must be current on the date the biennial report is executed on behalf of the corporation.

3. The first biennial report shall be delivered to the secretary of state between January 1 and April 1 of the first odd-numbered year following the calendar year in which a domestic corporation was incorporated or a foreign corporation was authorized to transact business. Subsequent biennial reports must be delivered to the secretary of state between January 1 and April 1 of the following odd-numbered calendar years.

4. *a.* If a biennial report does not contain the information required by this section, the secretary of state shall promptly notify the reporting domestic or foreign corporation in writing and return the report to the corporation for correction.

b. A filing fee for the biennial report shall be determined by the secretary of state.

c. For purposes of this section, each biennial report shall contain information related to the two-year period immediately preceding the calendar year in which the report is filed.

5. The secretary of state may provide for the change of registered office or registered agent on the form prescribed by the secretary of state for the biennial report, provided that the form contains the information required in section 504.502 or 504.503. If the secretary of state determines that a biennial report does not contain the information required by this section but otherwise meets the requirements of section 504.502 or 504.503 for the purpose of changing the registered office or registered agent, the secretary of state shall file the statement of change of registered office or registered agent, effective as provided in section 504.114, before returning the biennial report to the corporation as provided in this section. A statement of change of registered office or agent pursuant to this subsection shall be executed by a person authorized to execute the biennial report.

2004 Acts, ch 1049, §175, 192

Referred to in §497.22, 498.24, 499.49, 504.111, 504.116, 504.119, 504.141, 504.504, 504.1421, 504.1508, 504.1510, 504.1531, 504.1601

504.1614 through 504.1700 Reserved.

SUBCHAPTER XVII

TRANSITION PROVISIONS

504.1701 Application to existing domestic corporations.

1. A domestic corporation that is incorporated under chapter 504A, Code 2005, is subject to this chapter beginning on July 1, 2005.

2. Prior to July 1, 2005, only the following corporations are subject to the provisions of this chapter:

a. A corporation formed on or after January 1, 2005.

b. A corporation incorporated under chapter 504A, Code 2005, that voluntarily elects to be subject to the provisions of this chapter in accordance with the procedures set forth in subsection 3.

3. A corporation incorporated under chapter 504A, Code 2005, may voluntarily elect to be subject to the provisions of this chapter by doing all of the following:

a. The corporation shall amend or restate its articles of incorporation to indicate that the corporation voluntarily elects to be subject to the provisions of this chapter.

b. The corporation shall deliver a copy of the amended or restated articles of incorporation to the secretary of state for filing and recording in the office of the secretary of state.

4. After the amended or restated articles of incorporation have been filed with the secretary of state all of the following shall occur:

a. The corporation shall be subject to all provisions of this chapter.

b. The secretary of state shall issue a certificate of filing of the corporation's amended or restated articles of incorporation indicating that the corporation has made a voluntary election to be subject to the provisions of this chapter and shall deliver the certificate to the corporation or to the corporation's representative.

c. The secretary of state shall not file the amended or restated articles of incorporation of a corporation pursuant to this subsection unless at the time of filing the corporation is validly organized under the chapter under which it is incorporated, and has filed all biennial reports that are required and paid all fees that are due in connection with such reports.

5. The voluntary election of a corporation to be subject to the provisions of this chapter that is made pursuant to this section does not affect any right accrued or established, or any liability or penalty incurred by the corporation pursuant to the chapter under which the corporation was organized prior to such voluntary election.

2004 Acts, ch 1049, §176, 192; 2005 Acts, ch 3, §80 – 82

504.1702 Application to qualified foreign corporations.

A foreign corporation authorized to transact business in this state prior to January 1, 2005, is subject to this chapter beginning on July 1, 2005, but is not required to obtain a new certificate of authority to transact business under this chapter.

2004 Acts, ch 1049, §177, 192

504.1703 Savings provisions.

1. Except as provided in subsection 2, the repeal of a statute by 2004 Acts, ch. 1049, does not affect any of the following:

a. The operation of the statute or any action taken under it before its repeal.

b. Any ratification, right, remedy, privilege, obligation, or liability acquired, accrued, or incurred under the statute before its repeal.

c. Any violation of the statute or any penalty, forfeiture, or punishment incurred because of the violation, before its repeal.

d. Any proceeding, reorganization, or dissolution commenced under the statute before its repeal, and the proceeding, reorganization, or dissolution may be completed in accordance with the statute as if it had not been repealed.

2. If a penalty or punishment imposed for violation of a statute repealed by 2004 Iowa Acts, ch. 1049, is reduced by this chapter, the penalty or punishment, if not already imposed, shall be imposed in accordance with this chapter.

2004 Acts, ch 1049, §178, 192; 2014 Acts, ch 1026, §143

504.1704 Severability.

If any provision of this chapter or its application to any person or circumstance is held invalid by a court of competent jurisdiction, the invalidity does not affect other provisions or applications of the chapter that can be given effect without the invalid provision or application, and to this end the provisions of the chapter are severable.

2004 Acts, ch 1049, §179, 192

504.1705 Public benefit, mutual benefit, and religious corporations.

For the purposes of this chapter, each domestic corporation shall be deemed a public benefit, mutual benefit, or religious corporation as follows:

1. A corporation designated by statute as a public benefit corporation, a mutual benefit

corporation, or a religious corporation is deemed to be the type of corporation designated by that statute.

2. A corporation that does not come within subsection 1 but is organized primarily or exclusively for religious purposes is a religious corporation.

3. A corporation that does not come within subsection 1 or 2 but which is recognized as exempt under section 501(c)(3) of the Internal Revenue Code, or any successor section, is a public benefit corporation.

4. A corporation that does not come within subsection 1, 2, or 3, but which is organized for a public or charitable purpose and which upon dissolution must distribute its assets to a public benefit corporation, the United States, a state, or a person recognized as exempt under section 501(c)(3) of the Internal Revenue Code, or any successor section, is a public benefit corporation.

5. A corporation that does not come within subsection 1, 2, 3, or 4 is a mutual benefit corporation.

2004 Acts, ch 1049, §180, 192
Referred to in §504.141

CHAPTER 504A

IOWA NONPROFIT CORPORATION ACT

Repealed by 2004 Acts, ch 1049, §190; see chapter 504

CHAPTER 504B

NONPROFIT CORPORATIONS AND FEDERAL TAX LIABILITY

Referred to in §669.14

504B.1	Corporations applicable.	504B.4	Construction.
504B.2	Articles of incorporation — contents.	504B.5	Internal Revenue Code references.
504B.3	Avoiding tax liability.	504B.6	Certain powers not limited.

504B.1 Corporations applicable.

This chapter shall apply to every corporation organized under chapter 504, Code 1989, or current chapter 504, which corporation is deemed to be a private foundation as defined in section 509 of the Internal Revenue Code, which is incorporated in the state of Iowa after December 31, 1969, and as to any such corporation organized in this state before January 1, 1970, it shall apply only for its federal taxable years beginning on or after January 1, 1972.

[C73, 75, 77, 79, 81, §504B.1]

2003 Acts, ch 108, §94; 2004 Acts, ch 1049, §191; 2004 Acts, ch 1175, §394

504B.2 Articles of incorporation — contents.

The articles of incorporation of every such corporation shall be deemed to contain provisions forbidding the corporation to:

1. Engage in any act of self-dealing, as defined in section 4941(d) of the Internal Revenue Code, which would give rise to any liability for the tax imposed by section 4941(a) of the Internal Revenue Code;

2. Retain any excess business holdings, as defined in section 4943(c) of the Internal Revenue Code, which would give rise to any liability for the tax imposed by section 4943(a) of the Internal Revenue Code;

3. Make any investment which would jeopardize the carrying out of any of its exempt

purposes, within the meaning of section 4944 of the Internal Revenue Code, so as to give rise to any liability for the tax imposed by section 4944(a) of the Internal Revenue Code; and

4. Make any taxable expenditures, as defined in section 4945(d) of the Internal Revenue Code, which would give rise to any liability for the tax imposed by section 4945(a) of the Internal Revenue Code.

[C73, 75, 77, 79, 81, §504B.2]
Referred to in §504B.6

504B.3 Avoiding tax liability.

The articles of incorporation of every such corporation shall be deemed to contain a provision requiring such corporation to distribute, for the purposes specified in its articles of incorporation, for each taxable year, amounts at least sufficient to avoid liability for the tax imposed by section 4942(a) of the Internal Revenue Code.

[C73, 75, 77, 79, 81, §504B.3]
Referred to in §504B.6

504B.4 Construction.

Nothing in this chapter shall impair the rights and powers of the courts or the attorney general of this state with respect to any corporation.

[C73, 75, 77, 79, 81, §504B.4]

504B.5 Internal Revenue Code references.

All references to sections of the Internal Revenue Code shall mean the Code as defined in section 422.3.

[C73, 75, 77, 79, 81, §504B.5]
2006 Acts, ch 1140, §8, 10, 11

504B.6 Certain powers not limited.

Nothing in this chapter shall limit the power of any nonprofit corporation organized under chapter 504, Code 1989, or organized under current chapter 504:

1. To at any time amend its articles of incorporation or other instrument governing such corporation by any amendment process allowable under the laws of this state to provide that some or all provisions of sections 504B.2 and 504B.3 shall have no application to such corporation, or

2. In the case of any such corporation formed after July 1, 1971, to include any specific provisions in its original articles of incorporation, which provide that some or all provisions of sections 504B.2 and 504B.3 shall have no application to such corporation.

[C73, 75, 77, 79, 81, §504B.6]
2003 Acts, ch 108, §95; 2004 Acts, ch 1049, §191; 2004 Acts, ch 1175, §394

CHAPTER 504C

NONPROFIT CORPORATIONS — HOUSING FOR PERSONS WITH DISABILITIES

Referred to in §335.32, 414.30, 669.14

504C.1 Housing — persons with disabilities.

504C.1 Housing — persons with disabilities.

1. For the purposes of this chapter, *"disability"* means a physical impairment that results in significant functional limitations in one or more areas of major life activity and in the need for specialized care, treatment, or training services of extended duration.

2. Individuals with disabilities may form nonprofit corporations pursuant to chapter 504

for the sole purpose of establishing homes for persons with disabilities which are intended to serve two to five residents who are members of the nonprofit corporation.

3. A nonprofit corporation formed under this section may do any of the following:

a. Design, modify, or construct a specific housing facility to provide appropriate services and support to the residents of the specific housing facility. Local requirements shall not be more restrictive than the rules adopted for a family home, as defined in section 335.25 or 414.22, and the state building code requirements for single-family or multiple-family housing, as adopted pursuant to section 103A.7.

b. Contract for or employ staff for personal attendant needs and for the management and operation of the housing facility.

c. Purchase, modify, maintain, and operate transportation services for the use of the housing facility residents.

4. Residents of housing facilities established under this chapter shall be eligible to apply for or continue to receive funding provided through federal, state, and county funding sources, and assets of the members of the nonprofit corporation used in the establishment, management, and operation of the housing facility, including but not limited to provision of services to the residents of the facility, shall not be considered in determining a resident's eligibility for funding provided through sources otherwise available to the resident.

93 Acts, ch 90, §1; 2004 Acts, ch 1049, §191; 2004 Acts, ch 1086, §85; 2004 Acts, ch 1175, §393; 2010 Acts, ch 1079, §18

TITLE XIII

COMMERCE

Referred to in §8F.2, 29A.105, 714H.4

SUBTITLE 1

INSURANCE AND RELATED REGULATION

Referred to in §144E.8, 216.10, 455G.14, 491.39, 502.201, 505B.3, 508.15A, 513A.5, 514F.1, 514F.2, 515.144, 524.802, 524.1808, 546.8, 547A.1, 714.16B, 715A.8

CHAPTER 505

INSURANCE DIVISION

Referred to in §87.4, 235F.1, 296.7, 331.301, 364.4, 535A.2, 669.14, 670.7

505.1 Insurance division created.
505.2 Appointment and term of commissioner.
505.3 Vacancies.
505.4 Deputy — assistants — bond.
505.5 Expenses — salary.
505.6 Documents and records.
505.7 Fees — expenses of division — assessments.
505.7A Civil penalties.
505.8 Commissioner's general powers and duties — consumer advocate bureau established.
505.9 Ex officio receiver.
505.10 Expenses attending liquidation.
505.11 Refunds.
505.12 Life insurance — annual report.
505.13 Other insurance — annual report by the division.
505.14 Foreign insurers — reciprocal provisions.
505.15 Actuarial, professional, and specialist staff.
505.16 Applications for insurance — human immunodeficiency virus tests — restrictions.
505.17 Confidential information.
505.18 Health care insurance quality and costs — annual report.
505.19 Health insurance rate increase applications — public hearing and comment.
505.20 Certain agricultural organizations exempt from regulation.
505.21 Health care access — duties of commissioner — penalties.
505.22 Certain religious organization activities exempt from regulation.
505.23 Hearings.
505.24 Sale of policy term information by consumer reporting agency.
505.25 Information provided to medical assistance program, hawk-i program, and child support recovery unit.
505.26 Prior authorization for prescription drug benefits — standard process and form — response requirements.
505.27 Medical malpractice insurance — annual claims reports required.
505.27A Sale of life insurance to military personnel.
505.28 Consent to jurisdiction.
505.29 Administrative hearings — authority to appoint hearing officer.
505.30 Service of process made on the commissioner as agent or attorney for service of process — rules and fee.
505.31 Reimbursement accounts — assistance to small employers.
505.32 Iowa insurance information exchange. Repealed by 2018 Acts, ch 1012, §2.
505.33 Dramshop liability insurance evaluation.

505.1 Insurance division created.

An insurance division is created within the department of commerce to regulate and supervise the conducting of the business of insurance in the state. The commissioner of

insurance is the chief executive officer of the division. As used in this subtitle and chapter 502, *"division"* means the insurance division.

[S13, §1683-r, -r1; C24, 27, 31, 35, 39, §**8604;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §505.1]

86 Acts, ch 1245, §745; 93 Acts, ch 60, §6; 94 Acts, ch 1023, §113

Referred to in §516E.1

505.2 Appointment and term of commissioner.

The governor shall appoint subject to confirmation by the senate, a commissioner of insurance, who shall be selected solely with regard to qualifications and fitness to discharge the duties of this position, devote the entire time to such duties, and serve for four years beginning and ending as provided by section 69.19. The governor may remove the commissioner for malfeasance in office, or for any cause that renders the commissioner ineligible, incapable, or unfit to discharge the duties of the office.

[S13, §1683-r; C24, 27, 31, 35, 39, §**8605;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §505.2]

86 Acts, ch 1245, §1989

Referred to in §522A.2, 546.8

Confirmation, see §2.32

505.3 Vacancies.

Vacancies shall be filled as regular appointments are made for the unexpired portion of the regular term.

[S13, §1683-r; C24, 27, 31, 35, 39, §**8607;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §505.3]

505.4 Deputy — assistants — bond.

1. The commissioner of insurance shall appoint a first and second deputy commissioner and such other clerks and assistants as shall be needed to assist the commissioner in the performance of the commissioner's duty, all of whom shall serve during the pleasure of the commissioner. Before entering upon the duties of their respective offices, deputy commissioners shall give a bond in the penal sum of ten thousand dollars.

2. The commissioner may appoint a deputy commissioner for supervision whom the commissioner may appoint as supervisory or special deputy pursuant to chapter 507C and who shall perform such other duties as may be assigned by the commissioner. The deputy commissioner for supervision shall receive a salary to be fixed by the commissioner. The deputy commissioner for supervision shall be exempt from the merit system provisions of chapter 8A, subchapter IV, under section 8A.412, subsection 17.

[S13, §1683-r2; C24, 27, 31, 35, 39, §**8608;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §505.4]

91 Acts, ch 26, §31; 2003 Acts, ch 145, §269

505.5 Expenses — salary.

The commissioner shall be entitled to reimbursement of actual necessary expenses in attending meetings of insurance commissioners of other states, and in the performance of the duties of the office. The commissioner's salary shall be as fixed by the general assembly.

[S13, §1683-r2; C24, 27, 31, 35, 39, §**8610;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §505.5]

505.6 Documents and records.

All books, records, files, documents, reports, and securities, and all papers of every kind and character relating to the business of insurance shall be delivered to, and filed or deposited with, the said commissioner of insurance.

[S13, §1683-r4; C24, 27, 31, 35, 39, §**8611;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §505.6]

505.7 Fees — expenses of division — assessments.

1. All fees and charges which are required by law to be paid by insurance companies, associations, and other regulated entities shall be payable to the commissioner of the insurance division of the department of commerce or department of revenue, as provided by law, whose duty it shall be to account for and pay over the same to the treasurer of state at the time and in the manner provided by law for deposit in the department of commerce revolving fund created in section 546.12.

2. The commissioner shall account for receipts and disbursements according to the separate inspection and examination duties imposed upon the commissioner by the laws of this state and each separate inspection and examination duty shall be fiscally self-sustaining.

3. Forty percent of the nonexamination revenues payable to the division of insurance or the department of revenue in connection with the regulation of insurance companies or other entities subject to the regulatory jurisdiction of the division shall be deposited in the department of commerce revolving fund created in section 546.12 and shall be subject to annual appropriation to the division for its operations and is also subject to expenditure under subsection 6. The remaining nonexamination revenues payable to the division of insurance or the department of revenue shall be deposited in the general fund of the state.

4. Except as otherwise provided in subsection 6, the insurance division may expend additional funds if those additional expenditures are actual expenses which exceed the funds budgeted for statutory duties of the division and directly result from the statutory duties of the division. The amounts necessary to fund the excess division expenses shall be collected from additional fees and other moneys collected by the division. The division shall notify in writing the legislative services agency and the department of management when hiring additional personnel. The written notification shall include documentation that any additional expenditure related to such hiring will be totally reimbursed to the general fund, and shall also include the division's justification for hiring such personnel. The division must obtain the approval of the department of management only if the number of additional personnel to be hired exceeds the number of full-time equivalent positions authorized by the general assembly.

5. The insurance division may transfer moneys between budgeted line items of its appropriation, but such transfers may not reduce moneys budgeted for examinations or professional services, including but not limited to actuarial and legal services.

6. *a.* The insurance division may expend additional funds, including funds for additional personnel if those additional expenditures are actual expenses which exceed the funds budgeted for insurance solvency oversight under the following conditions:

(1) The division may exceed the line item budgets for examinations and professional services, including but not limited to legal and actuarial services, provided that the division funds the increased expenditures through assessments or increased nonexamination revenues payable to the division under subsection 1 or otherwise. The amounts necessary to fund the excess expenses may be collected from those regulated entities or classes of entities which either cause or benefit from the expenditure or encumbrance.

(2) Before the division expends or encumbers an amount in excess of the funds budgeted for line items other than examinations and professional services, the director of the department of management shall approve the expenditure or encumbrance. Before approval is given, the director of the department of management shall determine that the expenses can be paid from nonexamination revenues payable to the division under subsection 1 or otherwise. Upon the approval of the director of the department of management the division may expend and encumber funds for the excess expenses. The amounts necessary to fund the excess expenses may be collected from those regulated entities or classes of entities which either cause or benefit from the expenditure or encumbrance.

b. The annual salaries of the deputy commissioner for supervision and the chief examiner appointed pursuant to section 507.5 shall be expenses of examination of insurance companies and shall be charged to insurance companies examined on a proportionate basis as provided by rule adopted by the commissioner. Insurance companies examined shall pay the proportion of the salaries of the deputy commissioner for supervision and the chief examiner charged to them as part of the costs of examination as provided in section 507.8.

7. The insurance division shall, by January 15 of each year, prepare estimates of projected receipts, refunds, and reimbursements to be generated by the examinations function of the division during the calendar year in which the report is due, and such receipts, refunds, and reimbursements shall be treated in the same manner as repayment receipts, as defined in section 8.2, subsection 8, and shall be available to the division to pay the expenses of the division's examination function.

8. The commissioner may assess the costs of an audit or examination to a health insurance purchasing cooperative, in the same manner as provided for insurance companies under sections 507.7 through 507.9, and may establish by rule reasonable filing fees to fund the cost of regulatory oversight.

9. The commissioner may retain funds collected during the fiscal year beginning July 1, 2003, pursuant to any settlement, enforcement action, or other legal action authorized under federal or state law for the purpose of reimbursing costs and expenses of the division.

10. *a.* The commissioner shall assess the costs of carrying out the insurance division's duties pursuant to section 505.8, subsection 18, section 505.17, subsection 2, and sections 505.18 and 505.19 that are directly attributable to the performance of the division's duties involving specific health insurance carriers licensed to do business in this state. Such expenses shall be charged to and paid by the specific health insurance carrier to whom the expenses are attributable and upon failure or refusal of any such carrier to pay such expenses, the same may be recovered in an action brought in the name of the state. In addition, the commissioner may revoke the certificate of authority of a health insurance carrier licensed to do business in this state that fails to pay such expenses attributable to that carrier.

b. The commissioner shall assess the costs of carrying out the insurance division's duties generally pursuant to section 505.8, subsection 18, section 505.17, subsection 2, and sections 505.18 and 505.19, and for implementation and maintenance of health insurance information for consumers on the insurance division's internet site, that are not attributable to a specific health insurance carrier, to all health insurance carriers that are licensed to do business in this state on a proportionate basis as provided by rules adopted by the commissioner.

[S13, §1683-r5; C24, 27, 31, 35, 39, §**8612;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §505.7]

86 Acts, ch 1246, §615; 87 Acts, ch 234, §433; 90 Acts, ch 1247, §12, 13; 91 Acts, ch 26, §32; 91 Acts, ch 260, §1239; 93 Acts, ch 88, §3; 94 Acts, ch 1176, §1, 2; 2002 Acts, 2nd Ex, ch 1003, §32, 35; 2003 Acts, ch 35, §45, 49; 2003 Acts, ch 145, §286; 2003 Acts, ch 179, §135; 2009 Acts, ch 181, §62, 63; 2010 Acts, ch 1121, §4, 33

Referred to in §87.11E, 502.302, 502.304A, 502.305, 502.321G, 502.410, 507.9, 507B.7, 508.13, 508.14, 508.15, 508E.3, 508E.16, 512B.25, 514.9A, 514B.3B, 514B.12, 514G.113, 515.42, 515.115, 515.146, 515.147, 515A.17, 515F.19, 516E.2, 518.15, 518A.18, 518A.40, 520.10, 520.12, 521A.10, 521H.7, 522A.5, 522B.5, 522E.4, 523A.501, 523A.502, 523A.807, 523A.812, 523C.3, 523C.13, 523D.2A, 523I.205, 523I.813

Deposit of fees, §12.10

505.7A Civil penalties.

Unless specifically provided for in this subtitle, penalties imposed under this subtitle by order of the commissioner of insurance after hearing shall not exceed one thousand dollars for each act or violation of this subtitle, up to an aggregate of ten thousand dollars, unless the person knew or reasonably should have known the person was in violation of this subtitle, in which case the penalty shall not exceed five thousand dollars for each act or violation, up to an aggregate of fifty thousand dollars in any one six-month period.

2004 Acts, ch 1110, §5

Referred to in §505.8, 507.16, 522C.6

505.8 Commissioner's general powers and duties — consumer advocate bureau established.

1. The commissioner of insurance shall be the head of the division, and shall have general control, supervision, and direction over all insurance business transacted in the state, and shall enforce all the laws of the state relating to federal and state insurance business transacted in the state.

2. The commissioner shall, subject to chapter 17A, establish, publish, and enforce rules

not inconsistent with law for the enforcement of this subtitle and for the enforcement of the laws, the administration and supervision of which are imposed on the division, including rules to establish fees sufficient to administer the laws, where appropriate fees are not otherwise provided for in rule or statute.

3. The commissioner shall supervise all transactions relating to the organization, reorganization, liquidation, and dissolution of domestic insurance corporations, and all transactions leading up to the organization of such corporations.

4. The commissioner shall also supervise the sale in the state of all stock, certificates, or other evidences of interest, either by domestic or foreign insurance companies or organizations proposing to engage in any insurance business.

5. The commissioner shall supervise all health insurance purchasing cooperatives providing services or operating within the state and the organization of domestic cooperatives. The commissioner may admit nondomestic health insurance purchasing cooperatives under the same standards as domestic cooperatives.

6. The commissioner shall provide assistance to the public and to consumers of insurance products and services in this state.

a. The commissioner shall accept inquiries and complaints from the public regarding the business of insurance. The commissioner or the commissioner's designee may respond to inquiries and complaints, and may examine or investigate such inquiries and complaints to determine whether laws in this subtitle and rules adopted pursuant to such laws have been violated.

b. The commissioner shall establish a bureau, to be known as the "consumer advocate bureau", which shall be responsible for ensuring fair treatment of consumers and for preventing unfair or deceptive trade practices in the marketplace and by persons under the jurisdiction of the commissioner.

(1) The commissioner, with the advice of the governor, shall appoint a consumer advocate who shall be knowledgeable in the area of insurance and particularly in the area of consumer protection. The consumer advocate shall be the chief administrator of the consumer advocate bureau.

(2) The consumer advocate bureau may receive and may investigate consumer complaints and inquiries from the public, and may conduct investigations to determine whether any person has violated any provision of the insurance code, including chapters 507B and 522B, and any provisions related to the establishment of insurance rates.

(3) The consumer advocate bureau shall perform other functions as may be assigned to it by the commissioner related to consumer advocacy.

(4) The consumer advocate bureau shall work in conjunction with other areas of the insurance division on matters of mutual interest. The insurance division shall cooperate with the consumer advocate in fulfilling the duties of the consumer advocate bureau. The consumer advocate may also seek assistance from other federal or state agencies or private entities for the purpose of assisting consumers.

(5) When necessary or appropriate to protect the public interest or consumers, the consumer advocate may request that the commissioner conduct rate filing reviews as provided in section 505.15 or administrative hearings as provided in section 505.29.

(6) The commissioner, in cooperation with the consumer advocate, shall prepare and deliver a report to the general assembly by January 15 of each year that contains findings and recommendations regarding the activities of the consumer advocate bureau including but not limited to all of the following:

(a) An overview of the functions of the bureau.

(b) The structure of the bureau including the number and type of staff positions.

(c) Statistics showing the number of complaints handled by the bureau, the nature of the complaints including the line of business involved and their disposition, and the disposition of similar issues in other states.

(d) Actions commenced by the consumer advocate.

(e) Studies performed by the consumer advocate.

(f) Educational and outreach efforts of the consumer advocate bureau.

(g) Recommendations from the commissioner and the consumer advocate about

additional consumer protection functions that would be appropriate and useful for the bureau or the insurance division to fulfill based on observations and analysis of trends in complaints and information derived from national or other sources.

(h) Recommendations from the commissioner and the consumer advocate about any needs for additional funding, staffing, legislation, or administrative rules.

c. When necessary or appropriate to protect the public interest or consumers, the commissioner may conduct, or the commissioner's designee may request that the commissioner conduct, administrative hearings as provided in this subtitle.

d. The commissioner may adopt rules for the administration of this subsection.

7. The commissioner shall have regulatory authority over health benefit plans and adopt rules under chapter 17A as necessary, to promote the uniformity, cost efficiency, transparency, and fairness of such plans for physicians and osteopathic physicians licensed under chapter 148 and hospitals licensed under chapter 135B, for the purpose of maximizing administrative efficiencies and minimizing administrative costs of health care providers and health insurers.

8. *a.* Notwithstanding chapter 22, the commissioner shall keep confidential the information submitted to the insurance division or obtained by the insurance division in the course of an investigation or inquiry pursuant to subsection 6, including all notes, work papers, or other documents related to the investigation. Information obtained by the commissioner in the course of investigating a complaint or inquiry may, in the discretion of the commissioner, be provided to the insurance company or insurance producer that is the subject of the complaint or inquiry, to the consumer who filed the complaint or inquiry, and to the individual insured who is the subject of the complaint or inquiry, without waiving the confidentiality afforded to the commissioner or to other persons by this subsection. The commissioner may disclose or release information that is otherwise confidential under this subsection, in the course of an administrative or judicial proceeding.

b. Notwithstanding chapter 22, the commissioner shall keep confidential both information obtained by or submitted to the insurance division pursuant to chapters 514J and 515D.

c. The commissioner shall adopt rules protecting the privacy of information held by an insurer or an agent consistent with the federal Gramm-Leach-Bliley Act, Pub. L. No. 106-102.

d. Notwithstanding paragraphs "*a*", "*b*", and "*c*", if the commissioner determines that it is necessary or appropriate in the public interest or for the protection of the public, the commissioner may share information with other regulatory authorities or governmental agencies or may publish information concerning a violation of this chapter or a rule or order under this chapter. Such information may be redacted so that personally identifiable information is not made available.

e. The commissioner may adopt rules protecting the privacy of information submitted to the insurance division consistent with this section.

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

10. The commissioner may, after a hearing conducted pursuant to chapter 17A, assess fines or penalties; assess costs of an examination, investigation, or proceeding; order restitution; or take other corrective action as the commissioner deems necessary and appropriate to accomplish compliance with the laws of the state relating to all insurance business transacted in the state.

11. The commissioner may do any of the following:

a. Conduct public or private investigations within or outside of this state which the commissioner deems necessary or appropriate to determine whether a person has violated, is violating, or is about to violate a provision of any chapter of this subtitle or a rule adopted or order issued under any chapter of this subtitle, or to aid in the enforcement of any chapter of this subtitle or in the adoption of rules and forms under any chapter of this subtitle.

b. Require or permit a person to testify, file a statement, or produce a record under oath or otherwise as the commissioner determines, concerning facts and circumstances relating to a matter being investigated or about which an action or proceeding will be instituted.

c. Notwithstanding subsection 8, publish a record concerning an action, proceeding, or

investigation under, or a violation of, any chapter of this subtitle or a rule adopted or order issued under any chapter of this subtitle, if the commissioner determines that such publication is in the public interest and is necessary and appropriate for the protection of the public.

12. For the purpose of an investigation made under any chapter of this subtitle, the commissioner or the commissioner's designee may administer oaths and affirmations, subpoena witnesses, seek compulsory attendance, take evidence, require the filing of statements, and require the production of any records that the commissioner considers relevant or material to the investigation, pursuant to rules adopted under chapter 17A. The confidentiality provisions of subsection 8 shall apply to information and material obtained pursuant to this subsection.

13. If a person does not appear or refuses to testify, or does not file a statement or produce records, or otherwise does not obey a subpoena or order issued by the commissioner under any chapter of this subtitle, the commissioner may, in addition to assessing the penalties contained in sections 505.7A, 507B.6A, 507B.7, 522B.11, and 522B.17, make application to a district court of this state or another state to enforce compliance with the subpoena or order. A court to whom application is made to enforce compliance with a subpoena or order pursuant to this subtitle may do any of the following:

a. Hold the person in contempt.

b. Order the person to appear before the commissioner.

c. Order the person to testify about the matter under investigation.

d. Order the production of records.

e. Grant injunctive relief, including restricting or prohibiting the offer or sale of insurance or insurance advice.

f. Impose a civil penalty as set forth in section 505.7A.

g. Grant any other necessary or appropriate relief.

14. This section shall not be construed to prohibit a person from applying to a district court of this state or another state for relief from a subpoena or order issued by the commissioner under any chapter of this subtitle.

15. An individual shall not be relieved of an order to appear, testify, file a statement, produce a record or other evidence, or obey a subpoena or other order of the commissioner made under any chapter of this subtitle on the grounds that fulfillment of the requirement may, directly or indirectly, tend to incriminate the individual or subject the individual to a criminal fine, penalty, or forfeiture. If an individual refuses to obey a subpoena or order by asserting that individual's privilege against self-incrimination, the commissioner may apply to the district court to compel the individual to obey the subpoena or order of the commissioner. Testimony, records, or other evidence that is compelled by a court enforcing an order of the commissioner shall not be used, directly or indirectly, against that individual in a criminal case, except in a prosecution for perjury or contempt or for otherwise failing to comply with the order.

16. Upon request of the insurance regulator of another state or foreign jurisdiction, the commissioner may provide assistance in conducting an investigation to determine whether a person has violated, is violating, or is about to violate an insurance law or rule of the other state or foreign jurisdiction administered or enforced by that insurance regulator. The commissioner may provide such assistance pursuant to the powers conferred under this section as the commissioner determines is necessary or appropriate under the circumstances. Such assistance may be provided regardless of whether the conduct being investigated would constitute a violation of this subtitle or any other law of this state if the conduct occurred in this state. In determining whether to provide such assistance the commissioner may consider whether the insurance regulator requesting the assistance is permitted to and has agreed to reciprocate in providing assistance to the commissioner upon request, whether compliance with the request would violate or prejudice the public policy of this state, and the availability of division commissioner resources and employees to provide such assistance.

17. The commissioner shall utilize the senior health insurance information program to assist in the dissemination of objective and noncommercial educational material and to raise

awareness of prudent consumer choices in considering the purchase of various insurance products designed for the health care needs of older Iowans.

18. The commissioner shall annually convene a work group composed of the consumer advocate, health insurance carriers, health care providers, small employers that purchase health insurance under chapter 513B, and individual consumers in the state for the purpose of considering ways to reduce the cost of providing health insurance coverage and health care services, including but not limited to utilization of uniform billing codes, improvements to provider credentialing procedures, reducing out-of-state care expenses, annually assessing the impact of federal health care reform legislation on health care costs in the state and determining whether such legislation has reduced the cost of health insurance in the state, and the electronic delivery of explanation of benefits statements. The recommendations made by the work group shall be included in the annual report filed with the general assembly pursuant to section 505.18.

19. The commissioner may propose and promulgate administrative rules to effectuate the insurance provisions of the federal Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended by the federal Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152, and any amendments thereto, or other applicable federal law.

[S13, §1683-r3; C24, 27, 31, 35, 39, §**8613;** C46, 50, 54, §505.8; C58, 62, §505.8, 522.3; C66, 71, 73, §505.8, 515.150, 522.3; C75, 77, 79, 81, §505.8]

83 Acts, ch 27, §10; 88 Acts, ch 1159, §2; 90 Acts, ch 1234, §2; 94 Acts, ch 1176, §3; 97 Acts, ch 23, §61; 98 Acts, ch 1119, §3; 99 Acts, ch 114, §41; 2000 Acts, ch 1023, §4, 5; 2002 Acts, ch 1111, §6; 2003 Acts, ch 91, §2; 2007 Acts, ch 137, §6; 2007 Acts, ch 215, §117; 2008 Acts, ch 1123, §7 – 9; 2008 Acts, ch 1175, §1; 2008 Acts, ch 1188, §21; 2009 Acts, ch 133, §168; 2009 Acts, ch 145, §3; 2010 Acts, ch 1121, §5, 33; 2011 Acts, ch 70, §2, 3; 2013 Acts, ch 124, §7

Referred to in §505.7, 505.18, 508.36, 508E.10, 514G.110, 515D.10
See also §523A.801 and 523I.201

505.9 Ex officio receiver.

The commissioner of insurance henceforth shall be the receiver and liquidating officer for any insurance company, association, or insurance carrier, and shall serve without compensation other than the stated compensation as commissioner of insurance, but the commissioner shall be allowed clerical and other expenses necessary for the conduct of such receivership.

[C31, 35, §8613-c1; C39, §**8613.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §505.9]

Referred to in §521A.11

505.10 Expenses attending liquidation.

All expenses of supervision and liquidation shall be fixed by the commissioner of insurance, subject to approval by the court or a judge thereof, and shall, upon the commissioner's order, be paid out of the funds of such company, association, or insurance carrier in the commissioner's hands.

[C31, 35, §8613-c2; C39, §**8613.2;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §505.10]

505.11 Refunds.

Whenever it appears to the satisfaction of the commissioner of insurance that, because of error, mistake, or erroneous interpretation of statute, a foreign or domestic insurance corporation has paid to the state of Iowa taxes, fines, penalties, or license fees in excess of the amount legally chargeable against it, the commissioner of insurance shall have power to refund to such corporation any such excess by applying the amount of the excess payment toward the payment of taxes, fines, penalties, or license fees already due or which may become due, until such excess payments have been fully refunded.

[C31, 35, §8613-c3; C39, §**8613.3;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §505.11]

2001 Acts, ch 69, §2; 2002 Acts, ch 1050, §44

505.12 Life insurance — annual report.

Before the first day of September the commissioner of insurance shall make an annual report to the governor of the general conduct and condition of the life insurance companies

doing business in the state, and include therein an aggregate of the estimated value of all outstanding policies in each of the companies; and in connection therewith prepare a separate abstract thereof as to each company, and of all the returns and statements made to the commissioner by them.

[C73, §1176; C97, §1781; C24, 27, 31, 35, 39, §**8614;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §505.12]

88 Acts, ch 1112, §101

505.13 Other insurance — annual report by the division.

The commissioner shall annually cause the preparation and printing of a report to be delivered to the governor. The report shall contain information from the statements required of insurance companies, other than life insurance companies, organized or doing business in the state. The reports shall be delivered on or before the first day of September each year.

[C73, §1158; C97, §1720; S13, §1720-a; C24, 27, 31, 35, 39, §**8615;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §505.13]

87 Acts, ch 132, §1; 88 Acts, ch 1112, §102; 98 Acts, ch 1119, §4

505.14 Foreign insurers — reciprocal provisions.

When by the laws of any other state a premium or income or other taxes, or fees, fines, penalties, licenses, deposit requirements or other obligations, prohibitions or restrictions are imposed upon Iowa insurance companies actually doing business in the other state, or upon the agents of the Iowa companies, which in the aggregate are in excess of the aggregate of the taxes, fees, fines, penalties, licenses, deposit requirements or other obligations, prohibitions or restrictions directly imposed upon insurance companies of the other state under the statutes of this state, the same obligations, prohibitions or restrictions of whatever kind are in the same manner and for the same purpose imposed upon insurance companies of the other state doing business in Iowa. Insurance premium taxes paid which were not paid under protest shall not be refunded if the refund claim is based upon an alleged error or mistake of law or erroneous interpretation of statute regarding the validity or legality of this section under the laws or constitutions of the United States or this state. For the purpose of this section, an alien insurer is deemed domiciled in a state designated by it wherein it has established its principal office or agency in the United States, or maintains the largest amount of its assets held in trust or on deposit for the security of its policyholders or policyholders and creditors in the United States, or in which it was admitted to do business in the United States. This section does not apply to ad valorem taxes on real or personal property or to personal income taxes.

[C46, 50, 54, §432.2; C58, 62, 66, 71, 73, 75, 77, 79, 81, §505.14; 81 Acts, ch 164, §1]

Referred to in §508E.7, 511.40

505.15 Actuarial, professional, and specialist staff.

1. The commissioner may appoint a staff of actuaries as necessary to carry out the duties of the division. The actuarial staff shall do all of the following:

a. Perform analyses of rate filings.

b. Perform audits of submitted loss data.

c. Conduct rate hearings and serve as expert witnesses.

d. Prepare, review, and dispense data on the insurance business.

e. Assist in public education concerning the insurance business.

f. Identify any impending problem areas in the insurance business.

g. Assist in examinations of insurance companies.

2. The commissioner may retain, or the commissioner's designee may request that the commissioner retain, attorneys, appraisers, independent actuaries, independent certified public accountants, or other professionals or specialists to assist the division or the consumer advocate bureau in carrying out its duties in regard to rate filing reviews. The reasonable cost of retaining such professionals and specialists shall be borne by the insurer which is the subject of the rate filing review.

87 Acts, ch 132, §2; 2008 Acts, ch 1123, §10; 2009 Acts, ch 145, §4

Referred to in §505.8

505.16 Applications for insurance — human immunodeficiency virus tests — restrictions.

1. A person engaged in the business of insurance shall not require a test of an individual in connection with an application for insurance for the presence of an antibody to the human immunodeficiency virus unless the individual provides a written release on a form approved by the insurance commissioner. The form shall include information regarding the purpose, content, use, and meaning of the test, disclosure of test results including information explaining the effect of releasing the information to a person engaged in the business of insurance, the purpose for which the test results may be used, and other information approved by the insurance commissioner. The form shall also authorize the person performing the test to provide the results of the test to the insurance company subject to rules of confidentiality, consistent with section 141A.9, approved by the insurance commissioner. As used in this section, *"a person engaged in the business of insurance"* includes hospital service corporations organized under chapter 514 and health maintenance organizations subject to chapter 514B.

2. The insurance commissioner shall approve rules for carrying out this section including rules relating to the preparation of information to be provided before and after a test and the protection of confidentiality of personal and medical records of insurance applicants and policyholders. The rules shall require a person engaged in the business of insurance who receives results of a positive human immunodeficiency virus test of an insurance applicant or policyholder to report those results to a physician or alternative testing site of the applicant's or policyholder's choice, or if the applicant or policyholder does not choose a physician or alternative testing site to receive the results, to the Iowa department of public health.

88 Acts, ch 1234, §7; 99 Acts, ch 181, §17; 2006 Acts, ch 1117, §15
Referred to in §141A.7

505.17 Confidential information.

1. *a.* Information, records, and documents utilized for the purpose of, or in the course of, investigation, regulation, or examination of an insurance company or insurance holding company, received by the division from some other governmental entity which treats such information, records, and documents as confidential, are confidential and shall not be disclosed by the division and are not subject to subpoena. Such information, records, and documents do not constitute a public record under chapter 22.

b. The disclosure of confidential information, administrative or judicial orders which contain confidential information, or information regarding other action of the division which is not a public record subject to disclosure, to other insurance and financial regulatory officials may be permitted by the commissioner provided that those officials are subject to, or agree to comply with, standards of confidentiality comparable to those imposed on the commissioner.

2. Notwithstanding subsection 1, an application for a rate increase filed by a health insurance carrier and all information, records, and documents accompanying such an application or utilized for the purpose of, or in the course of consideration of the application by the commissioner, shall constitute a public record under chapter 22 except as provided in this subsection.

a. The commissioner shall consider the written request of a health insurance carrier to keep confidential certain details of an application or accompanying information, records, and documents. If the request includes a sufficient explanation as to why public disclosure of such details would give an unfair advantage to competitors, the commissioner shall keep such details confidential. If the commissioner elects to keep certain details confidential, the commissioner shall release only the nonconfidential details in response to a request for records made pursuant to chapter 22. If confidential details are withheld from a request for records made pursuant to chapter 22, the commissioner shall release an explanation of why the information was deemed confidential and a summary of the nature of the information withheld and the reasons for withholding the information.

b. In considering requests for confidential treatment, the commissioner shall narrowly

construe the provisions of this subsection in order to appropriately balance an applicant's need for confidentiality against the public's right to information about the application.

94 Acts, ch 1176, §4; 99 Acts, ch 165, §1; 2010 Acts, ch 1121, §6, 33
Referred to in §505.7

505.18 Health care insurance quality and costs — annual report.

1. Consumers deserve to know the quality and cost of their health care insurance. Health care insurance transparency provides consumers with the information necessary, and the incentive, to choose health plans based on cost and quality. Reliable cost and quality information about health care insurance empowers consumer choice and consumer choice creates incentives at all levels, and motivates the entire health care delivery system to provide better health care and health care benefits at a lower cost. It is the purpose of this section to make information regarding the costs of health care insurance readily available to consumers through the consumer advocate bureau of the insurance division.

2. The commissioner in collaboration with the consumer advocate shall prepare and deliver a report to the governor and to the general assembly no later than November 15 of each year that provides findings regarding health spending costs for health insurance carriers in the state for the previous calendar year. The commissioner may contract with outside vendors or entities to assist in providing the information contained in the annual report. The report shall provide, at a minimum, the following information:

a. Aggregate health insurance data concerning loss ratios of health insurance carriers licensed to do business in the state.

b. Rate increase data.

c. Health care expenditures in the state and the effect of such expenditures on health insurance premium rates.

d. A ranking and quantification of those factors that result in higher costs and those factors that result in lower costs for each health insurance carrier in the state.

e. The current capital and surplus and reserve amounts held in reserve by each health insurance carrier licensed to do business in the state.

f. A listing of any apparent medical trends affecting health insurance costs in the state.

g. Any additional data or analysis deemed appropriate by the commissioner to provide the general assembly with pertinent health insurance cost information.

h. Recommendations made by the work group convened pursuant to section 505.8, subsection 18.

2010 Acts, ch 1121, §7, 33; 2011 Acts, ch 70, §4, 5
Referred to in §505.7, 505.8

505.19 Health insurance rate increase applications — public hearing and comment.

1. All health insurance carriers licensed to do business in the state shall immediately notify policyholders of any application for a rate increase exceeding the average annual health spending growth rate stated in the most recent national health expenditure projection published by the centers for Medicare and Medicaid services of the United States department of health and human services, that is filed with the insurance division. Such notice shall specify the rate increase proposed that is applicable to each policyholder and shall include the ranking and quantification of those factors that are responsible for the amount of the rate increase proposed. The notice shall include information about how the policyholder can contact the consumer advocate for assistance.

2. The commissioner shall hold a public hearing at the time a carrier files for proposed health insurance rate increases exceeding the average annual health spending growth rate as provided in subsection 1, prior to approval or disapproval of the proposed rate increases for that carrier by the commissioner.

3. The consumer advocate shall solicit public comments on each proposed health insurance rate increase application if the increase exceeds the average annual health spending growth rate as provided in subsection 1, and shall post without delay during the normal business hours of the division, all comments received on the insurance division's

internet site prior to approval, disapproval, or modification of the proposed rate increase by the commissioner.

4. The consumer advocate shall present the public testimony, if any, and public comments received for consideration by the commissioner in determining whether to approve, disapprove, or modify such health insurance rate increase proposals.

5. *a.* For the purposes of this section, *"health insurance"* does not include any of the following:

(1) Coverage for accident-only, or disability income insurance.

(2) Coverage issued as a supplement to liability insurance.

(3) Liability insurance, including general liability insurance and automobile liability insurance.

(4) Workers' compensation or similar insurance.

(5) Automobile medical-payment insurance.

(6) Credit-only insurance.

(7) Coverage for on-site medical clinic care.

(8) Other similar insurance coverage, specified in federal regulations, under which benefits for medical care are secondary or incidental to other insurance coverage or benefits.

b. For the purposes of this section, *"health insurance"* does not include benefits provided under a separate policy as follows:

(1) Limited scope dental or vision benefits.

(2) Benefits for long-term care, nursing home care, home health care, or community-based care.

(3) Any other similar limited benefits as provided by rule of the commissioner.

c. For the purposes of this section, *"health insurance"* does not include benefits offered as independent noncoordinated benefits as follows:

(1) Coverage only for a specified disease or illness.

(2) A hospital indemnity or other fixed indemnity insurance.

d. For the purposes of this section, *"health insurance"* does not include Medicare supplemental health insurance as defined under section 1882(g)(1) of the federal Social Security Act, coverage supplemental to the coverage provided under 10 U.S.C. ch. 55, and similar supplemental coverage provided to coverage under group health insurance coverage.

6. The commissioner shall adopt rules pursuant to chapter 17A to implement the provisions of this section.

2010 Acts, ch 1121, §8, 33; 2011 Acts, ch 70, §6

Referred to in §505.7

505.20 Certain agricultural organizations exempt from regulation.

1. A health benefit plan, sponsored by a nonprofit agricultural organization domiciled in this state and created primarily to promote programs for the development of rural communities and the economic stability and sustainability of farmers in the state which meets the requirements set forth in subsection 2, shall be deemed to not be insurance and shall not be subject to the provisions of this subtitle, to the extent such plan, after January 1, 2018, provides health benefits under a self-funded arrangement that is administered by a domestic entity that is registered as a third-party administrator pursuant to chapter 510 and that has continuously provided, either directly or through an affiliate, health care administrative services to the nonprofit agricultural organization or its affiliates for a period in excess of ten years.

2. A nonprofit agricultural organization providing a health benefit plan to its members under this section must meet all of the following requirements:

a. Have been in existence for twenty-five continuous years prior to the issuance of health benefits to members of the organization.

b. Provide membership opportunities for eligible individuals in all ninety-nine counties of the state.

c. Collect annual dues from members.

d. Hold regular meetings to further the purposes of the members.

e. Provide the members with representation on its governing board and committees.

f. Provide education, mentoring, and financial assistance to grow and expand rural businesses in the state.

g. Have contracted with the domestic entity described in subsection 1 to administer the health benefit plan.

3. Such nonprofit agricultural organization shall file a certification with the commissioner that the organization meets the foregoing requirements prior to providing health benefits under a self-funded arrangement to its members.

2018 Acts, ch 1063, §1
NEW section

505.21 Health care access — duties of commissioner — penalties.

1. The commissioner shall adopt rules establishing a requirement that an employer provide access to health care to the employees of the employer. The rules shall provide that an employer doing business within this state shall offer each employee, at a minimum, access to health insurance. The requirement contained in this section may be satisfied by offering any of the following:

a. Health care coverage through an insurer or health maintenance organization authorized to do business in this state.

b. Access to health benefits through a health benefits plan qualified under the federal Employee Retirement Income Security Act of 1974.

2. An employer may financially contribute toward the employee's health benefit plan. The employer shall offer payroll deduction of employee contributions and direct deposit of premium payments related to a health insurance purchasing cooperative or other health care coverage.

3. A violation of this section may be reported to the consumer and legal affairs bureau in the insurance division. The division may issue, upon a finding that an employer has failed to offer an employee access to health insurance, any of the following:

a. A cease and desist order instructing the employer to cure the failure and desist from future violations of this section.

b. An order requiring an employer who has previously been the subject of a cease and desist order to pay an employee's reasonable health insurance premiums necessary to prevent or cure a lapse in health care coverage arising out of the employer's failure to offer as required.

c. An order upon the employer assessing the reasonable costs of the division's investigation and enforcement action.

94 Acts, ch 1176, §6; 98 Acts, ch 1217, §38

505.22 Certain religious organization activities exempt from regulation.

A religious organization which, through its publication to subscribers, solicits funds for the payment of medical expenses of other subscribers, shall not be considered to be engaging in the business of insurance for purposes of this chapter or any other provision of this title, and shall not be subject to the jurisdiction of the commissioner of insurance, if all of the following apply:

1. The religious publication is provided by a nonprofit charitable organization described in section 501(c)(3) of the Internal Revenue Code.

2. Participation is limited to subscribers who are members of the same denomination or religion.

3. The publication is registered with the United States postal service and acts as an organizational clearinghouse for information between subscribers who have financial, physical, or medical needs, and subscribers who choose to assist with those needs, matching subscribers with the present ability to pay with subscribers with a present financial or medical need.

4. The organization, through its publication, provides for the payment for subscriber financial or medical needs through direct payments from one subscriber to another.

5. The organization, through its publication, suggests amounts to contribute that are

voluntary among the subscribers, with no assumption of risk or promise to pay either among the subscribers or between the subscribers and the publication.

95 Acts, ch 185, §3

505.23 Hearings.

If an evidentiary hearing is conducted in a proceeding pursuant to section 508B.7, 515G.7, 521A.3, or 521A.14, or in a proceeding with respect to a merger or consolidation pursuant to chapter 521, the proceeding is a contested case subject to chapter 17A.

2000 Acts, ch 1023, §6

505.24 Sale of policy term information by consumer reporting agency.

1. For purposes of this section, unless the context otherwise requires, *"consumer reporting agency"* means any person that for monetary fees, dues, or on a cooperative nonprofit basis regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties and that uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports.

2. A consumer reporting agency shall not provide or sell data or lists that include any information that in whole or in part was submitted in conjunction with an insurance inquiry about a consumer's credit information or a request for a credit report or insurance score. Information submitted in conjunction with an insurance inquiry about a consumer includes, but is not limited to, the expiration dates of an insurance policy or any other information that may identify time periods during which a consumer's insurance may expire and the terms and conditions of the consumer's insurance coverage.

3. The restrictions provided in subsection 2 do not apply to data or lists supplied by a consumer reporting agency to an insurance producer from whom information was received, the insurer on whose behalf such producer acted, or such insurer's affiliates or holding companies.

4. This section shall not be construed to restrict any insurer from being able to obtain a claims history report or a motor vehicle report.

2003 Acts, ch 91, §3

505.25 Information provided to medical assistance program, hawk-i program, and child support recovery unit.

A carrier, as defined in section 514C.13, shall enter into a health insurance data match program with the department of human services for the sole purpose of comparing the names of the carrier's insureds with the names of recipients of the medical assistance program under chapter 249A, individuals under the purview of the child support recovery unit pursuant to chapter 252B, or enrollees of the hawk-i program under chapter 514I.

2004 Acts, ch 1175, §153, 162; 2005 Acts, ch 175, §123; 2006 Acts, ch 1119, §6

Referred to in §249A.37, 252B.9

505.26 Prior authorization for prescription drug benefits — standard process and form — response requirements.

1. As used in this section:

a. "Facility", *"health benefit plan"*, *"health care professional"*, *"health care provider"*, *"health care services"*, and *"health carrier"* mean the same as defined in section 514J.102.

b. "Pharmacy benefits manager" means the same as defined in section 510B.1.

2. The commissioner shall develop, by rule, a process for use by each health carrier and pharmacy benefits manager that requires prior authorization for prescription drug benefits pursuant to a health benefit plan, to submit, on or before January 1, 2015, a single prior authorization form for approval by the commissioner, that each health carrier or pharmacy benefits manager shall be required to use beginning on July 1, 2015. The process shall provide that if a prior authorization form submitted to the commissioner by a health carrier or pharmacy benefits manager is not approved or disapproved within thirty days after its receipt by the commissioner, the form shall be deemed approved.

3. The commissioner shall develop, by rule, a standard prior authorization process which meets all of the following requirements:

a. Health carriers and pharmacy benefits managers shall allow health care providers to submit a prior authorization request electronically.

b. Health carriers and pharmacy benefits managers shall provide that approval of a prior authorization request shall be valid for a minimum length of time in accordance with the rules adopted under this section. In adopting the rules, the commissioner may consult with health care professionals who seek prior authorization for particular types of drugs, and as the commissioner determines to be appropriate, negotiate standards for such minimum time periods with individual health carriers and pharmacy benefits managers.

c. Health carriers and pharmacy benefits managers shall make the following available and accessible on their internet sites:

(1) Prior authorization requirements and restrictions, including a list of drugs that require prior authorization.

(2) Clinical criteria that are easily understandable to health care providers, including clinical criteria for reauthorization of a previously approved drug after the prior authorization period has expired.

(3) Standards for submitting and considering requests, including evidence-based guidelines, when possible, for making prior authorization determinations.

d. Health carriers shall provide a process for health care providers to appeal a prior authorization determination as provided in chapter 514J. Pharmacy benefits managers shall provide a process for health care providers to appeal a prior authorization determination that is consistent with the process provided in chapter 514J.

4. In adopting a standard prior authorization process, the commissioner shall consider national standards pertaining to electronic prior authorization, such as those developed by the national council for prescription drug programs.

5. A prior authorization form approved by the commissioner shall meet all of the following requirements:

a. Not exceed two pages in length, except that a prior authorization form may exceed that length as determined to be appropriate by the commissioner.

b. Be available in electronic format.

c. Be transmissible in an electronic format or a fax transmission.

6. Beginning on July 1, 2015, each health carrier and pharmacy benefits manager shall use and accept the prior authorization form that was submitted by that health carrier or pharmacy benefits manager and approved for the use of that health carrier or pharmacy benefits manager by the commissioner pursuant to this section. Beginning on July 1, 2015, health care providers shall use and submit the prior authorization form that has been approved for the use of a health carrier or pharmacy benefits manager, when prior authorization is required by a health benefit plan.

7. The commissioner shall adopt rules pursuant to chapter 17A that provide requirements, not to exceed seventy-two hours for urgent claims and five calendar days for nonurgent claims, for a health carrier or pharmacy benefits manager to respond to a health care provider's request for prior authorization of prescription drug benefits or to request additional information from a health care provider concerning such a request.

2014 Acts, ch 1140, §98, 101; 2015 Acts, ch 128, §9, 50, 51
Referred to in §510B.9, 514F.7

505.27 Medical malpractice insurance — annual claims reports required.

1. An insurer providing medical malpractice insurance coverage to Iowa health care providers shall file annually on or before June 1 with the commissioner a report of all medical malpractice insurance claims, both open claims and closed claims filed during the reporting period, against any such Iowa insureds during the preceding calendar year.

2. The report shall be in writing and contain all of the following information aggregated by specialty area and paid loss and paid expense categories established by the commissioner:

a. The total number of claims in the reporting period and the nature and substance of such claims.

b. The total amounts paid within six months after final disposition of the claims.

c. The total amount reserved for the payment of claims incurred and reported but not disposed.

d. The expenses, as set forth by rule, related to the claims.

e. Any other additional information as required by the commissioner by rule.

3. The commissioner shall compile annually the data included in reports filed by insurers pursuant to this section into an aggregate form by insurer, except that such data shall not include information that directly or indirectly identifies any individual, including a patient, an insured, or a health care provider. The commissioner shall submit a written report summarizing such data along with any recommendations to the general assembly and the governor by December 1, 2007, with subsequent reports submitted to the general assembly and the governor annually thereafter.

4. A report prepared pursuant to subsection 1 or 3 shall be open to the public and shall be made available to a requesting party by the commissioner at no charge, except that any identifying information of any individual, including a patient, an insured, or health care provider, shall remain confidential.

5. For purposes of this section:

a. "Health care provider" means the same as defined in section 135.61, a hospital licensed pursuant to chapter 135B, or a health care facility licensed pursuant to chapter 135C.

b. "Insurer" means an insurance company authorized to transact insurance business in this state. *"Insurer"* does not include a health care provider who maintains professional liability insurance coverage through a self-insurance plan, an unauthorized insurance company transacting business with an insured person in this state, or a person not authorized to transact insurance business in this state.

2006 Acts, ch 1128, §3; 2017 Acts, ch 29, §141
Referred to in §135P.4

505.27A Sale of life insurance to military personnel.

Notwithstanding any other provision of this title, the commissioner of insurance shall have the authority to adopt such rules related to the sale of life insurance, other than the servicemembers' group life insurance program under 38 U.S.C. pt. II, ch. 19, subch. III, as may be necessary to protect military personnel located either on a United States military installation or elsewhere in this state and to carry out the provisions of this title.

2007 Acts, ch 137, §7

505.28 Consent to jurisdiction.

A person committing any act governed by chapter 502, 502A, this chapter, chapters 505A through 523G, or 523I constitutes consent by that person to the jurisdiction of the commissioner of insurance and the district courts of this state.

2006 Acts, ch 1117, §16; 2011 Acts, ch 25, §61

505.29 Administrative hearings — authority to appoint hearing officer.

The commissioner of insurance shall have the authority to appoint as a hearing officer a designee or an independent administrative law judge. Duties of a hearing officer shall include hearing contested cases arising from conduct governed by chapters 502, 502A, this chapter, chapters 505A through 523G, and 523I. Sections 10A.801 and 17A.11 do not apply to the appointment of a designee or an administrative law judge pursuant to this section.

2006 Acts, ch 1117, §17; 2011 Acts, ch 25, §62
Referred to in §505.8, 507B.7A

505.30 Service of process made on the commissioner as agent or attorney for service of process — rules and fee.

1. The commissioner may adopt rules pursuant to chapter 17A setting forth procedures related to service of process made on the commissioner as agent or attorney for service of process for an individual or entity within the jurisdiction of the commissioner. The rules shall apply when the individual or entity is required by law to appoint the commissioner to serve, is required by law to consent to have the commissioner serve, is deemed by law to

have appointed or to have consented to have the commissioner serve, or elects to appoint or consents to have the commissioner serve as agent or attorney for service of process.

2. The commissioner may collect a reasonable fee each time service of process is made on the commissioner as set forth in subsection 1 or as otherwise allowed by law. A fee collected by the commissioner under this subsection shall be used and is appropriated to the insurance division to offset the costs of the commissioner acting as agent or attorney for service of process. The party to a proceeding requesting service of process is entitled to recover the fee paid pursuant to this subsection and any rules adopted under this section as costs if the party prevails in the proceeding.

3. The commissioner shall maintain for ninety days a record of each service of process made on the commissioner pursuant to this section, including the date each service of process is made on the commissioner, the date each service of process is forwarded by mail by the commissioner to the defendant or respondent, and the date each certificate of service is submitted electronically to the court. The records may be maintained electronically.

2006 Acts, ch 1117, §18; 2018 Acts, ch 1018, §2

Referred to in §502.611, 507A.5, 508E.3, 511.28, 512B.33, 514.2A, 515.77, 515E.3, 516E.12, 520.6, 521A.3, 521B.107, 521C.13, 523A.802A, 523C.20, 523C.21

Section amended

505.31 Reimbursement accounts — assistance to small employers.

The commissioner of insurance shall assist employers with twenty-five or fewer employees with implementing and administering plans under section 125 of the Internal Revenue Code, including medical expense reimbursement accounts and dependent care accounts. The commissioner shall provide information about the assistance available to small employers on the insurance division's internet site.

2008 Acts, ch 1188, §37, 43

505.32 Iowa insurance information exchange. Repealed by 2018 Acts, ch 1012, §2.

505.33 Dramshop liability insurance evaluation.

The division shall biennially conduct an evaluation concerning minimum coverage requirements of dramshop liability insurance. In conducting the evaluation, the division shall include a comparison of other states' minimum dramshop liability insurance coverage and any other relevant issues the division identifies. By January 31, 2019, and every two years thereafter, the division shall submit a report, including any findings and recommendations, to the general assembly as provided in chapter 7A.

2018 Acts, ch 1172, §52

Dramshop liability insurance requirements, see §123.92

NEW section

CHAPTER 505A

INTERSTATE INSURANCE PRODUCT REGULATION COMPACT

Referred to in §87.4, 296.7, 331.301, 364.4, 505.28, 505.29, 669.14, 670.7

505A.1 Interstate insurance product regulation compact.

505A.1 Interstate insurance product regulation compact.

The interstate insurance product regulation compact is hereby entered into and enacted into law with all jurisdictions legally joining therein, in the form substantially as follows:

1. *Article I — Purposes.* The purposes of this compact are, through means of joint and cooperative action among the compacting states:

a. To promote and protect the interest of consumers of individual and group annuity, life insurance, disability income and long-term care insurance products.

b. To develop uniform standards for insurance products covered under this compact.

c. To establish a central clearinghouse to receive and provide prompt review of insurance products covered under the compact and, in certain cases, advertisements related thereto, submitted by insurers authorized to do business in one or more compacting states.

d. To give appropriate regulatory approval to those product filings and advertisements satisfying the applicable uniform standard.

e. To improve coordination of regulatory resources and expertise between state insurance departments regarding the setting of uniform standards and review of insurance products covered under this compact.

f. To create the interstate insurance product regulation commission.

g. To perform these and such other related functions as may be consistent with the state regulation of the business of insurance.

2. *Article II — Definitions.* For purposes of this compact, unless the context otherwise requires:

a. *"Advertisement"* means any material designed to create public interest in a product, or induce the public to purchase, increase, modify, reinstate, borrow on, surrender, replace or retain a policy, as more specifically defined in the rules and operating procedures of the commission.

b. *"Bylaws"* means those bylaws established by the commission for its governance, or for directing or controlling the commission's actions or conduct.

c. *"Commission"* means the interstate insurance product regulation commission established by this compact.

d. *"Commissioner"* means the chief insurance regulatory official of a state including, but not limited to, commissioner, superintendent, director, or administrator.

e. *"Compacting state"* means any state that has enacted this compact legislation and that has not withdrawn pursuant to article XIV, paragraph *"a"*, or been terminated pursuant to article XIV, paragraph *"b"*.

f. *"Domiciliary state"* means the state in which an insurer is incorporated or organized, or, in the case of an alien insurer, its state of entry.

g. *"Insurer"* means any entity licensed by a state to issue contracts of insurance for any of the lines of insurance covered by this compact.

h. *"Member"* means the person chosen by a compacting state as its representative to the commission, or the person's designee. The commissioner of insurance shall be the representative member of the compact for the state of Iowa.

i. *"Noncompacting state"* means any state which is not at the time a compacting state.

j. *"Operating procedures"* means procedures promulgated by the commission implementing a rule, uniform standard, or a provision of this compact.

k. *"Product"* means the form of a policy or contract, including any application, endorsement, or related form which is attached to and made a part of the policy or contract, and any evidence of coverage or certificate, for an individual or group annuity, life insurance, disability income, or long-term care insurance product that an insurer is authorized to issue.

l. *"Rule"* means a statement of general or particular applicability and future effect promulgated by the commission, including a uniform standard developed pursuant to article VII, designed to implement, interpret, or prescribe law or policy, or describing the organization, procedure, or practice requirements of the commission, which shall have the force and effect of law in the compacting states.

m. *"State"* means any state, district, or territory of the United States of America.

n. *"Third-party filer"* means an entity that submits a product filing to the commission on behalf of an insurer.

o. *"Uniform standard"* means a standard adopted by the commission for a product line, pursuant to article VII, and shall include all of the product requirements in aggregate, provided that each uniform standard shall be construed, whether express or implied, to prohibit the use of any inconsistent, misleading, or ambiguous provisions in a product, and

the form of the product made available to the public shall not be unfair, inequitable, or against public policy as determined by the commission.

3. *Article III — Establishment of the commission and venue.*

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

b. The commission is a body corporate and politic, and an instrumentality of the compacting state.

c. The commission is solely responsible for its liabilities except as otherwise specifically provided in this compact.

d. Venue is proper and judicial proceedings by or against the commission shall be brought solely and exclusively in a court of competent jurisdiction where the principal office of the commission is located.

4. *Article IV — Powers of the commission.* The commission shall have the following powers:

a. To promulgate rules, pursuant to article VII, which shall have the force and effect of law and shall be binding in the compacting states to the extent and in the manner provided in this compact.

b. To exercise its rulemaking authority and establish reasonable uniform standards for products covered under this compact, and advertisement related thereto, which shall have the force and effect of law and shall be binding in the compacting states, but only for those products filed with the commission, provided that a compacting state shall have the right to opt out of such uniform standard pursuant to article VII, to the extent and in the manner provided in this compact, and, provided further, that any uniform standard established by the commission for long-term care insurance products may provide the same or greater protections for consumers as, but shall not provide less than, those protections set forth in the national association of insurance commissioners' long-term care insurance model act and long-term care insurance model regulation, respectively, adopted as of 2001. The commission shall consider whether any subsequent amendments to the long-term care insurance model act or long-term care insurance model regulation adopted by the national association of insurance commissioners require amending of the uniform standards established by the commission for long-term care insurance products.

c. To receive and review in an expeditious manner products filed with the commission, and rate filings for disability income and long-term care insurance products, and give approval of those products and rate filings that satisfy the applicable uniform standard, where such approval shall have the force and effect of law, and be binding on the compacting states to the extent and in the manner provided in the compact.

d. To receive and review in an expeditious manner advertisement relating to long-term care insurance products for which uniform standards have been adopted by the commission, and give approval to all advertisement that satisfies the applicable uniform standard. For any product covered under this compact, other than long-term care insurance products, the commission shall have the authority to require an insurer to submit all or any part of its advertisement with respect to that product for review or approval prior to use, if the commission determines that the nature of the product is such that an advertisement of the product could have the capacity or tendency to mislead the public. The actions of the commission as provided in this article shall have the force and effect of law and shall be binding in the compacting states to the extent and in the manner provided in this compact.

e. To exercise its rulemaking authority and designate products and advertisement that may be subject to a self-certification process without the need for prior approval by the commission.

f. To promulgate operating procedures, pursuant to article VII, which shall be binding in the compacting states to the extent and in the manner provided in this compact.

g. To bring and prosecute legal proceedings or actions in its name as the commission, provided that the standing of any state insurance department to sue or be sued under applicable law shall not be affected.

h. To issue subpoenas requiring the attendance and testimony of witnesses and the production of evidence.

i. To establish and maintain offices.

j. To purchase and maintain insurance and bonds.

k. To borrow, accept, or contract for services of personnel, including, but not limited to, employees of a compacting state.

l. To hire employees, professionals, or specialists, and elect or appoint officers, and to fix their compensation, define their duties, and give them appropriate authority to carry out the purposes of this compact, and determine their qualifications, and to establish the commission's personnel policies and programs relating to, among other things, conflicts of interest, rates of compensation, and qualifications of personnel.

m. To accept any and all appropriate donations and grants of money, equipment, supplies, materials, and services, and to receive, utilize, and dispose of the same, provided that at all times the commission shall strive to avoid any appearance of impropriety.

n. To lease, purchase, accept appropriate gifts or donations of, or otherwise to own, hold, improve, or use, any property, real, personal, or mixed, provided that at all times the commission shall strive to avoid any appearance of impropriety.

o. To sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property, real, personal, or mixed.

p. To remit filing fees to compacting states as may be set forth in the bylaws, rules, or operating procedures.

q. To enforce compliance by compacting states with rules, uniform standards, operating procedures, and bylaws.

r. To provide for dispute resolution among compacting states.

s. To advise compacting states on issues relating to insurers domiciled or doing business in noncompacting jurisdictions, consistent with the purposes of this compact.

t. To provide advice and training to those personnel in state insurance departments responsible for product review, and to be a resource for state insurance departments.

u. To establish a budget and make expenditures.

v. To borrow money.

w. To appoint committees, including advisory committees comprising members, state insurance regulators, state legislators or their representatives, insurance industry and consumer representatives, and such other interested persons as may be designated in the bylaws.

x. To provide and receive information from, and to cooperate with, law enforcement agencies.

y. To adopt and use a corporate seal.

z. To perform such other functions as may be necessary or appropriate to achieve the purposes of this compact consistent with the state regulation of the business of insurance.

5. *Article V — Organization of the commission.*

a. Membership, voting, and bylaws.

(1) Each compacting state shall have and be limited to one member. Each member shall be qualified to serve in that capacity pursuant to applicable law of the compacting state. Any member may be removed or suspended from office as provided by the law of the state from which the member is appointed. Any vacancy occurring in the commission shall be filled in accordance with the laws of the compacting state wherein the vacancy exists. Nothing herein shall be construed to affect the manner in which a compacting state determines the election or appointment and qualification of its own commissioner.

(2) Each member shall be entitled to one vote and shall have an opportunity to participate in the governance of the commission in accordance with the bylaws. Notwithstanding any

provision herein to the contrary, no action of the commission with respect to the promulgation of a uniform standard shall be effective unless two-thirds of the members vote in favor thereof.

(3) The commission shall, by a majority of the members, prescribe bylaws to govern its conduct as may be necessary or appropriate to carry out the purposes, and exercise the powers, of the compact, including, but not limited to:

(a) Establishing the fiscal year of the commission.

(b) Providing reasonable procedures for appointing and electing members, as well as holding meetings, of the management committee.

(c) Providing reasonable standards and procedures:

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

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

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

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

(ii) Votes taken during such meeting.

(e) Establishing the titles, duties, and authority, and reasonable procedures for the election of the officers of the commission.

(f) Providing reasonable standards and procedures for the establishment of the personnel policies and programs of the commission. Notwithstanding any civil service or other similar laws of any compacting state, the bylaws shall exclusively govern the personnel policies and programs of the commission.

(g) Providing a mechanism for winding up the operations of the commission and the equitable disposition of any surplus funds that may exist after the termination of this compact after the payment or reserving of all of its debts and obligations.

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

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

b. Management committee, officers, and personnel.

(1) A management committee comprising no more than fourteen members shall be established as follows:

(a) One member from each of the six compacting states with the largest premium volume for individual and group annuities, life, disability income, and long-term care insurance products, determined from the records of the national association of insurance commissioners for the prior year.

(b) Four members from those compacting states with at least two percent of the market based on the premium volume described in subparagraph division (a), other than the six compacting states with the largest premium volume, selected on a rotating basis as provided in the bylaws.

(c) Four members from those compacting states with less than two percent of the market, based on the premium volume described in subparagraph division (a), with one selected from each of the four zone regions of the national association of insurance commissioners as provided in the bylaws.

(2) The management committee shall have such authority and duties as may be set forth in the bylaws, including but not limited to:

(a) Managing the affairs of the commission in a manner consistent with the bylaws and purposes of the commission.

(b) Establishing and overseeing an organizational structure within, and appropriate

procedures for, the commission to provide for the creation of uniform standards and other rules, receipt and review of product filings, administrative and technical support functions, review of decisions regarding the disapproval of a product filing, and the review of elections made by a compacting state to opt out of a uniform standard, provided that a uniform standard shall not be submitted to the compacting states for adoption unless approved by two-thirds of the members of the management committee.

(c) Overseeing the offices of the commission.

(d) Planning, implementing, and coordinating communications and activities with other state, federal, and local government organizations in order to advance the goals of the commission.

(3) The commission shall elect annually officers from the management committee, with each having such authority and duties, as may be specified in the bylaws.

(4) The management committee may, subject to the approval of the commission, appoint or retain an executive director for such period, upon such terms and conditions and for such compensation as the commission may deem appropriate. The executive director shall serve as secretary to the commission, but shall not be a member of the commission. The executive director shall hire and supervise such other staff as may be authorized by the commission.

c. Legislative and advisory committees.

(1) A legislative committee comprising state legislators or their designees shall be established to monitor the operations of, and make recommendations to, the commission, including the management committee, provided that the manner of selection and term of any legislative committee member shall be as set forth in the bylaws. Prior to the adoption by the commission of any uniform standard, revision to the bylaws, annual budget, or other significant matter as may be provided in the bylaws, the management committee shall consult with and report to the legislative committee.

(2) The commission shall establish two advisory committees, one of which shall comprise consumer representatives independent of the insurance industry, and the other comprising insurance industry representatives.

(3) The commission may establish additional advisory committees as its bylaws may provide for the carrying out of its functions.

d. Corporate records of the commission. The commission shall maintain its corporate books and records in accordance with the bylaws.

e. Qualified immunity, defense, and indemnification.

(1) The members, officers, executive director, employees, and representatives of the commission shall be immune from suit and liability, either personally or in their official capacity, for any claim for damage to, or loss of, property, personal injury, or other civil liability caused by or arising out of any actual or alleged act, error, or omission that occurred, or that the person against whom the claim is made had a reasonable basis for believing occurred, within the scope of commission employment, duties, or responsibilities, provided that nothing in this subparagraph shall be construed to protect any such person from suit or liability for any damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of that person.

(2) The commission shall defend any member, officer, executive director, employee, or representative of the commission in any civil action seeking to impose liability arising out of any actual or alleged act, error, or omission that occurred within the scope of commission employment, duties, or responsibilities, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities, provided that nothing herein shall be construed to prohibit that person from retaining the person's own counsel; and, provided further, that the actual or alleged act, error, or omission did not result from that person's intentional or willful and wanton misconduct.

(3) The commission shall indemnify and hold harmless any member, officer, executive director, employee, or representative of the commission for the amount of any settlement or judgment obtained against that person arising out of any actual or alleged act, error, or omission that occurred within the scope of commission employment, duties, or responsibilities, or that such person had a reasonable basis for believing occurred within

the scope of commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from the intentional or willful and wanton misconduct of that person.

6. *Article VI — Meetings and acts of the commission.*

a. The commission shall meet and take such actions as are consistent with the provisions of this compact and the bylaws.

b. Each member of the commission shall have the right and power to cast a vote to which that compacting state is entitled and to participate in the business and affairs of the commission. A member shall vote in person or by such other means as provided in the bylaws. The bylaws may provide for members' participation in meetings by telephone or other means of communication.

c. The commission shall meet at least once during each calendar year. Additional meetings shall be held as set forth in the bylaws.

7. *Article VII — Rules and operating procedures — rulemaking functions of the commission and opting out of uniform standards.*

a. Rulemaking authority. The commission shall promulgate reasonable rules, including uniform standards and operating procedures, in order to effectively and efficiently achieve the purposes of this compact. Notwithstanding the foregoing, in the event the commission exercises its rulemaking authority in a manner that is beyond the scope of the purposes of this compact, or the powers granted hereunder, such an action by the commission shall be invalid and have no force and effect.

b. Rulemaking procedure. Rules and operating procedures shall be made pursuant to a rulemaking process that conforms to the model state administrative procedure act of 1981 as amended, as may be appropriate to the operations of the commission. Before the commission adopts a uniform standard, the commission shall give written notice to the relevant state legislative committee or committees in each compacting state responsible for insurance issues of its intention to adopt the uniform standard. The commission, in adopting a uniform standard, shall consider fully all submitted materials and issue a concise explanation of its decision.

c. Effective date and opt out of a uniform standard. A uniform standard shall become effective ninety days after its promulgation by the commission or such later date as the commission may determine, provided, however, that a compacting state may opt out of a uniform standard as provided in this article. *"Opt out"* means any action by a compacting state to decline to adopt or participate in a promulgated uniform standard. All other rules and operating procedures, and amendments thereto, shall become effective as of the date specified in each rule, operating procedure, or amendment.

d. Opt-out procedure.

(1) A compacting state may opt out of a uniform standard, either by legislation or regulation duly promulgated by the insurance department under the compacting state's administrative procedure act. If a compacting state elects to opt out of a uniform standard by regulation, it must do all of the following:

(a) Give written notice to the commission no later than ten business days after the uniform standard is promulgated, or at the time the state becomes a compacting state.

(b) Find that the uniform standard does not provide reasonable protections to the citizens of the state, given the conditions in the state.

(2) The commissioner shall make specific findings of fact and conclusions of law, based on a preponderance of the evidence, detailing the conditions in the state which warrant a departure from the uniform standard and determining that the uniform standard would not reasonably protect the citizens of the state. The commissioner must consider and balance the following factors and find that the conditions in the state and needs of the citizens of the state outweigh both of the following:

(a) The intent of the legislature to participate in, and the benefits of, an interstate agreement to establish national uniform consumer protections for the products subject to this compact.

(b) The presumption that a uniform standard adopted by the commission provides reasonable protections to consumers of the relevant product.

(3) Notwithstanding the foregoing, a compacting state may, at the time of its enactment of this compact, prospectively opt out of all uniform standards involving long-term care insurance products by expressly providing for such opt out in the enacted compact, and such an opt out shall not be treated as a material variance in the offer or acceptance of any state to participate in this compact. Such an opt out shall be effective at the time of enactment of this compact by the compacting state and shall apply to all existing uniform standards involving long-term care insurance products and those subsequently promulgated.

e. Effect of opt out.

(1) If a compacting state elects to opt out of a uniform standard, the uniform standard shall remain applicable in the compacting state electing to opt out until such time the opt-out legislation is enacted into law or the regulation opting out becomes effective.

(2) Once the opt out of a uniform standard by a compacting state becomes effective, as provided under the laws of that state, the uniform standard shall have no further force and effect in that state unless and until the legislation or regulation implementing the opt out is repealed or otherwise becomes ineffective under the laws of the state. If a compacting state opts out of a uniform standard after the uniform standard has been made effective in that state, the opt out shall have the same prospective effect as provided under article XIV for withdrawals.

8. *Article VIII — Commission records and enforcement.*

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

b. Except as to privileged records, data, and information, the laws of any compacting state pertaining to confidentiality or nondisclosure shall not relieve any compacting state commissioner of the duty to disclose any relevant records, data, or information to the commission, provided that disclosure to the commission shall not be deemed to waive or otherwise affect any confidentiality requirement, and further provided that, except as otherwise expressly provided in this compact, the commission shall not be subject to the compacting state's laws pertaining to confidentiality and nondisclosure with respect to records, data, and information in its possession. Confidential information of the commission shall remain confidential after such information is provided to any commissioner.

c. The commission shall monitor compacting states for compliance with duly adopted bylaws, rules, including uniform standards, and operating procedures. The commission shall notify any noncomplying compacting state in writing of its noncompliance with commission bylaws, rules, or operating procedures. If a noncomplying compacting state fails to remedy its noncompliance within the time specified in the notice of noncompliance, the compacting state shall be deemed to be in default as set forth in article XIV.

d. The commissioner of any state in which an insurer is authorized to do business, or is conducting the business of insurance, shall continue to exercise the commissioner's authority to oversee the market regulation of the activities of the insurer in accordance with the provisions of the state's law. The commissioner's enforcement of compliance with the compact is governed by the following provisions:

(1) With respect to the commissioner's market regulation of a product or advertisement that is approved or certified to the commission, the content of the product or advertisement shall not constitute a violation of the provisions, standards, or requirements of this compact except upon a final order of the commission, issued at the request of a commissioner after prior notice to the insurer and an opportunity for hearing before the commission.

(2) Before a commissioner may bring an action for violation of any provision, standard, or requirement of this compact relating to the content of an advertisement not approved or certified to the commission, the commission, or an authorized commission officer or employee, must authorize the action. However, authorization pursuant to this subparagraph

does not require notice to the insurer, opportunity for hearing, or disclosure of requests for authorization or records of the commission's action on such requests.

e. Stay of uniform standard. If a compacting state has formally initiated the process of opting out of a uniform standard by regulation, and while the regulatory opt out is pending, the compacting state may petition the commission, at least fifteen days before the effective date of the uniform standard, to stay the effectiveness of the uniform standard in that state. The commission may grant a stay if it determines the regulatory opt out is being pursued in a reasonable manner and there is a likelihood of success. If a stay is granted or extended by the commission, the stay or extension thereof may postpone the effective date by up to ninety days, unless affirmatively extended by the commission, provided a stay may not be permitted to remain in effect for more than one year unless the compacting state can show extraordinary circumstances which warrant a continuance of the stay, including, but not limited to, the existence of a legal challenge which prevents the compacting state from opting out. A stay may be terminated by the commission upon notice that the rulemaking process has been terminated.

f. Not later than thirty days after a rule or operating procedure is adopted, any person may file a petition for judicial review of the rule or operating procedure, provided that the filing of such a petition shall not stay or otherwise prevent the rule or operating procedure from becoming effective unless the court finds that the petitioner has a substantial likelihood of success. The court shall give deference to the actions of the commission consistent with applicable law and shall not find the rule or operating procedure to be unlawful if the rule or operating procedure represents a reasonable exercise of the commission's authority.

9. *Article IX — Dispute resolution.* The commission shall attempt, upon the request of a member, to resolve any disputes or other issues which are subject to this compact and which may arise between two or more compacting states, or between compacting states and noncompacting states, and the commission shall promulgate an operating procedure providing for resolution of such disputes.

10. *Article X — Product filing and approval.*

a. Insurers and third-party filers seeking to have a product approved by the commission shall file the product with, and pay applicable filing fees to, the commission. Nothing in this compact shall be construed to restrict or otherwise prevent an insurer from filing its product with the insurance department in any state wherein the insurer is licensed to conduct the business of insurance, and such filing shall be subject to the laws of the states where filed.

b. The commission shall establish appropriate filing and review processes and procedures pursuant to commission rules and operating procedures. Notwithstanding any provision herein to the contrary, the commission shall promulgate rules to establish conditions and procedures under which the commission will provide public access to product filing information. In establishing such rules, the commission shall consider the interests of the public in having access to such information, as well as protection of personal medical and financial information and trade secrets, that may be contained in a product filing or supporting information.

c. Any product approved by the commission may be sold or otherwise issued in those compacting states in which the insurer is legally authorized to do business.

11. *Article XI — Review of commission decisions regarding filings.*

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

b. The commission shall have authority to monitor, review, and reconsider products and advertisement subsequent to their filing or approval upon a finding that the product does not meet the relevant uniform standard. Where appropriate, the commission may withdraw

or modify its approval after proper notice and hearing, subject to the appeal process in paragraph *"a"*.

12. *Article XII — Finance.*

a. The commission shall pay or provide for the payment of the reasonable expenses of its establishment and organization. To fund the cost of its initial operations, the commission may accept contributions and other forms of funding from the national association of insurance commissioners, compacting states, and other sources. Contributions and other forms of funding from other sources shall be of such a nature that the independence of the commission concerning the performance of its duties shall not be compromised.

b. The commission shall collect a filing fee from each insurer and third-party filer filing a product with the commission to cover the cost of the operations and activities of the commission and its staff in a total amount sufficient to cover the commission's annual budget.

c. The commission's budget for a fiscal year shall not be approved until it has been subject to notice and comment as set forth in article VII.

d. The commission shall be exempt from all taxation in and by the compacting states.

e. The commission shall not pledge the credit of any compacting state, except by and with the appropriate legal authority of that compacting state.

f. The commission shall keep complete and accurate accounts of all its internal receipts, including grants and donations, and disbursements of all funds under its control. The internal financial accounts of the commission shall be subject to the accounting procedures established under its bylaws. The financial accounts and reports, including the system of internal controls and procedures of the commission, shall be audited annually by an independent certified public accountant. Upon the determination of the commission, but no less frequently than every three years, the review of the independent auditor shall include a management and performance audit of the commission. The commission shall make an annual report to the governor and legislature of the compacting states, which shall include a report of the independent audit. The commission's internal accounts shall not be confidential and such materials may be shared with the commissioner of any compacting state upon request; provided, however, that any work papers related to any internal or independent audit and any information regarding the privacy of the individuals and insurers' proprietary information, including trade secrets, shall remain confidential.

g. A compacting state shall not have any claim to or ownership of any property held by or vested in the commission or to any commission funds held pursuant to the provisions of this compact.

13. *Article XIII — Compacting states, effective date, and amendment.*

a. Any state is eligible to become a compacting state.

b. This compact shall become effective and binding upon legislative enactment of this compact into law by two compacting states, provided the commission shall become effective for purposes of adopting uniform standards for reviewing, and giving approval or disapproval of, products filed with the commission that satisfy applicable uniform standards only after twenty-six states are compacting states or, alternatively, by states representing greater than forty percent of the premium volume for life insurance, annuity, disability income, and long-term care insurance products, based on records of the national association of insurance commissioners for the prior year. Thereafter, it shall become effective and binding as to any other compacting state upon enactment of this compact into law by that state.

c. Amendments to this compact may be proposed by the commission for enactment by the compacting states. An amendment shall not become effective and binding upon the commission and the compacting states unless and until all compacting states enact the amendment into law.

14. *Article XIV — Withdrawal, default, and termination.*

a. Withdrawal.

(1) Once effective, this compact shall continue in force and remain binding upon each and every compacting state, provided that a compacting state may withdraw from this compact by enacting a statute specifically repealing the statute which enacted the compact into law.

(2) The effective date of withdrawal is the effective date of the repealing statute. However, the withdrawal shall not apply to any product filings approved or self-certified, or any advertisement of such products, on the date the repealing statute becomes effective, except by mutual agreement of the commission and the withdrawing state unless the approval is rescinded by the withdrawing state as provided in subparagraph (5).

(3) The commissioner of the withdrawing state shall immediately notify the management committee in writing upon the introduction of legislation repealing this compact in the withdrawing state.

(4) The commission shall notify the other compacting states of the introduction of such legislation within ten days after its receipt of notice.

(5) The withdrawing state is responsible for all obligations, duties, and liabilities incurred through the effective date of withdrawal, including any obligations, the performance of which extend beyond the effective date of withdrawal, except to the extent those obligations may have been released or relinquished by mutual agreement of the commission and the withdrawing state. The commission's approval of products and advertisement prior to the effective date of withdrawal shall continue to be effective and be given full force and effect in the withdrawing state, unless formally rescinded by the withdrawing state in the same manner as provided by the laws of the withdrawing state for the prospective disapproval of products or advertisement previously approved under state law.

(6) Reinstatement following withdrawal of any compacting state shall occur upon the effective date of the withdrawing state reenacting the compact.

b. Default.

(1) If the commission determines that any compacting state has at any time defaulted in the performance of any of its obligations or responsibilities under this compact, the bylaws or duly promulgated rules or operating procedures, then, after notice and hearing as set forth in the bylaws, all rights, privileges, and benefits conferred by this compact on the defaulting state shall be suspended from the effective date of default as fixed by the commission. The grounds for default include, but are not limited to, failure of a compacting state to perform its obligations or responsibilities, and any other grounds designated in commission rules. The commission shall immediately notify the defaulting state in writing of the defaulting state's suspension, pending a cure of the default. The commission shall stipulate the conditions and the time period within which the defaulting state must cure its default. If the defaulting state fails to cure the default within the time period specified by the commission, the defaulting state shall be terminated from this compact and all rights, privileges, and benefits conferred by this compact shall be terminated from the effective date of termination.

(2) Product approvals by the commission or product self-certifications, or any advertisement in connection with such product, that are in force on the effective date of termination shall remain in force in the defaulting state in the same manner as if the defaulting state had withdrawn voluntarily pursuant to paragraph *"a"*.

(3) Reinstatement following termination of any compacting state requires a reenactment of this compact.

c. Dissolution of compact.

(1) This compact dissolves effective upon the date of the withdrawal or default of the compacting state which reduces membership in this compact to one compacting state.

(2) Upon the dissolution of this compact, this compact becomes null and void and shall be of no further force or effect, and the business and affairs of the commission shall be wound up and any surplus funds shall be distributed in accordance with the bylaws.

15. *Article XV — Severability and construction.*

a. The provisions of this compact shall be severable, and if any phrase, clause, sentence, or provision is deemed unenforceable, the remaining provisions of this compact shall be enforceable.

b. The provisions of this compact shall be liberally construed to effectuate its purposes.

16. *Article XVI — Binding effect of compact and other laws.*

a. Other laws.

(1) Nothing herein prevents the enforcement of any other law of a compacting state, except as provided in subparagraph (2).

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

(a) The access of any person to state courts.

(b) Remedies available under state law related to breach of contract, tort, general consumer protection laws, or general consumer protection regulations that apply to the sale or advertisement of the product or other laws not specifically directed to the content of the product.

(c) State law relating to the construction of insurance contracts.

(d) The authority of the attorney general of the state, including but not limited to maintaining any actions or proceedings, as authorized by law.

(3) All insurance products filed with individual states shall be subject to the laws of those states.

b. Binding effect of this compact.

(1) All lawful actions of the commission, including all rules and operating procedures adopted by the commission, are binding upon the compacting states.

(2) All agreements between the commission and the compacting states are binding in accordance with their terms.

(3) Upon the request of a party to a conflict over the meaning or interpretation of commission actions, and upon a majority vote of the compacting states, the commission may issue advisory opinions regarding the meaning or interpretation in dispute.

(4) In the event any provision of this compact exceeds the constitutional limits imposed on the legislature of any compacting state, the obligations, duties, powers, or jurisdiction sought to be conferred by that provision upon the commission shall be ineffective as to that compacting state, and those obligations, duties, powers, or jurisdiction shall remain in the compacting state and shall be exercised by the agency thereof to which those obligations, duties, powers, or jurisdiction are delegated by law in effect at the time this compact becomes effective.

2003 Acts, ch 91, §54; 2003 Acts, ch 179, §74; 2004 Acts, ch 1110, §6 – 16; 2005 Acts, ch 70, §3; 2008 Acts, ch 1032, §201; 2009 Acts, ch 41, §263

CHAPTER 505B

INSURANCE NOTICES AND DOCUMENTS — ELECTRONIC DELIVERY AND POSTING

Referred to in §87.4, 296.7, 331.301, 364.4, 505.28, 505.29, 669.14, 670.7

505B.1 Notices and documents delivered by electronic means.
505B.2 Posting of policies on the internet.
505B.3 Applicability.

505B.1 Notices and documents delivered by electronic means.

1. As used in this chapter, unless the context otherwise requires:

a. "Delivered by electronic means" means any of the following:

(1) Delivery to an electronic mail address at which a party has consented to receive notices or documents.

(2) Posting on an electronic network or site accessible via the internet, a mobile application, computer, mobile device, tablet, or any other electronic device, together with separate notice of the posting which shall be provided by electronic mail to the address at which the party has consented to receive notice or by any other delivery method that has been consented to by the party.

b. *"Party"* means a recipient of a notice or document required as part of an insurance transaction, including but not limited to an applicant, an insured, a policyholder, or an annuity contract holder.

2. *a.* Subject to the requirements of this section, except for a notice of cancellation, nonrenewal, or termination, any notice to a party or any other document required under applicable law in an insurance transaction or that is to serve as evidence of insurance coverage may be delivered, stored, or presented by electronic means so long as the notice or document meets the requirements of chapter 554D.

b. A notice of cancellation, nonrenewal, or termination shall be delivered by mail as provided by law and shall not be delivered by electronic means unless the notice is sent and received as required pursuant to section 554D.117 in a manner that is verifiable and is approved by the commissioner by rules adopted pursuant to chapter 17A. Delivery of a notice or document by electronic means in a manner that meets the requirements of chapter 554D and this chapter, and in a manner that is verifiable and is approved by the commissioner by rule, may be used in lieu of delivery by mail. Nothing in this section shall prohibit the delivery of a courtesy copy of a notice of cancellation, nonrenewal, or termination by electronic means even if the manner of electronic delivery has not been approved by the commissioner by rule if both of the following requirements are met:

(1) The notice of cancellation, nonrenewal, or termination is properly delivered by mail as provided by law.

(2) The requirements of subsection 4 are satisfied.

3. Delivery of a notice or document in accordance with this section shall be considered equivalent to any delivery method required under applicable law, including delivery by first class mail; first class mail, postage prepaid; certified mail; certificate of mail; or certificate of mailing.

4. A notice or document may be delivered by electronic means by an insurer to a party under this section if all of the following occur:

a. The party has affirmatively consented to such method of delivery and has not withdrawn the consent.

b. The party, before giving consent, is provided with a clear and conspicuous statement informing the party of the following:

(1) The right of the party to have the notice or document provided or made available in paper form.

(2) The right of the party to withdraw consent to have a notice or document delivered by electronic means and any conditions or consequences imposed in the event consent is withdrawn.

(3) Whether the party's consent applies as follows:

(a) Only to the particular transaction as to which the notice or document must be provided.

(b) To notices of cancellation, nonrenewal, or termination.

(c) To other identified categories of notices or documents that may be delivered by electronic means during the course of the parties' relationship.

(4) The means, after consent is given, by which a party may obtain a paper copy of a notice or document delivered by electronic means.

(5) The procedure a party must follow to withdraw consent to have a notice or document delivered by electronic means and to update information needed to contact the party electronically.

c. Both of the following occur:

(1) Before giving consent, the party is provided with a statement of the hardware and software requirements for access to and retention of a notice or document delivered by electronic means.

(2) The party consents electronically, or confirms consent electronically, in a manner that reasonably demonstrates that the party can access information in the electronic form that will be used for notices or documents delivered by electronic means as to which the party has given consent.

d. After consent of the party is given, the insurer, in the event a change in the hardware or software requirements needed to access or retain a notice or document delivered by electronic

means creates a material risk that the party will not be able to access or retain a subsequent notice or document to which the consent applies, does the following:

(1) Provides the party with a statement of the following:

(a) The revised hardware and software requirements for access to and retention of a notice or document delivered by electronic means.

(b) The right of the party to withdraw consent without the imposition of any condition or consequence that was not disclosed under paragraph *"b"*, subparagraph (2).

(2) Complies with paragraph *"b"*.

5. This section does not affect requirements related to content or timing of any notice or document required under applicable law.

6. If a provision of this title or applicable law requiring a notice or document to be provided to a party expressly requires verification or acknowledgment of receipt of the notice or document, the notice or document may be delivered by electronic means only if the method used provides for verification or acknowledgment of receipt.

7. The legal effectiveness, validity, or enforceability of any contract or policy of insurance executed by a party shall not be denied solely because of the failure to obtain electronic consent or confirmation of consent of the party in accordance with subsection 4, paragraph *"c"*, subparagraph (2).

8. *a.* A withdrawal of consent by a party does not affect the legal effectiveness, validity, or enforceability of a notice or document delivered by electronic means to the party before the withdrawal of consent is effective.

b. A withdrawal of consent by a party is effective within a reasonable period of time after receipt of the withdrawal by the insurer.

c. Failure by an insurer to comply with subsection 4, paragraph *"d"*, may be treated, at the election of the party, as a withdrawal of consent for purposes of this section.

9. This section does not apply to a notice or document delivered by an insurer in an electronic form before July 1, 2014, to a party who, before that date, has consented to receive a notice or document in an electronic form otherwise allowed by law.

10. If the consent of a party to receive certain notices or documents in an electronic form is on file with an insurer before July 1, 2014, and pursuant to this section an insurer intends to deliver additional notices or documents to such party in an electronic form, then prior to delivering such additional notices or documents electronically, the insurer shall do all of the following:

a. Provide the party with a statement that describes all of the following:

(1) The notices or documents that will be delivered by electronic means under this section that were not previously delivered electronically.

(2) The party's right to withdraw consent to have notices or documents delivered by electronic means without the imposition of any condition or consequence that was not disclosed at the time of initial consent.

b. Comply with all of the requirements of subsection 4, paragraph *"b"*.

11. An insurer shall deliver a notice or document by any other delivery method permitted by law other than electronic means if either of the following occurs:

a. The insurer attempts to deliver the notice or document by electronic means and has a reasonable basis for believing that the notice or document has not been received by the party.

b. The insurer becomes aware that the electronic mail address provided by the party is no longer valid.

12. It shall be the exclusive responsibility of an insurer to satisfy the requirements of this section and to deliver any notice or document sent to a party pursuant to this section.

13. This section shall not be construed to modify, limit, or supersede the provisions of the federal Electronic Signatures in Global and National Commerce Act, Pub. L. No. 106-229, 114 Stat. 464 (2000), codified at 15 U.S.C. §7001 et seq., as amended.

2014 Acts, ch 1007, §5; 2015 Acts, ch 108, §1 – 6

505B.2 Posting of policies on the internet.

1. Notwithstanding any contrary provision of chapter 554D, an insurer may mail, deliver, or post on the insurer's internet site insurance documents, including policies, riders,

endorsements, and annuity contracts that do not contain personally identifiable information. If the insurer elects to post an insurance policy or endorsement on the insurer's internet site in lieu of mailing or delivering the policy or endorsement to the insured, the insurer must comply with all of the following conditions:

a. The policy or endorsement must be accessible and remain accessible to the insured and to the licensed insurance producer of record for as long as the policy or endorsement is in force.

b. After the expiration of the policy or endorsement, the insurer must archive the expired policy or endorsement for a period of five years or other period required by law, and make the policy or endorsement available upon request.

c. The policy or endorsement must be posted in a manner that enables the insured and the licensed insurance producer of record to print and save the policy or endorsement using programs and applications that are widely available on the internet and free to use.

d. The insurer must provide the following information in, or simultaneously with, each declarations page provided at the time of issuance of the initial policy and any renewal of that policy:

(1) A description of the exact policy or endorsement purchased by the insured.

(2) A description of the insured's right to receive, upon request and without charge, a paper copy of the insured's policy or endorsement by mail.

(3) An internet address where the insured's policy or endorsement is posted.

e. The insurer, upon request and without charge, must deliver a paper copy of the policy or endorsements to the insured by mail.

f. The insurer must provide notice, in the format preferred by the insured, of any changes to the policy or endorsement, the insured's right to obtain, upon request and without charge, a paper copy of such policy or endorsement, and the internet address where such policy or endorsement is posted.

2. Nothing in this section shall be construed to affect the timing or content of any notice or document required to be provided or made available to any insured under applicable law.

2014 Acts, ch 1007, §6; 2015 Acts, ch 108, §7

505B.3 Applicability.

The provisions of this chapter shall apply to the insurance products and documents, including insurance policies, insurance riders, insurance endorsements, and annuity contracts filed with and regulated by the commissioner of insurance under the authority provided to the commissioner by Title XIII, subtitle 1.

2014 Acts, ch 1007, §7

CHAPTER 506

DOMESTIC INSURANCE COMPANIES

Referred to in §87.4, 296.7, 331.301, 364.4, 505.28, 505.29, 669.14, 670.7

506.1 Rules — limitations.
506.2 Sale of securities restricted.
506.3 Certificate of compliance.
506.4 Maximum promotion expense allowed.
506.5 Regulation by commissioner.
506.6 Promoters restricted.
506.7 Penalty. Repealed by 2004 Acts, ch 1110, §71.
506.8 Liability to stockholders.
506.9 Judicial review.
506.10 Sale of stock as inducement to insurance.
506.11 Securities law applicable.
506.12 Principal executive office.
506.13 New officers or directors — biographical affidavit required.
506.14 Voluntary dissolution of domestic mutual insurance companies.

506.1 Rules — limitations.

The commissioner of insurance shall promulgate such reasonable rules and regulations as the commissioner deems necessary to assure the proper operation of newly organized insurance companies but in no event shall the commissioner:

1. Require that more than twenty percent of the original capital and surplus of a stock corporation subject to the provisions of this chapter be invested by the organizers; or

2. Restrict the alienation of securities issued to organizers for a period of more than:

a. Five years, or

b. Until the operation of the insurance company produces earned surplus for two successive years.

[C66, 71, 73, 75, 77, 79, 81, §506.1]

506.2 Sale of securities restricted.

Neither the securities in a domestic insurance company, nor securities in a holding company, one of the purposes of which is to organize, purchase, or otherwise acquire control of a domestic insurance company, nor membership in an association in process of organization shall be sold or solicited until such company or association, and the promoters thereof, shall have first complied with all of the statutory provisions regulating the organization of such companies and associations, and also have secured from the commissioner of insurance a certificate indicating full compliance with the provisions of this chapter.

[S13, §1683-r3; C24, 27, 31, 35, 39, §**8616;** C46, 50, 54, 58, 62, §506.1; C66, 71, 73, 75, 77, 79, 81, §506.2]

88 Acts, ch 112, §501

506.3 Certificate of compliance.

Before the commissioner of insurance shall issue such certificate of compliance, the commissioner shall first be satisfied with the general plan of such organization and the character of the advertising to be used; the commissioner shall also see that all rules and regulations promulgated under this chapter have been complied with and fix the time within which such organization shall be completed; the commissioner shall also prescribe the method of keeping books and accounts of insurance companies and those of fiscal agents of corporations subject to the provisions of this chapter.

[S13, §1683-r3; C24, 27, 31, 35, 39, §**8617;** C46, 50, 54, 58, 62, §506.2; C66, 71, 73, 75, 77, 79, 81, §506.3]

506.4 Maximum promotion expense allowed.

The maximum promotion expense which may be incurred shall in no case exceed fifteen percent of the sale price of said stock, and no portion of such amount shall be used in the payment of salaries for officers and directors before the issuance, by the commissioner of insurance, of authority to transact an insurance business. Any amount paid to the company

for stock above the par value of the stock shall constitute a contributed surplus but no dividends shall be paid by the company except from the earned profits arising from their business, which shall not include contributed capital or contributed surplus.

[C24, 27, 31, 35, 39, §**8618;** C46, 50, 54, 58, 62, §506.3; C66, 71, 73, 75, 77, 79, 81, §506.4]

Referred to in §506.6, 515.10

506.5 Regulation by commissioner.

The commissioner of insurance shall have power to regulate all other matters in connection with the organization of such domestic corporations, and the sale of stock or the issuing of certificates by all insurance corporations within the state, to the end that fraud may be prevented in the organization of such companies and the sale of their stocks and securities.

[S13, §1683-r3; C24, 27, 31, 35, 39, §**8619;** C46, 50, 54, 58, 62, §506.4; C66, 71, 73, 75, 77, 79, 81, §506.5]

Referred to in §515.10

506.6 Promoters restricted.

No company shall enter into any contract with any promoter, officer, director, or agent of the company or any other person to pay the person's expenses or to pay the person any commission or any compensation for the person's services in promoting or organizing such company, or in selling its stock in excess of the amount authorized in section 506.4; nor shall it contract with any such person to pay the person any part of the premiums arising from the insurance it has written or may write as compensation, directly or indirectly, for aiding in the promotion or for aiding or effecting any consolidation of such company with any other company, without the approval of the commissioner of insurance.

[C24, 27, 31, 35, 39, §**8620;** C46, 50, 54, 58, 62, §506.5; C66, 71, 73, 75, 77, 79, 81, §506.6]

Referred to in §515.10

506.7 Penalty. Repealed by 2004 Acts, ch 1110, §71.

506.8 Liability to stockholders.

Any person, association, or corporation who sells or aids in selling or causes to be sold any stock, certificate of membership, or evidence of interest in any such corporation or association, in violation of law, shall be personally liable to any person to whom the person, association or certificate of membership or evidence of interest, in an amount equal to the price paid therefor by such person with legal interest, and suit to recover the same may be brought by such purchasers, jointly or severally, in any court of competent jurisdiction.

[C24, 27, 31, 35, 39, §**8622;** C46, 50, 54, 58, 62, §506.7; C66, 71, 73, 75, 77, 79, 81, §506.8]

506.9 Judicial review.

Judicial review of the acts of commissioner of insurance may be sought in accordance with the terms of the Iowa administrative procedure Act, chapter 17A.

[C24, 27, 31, 35, 39, §**8623;** C46, 50, 54, 58, 62, §506.8; C66, 71, 73, 75, 77, 79, 81, §506.9]

2003 Acts, ch 44, §114

506.10 Sale of stock as inducement to insurance.

1. No insurance company shall issue in this state, or permit its agents, officers, or employees to issue in this state its own stock, agency company stock or other stock or securities, or any special or advisory board or other contract of any kind promising returns and profits as an inducement to insurance.

2. No insurance company shall be authorized to do business in this state which issues or permits its agents, officers, or employees to issue in this state or in any other state or territory, agency company stock or other stock or securities, or any special advisory board or other contract of any kind promising returns and profits as an inducement to insurance.

3. No corporation or stock company, acting as an agent of an insurance company, or any of its agents, officers, or employees, shall be permitted to agree to sell, offer to sell, or give or offer to give, directly or indirectly, in any manner whatsoever, any share of stock, securities,

bonds, or agreement of any form or nature, promising returns and profits as an inducement to insurance, or in connection therewith.

4. Nothing herein contained shall impair or affect in any manner any such contracts issued or made as an inducement to insurance prior to the enactment of this section, or prevent the payment of the dividends or returns therein stipulated to be paid.

5. It shall be the duty of the commissioner upon being satisfied that any insurance company, or any agent thereof, has violated any of the provisions of this section, to revoke the certificate of authority of the company or agent so offending.

[C24, 27, 31, 35, 39, §**8624;** C46, 50, 54, 58, 62, §506.9; C66, 71, 73, 75, 77, 79, 81, §506.10]

2018 Acts, ch 1041, §127

Code editor directive applied

506.11 Securities law applicable.

Nothing contained in this chapter shall be construed to exempt any corporation from the requirements of chapter 502.

[C66, 71, 73, 75, 77, 79, 81, §506.11]

506.12 Principal executive office.

An insurance company incorporated under the laws of this state for the purpose of engaging in the business of insurance shall maintain a principal executive office in this state unless otherwise allowed by the commissioner of insurance. The location of the principal executive office in this state of an insurance company incorporated under chapter 490 shall be identified in the insurance company's articles of incorporation.

92 Acts, ch 1162, §2

506.13 New officers or directors — biographical affidavit required.

Within thirty days after a quarterly or annual statement of an insurance company domiciled in this state first names an individual as an officer or director of the company on the jurat page of the quarterly or annual statement, the new officer or director shall file a biographical affidavit with the commissioner. The affidavit shall be prepared on the current template for biographical affidavits prescribed by the national association of insurance commissioners.

2007 Acts, ch 137, §8

506.14 Voluntary dissolution of domestic mutual insurance companies.

1. Any plan for voluntary dissolution of a domestic mutual insurance company licensed to transact the business of insurance under chapter 508, 515, 518, or 518A shall be presented for approval by the commissioner not less than ninety days in advance of notice of the plan to policyholders.

2. The commissioner shall approve the plan if the commissioner finds that the plan complies with all applicable provisions of law and is fair and equitable to the domestic mutual insurance company and its policyholders.

2013 Acts, ch 124, §8

CHAPTER 507

EXAMINATION OF INSURANCE COMPANIES

Referred to in §87.4, 296.7, 331.301, 364.4, 505.28, 505.29, 507C.12, 508.36, 510B.3, 514.10, 521A.6, 521H.1, 521H.6, 669.14, 670.7

507.1 Purpose — definitions.
507.2 Authority, scope, and scheduling of examinations.
507.3 Conduct of examinations.
507.4 Examiners — salaries.
507.5 Chief examiner.
507.6 Conflict of interest.
507.7 Expenses.
507.8 Payment by company.
507.9 Fees — accounting.
507.10 Examination reports.
507.11 Repealed by 91 Acts, ch 26, §61.
507.12 Procedure against life companies.
507.13 Repealed by 92 Acts, ch 1117, §42.
507.14 Confidential documents — exceptions.
507.15 Transfer pending examination.
507.16 Unlawful solicitation of business.
507.17 Immunity from liability.

507.1 Purpose — definitions.

1. The purpose of this chapter is to provide an effective and efficient system for examining the activities, operations, financial condition, and affairs of all persons transacting the business of insurance in this state and all persons otherwise subject to the jurisdiction of the commissioner. The chapter is intended to enable the commissioner to adopt a flexible system of examinations which directs resources as deemed appropriate and necessary for the administration of the insurance and insurance-related laws of this state.

2. As used in this chapter, unless the context otherwise requires:

a. *"Commissioner"* means the commissioner of insurance of this state.

b. *"Company"* means any person engaging in or proposing or attempting to engage in any transaction or kind of insurance or surety business and any person or group of persons who may otherwise be subject to the administrative, regulatory, or taxing authority of the commissioner.

c. *"Division"* means the division of insurance of the department of commerce.

d. *"Examiner"* means any individual or firm authorized by the commissioner to conduct an examination pursuant to this chapter.

e. *"Insurer"* includes all companies or associations organized under chapter 508, 511, 512A, 512B, 514, 514B, 515, 515C, or 518A, associations subject to chapters 518 and 520, and companies or associations admitted or seeking to be admitted to this state under any of those chapters.

f. "*Person*" means any individual, aggregation of individuals, trust, association, partnership, or corporation or an affiliate of any of these.

[S13, §1821-i; C24, 27, 31, 35, 39, §**8625;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §507.1]
88 Acts, ch 1112, §301; 92 Acts, ch 1117, §1
Referred to in §515I.2

507.2 Authority, scope, and scheduling of examinations.

1. The commissioner or any of the commissioner's examiners may conduct an examination under this chapter of any company as often as the commissioner deems appropriate, but at a minimum, shall conduct an examination of any domestic insurer licensed in this state no less than once every five years. In scheduling and determining the nature, scope, and frequency of the examinations, the commissioner shall consider such matters as the results of financial statement analyses and ratios, changes in management or ownership, actuarial opinions, reports of independent certified public accountants, and other criteria as set forth in the examiners' handbook adopted by the national association of insurance commissioners and in effect when the commissioner exercises discretion under this section.

2. For purposes of completing an examination of any company pursuant to this chapter, the commissioner may examine or investigate any person, or the business of any person, insofar as the examination or investigation is, in the sole discretion of the commissioner, necessary or material to the examination of the company.

3. In lieu of an examination under this chapter of any foreign or alien insurer licensed in

this state, the commissioner may accept an examination report on the company as prepared by the regulatory authority for insurance for the company's state of domicile or port-of-entry state.

[C97, §1753; S13, §1821-a, -h; C24, 27, 31, 35, 39, §**8626, 8642, 9009, 9061;** C46, §507.2, 507.18, 515.130, 518.36; C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §507.2]

92 Acts, ch 1117, §2; 95 Acts, ch 185, §4

507.3 Conduct of examinations.

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

2. A company or person from whom information is sought and its officers, directors, and agents shall provide to the examiners appointed under subsection 1, timely, convenient, and free access at all reasonable hours at its offices to all books, records, accounts, papers, documents, and any or all computer or other recordings relating to the property, assets, business, and affairs of the company being examined. The officers, directors, employees, and agents of the company or person shall facilitate the examination and aid in the examination so far as it is in their power to do so. The refusal of any company, by its officers, directors, employees, or agents, to submit to examinations or to comply with any reasonable written request of the examiners is grounds for suspension or revocation of, or nonrenewal of, any license or authority held by the company to engage in the business of insurance or other business subject to the commissioner's jurisdiction. Should a company decline or refuse to submit to an examination as provided in this chapter, the commissioner shall immediately revoke its certificate of authority, and if the company is organized under the laws of this state, the commissioner shall report the commissioner's action to the attorney general, who shall immediately apply to the district court for the appointment of a receiver to administer the final affairs of the company.

3. The commissioner or any of the commissioner's examiners may issue subpoenas, administer oaths, and examine under oath any person as to any matter pertinent to the examination. Upon the failure or refusal of any person to obey a subpoena, the commissioner may petition a court of competent jurisdiction, and upon proper showing, the court may enter an order compelling the witness to appear and testify or produce documentary evidence. Failure to obey the court order is punishable as contempt of court.

4. When making an examination under this chapter, the commissioner may retain attorneys, appraisers, independent actuaries, independent certified public accountants, or other professionals and specialists as examiners, the reasonable cost of which shall be borne by the company which is the subject of the examination.

5. This chapter does not limit the commissioner's authority to terminate or suspend any examination in order to pursue other legal or regulatory action pursuant to the insurance laws of this state. Findings of fact and conclusions made pursuant to any examination are deemed to be prima facie evidence in any legal or regulatory action.

[S13, §1821-b; C24, 27, 31, 35, 39, §**8627;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §507.3]

92 Acts, ch 1117, §3; 97 Acts, ch 186, §2

507.4 Examiners — salaries.

1. The commissioner of insurance may appoint insurance examiners, at least one of whom shall be an experienced actuary, and at least one of whom shall be an experienced and competent fire insurance accountant, and who, while conducting examinations, shall possess all the powers conferred upon the commissioner of insurance for such purposes. The entire time of the examiners shall be under the control of the commissioner, and shall be employed as the commissioner may direct.

2. The commissioner may, when in the commissioner's judgment it is advisable,

appoint assistants to aid in conducting examinations. The commissioner shall employ rates of compensation consistent with current standards in the industry for certified public accountants, attorneys, and skilled insurance examiners. The commissioner may use compensation rates suggested by the national association of insurance commissioners. Insurance examiners employed under this section shall be exempt from the merit system provisions of chapter 8A, subchapter IV, under section 8A.412, subsection 17. Compensation shall be paid from appropriations for such purposes upon certification of the commissioner, which shall be reimbursed as provided in sections 507.8 and 507.9.

[S13, §1821-c; C24, 27, 31, 35, 39, §**8628;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §507.4]

2008 Acts, ch 1123, §11

Referred to in §87.11C

507.5 Chief examiner.

The commissioner may appoint a chief examiner who shall supervise insurance company examinations and perform such other duties as may be assigned by the commissioner. The chief examiner shall receive a salary to be fixed by the commissioner. The chief examiner shall be exempt from the merit system provisions of chapter 8A, subchapter IV, under section 8A.412, subsection 17.

91 Acts, ch 26, §33; 2003 Acts, ch 145, §270

Referred to in §87.11C, 505.7

507.6 Conflict of interest.

1. An examiner shall not be appointed by the commissioner if the examiner, either directly or indirectly, has a conflict of interest or is affiliated with the management of or owns a pecuniary interest in any person subject to examination under this chapter. This section shall not be construed to automatically preclude an examiner from being any of the following:

a. A policyholder or claimant under an insurance policy.

b. A grantor of a mortgage or similar instrument on the examiner's residence to a regulated entity if done under customary terms and in the ordinary course of business.

c. An investment owner in shares of regulated diversified investment companies.

d. A settlor or beneficiary of a blind trust into which any otherwise impermissible holdings have been placed.

2. Notwithstanding the requirements of subsection 1, the commissioner may retain from time to time, on an individual basis, qualified actuaries, certified public accountants, or other similar individuals who are independently practicing their professions, even though the persons may from time to time be similarly employed or retained by persons subject to examination under this chapter.

[C24, 27, 31, 35, 39, §**8630;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §507.6]

92 Acts, ch 1117, §4

Referred to in §87.11C

507.7 Expenses.

Said examiners and assistants and the said commissioner shall receive actual and necessary traveling, hotel, and other expenses while engaged in conducting examinations away from their respective places of residence.

[S13, §1821-c; C24, 27, 31, 35, 39, §**8631;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §507.7]

Referred to in §87.11C, 505.7, 521A.6

507.8 Payment by company.

The commissioner shall upon the completion of an examination, or at such regular intervals prior to completion as the commissioner determines, prepare an account of the costs incurred in performing and preparing the report of such examinations which shall be charged to and paid by the companies examined, and upon failure or refusal of any company examined to pay such bill or bills, the same may be recovered in an action brought in the name of the

state, and the commissioner may also revoke the certificate of authority of such company to transact business within this state.

[S13, §1821-c; C24, 27, 31, 35, 39, §**8632;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §507.8]

88 Acts, ch 1112, §302
Referred to in §505.7, 507.4, 508E.7

507.9 Fees — accounting.

All fees collected under the provisions of this chapter shall be paid to the commissioner of insurance and shall be turned in to the state treasury for deposit as provided in section 505.7.

[S13, §1821-c; C24, 27, 31, 35, 39, §**8633;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §507.9]

2009 Acts, ch 181, §64
Referred to in §505.7, 507.4, 508E.7
Deposit of fees, §12.10

507.10 Examination reports.

1. *General description.* All examination reports shall be comprised only of facts appearing upon the books, records, or other documents of the company, its agents, or other persons examined, or as ascertained from the testimony of its officers or agents or other persons examined concerning its affairs, and such conclusions and recommendations as the examiners find reasonably warranted from the facts.

2. *Filing of examination report.* No later than sixty days following completion of the examination, the examiner in charge shall file with the division a verified written report of examination. Upon receipt of the verified report and after administrative review, the division shall transmit the report to the company examined, together with a notice which shall afford the company examined a reasonable opportunity of not more than thirty days to make a written submission or rebuttal with respect to any matters contained in the examination report.

3. *Adoption of report on examination.* Within twenty days of the end of the period allowed for the receipt of written submissions or rebuttals, the commissioner shall fully consider and review the report, together with any written submissions or rebuttals and any relevant portions of the examiner's work papers and enter an order which does one of the following:

a. Adopts the examination report as filed or with modification or corrections. If the examination report reveals that the company is operating in violation of any law or a rule or prior order of the commissioner, the commissioner may order the company to take any action the commissioner considers necessary and appropriate to cure the violation.

b. Rejects the examination report with directions to the examiners to reopen the examination for purposes of obtaining additional data, documentation, or information, and refiling pursuant to subsection 1 above.

c. Calls for an investigatory hearing with no less than twenty days' notice to the company for purposes of obtaining additional documentation, data, information, and testimony.

4. *Orders and procedures.*

a. All orders entered pursuant to subsection 3, paragraph *"a"*, shall be accompanied by findings and conclusions resulting from the commissioner's consideration and review of the examination report, relevant examiner work papers, and any written submissions or rebuttals. Any such order is a final administrative decision and may be appealed pursuant to chapter 17A, and shall be served upon the company by certified mail, together with a copy of the adopted examination report. The board of directors of the company shall timely review the adopted report. The minutes of the meeting of the board at which the adopted report is considered shall reflect that each member of the board has reviewed the adopted report.

b. Any hearing conducted under subsection 3, paragraph *"c"*, by the commissioner or an authorized representative, shall be conducted as a nonadversarial, confidential, investigatory proceeding as necessary for the resolution of any inconsistencies, discrepancies, or disputed issues apparent upon the face of the filed examination report or indicated as a result of the commissioner's review of relevant work papers or by the written submission or rebuttal of

the company. Within twenty days of the conclusion of any such hearing, the commissioner shall enter an order pursuant to subsection 3, paragraph *"a"*.

(1) (a) The commissioner shall not appoint an examiner as an authorized representative to conduct the hearing. The hearing shall proceed expeditiously with discovery by the company limited to the examiner's work papers which tend to substantiate any assertions set forth in any written submission or rebuttal. The commissioner or a representative acting on the commissioner's behalf may issue subpoenas for the attendance of any witnesses or the production of any documents deemed relevant to the investigation whether under the control of the division of insurance, the company, or other persons. The documents produced shall be included in the record and testimony taken by the commissioner or a representative acting on the commissioner's behalf shall be under oath and preserved for the record.

(b) This section does not require the division of insurance to disclose any information or records which would indicate or show the existence of any investigation or activity of a criminal or juvenile justice agency.

(2) The hearing shall proceed with the commissioner or the commissioner's representative posing questions to the persons subpoenaed. Thereafter the company and the division may present testimony relevant to the investigation. Cross-examination shall be conducted only by the commissioner or the commissioner's representative. The company and the division shall be permitted to make closing statements and may be represented by counsel.

5. *Publication and use.*

a. Upon the adoption of the preliminary examination report under subsection 3, paragraph *"a"*, the commissioner shall hold the content of the final examination report as private and confidential information not subject to disclosure and it is not a public record under chapter 22, for a period of twenty days except to the extent provided in subsection 2. After the twenty-day period has elapsed, the commissioner may open the final report for public inspection so long as no court of competent jurisdiction has stayed its publication.

b. The commissioner is not prevented from disclosing the content of an examination report, preliminary examination report or results, or any matter relating to the report, to an insurance department of any other state or country, to the national association of insurance commissioners, or to law enforcement officials of this or any other state or an agency of the federal government at any time, so long as such agency or office receiving the report, or matters relating to the report, agrees in writing to maintain the confidentiality of the report or such matters in a manner consistent with this chapter.

c. If the commissioner determines that regulatory action is appropriate as a result of any examination, the commissioner may initiate any proceeding or action as provided by law.

[S13, §1821-d; C24, 27, 31, 35, 39, §**8634;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §507.10]

92 Acts, ch 1117, §5; 95 Acts, ch 191, §25; 2001 Acts, ch 69, §3; 2006 Acts, ch 1117, §19; 2012 Acts, ch 1023, §157; 2013 Acts, ch 124, §9

Referred to in §511.23

507.11 Repealed by 91 Acts, ch 26, §61.

507.12 Procedure against life companies.

In case of companies organized under the provisions of chapter 508, the officers shall proceed as provided in sections 508.18 and 508.19.

[S13, §1821-d; C24, 27, 31, 35, 39, §**8636;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §507.12]

91 Acts, ch 26, §57

Referred to in §511.23

507.13 Repealed by 92 Acts, ch 1117, §42.

507.14 Confidential documents — exceptions.

1. A preliminary report of an examination of a domestic or foreign insurer, and all notes, work papers, or other documents related to an examination of an insurer are confidential

records under chapter 22 except when sought by the insurer to whom they relate, an insurance regulator of another state, or the national association of insurance commissioners, and shall be privileged and confidential in any judicial or administrative proceeding except any of the following:

a. An action commenced by the commissioner under chapter 507C.

b. An administrative proceeding brought by the insurance division under chapter 17A.

c. A judicial review proceeding under chapter 17A brought by an insurer to whom the records relate.

d. An action or proceeding which arises out of the criminal provisions of the laws of this state or the United States.

e. An action brought in a shareholders' derivative suit against an insurer.

f. An action brought to recover moneys or to recover upon an indemnity bond for embezzlement, misappropriation, or misuse of insurer funds.

2. A report of an examination of a domestic or foreign insurer which is preliminary under the rules of the division is a confidential record under chapter 22 except when sought by the insurer to which the report relates or an insurance regulator of another state, and is privileged and confidential in any judicial or administrative proceeding.

3. All work papers, notes, recorded information, documents, market conduct annual statements, and copies thereof that are produced or obtained by or disclosed to the commissioner or any other person in the course of analysis by the commissioner of the financial condition or market conduct of an insurer are confidential records under chapter 22 and shall be privileged and confidential in any judicial or administrative proceeding except any of the following:

a. An action commenced by the commissioner under chapter 507C.

b. An administrative proceeding brought by the insurance division under chapter 17A.

c. A judicial review proceeding under chapter 17A brought by an insurer to whom the records relate.

d. An action or proceeding which arises out of the criminal provisions of the laws of this state or the United States.

4. Confidential documents, materials, information, administrative or judicial orders, or other actions may be disclosed to a regulatory official of any state, federal agency, or foreign country provided that the recipients are required, under the law of the recipients' jurisdiction, to maintain confidentiality of the documents, materials, information, orders, or other actions. Confidential records may be disclosed to the national association of insurance commissioners, the international association of insurance supervisors, and the bank for international settlements provided that the associations and bank certify by written statement that the confidentiality of the records will be maintained.

5. A financial statement filed by an employer self-insuring workers' compensation liability pursuant to section 87.11, or the working papers of an examiner or the division in connection with calculating appropriate security and reserves for the self-insured employer are confidential records under chapter 22 except when sought by the employer to which the financial statement or working papers relate or an insurance or workers' compensation self-insurance regulator of another state, and are privileged and confidential in any judicial or administrative proceeding. The financial information of a nonpublicly traded employer which self-insures for workers' compensation liability pursuant to section 87.11 is protected as proprietary trade secrets to the extent consistent with the commissioner's duties to oversee the security of self-insured workers' compensation liability.

6. Analysis notes, work papers, or other documents related to the analysis of an insurer are confidential records under chapter 22.

[S13, §1821-d; C24, 27, 31, 35, 39, §**8638;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §507.14]

90 Acts, ch 1234, §3; 91 Acts, ch 26, §34; 92 Acts, ch 1117, §6; 2004 Acts, ch 1110, §17; 2006 Acts, ch 1117, §20; 2012 Acts, ch 1138, §34; 2013 Acts, ch 90, §150

Referred to in §22.7(53), 508.36, 508E.7, 515H.3, 616.15

Documents in support of statements of actuarial opinion, see §515H.3

507.15 Transfer pending examination.

Any transfer of stock of any company, pending an investigation, shall not release the party making the transfer from any liability for losses that may have occurred previous to such transfer.

[S13, §1821-e; C24, 27, 31, 35, 39, §**8639;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §507.15]

507.16 Unlawful solicitation of business.

It shall be unlawful for any officer, manager, agent, or representative of any insurance company contemplated by this chapter, who, with knowledge that its certificate of authority has been suspended or revoked, or that it is insolvent, or is doing an unlawful or unauthorized business, to solicit or receive applications for insurance for the company, or to do any other act or thing toward receiving or procuring any new business for the company. The provisions of sections 505.7A and 511.17 are extended to all companies contemplated by this chapter.

[S13, §1821-f; C24, 27, 31, 35, 39, §**8640;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §507.16]

2004 Acts, ch 1110, §18; 2007 Acts, ch 126, §89

507.17 Immunity from liability.

1. A cause of action does not arise nor shall any liability be imposed against the commissioner, the commissioner's authorized representative, or any examiner appointed by the commissioner for any statements made or conduct performed in good faith while carrying out the provisions of this chapter.

2. A cause of action does not arise, nor shall any liability be imposed against any person for the act of communicating or delivering information or data to the commissioner or the commissioner's authorized representative, or an examiner pursuant to an examination made under this chapter, if the act of communication or delivery was performed in good faith and without fraudulent intent or the intent to deceive.

3. This section does not abrogate or modify in any way any common law or statutory privilege or immunity enjoyed by any person identified in subsection 1.

4. A person identified in subsection 1 is entitled to an award of attorney's fees and costs if the person is the prevailing party in a civil cause of action for libel, slander, or any other relevant tort arising out of activities in carrying out the provisions of this chapter and the party bringing the action was not substantially justified in doing so. For purposes of this section, a proceeding is substantially justified if the proceeding has a reasonable basis in law or fact at the time that it is initiated.

[S13, §1821-g; C24, 27, 31, 35, 39, §**8641;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §507.17]

92 Acts, ch 1117, §7

CHAPTER 507A

UNAUTHORIZED INSURERS

Referred to in §87.4, 296.7, 331.301, 364.4, 432.5, 505.28, 505.29, 508F.6, 522B.17, 522C.6, 669.14, 670.7

507A.1 Title.
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507A.11 Reciprocal enforcement of court orders.

507A.1 Title.

This chapter may be cited as the *"Iowa Unauthorized Insurers Act"*.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §507A.1]

507A.2 Purpose.

The purpose of this chapter is to subject certain persons and insurers to the jurisdiction of the insurance commissioner and the courts of this state in suits by or on behalf of the state and insureds or beneficiaries under insurance contracts. The general assembly hereby declares that it is a subject of concern that many residents of this state hold policies of insurance issued by persons and insurers not authorized to do insurance business in this state, thus presenting to such residents the often insuperable obstacle of asserting their legal rights under such policies in forums foreign to them under laws and rules of practice with which they are not familiar. The general assembly further declares that it is also concerned with the protection of residents of this state against acts by persons and insurers not authorized to do an insurance business in this state, by the maintenance of fair and honest insurance markets, by protecting the premium tax revenues of this state, by protecting authorized persons and insurers which are subject to regulation from unfair competition by unauthorized persons and insurers, and by protecting against the evasion of the insurance regulatory laws of this state.

In furtherance of such state interest, the general assembly herein provides methods for substituted service of process upon such persons or insurers in any proceeding, suit or action in any court and substitute service of any notice, order, pleading, or process upon such persons or insurers in any proceeding before the commissioner of insurance to enforce or effect full compliance with the insurance and tax laws of this state. In so doing, the state exercises its powers to protect residents of this state and to define what constitutes doing an insurance business in this state, and also exercises powers and privileges available to this state by virtue of Pub. L. No. 79-15, 79th Congress of the United States, Ch. 20, 1st Sess., S. 340, 59 Stat. 33, codified at 15 U.S.C. §1011 – 1015, which declares that the business of insurance and every person engaged therein shall be subject to the laws of the several states.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §507A.2]

2006 Acts, ch 1010, §134

507A.3 Definitions — scope.

1. Unless otherwise indicated, *"insurer"* as used in this section includes all corporations, associations, partnerships and individuals engaged in the business of insurance. Any of the following acts in this state, effected by mail or otherwise, by an unauthorized insurer is defined to be doing an insurance business in this state:

a. The making of or proposing to make, as an insurer, an insurance contract.

b. The taking or receiving of any application for insurance.

c. The receiving or collection of any premiums, membership fees, assessments, dues or other considerations for any insurance.

d. The issuance or delivery of contracts of insurance to residents of this state or to corporations or persons authorized to do business in this state.

e. The doing of any kind of insurance business specifically recognized as constituting the doing of an insurance business within the meaning of the statutes relating to insurance.

f. The doing or proposing to do any insurance business in substance equivalent to any of the foregoing in a manner designed to evade the provisions of the insurance laws of this state.

g. Any other transactions of business relating directly to insurance in this state by an insurer.

2. The venue of an act committed by mail is at the point where the matter transmitted by mail is delivered and takes effect.

[C50, 54, 58, 62, 66, §507A.3(1); C71, 73, 75, 77, 79, 81, §507A.3; 81 Acts, ch 165, §1]
2012 Acts, ch 1023, §157
Referred to in §507A.7

507A.4 Transactions where law not applicable.

The provisions of this chapter shall not apply to:

1. The lawful transaction of surplus lines insurance as permitted by chapter 515I.
2. The lawful transaction of reinsurance by insurers.
3. Attorneys acting in the ordinary relation of attorney and client in the adjustment of claims or losses.
4. Transactions in this state involving a policy lawfully solicited, written, and delivered outside of this state, covering subjects of insurance not resident located, or expressly to be performed in this state at the time of issue, and which transactions are subsequent to the issuance of the policy.
5. Transactions in this state involving group or blanket insurance and group annuities where the master policy of such groups was lawfully issued and delivered in a state in which the company was authorized to do an insurance business.
6. Transactions in this state involving any policy of insurance issued prior to July 1, 1967.
7. Insurance on vessels, craft or hulls, cargoes, marine builder's risk, marine protection and indemnity or other risk including strikes and war risks commonly insured under ocean or wet marine forms of policy.
8. Transactions involving risks located in this state where the policy or contract of insurance for such risk was principally negotiated and delivered outside this state and was lawfully issued in a state or foreign country in which the foreign or alien insurer was authorized to do an insurance business, and where such insurer has no contact with this state except in connection with inspections or losses required by virtue of the contract or policy of insurance covering the risk located in this state.
9. *a.* Transactions involving a multiple employer welfare arrangement, as defined in section 3 of the federal Employee Retirement Income Security Act of 1974, 29 U.S.C. §1002, paragraph 40, if the multiple employer welfare arrangement meets all of the following conditions:

(1) The arrangement is administered by an authorized insurer or an authorized third-party administrator.

(2) The arrangement is established by a trade, industry, or professional association of employers that has a constitution or bylaws, and is organized and maintained in good faith with membership stability as defined by rules adopted by the commissioner.

(3) The arrangement registers with and obtains and maintains a certificate of registration issued by the commissioner.

(4) The arrangement is subject to the jurisdiction of the commissioner and complies with all rules and solvency standards as established by the commissioner pursuant to chapter 17A.

b. A multiple employer welfare arrangement that does not meet the solvency requirements established by the commissioner pursuant to chapter 17A shall be subject to chapter 507C.

c. A multiple employer welfare arrangement that meets all of the conditions of paragraph "*a*" shall not be considered any of the following:

(1) An insurance company or association of any kind or character under section 432.1.

(2) A member of the Iowa individual health benefit reinsurance association under section 513C.10.

(3) A member insurer of the Iowa life and health insurance guaranty association under section 508C.5, subsection 12.

d. A multiple employer welfare arrangement registered with the commissioner shall file with the commissioner on or before March 1 of each year a copy of the report required to be filed by the multiple employer welfare arrangement with the United States department of labor pursuant to 29 C.F.R. §2520.101-2. A newly formed multiple employer welfare arrangement shall file with the commissioner a copy of the report required to be filed pursuant to 29 C.F.R. §2520.101-2 by a newly formed multiple employer welfare arrangement with the United States department of labor thirty days prior to operating in any state. The copy shall be filed with the commissioner within thirty calendar days of the date that the multiple employer welfare arrangement files the report with the United States department of labor.

e. A foreign or domestic multiple employer welfare arrangement doing business in this state shall pay fees pursuant to section 511.24 unless otherwise provided by law.

10. *a.* A self-funded health benefit plan sponsored by an employer in this state under the federal Employee Retirement Income Security Act of 1974, as codified in 29 U.S.C. §1169, which provides health benefits to independent contractors of the employer and to spouses and dependents of the independent contractors, if the plan is granted a waiver from the provisions of this chapter by the commissioner and meets all of the following conditions:

(1) There is a written contract between the sponsor of the health benefit plan and the independent contractor which establishes the relationship between the parties to the contract and provides for the personal services to be provided by the independent contractor to the sponsor of the health benefit plan pursuant to the contract.

(2) The personal services to be provided by the independent contractor pursuant to the contract are directly related to the principal business of the sponsor of the health benefit plan.

(3) The contract provides that the independent contractor will provide services to the sponsor of the health benefit plan on an exclusive basis.

(4) The inclusion of the independent contractor in the sponsor's health benefit plan is incidental to the contractual relationship between the sponsor of the health benefit plan and the independent contractor.

(5) Independent contractors and their spouses and dependents included in an employer-sponsored health benefit plan do not in total equal more than forty-nine percent of the total persons covered by the health benefit plan.

(6) The health benefit plan is administered by an authorized insurer or an authorized third-party administrator.

b. The sponsor of the health benefit plan shall file an application for waiver from the provisions of this chapter with the commissioner as prescribed by the commissioner and shall file periodic statements and information as required by the commissioner. The commissioner shall adopt rules pursuant to chapter 17A implementing this subsection. All statements and information filed with or disclosed to the commissioner pursuant to this subsection are confidential records pursuant to chapter 22.

c. If at any time the commissioner determines that a health benefit plan for which a waiver has been granted does not meet all of the conditions of paragraph *"a"*, and the rules adopted by the commissioner under paragraph *"b"*, the commissioner may terminate the waiver granted to the health benefit plan.

d. A self-funded employer-sponsored health benefit plan which has a valid waiver from the provisions of this chapter shall not be considered any of the following:

(1) An insurance company or association of any kind or character under section 432.1.

(2) A member insurer of the Iowa life and health insurance guaranty association as defined in section 508C.5, subsection 12.

(3) A carrier under chapter 513B.

(4) A member of the Iowa individual health benefit reinsurance association under section 513C.10.

(5) An entity subject to chapter 514C.

(6) A multiple employer welfare arrangement as defined in subsection 9.

e. A self-funded employer-sponsored health benefit plan which has received a waiver from the provisions of this chapter shall be considered to be a self-funded employer-sponsored health benefit plan under the federal Employee Retirement Income Security Act of 1974, as codified in 29 U.S.C. §1169, and not subject to this title so long as the waiver is in effect.

f. The provision of health benefits to an independent contractor by a self-funded employer-sponsored health benefit plan which meets all of the conditions of paragraph *"a"* shall not in and of itself create an employer-employee relationship between the independent contractor and the sponsor of the health benefit plan.

[C71, 73, 75, 77, 79, 81, §507A.4]

94 Acts, ch 1038, §1, 3; 95 Acts, ch 33, §1; 96 Acts, ch 1024, §1; 97 Acts, ch 67, §1, 2; 98 Acts, ch 1012, §1; 2001 Acts, ch 13, §1, 3 – 5; 2001 Acts, ch 69, §4, 39; 2003 Acts, ch 91, §4; 2003 Acts, 1st Ex, ch 2, §39, 209; 2006 Acts, ch 1117, §21; 2007 Acts, ch 152, §52; 2012 Acts, ch 1025, §18, 22; 2018 Acts, ch 1063, §2

Referred to in §509.19
Subsection 9 amended

507A.5 Proscribed acts binding on insurer.

1. A person or insurer shall not directly or indirectly perform any act of doing an insurance business as defined in this chapter except as provided by and in accordance with the specific authorization by statute. However, should an unauthorized person or insurer perform an act of doing an insurance business as set forth in this chapter, it shall be equivalent to and shall constitute an irrevocable appointment by such person or insurer, binding upon the person, the person's executor or administrator, or successor in interest if a corporation, of the commissioner of insurance or the commissioner's successor in office, to be the true and lawful attorney upon whom may be served all lawful process in any action, suit or proceeding in any court arising out of doing an insurance business in this state or instituted by or on behalf of an insured or beneficiary arising out of such an act of doing an insurance business, except in an action, suit, or proceeding by the commissioner of insurance or by the state. An act of doing an insurance business by an unauthorized person or insurer shall be signification of its agreement that such service of process is of the same legal force and validity as personal service of process in this state upon such person or insurer.

2. Service of process made upon the commissioner as the attorney for service of process shall be made as provided in section 505.30. Such service of process shall be sufficient to provide notice if all of the following apply:

a. The plaintiff or plaintiff's attorney sends a copy of the service of process by certified mail within ten days thereafter to the defendant at the defendant's last known principal place of business.

b. The defendant's receipt or a receipt issued by the post office showing the name of the sender of the certified mail and the name and address of the person to whom the certified mail is addressed and an affidavit by the plaintiff or plaintiff's attorney attesting to compliance with this subsection are filed with the clerk of the court in which the action is pending on or before the date the defendant is required to appear or within such further time as the court may allow.

3. Service of process in any such action, suit, or proceeding shall in addition to the manner as provided in this chapter be valid if made upon a person within this state who, in this state on behalf of such insurer, is soliciting insurance, making, issuing, or delivering any contract of insurance, or collecting or receiving any premium, membership fee, assessment, or other consideration for insurance, and if all of the following apply:

a. The plaintiff or plaintiff's attorney sends a copy of such service of process by certified mail within ten days thereafter to the defendant at the defendant's last known principal place of business.

b. The defendant's receipt, or a receipt issued by the post office showing the name of the sender of the certified mail and the name and address of the person to whom the certified mail is addressed, and an affidavit by the plaintiff or plaintiff's attorney attesting to compliance

with this subsection are filed with the clerk of the court in which such action is pending on or before the date the defendant is required to appear or within such further time as the court may allow.

4. A plaintiff shall not be entitled to a judgment by default under this chapter until the expiration of thirty days from the date on which the plaintiff or plaintiff's attorney files the affidavit of compliance.

5. Nothing in this section shall limit or abridge the right to serve any process, notice, or demand upon any insurer in any other manner now or hereafter permitted by law.

[C50, 54, 58, 62, 66, §507A.3; C71, 73, 75, 77, 79, 81, §507A.5]

2018 Acts, ch 1018, §3

Referred to in §507A.7

Section amended

507A.6 Secretary of state as process agent.

1. Any act of doing an insurance business as set forth in this chapter by any unauthorized person or insurer is equivalent to and shall constitute an irrevocable appointment by such person and insurer, binding upon the person or insurer, the person's or insurer's executor or administrator, or successor in interest if a corporation, of the secretary of state or the secretary of state's successor in office, to be the true and lawful attorney of such person or insurer upon whom may be served all legal process in any action, suit, or proceeding in any court by the commissioner of insurance or by the state and upon whom may be served any notice, order, pleading or process in any proceeding before the commissioner of insurance and which arises out of doing an insurance business in this state by such person or insurer. Any act of doing an insurance business in this state by any unauthorized person or insurer shall be signification of its agreement that any such legal process in such court action, suit, or proceeding and any such notice, order, pleading, or process in such administrative proceeding before the commissioner of insurance so served shall be of the same legal force and validity as personal service of process in this state upon such person or insurer.

2. Service of process in such action shall be made by delivering to and leaving with the secretary of state or some person in apparent charge of the secretary of state's office, two copies thereof. Service upon the secretary of state as such attorney shall be service upon the principal.

3. The secretary of state shall forthwith forward by certified mail one of the copies of such process or such notice, order, pleading, or process in proceedings before the commissioner to the defendant in such court proceeding or to whom the notice, order, pleading, or process in such administrative proceeding is addressed or directed at the last known principal place of business and shall keep a record of all process so served on the secretary of state which shall show the day and hour of service. Such service is sufficient, provided:

a. Notice of such service and a copy of the court process or the notice, order, pleading, or process in such administrative proceeding is sent within ten days thereafter by certified mail by the plaintiff or the plaintiff's attorney in the court proceeding or by the commissioner of insurance in the administrative proceeding to the defendant in the court proceeding or to whom the notice, order, pleading, or process in such administrative proceeding is addressed or directed at the last known principal place of business of the defendant in the court or administrative proceeding.

b. The defendant's receipt or receipts issued by the post office with which the letter is registered, showing the name of the sender of the letter and the name and address of the person or insurer to whom the letter is addressed, and an affidavit of the plaintiff or the plaintiff's attorney in court proceeding or of the commissioner of insurance in administrative proceeding, showing compliance therewith are filed with the clerk of the court in which such action, suit, or proceeding is pending or with the commissioner in administrative proceedings, on or before the date the defendant in the court or administrative proceeding is required to appear or respond thereto, or within such further time as the court or commissioner of insurance may allow.

4. No plaintiff shall be entitled to a judgment or a determination by default in any court or administrative proceeding in which court process or notice, order, pleading, or process

in proceedings before the commissioner of insurance is served under this section until the expiration of forty-five days from the date of filing of the affidavit of compliance.

5. Nothing in this section shall limit or abridge the right to serve any process, notice, order, or demand upon any person or insurer in any other manner now or hereafter permitted by law.

[C50, 54, 58, 62, 66, §507A.3; C71, 73, 75, 77, 79, 81, §507A.6]
Referred to in §507A.7

507A.7 Proceedings before commissioner — indemnifying bond.

1. Before any unauthorized person or insurer files or causes to be filed any pleading or process in an administrative proceeding before the commissioner of insurance, instituted against such person or insurer, by service made as provided in this chapter, such person or insurer shall either:

a. Deposit with the clerk of the court in which such action, suit, or proceeding is pending, or with the commissioner of insurance in administrative proceedings before the commissioner, cash or securities, or file with such clerk or commissioner a bond with good and sufficient sureties, to be approved by the clerk or commissioner in an amount to be fixed by the court or commissioner sufficient to secure the payment of any final judgment which may be rendered in such action or administrative proceeding.

b. Procure a certificate of authority to transact the business of insurance in this state.

2. The court in any action, suit, or proceeding in which service is made as provided in section 507A.6, subsections 2 and 3, or the commissioner of insurance in any administrative proceeding before the commissioner in which service is made as provided in section 507A.6, subsections 2 and 3, may in the court's or commissioner's discretion, order such postponement as may be necessary to afford the defendant reasonable opportunity to comply with the provisions of subsection 1 of this section and to defend such action.

3. Nothing in subsection 1 of this section shall be construed to prevent an unauthorized person or foreign or alien insurer from filing a motion to quash a writ or to set aside service thereof made in the manner provided in sections 507A.5 and 507A.6, on the ground that such unauthorized person or insurer has not done any of the acts enumerated in section 507A.3.

4. In an action against an unauthorized person or insurer upon a contract of insurance issued or delivered in this state to a resident thereof or to a corporation authorized to do business therein, if the person or insurer has failed for thirty days after demand prior to the commencement of the action to make payment in accordance with the terms of the contract, and it appears to the court that such refusal was without reasonable cause, the court may allow to the plaintiff a reasonable attorney fee and include such fee in any judgment that may be rendered in such action. Failure of the person or insurer to defend any such action shall be deemed prima facie evidence that its failure to make payment was without reasonable cause.

[C50, 54, 58, 62, 66, §507A.4, 507A.5; C71, 73, 75, 77, 79, 81, §507A.7]
2013 Acts, ch 30, §119
Referred to in §602.8102(69)

507A.8 Order by commissioner to produce contracts.

1. Whenever the commissioner of insurance has reason to believe that insurance has been effectuated by or for any person in this state with an unauthorized insurer the commissioner shall in writing order such person to produce for examination all insurance contracts and other documents evidencing insurance with both authorized and unauthorized insurers and to disclose to the commissioner the amount of insurance, name and address of each insurer, gross amount of premium paid or to be paid and the name and address of the person or persons assisting or aiding in the solicitation, negotiation, or effectuation of such insurance.

2. Every person investigating or adjusting any loss or claim on a subject of insurance in this state shall immediately report to the commissioner every insurance policy or contract which has been entered into by any insurer not authorized to transact such insurance in this state.

3. Every person who, for thirty days after receipt of written order pursuant to subsection 1

of this section, neglects to comply with the requirements of such order or who willfully makes a disclosure that is untrue, deceptive, or misleading shall forfeit fifty dollars.

[C71, 73, 75, 77, 79, 81, §507A.8]

507A.9 Premium tax on unauthorized insurers.

1. For all premiums collected during the calendar year, except premiums on lawfully procured surplus lines insurance, every unauthorized insurer shall pay to the commissioner of insurance before March 1, next succeeding the calendar year in which the insurance was so effectuated, continued, or renewed a premium tax on gross premiums charged for such insurance on subjects resident, located, or to be performed in this state equal to the applicable percent, as provided in section 432.1. Such insurance whether procured through negotiation or an application, in whole or in part occurring or made within or outside of this state, or for which premiums in whole or in part are remitted directly or indirectly from within or outside of this state, shall be deemed to be insurance procured or continued in this state. The term *"premium"* includes all premiums, membership fees, assessments, dues, and any other consideration for insurance. If the tax prescribed by this section is not paid within the time stated, the tax shall be increased by a penalty of twenty-five percent and by the amount of an additional penalty computed at the rate of one percent per month or any part thereof from the date such payment was due to the date paid.

2. If the policy covers risks or exposures only partly in the state, the tax payable shall be computed on the portions of the premium which are properly allocable to the risks or exposures located in the state. In determining the amount of premiums taxable in this state, all premiums written, procured, or received in this state and all premiums on policies negotiated in this state shall be deemed written on property or risks located or resident in this state, except such premiums as are properly allocated or apportioned and reported as taxable premiums of any other state or states.

3. The attorney general, upon request of the commissioner of insurance, shall proceed in the courts of this state or any other state or in any federal court or agency to recover such tax not paid within the time prescribed in this section.

[C71, 73, 75, 77, 79, 81, §507A.9]

2006 Acts, ch 1117, §22

Referred to in §515I.10, 515I.11

507A.10 Cease and desist orders — civil and criminal penalties.

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

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

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

c. A person or insurer violating a summary order issued under this subsection shall be

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

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

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

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

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

[C71, 73, 75, 77, 79, 81, §507A.10; 81 Acts, ch 165, §2]
95 Acts, ch 185, §5; 2004 Acts, ch 1110, §19
Referred to in §515I.11

507A.11 Reciprocal enforcement of court orders.

The attorney general upon request of the commissioner of insurance may proceed in the courts of this state or any reciprocal state to enforce an order or decision in any court proceeding or in any administrative proceeding before the commissioner of insurance.

1. As used in this section, unless the context otherwise requires:

a. "Reciprocal state" means any state or territory of the United States the laws of which contain procedures substantially similar to those specified in this section for the enforcement of decrees or orders in equity issued by courts located in other states or territories of the United States, against any insurer incorporated or authorized to do business in said state or territory.

b. "Foreign decree" means any decree or order in equity of a court located in a reciprocal state, including a court of the United States located therein, against any insurer incorporated or authorized to do business in this state.

c. "Qualified party" means a state regulatory agency acting in its capacity to enforce the insurance laws of its state.

2. The commissioner of insurance shall determine which states and territories qualify as reciprocal states and shall maintain at all times an up-to-date list of such states.

3. A copy of any foreign decree authenticated in accordance with the statutes of this state may be filed in the office of the clerk of any district court of this state. The clerk, upon verifying with the insurance commissioner that the decree or order qualifies as a foreign decree, shall treat the foreign decree in the same manner as a decree of a district court of this state. A foreign decree so filed has the same effect and shall be deemed as a decree of a district court of this state, and is subject to the same procedures, defenses and proceedings for reopening, vacating, or staying as a decree of a district court of this state and may be enforced or satisfied in like manner.

4. *a.* At the time of the filing of the foreign decree, the attorney general shall make and file with the clerk of the court an affidavit setting forth the name and last known post office address of the defendant.

b. Promptly upon the filing of the foreign decree and the affidavit, the clerk shall mail notice of the filing of the foreign decree to the defendant at the address given and to the insurance commissioner of this state and shall make a note of the mailing in the docket. In addition, the attorney general may mail a notice of the filing of the foreign decree to the defendant and to the insurance commissioner of this state and may file proof of mailing

with the clerk. Lack of mailing notice of filing by the clerk shall not affect the enforcement proceedings if proof of mailing by the attorney general has been filed.

c. No execution or other process for enforcement of a foreign decree filed under this section shall issue until thirty days after the date the decree is filed.

5. *a.* If the defendant shows the district court that an appeal from the foreign decree is pending or will be taken, or that a stay of execution has been granted, the court shall stay enforcement of the foreign decree until the appeal is concluded, the time for appeal expires, or the stay of execution expires or is vacated, upon proof that the defendant has furnished the security for the satisfaction of the decree required by the state in which it was rendered.

b. If the defendant shows the district court any ground upon which enforcement of a decree of any district court of this state would be stayed, the court shall stay enforcement of the foreign decree for an appropriate period, upon requiring the same security for satisfaction of the decree which is required in this state.

6. Any person filing a foreign decree shall pay to the clerk of court twenty-five dollars. Fees for docketing, transcription or other enforcement proceedings shall be as provided for decrees of the district court.

[C71, 73, §507A.6(6); C75, 77, 79, 81, §507A.11]

Referred to in §602.8102(71)

CHAPTER 507B

INSURANCE TRADE PRACTICES

Referred to in §87.4, 87.24, 225C.29, 296.7, 331.301, 364.4, 505.8, 505.28, 505.29, 508.15A, 508E.17, 508F.6, 508F.7, 510.5A, 510.23, 510B.3, 512B.32, 513A.7, 513C.9, 514B.18, 514B.32, 514J.119, 515.144, 515A.13, 515E.10, 515I.11, 521E.8, 522A.3, 522B.11, 522B.12, 522B.17, 522D.7, 522D.8, 668.9, 669.14, 670.7

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507B.1 Declaration of purpose.

The purpose of this chapter is to regulate trade practices in the business of insurance in accordance with the intent of Congress as expressed in the Act of Congress of March 9, 1945, Pub. L. No. 79-15, 59 Stat. 33, codified at 15 U.S.C. §1011 – 1015, by defining, or providing for the determination of, all such practices in this state which constitute unfair methods of competition or unfair or deceptive acts or practices and by prohibiting the trade practices so defined or determined.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §507B.1]

2006 Acts, ch 1010, §135

507B.2 Definitions.

When used in this chapter:

1. *"Person"* shall mean any individual, corporation, association, partnership, reciprocal

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

2. *"Commissioner"* shall mean the commissioner of insurance of this state.

3. *"Insurance policy"* or *"insurance contract"* shall mean any contract of insurance, indemnity, subscription, membership, suretyship, or annuity issued, proposed for issuance, or intended for issuance by any person.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §507B.2]

2004 Acts, ch 1110, §20

Referred to in §507B.7

See also §87.24

507B.3 Unfair competition or unfair and deceptive acts or practices prohibited.

A person shall not engage in this state in any trade practice which is defined in this chapter as, or determined pursuant to section 507B.6 to be, an unfair method of competition, or an unfair or deceptive act or practice in the business of insurance.

1. A person who violates a provision in chapter 508E shall be deemed to have committed an unfair trade practice under this chapter.

2. The issuance of a qualified charitable gift annuity as provided in chapter 508F does not constitute a trade practice in violation of this chapter.

[C58, 62, 66, 71, §507B.3, 507B.5; C73, 75, 77, 79, 81, §507B.3]

2001 Acts, ch 28, §1; 2003 Acts, ch 91, §5; 2004 Acts, ch 1110, §21; 2008 Acts, ch 1123, §12; 2008 Acts, ch 1155, §20

Referred to in §515E.4

507B.4 Unfair methods of competition and unfair or deceptive acts or practices defined.

1. For purposes of subsection 3, paragraph *"p"*, *"insurer"* means an entity providing a plan of health insurance, health care benefits, or health care services, or an entity subject to the jurisdiction of the commissioner performing utilization review, including an insurance company offering sickness and accident plans, a health maintenance organization, a nonprofit health service corporation, a plan established pursuant to chapter 509A for public employees, or any other entity providing a plan of health insurance, health care benefits, or health care services. However, *"insurer"* does not include an entity that sells disability income insurance.

2. For purposes of subsection 3, paragraphs *"k"*, *"l"*, and *"m"*, *"personal lines property and casualty insurance"* means insurance sold to individuals and families primarily for noncommercial purposes as provided in chapter 522B.

3. The following are hereby defined as unfair methods of competition and unfair or deceptive acts or practices in the business of insurance:

a. Misrepresentations and false advertising of insurance policies. Making, issuing, circulating, or causing to be made, issued or circulated, any estimate, illustration, circular, statement, sales presentation, omission, or comparison which does any of the following:

(1) Misrepresents the benefits, advantages, conditions, or terms of any insurance policy.

(2) Misrepresents the dividends or share of the surplus to be received on any insurance policy.

(3) Makes any false or misleading statements as to the dividends or share of surplus previously paid on any insurance policy.

(4) Is misleading or is a misrepresentation as to the financial condition of any person, or as to the legal reserve system upon which any life insurer operates.

(5) Uses any name or title of any insurance policy or class of insurance policies misrepresenting the true nature thereof.

(6) Is a misrepresentation for the purpose of inducing or tending to induce the lapse, forfeiture, exchange, conversion, or surrender of any insurance policy.

(7) Is a misrepresentation for the purpose of effecting a pledge or assignment of or effecting a loan against any insurance policy.

(8) Misrepresents any insurance policy as being shares of stock.

(9) Misrepresents any insurance policy to consumers by using the terms "burial insurance", "funeral insurance", "burial plan", or "funeral plan" in its names or titles, unless the policy is made with a funeral provider as beneficiary who specifies and fixes a price under contract with an insurance company. This subparagraph does not prevent insurers from stating or advertising that insurance benefits may provide cash for funeral or burial expenses.

(10) Is a misrepresentation, including any intentional misquote of premium rate, for the purpose of inducing or tending to induce the purchase of an insurance policy.

b. False information and advertising.

(1) *Generally.* Making, publishing, disseminating, circulating, or placing before the public, or causing, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public in a newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over any radio or television station, or in any other way, an advertisement, announcement, or statement containing any assertion, representation, or statement with respect to the business of insurance or with respect to any person in the conduct of the person's insurance business, which is untrue, deceptive, or misleading.

(2) *False statement of assets.* In the case of a company transacting the business of fire insurance within the state, stating or representing by advertisement in any newspaper, magazine, or periodical, or by any sign, circular, card, policy of insurance, or renewal certificate thereof or otherwise, that any funds or assets are in its possession and held available for the protection of holders of its policies unless so held, except the policy of insurance or certificate of renewal thereof may state, as a single item, the amount of capital set forth in the charter, or articles of incorporation, or association, or deed of settlement under which it is authorized to transact business.

(3) *Statement of capital and surplus.*

(a) In the case of a foreign company transacting the business of casualty insurance in the state, or an officer, producer, or representative of such a company, issuing or publishing an advertisement, public announcement, sign, circular, or card that purports to disclose the company's financial standing and fails to exhibit the following:

(i) The capital actually paid in cash, and the amount of net surplus of assets over all the company's liabilities actually held and available for the payment of losses by fire and for the protection of holders of fire policies.

(ii) The amount of net surplus of assets over all liabilities in the United States actually available for the payment of losses by fire and held in the United States for the protection of holders of fire policies in the United States, including in such liabilities the fund reserved for reinsurance of outstanding risks.

(b) The amounts stated for capital and net surplus shall correspond with the latest verified statement made by the company or association to the commissioner of insurance.

c. Defamation. Making, publishing, disseminating, or circulating, directly or indirectly, or aiding, abetting or encouraging the making, publishing, disseminating, or circulating of any oral or written statement or any pamphlet, circular, article or literature which is false, or maliciously critical of or derogatory to the financial condition of any person, and which is calculated to injure such person.

d. Boycott, coercion and intimidation. Entering into any agreement to commit, or by any concerted action committing, any act of boycott, coercion or intimidation resulting in or tending to result in unreasonable restraint of, or monopoly in, the business of insurance.

e. False statements and entries.

(1) Knowingly filing with any supervisory or other public official, or knowingly making, publishing, disseminating, circulating or delivering to any person, or placing before the public, or knowingly causing directly or indirectly, to be made, published, disseminated, circulated, delivered to any person, or placed before the public, any false material statement of fact as to the financial condition of a person.

(2) Knowingly making any false entry of a material fact in any book, report or statement of any person or knowingly omitting to make a true entry of any material fact pertaining to the business of such person in any book, report or statement of such person.

f. Stock operations and advisory board contracts. Issuing or delivering or permitting agents, officers or employees to issue or deliver, agency company stock or other capital stock, or benefit certificates or shares in any common law corporation, or securities or any special or advisory board contracts or other contracts of any kind promising returns and profits as an inducement to insurance.

g. Unfair discrimination.

(1) Making or permitting any unfair discrimination between individuals of the same class and equal expectation of life in the rates charged for any contract of life insurance or of life annuity or in the dividends or other benefits payable thereon, or in any other of the terms and conditions of such contract.

(2) Making or permitting any unfair discrimination between insureds of the same class for essentially the same hazard in the amount of premium, policy fees, or rates charged for any policy or contract of insurance other than life or in the benefits payable thereunder, or in any of the terms or conditions of such contract, or in any other manner whatever.

(3) Making or permitting any discrimination in the sale of insurance solely on the basis of domestic abuse as defined in section 236.2 or sexual abuse as defined in section 236A.2.

h. Release or use of genetic information. Failure of a person to comply with section 729.6, subsection 4.

i. Rebates.

(1) Except as otherwise expressly provided by law, knowingly permitting or offering to make or making any contract of life insurance, life annuity or accident and health insurance, or agreement as to such contract other than as plainly expressed in the contract issued thereon, or paying or allowing, or giving or offering to pay, allow, or give, directly or indirectly, as inducement to such insurance, or annuity, any rebate of premiums payable on the contract, or any special favor or advantage in the dividends or other benefits thereon, or any valuable consideration or inducement whatever not specified in the contract; or giving, or selling, or purchasing or offering to give, sell, or purchase as inducement to such insurance or annuity or in connection therewith, any stocks, bonds, or other securities of any insurance company or other corporation, association, or partnership, or any dividends or profits accrued thereon, or any thing of value whatsoever not specified in the contract.

(2) Nothing in paragraph "*g*" or subparagraph (1) of this paragraph "*i*" shall be construed as including within the definition of discrimination or rebates any of the following practices:

(a) In the case of any contract of life insurance or life annuity, paying bonuses to policyholders or otherwise rebating their premiums in whole or in part out of surplus accumulated from nonparticipating insurance, provided that any such bonuses or rebatement of premiums shall be fair and equitable to policyholders and for the best interests of the company and its policyholders.

(b) In the case of life insurance policies issued on the industrial debit plan, making allowance to policyholders who have continuously for a specified period made premium payments directly to an office of the insurer in an amount which fairly represents the saving in collection expenses.

(c) Readjustment of the rate of premium for a group insurance policy based on the loss or expense experienced thereunder, at the end of the first or any subsequent policy year of insurance thereunder, which may be made retroactive only for such policy year.

(3) (a) Paying, allowing, or giving, or offering to pay, allow, or give, directly or indirectly, as an inducement to purchase or acquire insurance other than life insurance, life annuity, or accident and health insurance, or after insurance has been effected, any rebate, discount, abatement, credit, or reduction of the premium named in a policy of insurance, or any special favor or advantage in the dividends or other benefits to accrue on the policy, or any valuable consideration or inducement, not specified in the policy, except to the extent provided for in an applicable filing. An insured named in a policy, or an employee of the insured, shall not knowingly receive or accept, directly or indirectly, any rebate, discount, abatement, credit, or

reduction of premium, or any such special favor or advantage or valuable consideration or inducement.

(b) This subparagraph (3) shall not be construed to prohibit the payment of commissions or other compensation to duly licensed producers, or to prohibit any insurer from allowing or returning to its participating policyholders, members, or subscribers, dividends, savings, or unabsorbed premium deposits. As used in this subparagraph (3), *"insurance"* includes suretyship and *"policy"* includes bond.

j. Unfair claim settlement practices. Committing or performing with such frequency as to indicate a general business practice any of the following:

(1) Misrepresenting pertinent facts or insurance policy provisions relating to coverages of issue.

(2) Failing to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies.

(3) Failing to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies.

(4) Refusing to pay claims without conducting a reasonable investigation based upon all available information.

(5) Failing to affirm or deny coverage of claims within a reasonable time after proof of loss statements have been completed.

(6) Not attempting in good faith to effectuate prompt, fair, and equitable settlements of claims in which liability has become reasonably clear, or failing to include interest on the payment of claims when required under paragraph *"p"* or section 511.38.

(7) Compelling insureds to institute litigation to recover amounts due under an insurance policy by offering substantially less than the amounts ultimately recovered in actions brought by such insureds.

(8) Attempting to settle a claim for less than the amount to which a reasonable person would have believed the person was entitled by reference to written or printed advertising material accompanying or made part of an application.

(9) Attempting to settle claims on the basis of an application which was altered without notice to, or knowledge or consent of the insured.

(10) Making claims payments to insureds or beneficiaries not accompanied by a statement setting forth the coverage under which payments are being made.

(11) Making known to insureds or claimants a policy of appealing from arbitration awards in favor of insureds or claimants for the purpose of compelling them to accept settlements or compromises less than the amount awarded in arbitration.

(12) Delaying the investigation or payment of claims by requiring an insured, claimant, or the physician of either to submit a preliminary claim report and then requiring the subsequent submission of formal proof of loss forms, both of which submissions contain substantially the same information.

(13) Failing to promptly settle claims, where liability has become reasonably clear, under one portion of the insurance policy coverage in order to influence settlements under other portions of the insurance policy coverage.

(14) Failing to promptly provide a reasonable explanation of the basis in the insurance policy in relation to the facts or applicable law for denial of a claim or for the offer of a compromise settlement.

(15) Failing to comply with the procedures for auditing claims submitted by health care providers as set forth by rule of the commissioner. However, this subparagraph shall have no applicability to liability insurance, workers' compensation or similar insurance, automobile or homeowners' medical payment insurance, disability income, or long-term care insurance.

k. Use of inquiries. Considering either of the following events for purposes of surcharging, declining, nonrenewing, or canceling personal lines property and casualty insurance coverage or a binder for personal lines property and casualty insurance coverage:

(1) An applicant's or insured's inquiry into the type or level of coverage of a policy, or an inquiry into whether a policy will cover a loss.

(2) An insured's inquiry regarding coverage of a policy for a loss if the insured does not file a claim.

l. History of a property. Declining to insure a property not previously owned by an applicant for personal lines property and casualty insurance, based solely on the loss history of a previous owner of the property, unless the insurer can provide evidence that the previous owner did not repair damage to the property.

m. Disclosure of use of claims history. Failing to inform an applicant at the time that an application for personal lines property and casualty insurance is made, in writing or in the same medium as the application is made, that the insurer will consider the applicant's or insured's claims history in determining whether to decline, cancel, nonrenew, or surcharge such a policy, and that a claim made by an insured will be reported to an insurance support organization.

n. Misrepresentation in insurance applications. Making false or fraudulent statements or representations on or relative to an application for an insurance policy, for the purpose of obtaining a fee, commission, money, or other benefit from any insurer, agent, broker, or individual.

o. Omission from insurance application. Failing to designate on an insurance policy application the licensee who has solicited and written the policy.

p. Payment of interest. Failure of an insurer to pay interest at the rate of ten percent per annum on all health insurance claims that the insurer fails to timely accept and pay pursuant to section 507B.4A, subsection 2, paragraph *"d"*. Interest shall accrue commencing on the thirty-first day after receipt of all properly completed proof of loss forms.

q. Rating organizations. Any violation of section 515F.16.

r. Minor traffic violations. Failure of a person to comply with section 516B.3.

s. Information. Failing or refusing to furnish any policyholder or applicant, upon reasonable request, information to which that individual is entitled.

[C97, §1782; S13, §1782, 1820-b; SS15, §1758-f; C24, 27, 31, 35, 39, §**8666, 8759, 9022;** C46, 50, 54, §508.23, 511.20, 515.144; C58, 62, 66, 71, 73, 75, 77, 79, 81, §507B.4]

85 Acts, ch 229, §1; 87 Acts, ch 65, §2; 87 Acts, ch 120, §7; 89 Acts, ch 321, §32; 90 Acts, ch 1234, §64; 92 Acts, ch 1162, §3; 93 Acts, ch 88, §4; 95 Acts, ch 185, §6; 2001 Acts, ch 69, §5 – 7, 39; 2001 Acts, ch 118, §15, 56; 2006 Acts, ch 1117, §23, 24; 2007 Acts, ch 152, §53, 54; 2008 Acts, ch 1074, §1; 2010 Acts, ch 1153, §1; 2012 Acts, ch 1023, §101; 2016 Acts, ch 1073, §145; 2017 Acts, ch 121, §25; 2017 Acts, ch 148, §32; 2018 Acts, ch 1012, §1

Referred to in §225C.28B, 225C.29, 507B.6, 507B.7, 507B.12, 515E.4, 729.6
Subsection 1 amended

507B.4A Duty to respond to inquiries and prompt payment of claim.

1. A person shall promptly respond to inquiries from the commissioner.

a. A person's actions are deemed untimely under this subsection if the person fails to respond to an inquiry from the commissioner within thirty days of the receipt of the inquiry, unless good cause exists for delay.

b. Failure to respond to inquiries from the commissioner pursuant to this subsection with such frequency as to indicate a general business practice shall subject the person to penalty under this chapter.

2. *a.* An insurer providing accident and sickness insurance under chapter 509, 514, or 514A; a health maintenance organization; or another entity providing health insurance or health benefits subject to state insurance regulation shall either accept and pay or deny a clean claim.

b. For purposes of this subsection, *"clean claim"* means a properly completed paper or electronic billing instrument containing all reasonably necessary information, that does not involve coordination of benefits for third-party liability, preexisting condition investigations, or subrogation, and that does not involve the existence of particular circumstances requiring special treatment that prevents a prompt payment from being made.

c. The commissioner shall adopt rules establishing processes for timely adjudication and payment of claims by insurers for health care benefits. The rules shall be consistent with the time frames and other procedural standards for claims decisions by group health plans established by the United States department of labor pursuant to 29 C.F.R. pt. 2560 in effect on January 1, 2002.

d. Payment of a clean claim shall include interest at the rate of ten percent per annum when an insurer or other entity as defined in this subsection that administers or processes claims on behalf of the insurer or other entity fails to timely pay a claim.

e. This subsection shall not apply to liability insurance, workers' compensation or similar insurance, automobile or homeowners' medical payment insurance, disability income, or long-term care insurance.

2001 Acts, ch 69, §8, 39; 2001 Acts, ch 176, §71; 2017 Acts, ch 148, §33
Referred to in §507B.4, 507B.6, 507B.12, 514F.6

507B.4B Suitability.

1. A person shall not recommend to any individual the purchase, sale, or exchange of any annuity contract, or any rider, endorsement, or amendment thereto, unless the person has reasonable grounds to believe that the recommendation is suitable for the individual based on a reasonable inquiry into the individual's financial status, investment objectives, and other relevant information.

2. A person engaged in the business of annuities shall establish and maintain a system to monitor recommendations made that is reasonably designed to achieve compliance with subsection 1.

3. The commissioner shall adopt rules pursuant to chapter 17A establishing procedures and standards for implementation of the suitability requirements of subsection 1.

2006 Acts, ch 1117, §25

507B.4C Unclaimed life insurance.

1. *Purpose.* The purpose of this section is to require complete and proper disclosure, transparency, and accountability relating to any method of payment for life insurance death benefits regulated by the commissioner.

2. *Definitions.* As used in this section, unless the context otherwise requires:

a. "Account owner" means the owner of a retained asset account who is a resident of this state.

b. "Annuity" means an annuity contract issued in this state. *"Annuity"* does not include any annuity contract used to fund an employment-based retirement plan or program where the insurer takes direction from the plan sponsor or plan administrator.

c. "Authorized person" means a policy owner, insured, annuity owner, annuitant, or account holder, as applicable under a policy, annuity, or retained asset account.

d. "Death master file" means the United States social security administration's death master file or any other database or service that is at least as comprehensive as the United States social security administration's death master file for determining that a person has died.

e. "Death master file match" means a search of the death master file that results in a match of an authorized person's name and social security number or an authorized person's name and date of birth.

f. "Insurer" means a life insurance company regulated under chapter 508.

g. "Policy" means any policy or certificate of life insurance issued in this state. *"Policy"* does not include any of the following:

(1) A policy or certificate of life insurance which provides a death benefit under an employee benefit plan subject to the federal Employee Retirement Income Security Act of 1974, Pub. L. No. 93-406, as codified at 29 U.S.C. §1002 et seq.

(2) A policy or certificate of life insurance which provides a death benefit under an employee benefit plan subject to a federal employee benefit program.

(3) A policy or certificate of life insurance which is used to fund a preneed plan for cemetery merchandise, funeral merchandise, funeral services, or a combination thereof.

(4) A policy or certificate of credit life or accidental death insurance.

(5) A policy issued to a group master policyowner for which the insurer does not provide recordkeeping services.

h. "Recordkeeping services" means services provided by an insurer who has entered into an agreement with a group policy customer to be responsible for obtaining, maintaining,

and administering in the insurer's own recordkeeping systems at least all of the following information about each individual insured under the insured's group insurance contract or a line of coverage thereunder:

(1) Social security number or name and date of birth.

(2) Beneficiary designation information.

(3) Coverage eligibility.

(4) Benefit amount.

(5) Premium payment status.

i. *"Retained asset account"* means an interest-bearing account set up by an insurer in the name of the beneficiary of a policy or annuity upon the death of the insured.

3. *Insurer duties.*

a. For any in-force policy, annuity, or retained asset account issued for delivery in this state for which the insurer has not previously been notified of a claim, an insurer shall perform a comparison of such policy, annuity, or retained asset account against the death master file, on at least a semiannual basis, to identify potential death master file matches.

(1) An insurer may comply with the requirements of this subsection by using the full death master file for the initial comparison and thereafter using the death master file update files for subsequent comparisons.

(2) Nothing in this section shall be interpreted to limit the right of an insurer to request a valid death certificate as part of any claims validation process.

b. If an insurer learns of the possible death of an authorized person through a death master file match or otherwise, the insurer shall, within ninety days, do all of the following:

(1) Complete a good-faith effort, which shall be documented by the insurer, to confirm the death of the authorized person against other available records and information.

(2) Review the insurer's records to determine whether the deceased authorized person had purchased any other products from the insurer.

(3) Determine whether benefits may be due in accordance with the applicable policy, annuity, or retained asset account.

(4) If the beneficiary or an authorized person has not communicated with the insurer within the ninety-day period, take reasonable steps, which shall be documented by the insurer, to locate and contact any beneficiary or other authorized person on the policy, annuity, or retained asset account, including sending the beneficiary or other authorized person information regarding the insurer's claims process and regarding the need to provide an official death certificate, if applicable under the policy, annuity, or retained asset account.

c. Every insurer shall implement procedures to account for all of the following:

(1) Common nicknames, initials used in lieu of a first or middle name, use of a middle name, compound first and middle names, and interchanged first and middle names.

(2) Compound last names, maiden or married names, and hyphens, blank spaces, or apostrophes in last names.

(3) Transposition of the month and date portions of the date of birth.

(4) Incomplete social security numbers.

d. An insurer may disclose minimum necessary personal information about a beneficiary or authorized person to an individual or entity whom the insurer reasonably believes may be able to assist the insurer in locating the beneficiary or authorized person entitled to payment of the claims proceeds.

e. An insurer or its service provider shall not charge a beneficiary or authorized person any fees or costs associated with a death master file search conducted pursuant to this section.

f. The benefits from a policy, annuity, or retained asset account, plus any applicable accrued interest, shall first be payable to designated beneficiaries or authorized persons, and in the event that the beneficiaries or authorized persons cannot be found, shall be reported and remitted to the state as unclaimed property pursuant to chapters 556 and 633.

4. *Rules.* The commissioner shall adopt rules to administer the provisions of this section.

5. *Orders.* The commissioner may issue an order doing any of the following:

a. Limiting the death master file comparisons required under subsection 3, paragraph *"a"*, to an insurer's electronic searchable files or approving a plan and timeline for conversion of an insurer's files to electronic searchable files.

b. Exempting an insurer from the death master file comparisons required under subsection 3, paragraph *"a"*, or permitting an insurer to perform such comparisons less frequently than semiannually, upon a demonstration of financial hardship by the insurer.

c. Phasing in requirements for compliance with this section according to a plan and timeline approved by the commissioner.

6. *Unfair trade practice.* Failure to meet any requirement of this section with such frequency as to constitute a general business practice is an unfair method of competition and an unfair or deceptive act or practice in the business of insurance under this chapter.

7. *Insurer unclaimed property reporting.*

a. If an insurer identifies a person as deceased through a death master file match as described in subsection 3, paragraph *"a"*, or other information source, and validates such information through a secondary information source, the insurer may report and remit the proceeds of the policy, annuity, or retained asset account due to the state prior to the dates required for such reporting and remittance under chapter 556, without further notice to or consent by the state, after attempting to contact any beneficiary under either of the following circumstances:

(1) The insurer is unable to locate a beneficiary who is located in this state under the policy, annuity contract, or retained asset account, after conducting reasonable search efforts of up to one year after the insurer's validation of the death master file match.

(2) No beneficiary or person, as applicable for unclaimed property reporting purposes under chapter 556, has a last known address in this state.

b. Once the insurer has reported upon and remitted the proceeds of the policy, annuity, or retained asset account to the state pursuant to chapter 556, the insurer is relieved from any and all additional liability to any beneficiary or authorized person relating to the proceeds reported upon and remitted.

2014 Acts, ch 1134, §23, 24; 2016 Acts, ch 1073, §146

507B.5 Favored agent or insurer — coercion of debtors.

1. No person may do any of the following:

a. Require, as a condition precedent to the lending of money or extension of credit, or any renewal thereof, that the person to whom such money or credit is extended or whose obligation the creditor is to acquire or finance, negotiate any policy or contract of insurance through a particular insurer or group of insurers or agent or broker or group of agents or brokers.

b. Unreasonably disapprove the insurance policy provided by a borrower for the protection of the property securing the credit or lien.

c. Require directly or indirectly that any borrower, mortgagor, purchaser, insurer, broker, or agent pay a separate charge in connection with the handling of any insurance policy required as security for a loan on real estate or pay a separate charge to substitute the insurance policy of one insurer for that of another.

d. Use or disclose information resulting from a requirement that a borrower, mortgagor or purchaser furnish insurance of any kind on real property being conveyed or used as collateral security to a loan, when such information is to the advantage of the mortgagee, vendor, or lender, or is to the detriment of the borrower, mortgagor, purchaser, insurer, or the agent or broker complying with such a requirement.

2. Subsection 1, paragraph *"c"* of this section does not include the interest which may be charged on premium loans or premium advancements in accordance with the security instrument.

3. For purposes of subsection 1, paragraph *"b"* of this section, such disapproval shall be deemed unreasonable if it is not based solely on reasonable standards uniformly applied, relating to the extent of coverage required and the financial soundness and the services of an insurer. Such standards shall not discriminate against any particular type of insurer, nor shall such standards call for the disapproval of an insurance policy because such policy contains coverage in addition to that required.

4. If a violation of this section is found, the person in violation shall be subject to the same procedures and penalties as are applicable to other provisions of this chapter.

5. For purposes of this section, *"person"* includes any individual, corporation, association, partnership, or other legal entity.

[C73, 75, 77, 79, 81, §507B.5]

2015 Acts, ch 29, §69

Referred to in §507B.6, 507B.12, 535.8

507B.6 Hearings — service of process, attendance of witnesses, and production of documents.

1. Whenever the commissioner believes that any person has been engaged or is engaging in this state in any unfair method of competition or any unfair or deceptive act or practice whether or not defined in section 507B.4, 507B.4A, or 507B.5 and that a proceeding by the commissioner in respect to such method of competition or unfair or deceptive act or practice would be in the public interest, the commissioner shall issue and serve upon such person a statement of the charges in that respect and a notice of a hearing on such charges to be held at a time and place fixed in the notice, which shall not be less than ten days after the date of the service of such notice.

2. At the time and place fixed for such hearing, such person shall have an opportunity to be heard and to show cause why an order should not be made by the commissioner requiring such person to cease and desist from the acts, methods or practices so complained of. Upon good cause shown, the commissioner shall permit any person to intervene, appear and be heard at such hearing by counsel or in person.

3. Nothing contained in this chapter shall require the observance at any such hearing of formal rules of pleading or evidence.

4. The commissioner, upon such hearing, may administer oaths, examine and cross-examine witnesses, receive oral and documentary evidence, and shall have the power to subpoena witnesses, compel their attendance, and require the production of books, papers, records, correspondence, or other documents which the commissioner deems relevant to the inquiry. The commissioner, upon such hearing, may, and upon the request of any party shall, cause to be made a stenographic record of all the evidence and all the proceedings had at such hearing. If no stenographic record is made and if a judicial review is sought, the commissioner shall prepare a statement of the evidence and proceeding for use on review. In case of a refusal of any person to comply with any subpoena issued hereunder or to testify with respect to any matter concerning which the person may be lawfully interrogated, the district court of Polk county or the county where such party resides, on application of the commissioner, may issue an order requiring such person to comply with such subpoena and to testify; and any failure to obey any such order of the court may be punished by the court as a contempt thereof.

5. Statements of charges, notices, orders, subpoenas, and other processes of the commissioner under this chapter may be served by anyone authorized by the commissioner, either in the manner provided by law for service of process in civil actions, or by mailing a copy by restricted certified mail to the person affected by the statement, notice, order, subpoena, or other process at the person's residence or principal office or place of business. The verified return by the person serving the statement, notice, order, subpoena, or other process, setting forth the manner of such service, shall be proof of service, and the return receipt for the statement, notice, order, subpoena, or other process, mailed by restricted certified mail, shall be proof of the service.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §507B.6]

2001 Acts, ch 69, §9, 39; 2004 Acts, ch 1110, §22

Referred to in §507B.3, 507B.7A, 514B.26, 522A.3, 522B.11, 522D.7

507B.6A Summary cease and desist orders.

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

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

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

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

2004 Acts, ch 1110, §23
Referred to in §505.8, 507B.7A, 508E.7

507B.7 Cease and desist orders and penalties.

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

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

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

c. Payment of interest at the rate of ten percent per annum if the commissioner finds that the insurer failed to pay interest as required under section 507B.4, subsection 3, paragraph "*p*".

2. Until the expiration of the time allowed under section 507B.8 for filing a petition for review if no such petition has been duly filed within such time, or, if a petition for review has been filed within such time, then until the transcript of the record in the proceeding has been filed in the district court, as hereinafter provided, the commissioner may at any time, upon such notice and in such manner as the commissioner may deem proper, modify or set aside in whole or in part any order issued by the commissioner under this section.

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

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

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

violation. A penalty collected under this lettered paragraph shall be deposited as provided in section 505.7.

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

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §507B.7; 81 Acts, ch 165, §3]

2001 Acts, ch 69, §10, 39; 2004 Acts, ch 1110, §24; 2009 Acts, ch 181, §65; 2012 Acts, ch 1021, §97; 2012 Acts, ch 1023, §152

Referred to in §505.8, 507B.7A, 510.21, 510B.3

507B.7A Administrative hearings.

Section 505.29 is applicable to hearings required by sections 507B.6, 507B.6A, and 507B.7.

2006 Acts, ch 1117, §26

507B.8 Judicial review of cease and desist orders.

1. Judicial review of the actions of the commissioner may be sought in accordance with the terms of the Iowa administrative procedure Act, chapter 17A. To the extent that an order of the commissioner is affirmed in any judicial review proceeding, the court shall thereupon issue its own order commanding obedience to the terms of such order of the commissioner.

2. After the period for judicial review of an order of the commissioner has expired and no petition for judicial review has been filed, the attorney general upon request of the commissioner of insurance shall proceed in the Iowa district court to enforce an order of the commissioner. The court shall enter its order commanding obedience to the terms of the commissioner's order.

3. No order of the commissioner under this chapter or order of a court to enforce the same shall in any way relieve or absolve any person affected by such order from any liability under any other laws of this state.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §507B.8; 82 Acts, ch 1003, §3]

2003 Acts, ch 44, §114; 2018 Acts, ch 1041, §127

Referred to in §507B.7

Code editor directive applied

507B.9 Sale of duplicate coverage prohibited.

1. A person shall not knowingly engage in the sale of duplicate Medicare supplement insurance coverage, as defined by rule of the commissioner.

2. The commissioner of insurance shall adopt rules pursuant to chapter 17A which define the sale of duplicate Medicare supplement insurance coverage.

[C81, §507B.9]

507B.10 Reserved.

507B.11 Penalty. Repealed by 2004 Acts, ch 1110, §71.

507B.12 Rules.

1. The commissioner may, after notice and hearing, promulgate reasonable rules, as are necessary or proper to identify specific methods of competition or acts or practices which are prohibited by section 507B.4, 507B.4A, or 507B.5, but the rules shall not enlarge upon or extend the provisions of such sections. Such rules shall be subject to review in accordance with chapter 17A.

2. The powers vested in the commissioner by this chapter shall be additional to any other powers to enforce any penalties, fines or forfeitures authorized by law with respect to the methods, acts and practices hereby declared to be unfair or deceptive.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §507B.12]

2001 Acts, ch 69, §11, 39; 2018 Acts, ch 1041, §127

Code editor directive applied

507B.13 Immunity from prosecution.

If any person shall ask to be excused from attending and testifying or from producing any books, papers, records, correspondence or other documents at any hearing on the ground that the testimony or evidence required of the person may tend to incriminate the person or

subject the person to a penalty or forfeiture, and shall notwithstanding be directed to give such testimony or produce such evidence, the person must nonetheless comply with such direction, but the person shall not thereafter be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which the person may testify or produce evidence pursuant thereto, and no testimony so given or evidence produced shall be received against the person upon any criminal action, investigation or proceeding, provided, however, that no such individual so testifying shall be exempt from prosecution or punishment for any perjury committed by the individual while so testifying and the testimony or evidence so given or produced shall be admissible against the individual upon any criminal action, investigation or proceeding concerning such perjury, nor shall the individual be exempt from the refusal, revocation or suspension of any license, permission or authority conferred, or to be conferred, pursuant to the insurance law of this state. Any such individual may execute, acknowledge and file in the office of the commissioner a statement expressly waiving such immunity or privilege in respect to any transaction, matter or thing specified in such statement and thereupon the testimony of such person or such evidence in relation to such transaction, matter or thing may be received or produced before any judge or justice, court, tribunal, grand jury or otherwise, and if so received or produced such individual shall not be entitled to any immunity or privilege on account of any testimony the individual may so give or evidence so produced.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §507B.13]

507B.14 Transfer of insurance stock.

1. When a controlling interest in two or more corporations, at least one of which is an insurance company domiciled in this state, is held by any person, group of persons, firm, or corporation, no exchange of stock, transfer or sale of securities, or loan based upon securities of any such corporation shall take place between such corporations, or between such person, group of persons, firm or corporation and such corporations, without first securing the approval of the insurance commissioner. If, in the opinion of the insurance commissioner, such sale, transfer, exchange, or loan would be improper and would work to the detriment of any such insurance company, the commissioner shall have the power to prohibit the transaction. A person, firm, or corporate officer or director shall not aid such transaction without approval of the insurance commissioner. A person, firm, or corporate officer or director who willfully violates this section is guilty of a class "D" felony. A person, firm, or corporate officer or director who willfully violates this section, and when such violation results in a loss of more than ten thousand dollars, is guilty of a class "C" felony.

2. For purposes of this section, *"controlling interest"* means actual control or the possession directly or indirectly of the power to direct or cause the direction of the management and policies of a firm, partnership, corporation, association, or trust, whether through the ownership of voting securities, by contract, or otherwise.

[C66, 71, 73, 75, 77, 79, 81, §507B.14]

2004 Acts, ch 1161, §66, 68; 2017 Acts, ch 29, §142

CHAPTER 507C

INSURERS SUPERVISION, REHABILITATION, AND LIQUIDATION

Referred to in §87.4, 296.7, 331.301, 364.4, 505.4, 505.28, 505.29, 507.14, 507A.4, 508D.6, 510A.6, 514B.25, 515E.3A, 521A.14, 521C.11, 521E.5, 521E.6, 521E.9, 521E.10, 521F.6, 521F.7, 521F.10, 521F.11, 669.14, 670.7

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SUBCHAPTER I

GENERAL PROVISIONS

507C.1 Short title — construction — purpose.

1. This chapter shall be cited as the *"Insurers Supervision, Rehabilitation, and Liquidation Act"*.

2. This chapter shall not be interpreted to limit the powers granted the commissioner by any other law.

3. This chapter shall be liberally construed to effect the purpose stated in subsection 4.

4. The purpose of this chapter is the protection of the interests of insureds, claimants,

creditors, and the public, with minimum interference with the normal prerogatives of the owners and managers of insurers, through all of the following:

a. Early detection of a potentially dangerous condition in an insurer and prompt application of appropriate corrective measures.

b. Improved methods for rehabilitating insurers, involving the cooperation and management expertise of the insurance industry.

c. Enhanced efficiency and economy of liquidation, through clarification of the law, to minimize legal uncertainty and litigation.

d. Equitable apportionment of any unavoidable loss.

e. Lessening the problems of interstate rehabilitation and liquidation by facilitating cooperation between states in the liquidation process, and by extending the scope of personal jurisdiction over debtors of the insurer outside this state.

f. Regulation of the insurance business by the impact of the law relating to delinquency procedures and substantive rules on the entire insurance business.

g. Providing for a comprehensive scheme for the rehabilitation and liquidation of insurance companies and those subject to this chapter as part of the regulation of the business of insurance, the insurance industry, and insurers in this state. Proceedings in cases of insurer insolvency and delinquency are deemed an integral aspect of the business of insurance and are of vital public interest and concern.

84 Acts, ch 1175, §1; 92 Acts, ch 1117, §8, 9

507C.2 Definitions.

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

1. *"Affiliate"* of or *"affiliated"* with a specific person, means a person that directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control with, the person specified.

2. *"Ancillary state"* means a state other than a domiciliary state.

3. *"Commissioner"* means the commissioner of insurance and any successor in office.

4. *"Commodity contract"* means any of the following:

a. A contract for the purchase or sale of a commodity for future delivery on, or subject to the rules of, a board of trade designated as a contract market by the commodity futures trading commission under the federal Commodity Exchange Act, 7 U.S.C. §1 et seq., or a board of trade outside the United States.

b. An agreement that is subject to regulation under section 19 of the federal Commodity Exchange Act, 7 U.S.C. §1 et seq., and that is commonly known to the commodities trade as a margin account, margin contract, leverage account, or leverage contract.

c. An agreement or transaction that is subject to regulation under section 4c(b) of the federal Commodity Exchange Act, 7 U.S.C. §1 et seq., and that is commonly known to the commodities trade as a commodity option.

5. *"Control"* means the same as defined in section 521A.1, subsection 3.

6. *"Creditor"* is a person having a claim against an insurer, whether the claim is matured or unmatured, liquidated or unliquidated, secured or unsecured, absolute, fixed or contingent.

7. *"Delinquency proceeding"* means a proceeding instituted against an insurer for the purpose of liquidating, rehabilitating, reorganizing or conserving the insurer, and a summary proceeding under section 507C.9 or 507C.10. *"Formal delinquency proceeding"* means any liquidation or rehabilitation proceeding.

8. *"Doing business"* means any of the following acts, whether effected by mail or otherwise:

a. The issuance or delivery of contracts of insurance to persons resident in this state.

b. The solicitation of applications for the contracts, or other negotiations preliminary to the execution of the contracts.

c. The collection of premiums, membership fees, assessments, or other consideration for the contracts.

d. The transaction of matters subsequent to execution of the contracts and arising out of them.

e. Operating as an insurer under a license or certificate of authority issued by the division.

9. *"Domiciliary state"* means the state in which an insurer is incorporated or organized, or, in the case of an alien insurer, its state of entry.

10. *"Fair consideration"* is given for property or obligation when either of the following is present:

a. When in good faith property is conveyed or services are rendered or an obligation is incurred or an antecedent debt is satisfied in exchange for the property or obligation, as a fair equivalent therefor, and in good faith.

b. When the property or obligation is received in good faith to secure a present advance or antecedent debt in amount not disproportionately small as compared to the value of the property or obligation obtained.

11. *"Federal home loan bank"* means a federal home loan bank established under the federal Home Loan Bank Act, 12 U.S.C. §1421 et seq.

12. *"Foreign country"* means another jurisdiction not in a state.

13. *"Forward contract"* means a contract for the purchase, sale, or transfer of a commodity, as defined in section 1 of the federal Commodity Exchange Act, 7 U.S.C. §1 et seq., or any similar good, article, service, right, or interest that is presently or in the future becomes the subject of dealing in the forward contract trade, or product or byproduct thereof, with a maturity date more than two days after the date the contract is entered into, including, but not limited to, a repurchase transaction, reverse repurchase transaction, consignment, lease, swap, hedge transaction, deposit, loan, option, allocated transaction, unallocated transaction, or a combination of them or option on any of them. *"Forward contract"* does not include a commodity contract.

14. *a.* *"General assets"* means all real, personal, or other property, not specifically mortgaged, pledged, deposited, or otherwise encumbered for the security or benefit of specified persons or classes of persons. As to specifically encumbered property, *"general assets"* includes all property or its proceeds in excess of the amount necessary to discharge the sum or sums secured by the property or its proceeds. Assets held in trust and on deposit for the security or benefit of all policyholders or all policyholders and creditors, in more than a single state, shall be treated as general assets.

b. *"General assets"* does not include that portion of the assets of the insurer allocated to and accumulated in a separate account established pursuant to section 508A.1, unless otherwise provided by the applicable policy, annuity, agreement, instrument, or contract. However, if any assets allocated to and accumulated in a separate account, after the satisfaction of any liabilities with regard to the operation of the separate account, are in excess of an amount equal to the reserves and other liabilities with respect to the separate account, the excess shall be treated as part of the general assets of the insurer.

15. *"Guaranty association"* means the Iowa insurance guaranty association created in chapter 515B, the Iowa life and health insurance guaranty association created in chapter 508C, and any other similar entity either presently existing or to be created by the general assembly for the payment of claims of insolvent insurers. *"Foreign guaranty association"* means a similar entity presently existing in or to be created in the future by the legislature of any other state.

16. *a.* *"Insolvency"* or *"insolvent"* means any of the following:

(1) For an insurer issuing only assessable fire insurance policies, either of the following:

(a) The inability to pay any obligation within thirty days after it becomes payable.

(b) If an assessment is made, the inability to pay the assessment within thirty days following the date specified in the first assessment notice issued after the date of loss.

(2) For any other insurer that it is unable to pay its obligations when they are due, or when its admitted assets do not exceed its liabilities plus the greater of:

(a) Any capital and surplus required by law for its organization.

(b) The total par or stated value of its authorized and issued capital stock.

(3) As to an insurer licensed to do business in this state as of July 1, 1984, which does not meet the standard established under subparagraph (2), the term *"insolvency"* or *"insolvent"* shall mean, for a period not to exceed three years from July 1, 1984, that it is unable to pay its obligations when they are due or that its admitted assets do not exceed its liabilities plus any

required capital contribution ordered by the commissioner under provisions of the insurance law.

b. For purposes of this subsection *"liabilities"* includes but is not limited to reserves required by statute or by the division's rules or specific requirements imposed by the commissioner upon a company at the time of or subsequent to admission.

17. *"Insurer"* means a person who has done, purports to do, is doing or is licensed to do insurance business, and is or has been subject to the authority of, or to liquidation, rehabilitation, reorganization, supervision, or conservation by an insurance commissioner. For purposes of this chapter, any other person included under section 507C.3 is an insurer.

18. *"Insurer-member"* means an insurer who is a member of a federal home loan bank.

19. *"Netting agreement"* means an agreement, including terms and conditions incorporated by reference therein, including a master agreement, which master agreement, together with all schedules, confirmations, definitions, and addenda thereto and transactions under any thereof, shall be treated as one netting agreement, that documents one or more transactions between parties to the agreement for or involving one or more qualified financial contracts and that provides for the netting or liquidation of qualified financial contracts or present or future payment obligations or payment entitlements thereunder, including liquidation or closeout values relating to such obligations or entitlements among the parties to the netting agreement.

20. *"Preferred claim"* means a claim with respect to which the terms of this chapter accord priority of payment from the general assets of the insurer.

21. *"Qualified financial contract"* means a commodity contract, forward contract, repurchase agreement, securities contract, swap agreement, and any similar agreement that the commissioner determines by regulation, resolution, or order to be a qualified financial contract for the purposes of this chapter.

22. *"Receiver"* means receiver, liquidator, rehabilitator, or conservator as the context requires.

23. *"Reciprocal state"* means a state other than this state in which section 507C.18, subsection 1, sections 507C.52 and 507C.53 and sections 507C.55 through 507C.57 are in force, and in which provisions are in force requiring that the commissioner or equivalent official be the receiver of a delinquent insurer, and in which some provision exists for the avoidance of fraudulent conveyances and preferential transfers.

24. *"Repurchase agreement"* means an agreement, including related terms, that provides for the transfer of certificates of deposit, eligible bankers' acceptances, or securities that are direct obligations of, or that are fully guaranteed as to principal and interest by, the United States or an agency of the United States against the transfer of funds by the transferee of the certificates of deposit, eligible bankers' acceptances or securities, with a simultaneous agreement by the transferee to transfer to the transferor certificates of deposit, eligible bankers' acceptances, or securities as described above, at a date certain not later than one year after the transfers or on demand against the transfer of funds. For the purposes of this definition, the items that may be subject to a repurchase agreement include, but are not limited to, mortgage-related securities, a mortgage loan, and an interest in a mortgage loan, but shall not include any participation in a commercial mortgage loan, unless the commissioner determines by rule, resolution, or order to include the participation within the meaning of the term. Repurchase agreement also applies to a reverse repurchase agreement.

25. *"Secured claim"* means a claim secured by mortgage, trust deed, pledge, deposit as security, escrow, or otherwise, but not including special deposit claims or claims against general assets. The term also includes claims which have become liens upon specific assets by reason of judicial process.

26. *"Securities contract"* means a contract for the purchase, sale, or loan of a security, including an option for the repurchase or sale of a security, certificate of deposit, or group or index of securities, including an interest therein or based on the value thereof, or an option entered into on a national securities exchange relating to foreign currencies, or the guarantee of a settlement of cash or securities by or to a securities clearing agency. For the purposes of this definition, the term *"security"* includes a mortgage loan, mortgage-related securities, and an interest in any mortgage loan or mortgage-related security.

27. *"Special deposit claim"* means a claim secured by a deposit made pursuant to statute for the security or benefit of a limited class or classes of persons, but not including a claim secured by general assets.

28. *"State"* means a state, district, or territory of the United States and the Panama Canal Zone.

29. *"Swap agreement"* means an agreement, including the terms and conditions incorporated by reference in an agreement, that is a rate swap agreement, basis swap, commodity swap, forward rate agreement, interest rate future, interest rate option, forward foreign exchange agreement, spot foreign exchange agreement, rate cap agreement, rate floor agreement, rate collar agreement, currency swap agreement, cross-currency rate swap agreement, currency future, or currency option or any other similar agreement, and includes any combination of agreements and an option to enter into an agreement.

30. *"Transfer"* shall include the sale and every other and different mode, direct or indirect, of disposing of or of parting with property or with an interest in the property, or with the possession of the property or of fixing a lien upon the property or upon an interest in the property, absolutely or conditionally, voluntarily, by or without judicial proceedings. The retention of a security title to property delivered to a debtor shall be deemed a transfer suffered by a debtor.

84 Acts, ch 1175, §2; 92 Acts, ch 1117, §10; 2005 Acts, ch 70, §4; 2006 Acts, ch 1117, §27; 2012 Acts, ch 1023, §102; 2014 Acts, ch 1008, §1

Referred to in §515B.2

507C.3 Applicability.

This chapter may be applied to any of the following:

1. Insurers who are doing or have done insurance business in this state, and against whom claims arising from that business may exist now or in the future.

2. Insurers who purport to do insurance business in this state.

3. Insurers who have insureds who are residents in this state.

4. Other persons organized or in the process of organizing with the intent to do insurance business in this state.

5. Nonprofit health service corporations and all fraternal benefit societies and beneficial societies subject to chapters 512A, 512B, and 514.

6. Prepaid health care delivery plans which are regulated by the commissioner.

84 Acts, ch 1175, §3; 93 Acts, ch 88, §5

Referred to in §507C.2

507C.4 Jurisdiction and venue.

1. A delinquency proceeding shall not be commenced under this chapter by a person other than the commissioner. A court shall not have jurisdiction over a proceeding under this chapter commenced by a person other than the commissioner.

2. A court shall not have jurisdiction over a petition praying for the dissolution, liquidation, rehabilitation, sequestration, conservation or receivership of an insurer, or praying for an injunction or restraining order or other relief preliminary to, incidental to or relating to such proceedings other than pursuant to this chapter.

3. A court having jurisdiction of the subject matter has jurisdiction over a person served pursuant to the Iowa rules of civil procedure or other applicable provisions in an action brought by the receiver of a domestic insurer or an alien insurer domiciled in this state for any of the following:

a. In an action on or incident to an obligation if the person served is obligated to the insurer in any way as an incident to an agency or brokerage arrangement that may exist or has existed between the insurer and the agent or broker.

b. In an action on or incident to a reinsurance contract, if the person served is a reinsurer who has at any time written a policy of reinsurance for an insurer against which a delinquency proceeding has been instituted, or is an agent or broker of or for the reinsurer and the action results from or is incident to the relationship with the reinsurer.

c. In an action resulting from a relationship with the insurer, if the person served is or has

been an officer, manager, trustee, organizer, promoter, or person in a position of comparable authority or influence in an insurer against which a rehabilitation or liquidation order is in effect when the action is commenced.

d. In an action if the person served is or was at the time of the institution of the delinquency proceeding against the insurer holding assets which are the subject of the proceeding and in which the receiver claims an interest on behalf of the insurer.

e. If the person served is obligated to the insurer in any way whatsoever, in an action on or incident to the obligation.

4. If the court on motion of a party finds that an action should as a matter of substantial justice be tried in a forum outside this state, the court may enter an order to stay the proceedings on the action in this state.

5. All actions authorized in this chapter shall be brought in the district court in Polk county.

84 Acts, ch 1175, §4; 92 Acts, ch 1117, §11, 12; 2015 Acts, ch 29, §70

507C.5 Injunctions and orders.

1. A receiver appointed in a proceeding under this chapter may at any time apply for, and any court of general jurisdiction may grant, restraining orders, preliminary and permanent injunctions, and other orders as necessary to prevent any of the following:

a. The transaction of further business.

b. The transfer of property.

c. Interference with the receiver or with a proceeding under this chapter.

d. Waste of the insurer's assets.

e. Dissipation and transfer of bank accounts.

f. The institution or further prosecution of any actions or proceedings.

g. The obtaining of preferences, judgments, attachments, garnishments, or liens against the insurer, its assets or its policyholders.

h. The levying of execution against the insurer, its assets or its policyholders.

i. The making of a sale or deed for nonpayment of taxes or assessments that would lessen the value of the assets of the insurer.

j. The withholding from the receiver of books, accounts, documents, or other records relating to the business of the insurer.

k. Any other threatened or contemplated action that might lessen the value of the insurer's assets or prejudice the rights of policyholders, creditors, or shareholders, or the administration of a proceeding under this chapter.

2. A receiver may apply to a court outside of the state for the relief described in subsection 1.

3. *a.* Notwithstanding any other provision to the contrary, after the seventh day following the filing of a delinquency proceeding a federal home loan bank shall not be stayed or prohibited from exercising its rights regarding collateral pledged by an insurer-member.

b. If a federal home loan bank exercises its rights regarding collateral pledged by an insurer-member who is subject to a delinquency proceeding, the federal home loan bank shall repurchase any outstanding capital stock that is in excess of that amount of federal home loan bank stock that the insurer-member is required to hold as a minimum investment, to the extent the federal home loan bank in good faith determines the repurchase to be permissible under applicable laws, regulations, regulatory obligations, and the federal home loan bank's capital plan, and consistent with the federal home loan bank's current capital stock practices applicable to its entire membership.

c. Following the appointment of a receiver for an insurer-member, the federal home loan bank shall, within ten business days after a request from the receiver, provide a process and establish a timeline for all of the following:

(1) The release of collateral that exceeds the amount required to support secured obligations remaining after any repayment of loans as determined in accordance with the applicable agreements between the federal home loan bank and the insurer-member.

(2) The release of any of the insurer-member's collateral remaining in the federal home loan bank's possession following repayment of all outstanding secured obligations of the insurer-member in full.

(3) The payment of fees owed by the insurer-member and the operation of deposits and other accounts of the insurer-member with the federal home loan bank.

(4) The possible redemption or repurchase of federal home loan bank stock or excess stock of any class that an insurer-member is required to own.

d. Upon request from a receiver, the federal home loan bank shall provide any available options for an insurer-member subject to a delinquency proceeding to renew or restructure a loan to defer associated prepayment fees, subject to market conditions, the terms of any loans outstanding to the insurer-member, the applicable policies of the federal home loan bank, and the federal home loan bank's compliance with federal laws and regulations.

84 Acts, ch 1175, §5; 2014 Acts, ch 1008, §2

507C.6 Cooperation of officers, owners, and employees — penalty.

1. An officer, manager, director, trustee, owner, employee, or agent of an insurer, or any other person with authority over or in charge of any segment of the insurer's affairs, shall cooperate with the commissioner in any proceeding under this chapter or any investigation preliminary to the proceeding. The term *"person"* as used in this section, shall include any person who exercises control directly or indirectly over activities of the insurer through any holding company or other affiliate of the insurer. *"To cooperate"* shall include, but shall not be limited to, the following:

a. To reply promptly in writing to any inquiry from the commissioner requesting a reply.

b. To make available to the commissioner any books, accounts, documents, or other records, information, or property of or pertaining to the insurer and in the person's possession, custody, or control.

2. A person shall not obstruct or interfere with the commissioner in the conduct of a delinquency proceeding or an investigation preliminary or incidental to a delinquency proceeding.

3. This section does not abridge otherwise existing legal rights, including the right to resist a petition for liquidation, other delinquency proceedings, or other orders.

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

84 Acts, ch 1175, §6; 90 Acts, ch 1234, §4; 2004 Acts, ch 1110, §25

507C.7 Bonds.

In a proceeding under this chapter, the commissioner and the commissioner's deputies shall be responsible on their official bonds for the faithful performance of their duties. If the court deems it desirable for the protection of the assets, it may require an additional bond from the commissioner or the commissioner's deputies. The bonds shall be paid for out of the assets of the insurer as a cost of administration.

84 Acts, ch 1175, §7

507C.8 Continuation of delinquency proceedings. Repealed by 2015 Acts, ch 30, §198.

507C.8A Condition on release from delinquency proceedings.

An insurer subject to a delinquency proceeding shall not be released from the delinquency proceeding unless the proceeding is converted into a rehabilitation or liquidation proceeding; shall not be permitted to solicit or accept new business, or request or accept the restoration of any suspended or revoked license or certificate of authority; and shall not be returned to the control of the insurer's shareholders or private management, or have any of the insurer's assets returned to the control of its shareholders or private management, until all payments of or on account of the insurer's contractual obligations by all guaranty associations, along with all expenses of such obligations and interest on all such payments and expenses, have been repaid to the guaranty association or a plan of repayment by the insurer is approved by the guaranty association.

92 Acts, ch 1117, §13

SUBCHAPTER II

SUMMARY PROCEEDINGS

507C.9 Summary orders and supervision proceedings — penalty.

1. If after a hearing held under subsection 5, the commissioner determines that a domestic insurer has committed or engaged in, or is about to commit or engage in, an act, practice, or transaction that would subject it to delinquency proceedings under this chapter, the commissioner may make and serve upon the insurer and any other persons involved orders as are reasonably necessary to correct, eliminate, or remedy the conduct, condition, or ground.

2. If the commissioner upon reasonable cause determines that a domestic insurer is in a condition as to render the continuance of its business hazardous to the public or to holders of its policies or certificates of insurance or if the domestic insurer gives its consent then the commissioner shall do both of the following:

a. Notify the insurer of the determination.

b. Furnish to the insurer a written list of the commissioner's requirements to abate the determination.

3. If the commissioner makes a determination to supervise an insurer subject to an order under subsection 1 or 2, the commissioner shall notify the insurer that it is under the supervision of the commissioner. During the period of supervision, the commissioner may appoint a supervisor to supervise the insurer. The order appointing a supervisor shall direct the supervisor to enforce orders issued under subsections 1 and 2 and may also require that during the period of supervision, the insurer shall not do any of the following without the prior approval of the commissioner or the commissioner's supervisor:

a. Dispose of, convey or encumber its assets or its business in force.

b. Withdraw from its bank accounts.

c. Lend its funds.

d. Invest its funds.

e. Transfer its property.

f. Incur any debt, obligation or liability.

g. Merge or consolidate with another company.

h. Enter into a new reinsurance contract or treaty.

i. Write new or renewal business.

4. An insurer subject to an order under this section shall comply with the lawful requirements of the commissioner and, if placed under supervision, shall have sixty days from the date the supervision order is served within which to comply with the requirements of the commissioner. If the insurer fails to comply, the commissioner may institute proceedings under section 507C.12 or 507C.17 to have a rehabilitator or liquidator appointed or extend the period of supervision.

5. The notice of hearing and any order issued pursuant to subsection 1 shall be served upon the insurer pursuant to chapter 17A. The notice of hearing shall state the time and place of hearing, and the conduct, condition or ground upon which the commissioner would base an order. Unless mutually agreed between the commissioner and the insurer, the hearing shall occur not less than ten days nor more than thirty days after notice is served and shall be either in Polk county or in some other place convenient to the parties to be designated by the commissioner. All hearings under subsection 1 shall be confidential unless the insurer requests a public hearing.

6. *a.* An insurer subject to an order under subsection 2 may request a hearing to review that order. The hearing shall be held as provided in subsection 5. The request for a hearing shall not stay the effect of the order.

b. If the commissioner issues an order under subsection 2, the insurer may waive a commissioner's hearing and apply for immediate judicial relief by means of any remedy afforded by law without first exhausting administrative remedies. Subsequent to a hearing, a party to the proceedings whose interests are substantially affected is entitled to judicial review of any order issued by the commissioner.

7. During the period of supervision the insurer may request the commissioner to review an action taken or proposed to be taken by the supervisor by specifying the reasons the action complained of is believed not to be in the best interest of the insurer.

8. If a person has violated a supervision order issued under this section which was in effect, the person is liable to pay a civil penalty imposed by the district court not to exceed ten thousand dollars.

9. The commissioner may apply for and any court of general jurisdiction may grant restraining orders, preliminary and permanent injunctions, and other orders as necessary to enforce a supervision order.

84 Acts, ch 1175, §9
Referred to in §507C.2, 507C.11, 507C.12, 507C.54, 508C.12

507C.10 Seizure order.

1. With respect to a domestic insurer the commissioner may file in the district court a petition alleging all of the following:

a. That there exist grounds that would justify a court order for a formal delinquency proceeding against an insurer under this chapter.

b. That the interests of policyholders, creditors, or the public will be endangered by delay.

c. The contents of an order deemed necessary by the commissioner.

2. Upon a filing under subsection 1, the court may issue, ex parte and without a hearing, the requested order which shall direct the commissioner to take possession and control of all or a part of the property, books, accounts, documents, and other records of an insurer, and of the premises occupied by it for transaction of its business, and until further order of the court enjoin the insurer and its officers, managers, agents, and employees from disposing of the insurer's property and from transacting of the insurer's business, except with the written consent of the commissioner.

3. The court shall specify in the order the duration of the order. The duration shall be the time the court deems necessary for the commissioner to ascertain the condition of the insurer. Upon motion or on its own, the court may from time to time hold hearings as it deems desirable after notice as it deems appropriate, and may extend, shorten, or modify the terms of the seizure order. The court shall vacate the seizure order if the commissioner fails to commence a formal proceeding under this chapter after having had a reasonable opportunity to do so. An order of the court pursuant to a formal proceeding under this chapter shall automatically vacate the seizure order.

4. Entry of a seizure order under this section is not an anticipatory breach of a contract of the insurer.

5. An insurer subject to an ex parte order under this section may petition the court after the issuance of the order for a hearing and review of the order. The court shall hold the hearing and review not more than fifteen days after the request. A hearing under this subsection may be held privately in chambers. Upon request of the insurer the hearing shall be held privately in chambers.

6. If at any time after the issuance of an order under this section it appears to the court that a person whose interest is or will be substantially affected by the order did not appear at the hearing and has not been served, the court may order that notice be given. An order that notice be given shall not stay the effect of any order previously issued by the court.

84 Acts, ch 1175, §10
Referred to in §507C.2, 507C.11, 507C.54

507C.11 Confidentiality of hearings.

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

1. The insurer requests that the records be made public.

2. After a hearing on the issue with the parties to the proceeding, the court orders that the

records be made public. Until such court order, the clerk of court shall hold all papers filed in a confidential file.

84 Acts, ch 1175, §11; 92 Acts, ch 1117, §14; 2004 Acts, ch 1110, §26
Referred to in §507C.54

SUBCHAPTER III

FORMAL PROCEEDINGS

507C.12 Grounds for rehabilitation.

1. The commissioner may petition the district court for an order to rehabilitate a domestic insurer or an alien insurer domiciled in this state on any of the following grounds:

a. The insurer is in a condition that the further transaction of business would be financially hazardous to its policyholders, creditors, or the public.

b. There is reasonable cause to believe that there has been embezzlement from the insurer, wrongful sequestration or diversion of the insurer's assets, forgery or fraud affecting the insurer, or other illegal conduct in, by, or with respect to the insurer that, if established, would endanger assets in an amount threatening the solvency of the insurer.

c. The insurer has failed to remove a person, whether an officer, manager, general agent, employee, or other person, who in fact has executive authority in the insurer, if the person has been found after notice and hearing by the commissioner to be dishonest or untrustworthy in a way affecting the insurer's business.

d. Control of the insurer is in a person or persons found after notice and hearing to be untrustworthy. Control may be by stock ownership or by other means and may be direct or indirect.

e. A person who in fact has executive authority in the insurer, whether an officer, manager, general agent, director or trustee, employee, or other person has refused to be examined under oath by the commissioner concerning the insurer's affairs, in this state or elsewhere, and after reasonable notice of the fact the insurer has failed promptly and effectively to terminate the employment and status of the person and all the person's influence on management.

f. After demand by the commissioner under chapter 507 or under this chapter, the insurer has failed to promptly make available for examination any of its property, books, accounts, documents, or other records, or those of a subsidiary or related company within the control of the insurer, or those of a person having executive authority in the insurer so far as they pertain to the insurer.

g. Without first obtaining the written consent of the commissioner, the insurer has transferred, or attempted to transfer, in a manner contrary to chapter 521 or 521A, substantially its entire property or business, or has entered into a transaction the effect of which is to merge, consolidate, or reinsure substantially its entire property or business in or with the property or business of any other person.

h. The insurer or its property has been or is the subject of an application for the appointment of a receiver, trustee, custodian, conservator or sequestrator or similar fiduciary of the insurer of its property other than as authorized under the insurance laws of this state, and the appointment has been made or is imminent, and the appointment might oust the court of this state of jurisdiction or might prejudice orderly delinquency proceedings under this chapter.

i. Within the previous three years the insurer has willfully violated its charter or articles of incorporation, its bylaws, an insurance law of this state, or a valid order of the commissioner under section 507C.9.

j. The insurer has failed to pay within sixty days after the due date an obligation to a state or any subdivision of a state or a judgment entered in a state, if the court in which the judgment was entered had jurisdiction over the subject matter. However, nonpayment shall not be a ground until sixty days after a good faith effort by the insurer to contest the obligation has been terminated whether the effort is before the commissioner or in the courts,

or the insurer has systematically attempted to compromise or renegotiate previously agreed settlements with its creditors on the ground that it is financially unable to pay its obligations in full.

k. The insurer has failed to file its annual report or other financial report required within the time allowed and, after written demand by the commissioner, has failed to immediately give an adequate explanation.

l. The board of directors or the holders of a majority of the shares entitled to vote, or a majority of those individuals entitled to the control of those entities request or consent to rehabilitation under this chapter.

2. If the petition alleges that extraordinary circumstances exist and that there is imminent substantial risk to the insurer's solvency if the insurer is not immediately placed into rehabilitation, the court may issue, ex parte and without a hearing, the requested order of rehabilitation. An insurer subject to an ex parte order under this section may petition the court after the issuance of the order for a hearing and review of the order. The court shall hold the hearing and review not more than fifteen days after the request. A hearing under this section may be held privately in chambers. Upon the request of the insurer, the hearing shall be held privately in chambers.

84 Acts, ch 1175, §12; 91 Acts, ch 26, §35; 2012 Acts, ch 1023, §157
Referred to in §507C.9, 507C.16, 507C.17, 507C.50, 507C.51

507C.13 Rehabilitation orders.

1. An order to rehabilitate the business of a domestic insurer or an alien insurer domiciled in this state shall appoint the commissioner as the rehabilitator. The order shall direct the rehabilitator to take possession of the assets of the insurer, and to administer them under the general supervision of the court. The filing or recording of the order with the clerk of the district court or recorder of deeds of the county in which the principal business of the insurer is conducted, or the county in which its principal office or place of business is located, is the same notice as a deed, bill of sale, or other evidence of title duly filed or recorded with that recorder of deeds. The order to rehabilitate the insurer shall vest title to all assets of the insurer in the rehabilitator.

2. An order issued under this section requires accounting to the court by the rehabilitator. Accountings shall be at intervals the court specifies in the order. Each accounting must include a report concerning the rehabilitator's opinion as to whether a plan pursuant to section 507C.14, subsection 4, will be prepared. If the rehabilitator includes in any accounting that such a plan is likely, the accounting shall also include a proposed timetable for the preparation and implementation of the plan.

3. Entry of an order of rehabilitation is not an anticipatory breach of a contract of the insurer.

84 Acts, ch 1175, §13; 92 Acts, ch 1117, §15
Referred to in §507C.15, 507C.37

507C.14 Powers and duties of the rehabilitator.

1. The commissioner as rehabilitator may appoint one or more special deputies. The special deputies shall have the powers and responsibilities of the rehabilitator granted under this section. The commissioner may employ counsel, clerks, and assistants as necessary. The compensation of the special deputy, counsel, clerks, and assistants and all expenses of taking possession of the insurer and of conducting the proceedings shall be fixed by the commissioner with the approval of the court and shall be paid out of the funds or assets of the insurer. The persons appointed under this section shall serve at the pleasure of the commissioner. If the property of the insurer does not contain sufficient cash or liquid assets to defray the costs incurred, the commissioner may advance the costs so incurred out of any appropriation for the maintenance of the division. Amounts so advanced for expenses of administration shall be repaid to the commissioner for the use of the division out of the first available money of the insurer.

2. The rehabilitator may take action as the rehabilitator deems necessary or appropriate to reform and revitalize the insurer. The rehabilitator shall have the powers of the directors,

officers, and managers of the insurer, whose authority shall be suspended, except as the powers are redelegated by the rehabilitator. The rehabilitator shall have power to direct and manage, to hire and discharge employees subject to contract rights the employees may have, and to deal with the property and business of the insurer.

3. If it appears to the rehabilitator that there has been criminal or tortious conduct, or breach of a contractual or fiduciary obligation by any person detrimental to the insurer, the rehabilitator may pursue appropriate legal remedies on behalf of the insurer.

4. If the rehabilitator determines that reorganization, consolidation, conversion, reinsurance, merger, or other transformation of the insurer is appropriate, the rehabilitator shall prepare a plan to effect the changes. Upon application of the rehabilitator for approval of the plan, and after notice and hearings as the court may prescribe, the court may either approve, disapprove or modify the plan proposed. Before approving a plan, the court shall find that it is fair and equitable to all parties concerned. If the plan is approved, the rehabilitator shall carry out the plan. In the case of a life insurer, if all rights of shareholders are first relinquished, the plan proposed may include the imposition of liens upon the policies of the company. A plan for a life insurer may also propose imposition of a moratorium upon loan and cash surrender rights under policies.

5. The rehabilitator shall have the power under sections 507C.26 and 507C.27 to avoid fraudulent transfers.

84 Acts, ch 1175, §14; 92 Acts, ch 1117, §16; 93 Acts, ch 88, §6
Referred to in §507C.13, 507C.16

507C.15 Actions by and against rehabilitator.

1. A court in this state, before which an action or proceeding in which the insurer is a party or is obligated to defend a party is pending when a rehabilitation order against the insurer is entered, shall stay the action or proceeding for ninety days and any additional time as necessary for the rehabilitator to obtain proper representation and prepare for further proceedings. The rehabilitator shall take action respecting the pending litigation as necessary in the interests of justice and for the protection of creditors, policyholders, and the public. The rehabilitator shall immediately consider all litigation pending outside this state and shall petition the courts having jurisdiction over that litigation for stays whenever necessary to protect the estate of the insurer.

2. A statute of limitations or defense of laches shall not run in an action by or against an insurer between the filing of a petition for appointment of a rehabilitator for that insurer and the order granting or denying that petition. An action by or against the insurer that might have been commenced when the petition was filed may be commenced for at least sixty days after the order of rehabilitation is entered or the petition is denied. The rehabilitator, upon the issuance of an order for rehabilitation pursuant to section 507C.13, may institute an action or proceeding on behalf of the insurer based upon a cause of action for which the period of limitation has not expired at the time of the filing of the petition for an order to rehabilitate. The action or proceeding by the rehabilitator may be instituted within one year or a longer period if provided by applicable law, of the issuance of the order for rehabilitation.

3. A guaranty association or foreign guaranty association covering life or health insurance or annuities shall have standing to appear in a court proceeding concerning the rehabilitation of a life or health insurer if the association is or may become liable to act as a result of the rehabilitation.

84 Acts, ch 1175, §15; 92 Acts, ch 1117, §17

507C.16 Termination of rehabilitation.

1. Whenever the commissioner determines that further attempts to rehabilitate an insurer would substantially increase the risk of loss to creditors, policyholders, or the public, or would be futile, the commissioner may petition the district court for an order of liquidation. A petition under this subsection shall have the same effect as a petition under section 507C.17. The court shall permit the directors of the insurer to take actions as are reasonably necessary to defend against the petition and may order payment from the estate of the insurer of costs and other expenses of defense as justice may require.

2. The rehabilitator may at any time petition the district court for an order terminating rehabilitation of an insurer. The directors of the insurer may petition the court for an order terminating rehabilitation of the insurer and the court may order payment from the estate of the insurer of costs and other expenses of the petition as justice may require. If the court finds that rehabilitation has been accomplished and that grounds for rehabilitation under section 507C.12 no longer exist, it shall order that the insurer be restored to possession of its property and the control of its business. The court may also terminate the rehabilitation at any time upon its own motion.

3. If the payment of obligations pursuant to a policy issued by the insurer is suspended in substantial part for a period of six months at any time after the appointment of the rehabilitator, and the rehabilitator has not filed an application for a plan pursuant to section 507C.14, subsection 4, the rehabilitator shall petition the court for an order of liquidation on grounds of insolvency.

84 Acts, ch 1175, §16; 92 Acts, ch 1117, §18

507C.17 Grounds for liquidation.

The commissioner may petition the district court for an order directing the commissioner to liquidate a domestic insurer or an alien insurer domiciled in this state on any of the following grounds:

1. Any ground for an order of rehabilitation specified in section 507C.12 whether or not there has been a prior order directing the rehabilitation of the insurer.

2. That the insurer is insolvent.

3. That the insurer is in a condition that the further transaction of business would be hazardous, financially or otherwise, to its policyholders, its creditors, or the public.

84 Acts, ch 1175, §17
Referred to in §507C.9, 507C.16, 507C.51

507C.17A Rehabilitation or liquidation of certain covered domestic insurers.

1. The provisions of this section apply in accordance with Tit. II of the federal Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 12 U.S.C. §5301 et seq., with respect to a domestic insurer that is a covered financial company, as that term is defined under 12 U.S.C. §5381.

2. The commissioner may petition the district court for an order of rehabilitation or liquidation of a domestic insurer pursuant to this section on any of the following grounds:

a. Upon a determination and notification given by the secretary of the treasury of the United States, in consultation with the president of the United States, that the insurer is a covered financial company satisfying the requirements of 12 U.S.C. §5383(b), and the board of directors, or a body performing similar functions of a board of directors, of the insurer acquiesces or consents to the appointment of a receiver pursuant to 12 U.S.C. §5382(a)(1)(A)(i) with such consent to be considered as consent to an order of rehabilitation or liquidation.

b. Upon an order of the United States district court for the District of Columbia under 12 U.S.C. §5382(a)(1)(A)(iv)(I) granting the petition of the secretary of the treasury of the United States concerning the insurer under 12 U.S.C. §5382(a)(1)(A)(i).

c. A petition by the secretary of the treasury of the United States concerning the insurer is granted by operation of law under 12 U.S.C. §5382(a)(1)(A)(v).

3. Notwithstanding any other provision of law to the contrary, after notice to the insurer, a district court may grant an order of rehabilitation or liquidation within twenty-four hours after the filing of such a petition pursuant to this section.

4. If the district court does not make a determination on a petition for an order of rehabilitation or liquidation filed by the commissioner pursuant to this section within twenty-four hours after the filing of the petition, the order shall be deemed granted by operation of law upon the expiration of the twenty-four-hour period.

a. At the time that an order is deemed granted under this subsection, the provisions of this chapter shall be deemed to be in effect, and the commissioner shall be deemed to be affirmed

as receiver and to have all of the applicable powers provided by this chapter, regardless of whether an order has been entered by the district court.

b. If an order is deemed granted by operation of law under this subsection, the district court shall expeditiously enter an order of rehabilitation or liquidation that does all of the following:

(1) Is effective as of the date that the order is deemed granted by operation of law.

(2) Conforms to the provisions for rehabilitation or liquidation of an insurer contained in this chapter, as applicable.

5. An order of rehabilitation or liquidation made pursuant to this section shall not be subject to a stay or injunction pending appeal.

6. Nothing in this section shall be construed to supersede or impair any other power or authority of the commissioner or the district court under this chapter.

2013 Acts, ch 124, §10, 31

507C.18 Liquidation orders.

1. An order to liquidate the business of a domestic insurer shall appoint the commissioner as liquidator and shall direct the liquidator to immediately take possession of the assets of the insurer and to administer them under the general supervision of the court. The liquidator is vested with the title to the property, contracts, and rights of action and the books and records of the insurer ordered liquidated, wherever located, as of the entry of the final order of liquidation. The filing or recording of the order with the clerk of the court and the recorder of deeds of the county in which its principal office or place of business is located, or, in the case of real estate with the recorder of deeds of the county where the property is located, is notice as a deed, bill of sale, or other evidence of title duly filed or recorded with the recorder of deeds.

2. Upon issuance of the order, the rights and liabilities of an insurer and of its creditors, policyholders, shareholders, members, and other persons interested in its estate shall become fixed as of the date of entry of the order of liquidation, except as provided in sections 507C.19 and 507C.37.

3. An order to liquidate the business of an alien insurer domiciled in this state must be in the same terms and have the same legal effect as an order to liquidate a domestic insurer, except that the assets and the business in the United States shall be the only assets and business included in the order.

4. At the time of petitioning for an order of liquidation, or at any time thereafter, the commissioner, after making appropriate findings of an insurer's insolvency, may petition the court for a declaration of insolvency. After providing notice and hearing as it deems proper, the court may make the declaration.

5. An order issued under this section shall require accounting to the court by the liquidator. Accountings, at a minimum, must include all funds received or disbursed by the liquidator during the current period. An accounting shall be filed within one year of the liquidation order and at such other times as the court may require.

6. *a.* Within five days of July 1, 1992, or, if later, within five days after the initiation of an appeal of an order of liquidation, which order has not been stayed, the commissioner shall present for the court's approval a plan for the continued performance of the defendant company's policy claims obligations, including the duty to defend insureds under liability insurance policies, during the pendency of an appeal. The plan shall provide for the continued performance and payment of policy claims obligations in the normal course of events, notwithstanding the grounds alleged in support of the order of liquidation including the ground of insolvency. If the defendant company's financial condition will not, in the judgment of the commissioner, support the full performance of all policy claims obligations during the appeal pendency period, the plan may prefer the claims of certain policyholders and claimants over creditors and interested parties as well as other policyholders and claimants, as the commissioner finds to be fair and equitable considering the relative circumstances of such policyholders and claimants. The court shall examine the plan submitted by the commissioner and if it finds the plan to be in the best interests of the parties, the court shall approve the plan. No action shall lie against the commissioner or any

of the commissioner's deputies, agents, clerks, assistants, or attorneys by any party based on preference in an appeal pendency plan approved by the court.

b. The appeal pendency plan shall not supersede or affect the obligations of any insurance guaranty association.

c. Any such plans shall provide for equitable adjustments to be made by the liquidator to any distributions of assets to guaranty associations, in the event that the liquidator pays claims from assets of the estate, which would otherwise be the obligations of any particular guaranty association but for the appeal of the order of liquidation, such that all guaranty associations equally benefit on a pro rata basis from the assets of the estate. If an order of liquidation is set aside upon an appeal, the company shall not be released from delinquency proceedings unless and until all funds advanced by a guaranty association, including reasonable administrative expenses in connection therewith relating to obligations of the company, shall be repaid in full, together with interest at the judgment rate of interest, or unless an arrangement for repayment thereof has been made with the consent of all applicable guaranty associations.

84 Acts, ch 1175, §18; 92 Acts, ch 1117, §19
Referred to in §507C.2, 507C.19, 507C.31, 507C.37
Judgment rate of interest, see §535.3

507C.19 Continuance of coverage.

1. Except for life or health insurance or annuities, policies in effect at the time of issuance of an order of liquidation shall continue in force only for the lesser of:

a. A period of thirty days from the date of entry of the liquidation orders.

b. The expiration of the policy coverage.

c. The date when the insured has replaced the insurance coverage with equivalent insurance in another insurer or otherwise terminated the policy.

d. The liquidator has effected a transfer of the policy obligation pursuant to section 507C.21, subsection 1, paragraph "*h*".

2. An order or liquidation under section 507C.18 shall terminate coverages at the time specified in subsection 1 for purposes of any other statute.

3. Policies of life or health insurance or annuities shall continue in force for the period and under terms as is provided for by any applicable guaranty association or foreign guaranty association.

4. Policies of life or health insurance or annuities or any period or coverage of the policies not covered by a guaranty association or foreign guaranty association shall terminate under subsections 1 and 2.

84 Acts, ch 1175, §19
Referred to in §507C.18, 507C.23

507C.20 Dissolution or sale of insurer.

The commissioner may petition for an order dissolving the corporate existence of a domestic insurer or the United States branch of an alien insurer domiciled in this state at the time the commissioner applies for a liquidation order. The court shall order dissolution of the corporation upon petition by the commissioner upon or after the granting of a liquidation order. If the dissolution has not previously been ordered, it shall be effected by operation of law upon the discharge of the liquidator if the insurer is insolvent. However, dissolution may be ordered by the court upon the discharge of the liquidator if the insurer is under a liquidation order for some other reason. Notwithstanding the above, upon application by the commissioner and following notice as prescribed by the court and a hearing, the court may sell the corporation as an entity, together with any of its licenses to do business, despite the entry of an order of liquidation. The sale may be made on terms and conditions the court deems appropriate. However, the order approving the sale shall provide that the proceeds of the sale shall become part of the assets of the liquidation estate, to be distributed in the manner set forth in section 507C.42, and that the corporate entity and its licenses

shall thereafter be free and clear from the claims or interests of all claimants, creditors, policyholders, and stockholders of the corporation under liquidation.

84 Acts, ch 1175, §20; 87 Acts, ch 168, §1; 88 Acts, ch 1112, §502
Referred to in §507C.21

507C.20A Redomestication of foreign insurer.

The commissioner may petition the court for an ancillary receivership or for an order redomesticating a foreign insurer which is the subject of a liquidation or other delinquency order in a reciprocal state. Only the corporate charter and rights to the licenses under such charter shall be redomesticated to Iowa. All claims against the foreign insurer shall remain a part of and be administered through the reciprocal state liquidation or other delinquency proceeding. Following notice as prescribed by the court and a hearing, the court may sell the corporation as an entity, together with any of its licenses, free and clear from the claims or interests of all claimants, creditors, policyholders, and stockholders of the corporation under liquidation or other delinquency proceedings, wherever located. The sale may be made on terms and conditions the court deems appropriate. The proceeds of the sale, less court costs, attorney fees, broker's fees, and the commissioner's expenses in effectuating the sale, shall become part of the assets of the liquidation or other estate in the reciprocal state.

91 Acts, ch 213, §2

507C.21 Powers of liquidator.

1. The liquidator may:

a. Appoint a special deputy to act for the liquidator under this chapter, and determine the special deputy's reasonable compensation. The special deputy shall have all powers of the liquidator granted by this section. The special deputy shall serve at the pleasure of the liquidator.

b. Hire employees and agents, legal counsel, actuaries, accountants, appraisers, consultants, and other personnel as the commissioner may deem necessary to assist in the liquidation.

c. With the approval of the court fix the reasonable compensation of employees and agents, legal counsel, actuaries, accountants, appraisers and consultants.

d. Pay reasonable compensation to persons appointed and defray from the funds or assets of the insurer all expenses of taking possession of, conserving, conducting, liquidating, disposing of, or otherwise dealing with the business and property of the insurer. If the property of the insurer does not contain sufficient cash or liquid assets to defray the costs incurred, the commissioner may advance the costs so incurred out of an appropriation for the maintenance of the division. Amounts so advanced for expenses of administration shall be repaid to the commissioner for the use of the division out of the first available moneys of the insurer.

e. Hold hearings, subpoena witnesses, and compel their attendance, administer oaths, examine a person under oath, and compel a person to subscribe to the person's testimony after it has been correctly reduced to writing, and in connection to the proceedings require the production of books, papers, records or other documents which the liquidator deems relevant to the inquiry.

f. Collect debts and moneys due and claims belonging to the insurer, wherever located. Pursuant to this paragraph, the liquidator may:

(1) Institute timely action in other jurisdictions to forestall garnishment and attachment proceedings against debts.

(2) Perform acts as are necessary or expedient to collect, conserve or protect its assets or property, including the power to sell, compound, compromise or assign debts for purposes of collection upon terms and conditions as the liquidator deems best.

(3) Pursue any creditor's remedies available to enforce claims.

g. Conduct public and private sales of the property of the insurer.

h. Use assets of the estate of an insurer under a liquidation order to transfer policy obligations to a solvent assuming insurer, if the transfer can be arranged without prejudice to applicable priorities under section 507C.42.

i. Acquire, hypothecate, encumber, lease, improve, sell, transfer, abandon, or otherwise dispose of or deal with property of the insurer at its market value or upon terms and conditions as are fair and reasonable. The liquidator shall also have power to execute, acknowledge, and deliver deeds, assignments, releases and other instruments necessary to effectuate a sale of property or other transaction in connection with the liquidation.

j. Borrow money on the security of the insurer's assets or without security and execute and deliver documents necessary to that transaction for the purpose of facilitating the liquidation. Money borrowed pursuant to this paragraph shall be repaid as an administrative expense and have priority over any other class 1 claims under the priority of distribution established in section 507C.42.

k. Enter into contracts as necessary to carry out the order to liquidate and affirm or disavow contracts to which the insurer is a party.

l. Continue to prosecute and to institute in the name of the insurer or in the liquidator's own name any and all suits and other legal proceedings, in this state or elsewhere, and to abandon the prosecution of claims the liquidator deems unprofitable to pursue further. If the insurer is dissolved under section 507C.20, the liquidator may apply to any court in this state or elsewhere for leave to substitute the liquidator for the insurer as plaintiff.

m. Prosecute an action on behalf of the creditors, members, policyholders or shareholders of the insurer against an officer of the insurer, or any other person.

n. Remove records and property of the insurer to the offices of the commissioner or to other place as may be convenient for the purposes of efficient and orderly execution of the liquidation. A guaranty association or foreign guaranty association shall have reasonable access to the records of the insurer as necessary to carry out the guaranty's statutory obligations.

o. Deposit in one or more banks in this state sums as are required for meeting current administration expenses and dividend distributions.

p. Unless the court orders otherwise, invest funds not currently needed.

q. File necessary documents for record in the office of a recorder of deeds or record office in this state or elsewhere where property of the insurer is located.

r. Assert defenses available to the insurer as against third persons including statutes of limitation, statutes of fraud, and the defense of usury. A waiver of a defense by the insurer after a petition in liquidation has been filed shall not bind the liquidator. If a guaranty association or foreign guaranty association has an obligation to defend a suit, the liquidator shall defer to the obligation and may defend only in the absence of a defense by the guaranty association.

s. Exercise and enforce the rights, remedies, and powers of a creditor, shareholder, policyholder, or member, including the power to avoid a transfer or lien that may be given by the general law and that is not included with sections 507C.26 through 507C.28.

t. Intervene in a proceeding wherever instituted that might lead to the appointment of a receiver or trustee, and act as the receiver or trustee whenever the appointment is offered.

u. Enter into agreements with a receiver or commissioner of insurance of any other state relating to the rehabilitation, liquidation, conservation or dissolution of an insurer doing business in both states.

v. Exercise powers now held or hereafter conferred upon receivers by the laws of this state not inconsistent with this chapter.

w. Audit the books and records of all agents of the insurer which relate to the business of the insurer.

2. This section does not limit the liquidator or exclude the liquidator from exercising a power not listed in subsection 1 that may be necessary or appropriate to accomplish the purposes of this chapter.

84 Acts, ch 1175, §21; 85 Acts, ch 67, §48; 92 Acts, ch 1117, §20, 21
Referred to in §507C.19

507C.22 Notice to creditors and others.

1. Unless the court otherwise directs, the liquidator shall give notice of the liquidation order as soon as possible by doing all of the following:

a. By first class mail and either by telegram or telephone to the insurance commissioner of each jurisdiction in which the insurer is doing business.

b. By first class mail to a guaranty association or foreign guaranty association which is or may become obligated as a result of the liquidation.

c. By first class mail to all insurance agents of the insurer.

d. By first class mail to all persons known or reasonably expected to have claims against the insurer, including policyholders, by mailing a notice to their last known address as indicated by the records of the insurer.

e. By publication in a newspaper of general circulation in the county in which the insurer has its principal place of business and in other locations as the liquidator deems appropriate.

2. Notice to potential claimants under subsection 1 shall require claimants to file with the liquidator their claims together with proper proofs of the claim under section 507C.36 on or before a date the liquidator shall specify in the notice. The liquidator need not require persons claiming cash surrender values or other investment values in life insurance and annuities to file a claim. Claimants shall keep the liquidator informed of changes of address.

3. *a.* Notice to agents of the insurer and potential claimants who are policyholders under subsection 1, where applicable, shall include notice that coverage by state guaranty associations may be available for all or part of policy benefits in accordance with applicable state guaranty laws.

b. The liquidator shall promptly provide to the guaranty associations such information concerning the identities and addresses of the policyholders and their policy coverages as may be within the liquidator's possession or control, and otherwise cooperate with guaranty associations to assist them in providing to the policyholders timely notice of the guaranty associations' coverage of policy benefits including, as applicable, coverage of claims and continuation or termination of coverage.

4. If notice is given pursuant to this section, the distribution of assets of the insurer under this chapter shall be conclusive with respect to claimants, whether or not a claimant actually received notice.

84 Acts, ch 1175, §22; 92 Acts, ch 1117, §22
Referred to in §507C.23, 507C.35, 507C.38

507C.23 Duties of agents.

1. A person, who receives notice in the form prescribed in section 507C.22 that an insurer which the person represents as an agent is the subject of a liquidation order, shall within fifteen days of the notice give notice to each policyholder or other person named in a policy issued through the agent by the insurer of the liquidation order. The notice shall be sent by first class mail to the last address contained in the agent's records if the agent has a record of the address of the policyholder or other person. A policy is issued through an agent if the agent has a property interest in the expiration of the policy, or if the agent has had in the agent's possession a copy of the declarations of the policy at any time during the life of the policy, except where the ownership of the expiration of the policy has been transferred to another. The written notice shall include the name and address of the insurer, the name and address of the agent, identification of the policy impaired and the nature of the impairment including termination of coverage, as described in section 507C.19. Notice by a general agent satisfies the notice requirement for an agent under contract to the general agent. An agent obligated to give notice under this section shall file a report of compliance with the liquidator.

2. An agent failing to provide information as required in subsection 1 may be subject to payment of a penalty of not more than one thousand dollars and may have the agent's license suspended. The penalty is to be imposed only after a hearing held by the commissioner.

3. The liquidator may waive the duties imposed by this section if the liquidator determines that another notice to the policyholders of the insurer under liquidation is adequate.

84 Acts, ch 1175, §23; 92 Acts, ch 1117, §23

507C.24 Actions by and against liquidator.

1. After the issuance of an order appointing a liquidator of a domestic insurer or of an alien insurer domiciled in this state, action at law or equity shall not be brought against the

insurer or liquidator in this state or elsewhere, nor shall existing actions be maintained or further presented after issuance of the order. The courts of this state shall give full faith and credit to injunctions against the liquidator or the insurer or the continuation of existing actions against the liquidator or the insurer, when the injunctions are included in an order to liquidate an insurer issued pursuant to corresponding provisions in other states. Whenever in the liquidator's judgment, protection of the estate of the insurer necessitates intervention in an action against the insurer that is pending outside this state, the liquidator may intervene in the action. The liquidator may defend, at the expense of the estate of the insurer, an action in which the liquidator intervenes under this section.

2. Within two years or such additional time as applicable law may permit, the liquidator may, after the issuance of an order for liquidation, institute an action or proceeding on behalf of the estate of the insurer upon any cause of action against which the period of limitation fixed by applicable law has not expired at the time of the filing of the petition upon which the order is entered. If a period of limitation is fixed by agreement for instituting a suit or proceeding upon a claim, or for filing a claim, proof of claim, proof of loss, demand, notice, or the like, or if in a proceeding, judicial or otherwise, a period of limitation is fixed in the proceeding or pursuant to applicable law for taking an action, filing a claim or pleading, or doing an act, and if the period had not expired at the date of the filing of the petition, the liquidator may, for the benefit of the estate, take any action or do any act, required of or permitted to the insurer, within a period of one hundred eighty days subsequent to the entry of an order for liquidation, or within a further period as is shown to the satisfaction of the court not to be unfairly prejudicial to the other party.

3. A statute of limitations or defense of laches shall not run with respect to an action against an insurer between the filing of a petition for liquidation against an insurer and the denial of the petition. An action against the insurer that might have been commenced when the petition was filed may be commenced for at least sixty days after the petition is denied.

4. A guaranty association or foreign guaranty association shall have standing to appear in a court proceeding concerning the liquidation of an insurer if the association is or may become liable to act as a result of the liquidation.

84 Acts, ch 1175, §24; 92 Acts, ch 1117, §24

507C.25 Collection and list of assets.

1. As soon as practicable after the liquidation order but not later than one hundred twenty days thereafter, the liquidator shall prepare in duplicate a list of the insurer's assets. The list shall be amended or supplemented as the liquidator may determine. One copy shall be filed in the office of the clerk of the court and one copy shall be retained for the liquidator's files. Amendments and supplements shall be similarly filed.

2. The liquidator shall reduce the assets to a degree of liquidity that is consistent with the effective execution of the liquidation.

3. A submission to the court for disbursement of assets in accordance with section 507C.34 fulfills the requirements of subsection 1.

84 Acts, ch 1175, §25

507C.26 Fraudulent transfers prior to petition.

1. A transfer made and an obligation incurred by an insurer within one year prior to the filing of a successful petition for rehabilitation or liquidation under this chapter is fraudulent as to then existing and future creditors if made or incurred without fair consideration, or with actual intent to hinder, delay, or defraud either existing or future creditors. A fraudulent transfer made or an obligation incurred by an insurer ordered to be rehabilitated or liquidated under this chapter may be avoided by the receiver, except as to a person who in good faith is a purchaser, lienor, or obligee for a present fair equivalent value. A purchaser, lienor, or obligee, who in good faith has given a consideration less than fair for such transfer, lien, or obligation, may retain the property, lien or obligation as security for repayment. The court may, on due notice, order any such transfer or obligation to be preserved for the benefit of the estate, and in that event, the receiver shall succeed to and may enforce the rights of the purchaser, lienor, or obligee.

2. *a.* A transfer of property other than real property is made when it becomes perfected so that a subsequent lien obtainable by legal or equitable proceedings on a simple contract could not become superior to the rights of the transferee under section 507C.28, subsection 3.

b. A transfer of real property is made when it becomes perfected so that a subsequent bona fide purchaser from the insurer could not obtain rights superior to the rights of the transferee.

c. A transfer which creates an equitable lien is not perfected if there are available means by which a legal lien could be created.

d. A transfer not perfected prior to the filing of a petition for liquidation shall be deemed to be made immediately before the filing of the successful petition.

e. This subsection applies whether or not there are or were creditors who might have obtained a lien or persons who might have become bona fide purchasers.

3. A transaction of the insurer with a reinsurer is fraudulent and may be avoided by the receiver under subsection 1 if both of the following exist:

a. The transaction consists of the termination, adjustment, or settlement of a reinsurance contract in which the reinsurer is released from any part of its duty to pay the originally specified share of losses that had occurred prior to the time of the transaction, unless the reinsurer gives a present fair equivalent value for the release.

b. Part of the transaction took place within one year prior to the date of filing of the petition through which the receivership was commenced.

4. A person receiving property from an insurer or any benefit from an insurer which is a fraudulent transfer under subsection 1 is personally liable for the property or benefit and shall account to the liquidator.

84 Acts, ch 1175, §26; 93 Acts, ch 88, §7
Referred to in §507C.14, 507C.21, 507C.35

507C.27 Fraudulent transfer after petition.

1. After a petition for rehabilitation or liquidation has been filed a transfer of real property of the insurer made to a person acting in good faith is valid against the receiver if made for a present fair equivalent value. If the transfer was not made for a present fair equivalent value, then the transfer is valid to the extent of the present consideration actually paid for which amount the transferee shall have a lien on the property transferred. The commencement of a proceeding in rehabilitation or liquidation is constructive notice upon the recording of a copy of the petition for or order of rehabilitation or liquidation with the recorder of deeds in the county where any real property in question is located. The exercise by a court of the United States or a state or jurisdiction to authorize a judicial sale of real property of the insurer within a county in a state shall not be impaired by the pendency of a proceeding unless the copy is recorded in the county prior to the consummation of the judicial sale.

2. After a petition for rehabilitation or liquidation has been filed and before either the receiver takes possession of the property of the insurer or an order of rehabilitation or liquidation is granted:

a. A transfer of the property, other than real property, of the insurer made to a person acting in good faith is valid against the receiver if made for a present fair equivalent value. If the transfer was not made for a present fair equivalent value, then the transfer is valid to the extent of the present consideration actually paid for which amount the transferee shall have a lien on the property transferred.

b. If acting in good faith, a person indebted to the insurer or holding property of the insurer may pay the debt or deliver the property, or any part thereof, to the insurer or upon the insurer's order as if the petition were not pending.

c. A person having actual knowledge of the pending rehabilitation or liquidation is not acting in good faith.

d. A person asserting the validity of a transfer under this section shall have the burden of proof. Except as provided in this section, a transfer by or on behalf of the insurer after the date of the petition for liquidation by any person other than the liquidator shall not be valid against the liquidator.

3. A person receiving any property from the insurer or any benefit of the insurer which is a fraudulent transfer under subsection 1 is personally liable for the property or benefit and shall account to the liquidator.

4. This chapter shall not impair the negotiability of currency or negotiable instruments.

84 Acts, ch 1175, §27; 92 Acts, ch 1117, §25
Referred to in §507C.14, 507C.21, 507C.35

507C.28 Voidable preferences and liens.

1. *a.* A preference is a transfer of the property of an insurer to or for the benefit of a creditor for an antecedent debt made or suffered by the insurer within one year before the filing of a successful petition for liquidation under this chapter, the effect of which transfer may be to enable the creditor to obtain a greater percentage of this debt than another creditor of the same class would receive. If a liquidation order is entered while the insurer is already subject to a rehabilitation order, then the transfers are preferences if made or suffered within one year before the filing of the successful petition for rehabilitation, or within two years before the filing of the successful petition for liquidation, whichever time is shorter.

b. A preference may be avoided by the liquidator if any of the following exist:

(1) The insurer was insolvent at the time of the transfer.

(2) The transfer was made within four months before the filing of the petition.

(3) At the time the transfer was made, the creditor receiving it or to be benefited by the transfer or the creditor's agent acting with reference to the transfer had reasonable cause to believe that the insurer was insolvent or was about to become insolvent.

(4) The creditor receiving the transfer was an officer, or an employee, attorney or other person who was in fact in a position of comparable influence in the insurer to an officer whether or not the person held the position of an officer, or a shareholder directly or indirectly holding more than five percent of a class of an equity security issued by the insurer, or other person, firm, corporation, association, or aggregation of persons with whom the insurer did not deal at arm's length.

c. Where the preference is voidable, the liquidator may recover the property. If the property has been converted, the liquidator may recover its value from a person who has received or converted the property. However, if a bona fide purchaser or lienor has given less than fair equivalent value, the purchaser or lienor shall have a lien upon the property to the extent of the consideration actually given. Where a preference by way of lien or security interest is voidable, the court may on due notice order the lien or security interest to be preserved for the benefit of the estate, in which event the lien or title shall pass to the liquidator.

2. *a.* A transfer of property other than real property is made when it becomes perfected so that a subsequent lien obtainable by legal or equitable proceedings on a simple contract could not become superior to the rights of the transferee.

b. A transfer of real property is made when it becomes perfected so that a subsequent bona fide purchaser from the insurer could not obtain rights superior to the rights of the transferee.

c. A transfer which creates an equitable lien is not perfected if there are available means by which a legal lien could be created.

d. A transfer not perfected prior to the filing of a petition for liquidation shall be deemed to be made immediately before the filing of the successful petition.

e. This subsection applies whether or not there are or were creditors who might have obtained liens or persons who might have become bona fide purchasers.

3. *a.* A lien obtainable by legal or equitable proceedings upon a simple contract is one arising in the ordinary course of the proceedings upon the entry or docketing of a judgment or decree, or upon attachment, garnishment, execution, or like process, whether before, upon, or after judgment or decree and whether before or upon levy. It does not include liens which under applicable law are given a special priority over other liens which are prior in time.

b. A lien obtainable by legal or equitable proceedings could become superior to the rights of a transferee, or a purchaser could obtain rights superior to the rights of a transferee within the meaning of subsection 2, if such consequences would follow only from the lien

or purchase itself, or from the lien or purchase followed by a step wholly within the control of the respective lienholder or purchaser, with or without the aid of ministerial action by public officials. However, a lien could not become superior and a purchase could not create superior rights for the purpose of subsection 2 through an act subsequent to the obtaining of a lien or subsequent to a purchase which requires the agreement or concurrence of any third party or which requires further judicial action or ruling.

4. A transfer of property for or on account of a new and contemporaneous consideration, which is under subsection 2 made or suffered after the transfer because of delay in perfecting it, does not become a transfer for or on account of an antecedent debt if any acts required by the applicable law to be performed in order to perfect the transfer as against liens or bona fide purchasers' rights are performed within twenty-one days or any period expressly allowed by the law, whichever is less. A transfer to secure a future loan, if a loan is actually made, or a transfer which becomes security for a future loan, shall have the same effect as a transfer for or on account of a new and contemporaneous consideration.

5. If a lien voidable under subsection 1, paragraph *"b"* has been dissolved by the furnishing of a bond or other obligation, the surety on which has been indemnified directly or indirectly by the transfer of or the creation of a lien upon property of an insurer before the filing of a petition under this chapter which results in a liquidation order, the indemnifying transfer or lien is also voidable.

6. The property affected by a lien voidable under subsections 1 and 5 is discharged from the lien. The property and any of the indemnifying property transferred to or for the benefit of a surety shall pass to the liquidator. However, the court may on due notice order a lien to be preserved for the benefit of the estate and the court may direct that the conveyance be executed to evidence the title of the liquidator.

7. The court shall have summary jurisdiction of a proceeding by the liquidator to hear and determine the rights of parties under this section. Reasonable notice of hearing in the proceeding shall be given to all parties in interest, including the obligee of a releasing bond or other like obligation. Where an order is entered for the recovery of indemnifying property in kind or for the avoidance of an indemnifying lien, upon application of any party in interest, the court shall in the same proceeding ascertain the value of the property or lien. If the value is less than the amount for which the property is indemnity or than the amount of the lien, the transferee or lienholder may elect to retain the property or lien upon payment of its value, as ascertained by the court, to the liquidator within time as the court shall fix.

8. The liability of a surety under a releasing bond or other like obligation shall be discharged to the extent of the value of the indemnifying property recovered or the indemnifying lien nullified and avoided by the liquidator. Where the property is retained under subsection 7, the liability of the surety shall be discharged to the extent of the amount paid to the liquidator.

9. If a creditor has been preferred for property which becomes a part of the insurer's estate, and afterward in good faith gives the insurer further credit without security of any kind, the amount of the new credit remaining unpaid at the time of the petition may be set off against the preference which would otherwise be recoverable from the creditor.

10. If within four months before the filing of a successful petition for liquidation under this chapter, or at any time in contemplation of a proceeding to liquidate an insurer directly or indirectly, pays money or transfers property to an attorney for services rendered or to be rendered, the transaction may be examined by the court on its own motion or shall be examined by the court on petition of the liquidator. The payment or transfer shall be held valid only to the extent of a reasonable amount to be determined by the court. The excess may be recovered by the liquidator for the benefit of the estate. However, where the attorney is in a position of influence in the insurer or an affiliate, payment of any money or the transfer of any property to the attorney for services rendered or to be rendered shall be governed by the provision of subsection 1, paragraph *"b"*, subparagraph (4).

11. *a.* An officer, manager, employee, shareholder, member, subscriber, attorney, or any other person acting on behalf of the insurer who knowingly participates in giving any preference when the person has reasonable cause to believe the insurer is or is about to become insolvent at the time of the preference is personally liable to the liquidator for

the amount of the preference. There is an inference that reasonable cause exists if the transfer was made within four months before the date of filing of this successful petition for liquidation.

b. A person receiving property from the insurer or the benefit thereof as a preference voidable under subsection 1 is personally liable for the property and shall account to the liquidator.

c. This subsection shall not prejudice any other claim by the liquidator against any person.

84 Acts, ch 1175, §28; 2013 Acts, ch 30, §120
Referred to in §507C.21, 507C.26, 507C.28A, 507C.35

507C.28A Qualified financial contracts.

1. Notwithstanding any other provision of this chapter to the contrary, including any other provision of this chapter permitting the modification of contracts, or other law of a state, a person shall not be stayed or prohibited from exercising any of the following:

a. A contractual right to terminate, liquidate, or close out any netting agreement or qualified financial contract with an insurer because of any of the following:

(1) The insolvency, financial condition, or default of the insurer at any time, provided that the right is enforceable under applicable law other than this chapter.

(2) The commencement of a formal delinquency proceeding under this chapter.

b. Any right under a pledge, security, collateral, or guarantee agreement or any other similar security arrangement or credit support document relating to a netting agreement or qualified financial contract.

c. Subject to any provision of section 507C.30, subsection 2, any right to set off or net out any termination value, payment amount, or other transfer obligation arising under or in connection with a netting agreement or qualified financial contract where the counterparty or its guarantor is organized under the laws of the United States or a state or foreign jurisdiction approved by the securities valuation office or the national association of insurance commissioners as eligible for netting.

2. Upon termination of a netting agreement, the net or settlement amount, if any, owed by a nondefaulting party to an insurer against which an application or petition has been filed under this chapter shall be transferred to or on the order of the receiver for the insurer, even if the insurer is the defaulting party, notwithstanding any provision in the netting agreement that may provide that the nondefaulting party is not required to pay any net or settlement amount due to the defaulting party upon termination. Any limited two-way payment provision in a netting agreement with an insurer that has defaulted shall be deemed to be a full two-way payment provision as against the defaulting insurer. Any such amount shall, except to the extent it is subject to one or more secondary liens or encumbrances, be a general asset of the insurer.

3. In making any transfer of a netting agreement or qualified financial contract of an insurer subject to a proceeding under this chapter, the receiver shall do either of the following:

a. Transfer to one party, other than an insurer subject to a proceeding under this chapter, all netting agreements and qualified financial contracts between a counterparty or any affiliate of the counterparty and the insurer that is the subject of the proceeding, including all of the following:

(1) All rights and obligations of each party under each such netting agreement and qualified financial contract.

(2) All property, including any guarantees or credit support documents, securing any claims of each party under each such netting agreement and qualified financial contract.

b. Transfer none of the netting agreements, qualified financial contracts, rights, obligations, or property referred to in paragraph "*a*" with respect to the counterparty and any affiliate of the counterparty.

4. If a receiver for an insurer makes a transfer of one or more netting agreements or qualified financial contracts, the receiver shall use the receiver's best efforts to notify any person who is a party to the netting agreements or qualified financial contracts of the transfer by noon of the receiver's local time on the business day following the transfer. For purposes

of this subsection, *"business day"* means a day other than a Saturday, Sunday, or any day on which either the New York stock exchange or the federal reserve bank of New York is closed.

5. Notwithstanding any other provision of this chapter to the contrary, a receiver shall not avoid a transfer of money or other property arising under or in connection with a netting agreement or qualified financial contract, or any pledge security, collateral, or guarantee agreement or any other similar security arrangement or credit support document relating to a netting agreement or qualified financial contract, that is made before the commencement of a formal delinquency proceeding under this chapter. However, a transfer may be avoided under section 507C.28 if the transfer was made with actual intent to hinder, delay, or defraud the insurer, a receiver appointed for the insurer, or existing or future creditors.

6. In exercising any of its powers under this chapter to disaffirm or repudiate a netting agreement or qualified financial contract, the receiver must take action with respect to each netting agreement or qualified financial contract and all transactions entered into in connection therewith, in its entirety. Notwithstanding any other provision of this chapter to the contrary, any claim of a counterparty against the estate arising from the receiver's disaffirmance or repudiation of a netting agreement or qualified financial contract that has not been previously affirmed in the liquidation or in the immediately preceding rehabilitation case shall be determined and shall be allowed or disallowed as if the claim had arisen before the date of the filing of the petition for liquidation or, if a rehabilitation proceeding is converted to a liquidation proceeding, as if the claim had arisen before the date of filing the petition for rehabilitation. The amount of the claim shall be the actual direct compensatory damages determined as of the date of the disaffirmance or repudiation of the netting agreement or qualified financial contract. The term *"actual direct compensatory damages"* does not include punitive or exemplary damages, damages for lost profit or lost opportunity, or damages for pain and suffering, but does include normal and reasonable costs of cover or other reasonable measures of damages utilized in the derivatives market for the contract and agreement claims.

7. The term *"contractual right"* as used in this section includes any right, whether or not evidenced in writing, arising under statutory or common law, a rule or bylaw of a national securities exchange, national securities clearing organization or securities clearing agency, a rule or bylaw, or a resolution of the governing body of a contract market or its clearing organization, or under law merchant.

8. This section shall not apply to persons who are affiliates of the insurer that is the subject of the proceeding.

9. All rights of a counterparty under this chapter shall apply to netting agreements and qualified financial contracts entered into on behalf of the general account or separate accounts, provided that the assets of each separate account are available only to counterparties to netting agreements and qualified financial contracts entered into on behalf of that separate account.

10. Notwithstanding any other provision of this chapter to the contrary, the receiver for an insurer-member shall not void any transfer of, or any obligation to transfer, money or any other property arising under or in connection with any federal home loan bank security agreement, or any pledge, security, collateral, or guarantee agreement, or any other similar arrangement or credit enhancement relating to a federal home loan bank security agreement made in the ordinary course of business and in compliance with the applicable federal home loan bank agreement. However, a transfer may be avoided under this subsection if the transfer was made with intent to hinder, delay, or defraud the insurer-member, the receiver for the insurer-member, or existing or future creditors. This subsection shall not affect a receiver's rights regarding advances to an insurer-member in delinquency proceedings pursuant to 12 C.F.R. §1266.4.

2005 Acts, ch 70, §5; 2014 Acts, ch 1008, §3

507C.29 Claims of holders of void or voidable rights.

1. A claim of a creditor who has received or acquired a preference, lien, conveyance, transfer, assignment, or encumbrance, voidable under this chapter shall not be allowed unless the creditor surrenders the preference, lien, conveyance, transfer, assignment, or

encumbrance. If the avoidance is effected by a proceeding in which a final judgment has been entered, the claim shall not be allowed unless the money is paid or the property is delivered to the liquidator within thirty days from the date of the entering of the final judgment. However, the court having jurisdiction over the liquidation may allow further time if there is an appeal or other continuation of the proceeding.

2. A claim allowable under subsection 1 by reason of a voluntary or involuntary avoidance, preference, lien, conveyance, transfer, assignment, or encumbrance may be filed as an excused late filing under section 507C.35 if filed within thirty days from the date of the avoidance or within the further time allowed by the court under subsection 1.

84 Acts, ch 1175, §29
Referred to in §507C.35

507C.30 Setoffs.

1. Except as provided in subsection 2 and section 507C.33 mutual debts or mutual credits between the insurer and another person in connection with an action or proceeding under this chapter shall be set off and the balance only shall be allowed or paid.

2. *a.* A setoff shall not be allowed in favor of a person where any of the following are found:

(1) At the date of the filing of a petition for liquidation, the obligation of the insurer to the person would not entitle the person to share as a claimant in the assets of the insurer.

(2) The obligation of the insurer to the person was purchased by or transferred to the person with a view to its being used as a setoff.

(3) The obligation of the insurer is owed to the affiliate of such person, or any other entity or association other than the person.

(4) The obligation of the person is owed to the affiliate of the insurer, or any other entity or association other than the insurer.

(5) The obligation of the person is to pay an assessment levied against the members or subscribers of the insurer, or is to pay a balance upon a subscription to the capital stock of the insurer, or is in any other way in the nature of a capital contribution.

(6) The obligation of the person is to pay earned premiums to the insurer.

b. Nothing in paragraph "*a*", however, restricts the right of a person to set off premium due to or from the insurer pursuant to a reinsurance contract.

84 Acts, ch 1175, §30; 92 Acts, ch 1117, §26; 96 Acts, ch 1045, §1; 2005 Acts, ch 70, §6
Referred to in §507C.28A

507C.31 Assessments.

1. As soon as practicable but not more than two years from the date of an order of liquidation under section 507C.18 of an insurer issuing assessable policies, the liquidator shall make a report to the court setting forth all of the following:

a. The reasonable value of the assets of the insurer.

b. The insurer's probable total liabilities.

c. The probable aggregate amount of the assessment necessary to pay claims of creditors and expenses in full, including expenses of administration and costs of collecting the assessment.

d. A recommendation as to whether an assessment should be made and, if so, in what amount.

2. *a.* Upon the basis of the report provided in subsection 1 and any supplement or amendment to the report, the court may levy one or more assessments against all members of the insurer who are subject to assessment.

b. Subject to any applicable legal limits on assessability, the aggregate assessment shall be for the amount that the sum of the probable liabilities, the expenses of administration, and the estimated cost of collection of the assessment, exceeds the value of existing assets. Due regard shall be given to assessments that cannot be collected economically.

3. After levy of assessment under subsection 2, the liquidator shall issue an order directing a member who has not paid the assessment pursuant to the order to show cause why the liquidator should not pursue a judgment for the assessment.

4. The liquidator shall give notice of the order to show cause by publication and by first class mail to a member liable under the order. The notice shall be mailed to the member's last known address as it appears on the insurer's records at least twenty days before the return day of the order to show cause.

5. *a.* If a member does not appear and serve duly verified objections upon the liquidator on or before the return day of the order to show cause under subsection 3, the court shall order the adjudging member to be liable for the amount of the assessment plus costs. The liquidator shall have a judgment against the member for the amount entered in the order.

b. If on or before the return day, the member appears and serves duly verified objections upon the liquidator, the commissioner may hear and determine the matter or may appoint a referee to hear it and make such order as the facts warrant. If the commissioner determines that the objections do not warrant relief from assessment, the member may request the court to review the matter and vacate the order to show cause.

6. The liquidator may enforce an order or collect a judgment under subsection 5 by any lawful means.

84 Acts, ch 1175, §31

507C.32 Reinsurer's liability.

Notwithstanding a provision in the reinsurance contract or other agreement, the amount recoverable by the liquidator from reinsurers shall not be reduced as a result of delinquency proceedings. Payment made directly to an insured or other creditor shall not diminish the reinsurer's obligation to the insurer's estate except when either of the following applies:

1. The contract or other written agreement specifically provides for another payee of the reinsurance in the event of the insolvency of the ceding insurer.

2. The assuming insurer, with the consent of the direct insured, has assumed the policy obligations of the ceding insurer as direct obligations of the assuming insurer to the payees under the policies and in substitution for the obligations of the ceding insurer to the payees.

84 Acts, ch 1175, §32; 98 Acts, ch 1057, §2

507C.33 Recovery of premiums owed.

1. *a.* An agent, broker, premium finance company or any other person responsible for the payment of a premium is obligated to pay an unpaid premium for the full policy term due the insurer at the time of the declaration of insolvency, whether earned or unearned, as shown on the records of the insurer. The liquidator shall also have the right to recover from the person any part of an unearned premium that represents commission of the person. Credits or setoffs or both shall not be allowed to an agent, broker, or premium finance company for amounts advanced to the insurer by the agent, broker, or premium finance company on behalf of, but in the absence of a payment by, the insured.

b. Notwithstanding paragraph "*a*", the agent, broker, premium finance company, or other person, is not liable for uncollected unearned premium of the insurer. A presumption exists that the premium as shown on the books of the insurer is collected and the burden is upon the agent, broker, premium finance company, or other person to demonstrate by a preponderance of the evidence that the unearned premium was not actually collected. For purposes of this paragraph, "*unearned premium*" means that portion of an insurance premium covering the unexpired term of the policy or the unexpired period of the policy period.

c. An insured is obligated to pay an unpaid earned premium due the insurer as shown on the records of the insurer at the time of the declaration of insolvency.

2. Upon satisfactory evidence of a violation of this section, the commissioner may pursue either one or both of the following courses of action:

a. Suspend or revoke or refuse to renew the licenses of the offending party or parties.

b. Impose a penalty of not more than one thousand dollars for each act in violation of this section by the party or parties.

3. Before the commissioner shall take any action as set forth in subsection 2, the commissioner shall give written notice to the person, company, association, or exchange accused of violating the law, stating specifically the nature of the alleged violation, and fixing a time and place, at least ten days thereafter, when a hearing on the matter shall be held.

After such hearing, or upon failure of the accused to appear at the hearing, if a violation is found the commissioner shall impose those penalties under subsection 2 as deemed advisable.

4. When the commissioner shall take action in any or all of the ways set out in subsection 2, the party aggrieved may appeal from the action to court.

84 Acts, ch 1175, §33; 91 Acts, ch 213, §3
Referred to in §507C.30

507C.34 Domiciliary liquidator's proposal to distribute assets.

1. Within one hundred twenty days of a final determination of insolvency under this chapter as assets become available, the liquidator shall make application to the court for approval of a proposal to disburse assets out of marshaled assets to a guaranty association or foreign guaranty association having obligations because of the insolvency. An application and disbursement of assets shall be made from time to time as assets become available. If the liquidator determines that there are insufficient assets to disburse, the application required by this section shall be considered satisfied by a filing by the liquidator stating the reasons for this determination.

2. The proposal shall at least include provisions for all of the following:

a. Reserving amounts for the payment of all the following:

(1) Expenses of administration.

(2) To the extent of the value of the security held, the payment of claims of secured creditors.

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

b. Disbursement of the assets marshaled to date and subsequent disbursement of assets as they become available.

c. Equitable allocation of disbursements to each of the guaranty associations and foreign guaranty associations entitled to disbursements.

d. The securing by the liquidator from each of the associations entitled to disbursements of an agreement to return to the liquidator the assets, together with income earned on assets previously disbursed, as may be required to pay claims of secured creditors and claims falling within the priorities established in section 507C.42 in accordance with the priorities. A bond shall not be required of an association.

e. A full report to be made by each association to the liquidator accounting for assets so disbursed to the association, all disbursements made from the assets, interest earned by the association on the assets and any other matter as the court may direct.

3. The liquidator's proposal shall provide for disbursements to the associations in amounts estimated at least equal to the claim payments made or to be made for which the associations could assert a claim against the liquidator. The proposal shall provide that if the assets available for disbursement do not equal or exceed the amount of the claim payments made or to be made by the association then disbursements shall be in the amount of available assets.

4. With respect to an insolvent insurer writing life or health insurance or annuities, the liquidator's proposal shall provide for disbursements of assets to a guaranty association or a foreign guaranty association covering life or health insurance or annuities or to any other entity or organization reinsuring, assuming, or guaranteeing policies or contracts of insurance under the acts creating the associations.

5. Notice of the application shall be given to the association in and to the commissioners of insurance of each of the states. Notice is given when deposited in the United States certified mails, first class postage prepaid, at least thirty days prior to submission of the application to the court. Action on the application may be taken by the court provided the required notice has been given and that the liquidator's proposal complies with subsection 2, paragraphs *"a"* and *"b"*.

84 Acts, ch 1175, §34; 92 Acts, ch 1117, §27; 97 Acts, ch 186, §3
Referred to in §507C.25, 508C.8

507C.35 Filing of claims.

1. Proof of all claims shall be filed with the liquidator in the form required by section 507C.36 on or before the last day for filing specified in the notice required under section 507C.22. However, proof of claims for cash surrender values or other investment values in life insurance and annuities need not be filed unless the liquidator expressly so requires.

2. The liquidator may permit a claimant making a late filing to share in distributions, whether past or future, as if the claimant were not late, to the extent that the payment will not prejudice the orderly administration of the liquidation under any of the following circumstances:

a. The existence of the claim was not known to the claimant and that the claimant filed the claim as promptly thereafter as reasonably possible after learning of it.

b. A transfer to a creditor was avoided under sections 507C.26 through 507C.28, or was voluntarily surrendered under section 507C.29, and that the filing satisfies the conditions of section 507C.29.

c. The valuation under section 507C.41 of security held by a secured creditor shows a deficiency, which is filed within thirty days after the valuation.

3. The liquidator shall permit late filing claims to share in distributions, whether past or future, as if they were not late, if the claims are claims of a guaranty association or foreign guaranty association for reimbursement of covered claims paid or expenses incurred, or both, subsequent to the last day for filing where the payments were made and expenses incurred as provided by law.

4. The liquidator may consider any claim filed late which is not covered by subsection 2, and permit it to receive distributions which are subsequently declared on any claims of the same or lower priority if the payment does not prejudice the orderly administration of the liquidation. The late-filing claimant shall receive at each distribution the same percentage of the amount allowed on the claim as is then being paid to claimants of any lower priority. This shall continue until the claim has been paid in full.

84 Acts, ch 1175, §35
Referred to in §507C.29, 507C.37, 507C.56

507C.36 Proof of claim.

1. Proof of claim shall consist of a statement signed by the claimant that includes all of the following that are applicable:

a. The particulars of the claim including the consideration given for it.

b. The identity and amount of the security on the claim.

c. The payments, if any, made on the debt.

d. A statement that the sum claimed is justly owing and that there is no setoff, counterclaim, or defense to the claim.

e. Any right of priority of payment or other specific right asserted by the claimant.

f. A copy of the written instrument which is the foundation of the claim.

g. The name and address of the claimant and the attorney who represents the claimant, if any.

2. A claim need not be considered or allowed if it does not contain all the information in subsection 1 which is applicable. The liquidator may require that a prescribed form be used and may require that other information and documents be included.

3. At any time the liquidator may request the claimant to present information or evidence supplementary to that required under subsection 1 and may take testimony under oath, require production of affidavits or depositions, or otherwise obtain additional information or evidence.

4. A judgment or order against an insured or the insurer entered after the date of filing of a successful petition for liquidation, or a judgment or order against an insured or the insurer entered at any time by default or by collusion need not be considered as evidence of liability or of quantum of damages. A judgment or order against an insured or the insurer entered within four months before the filing of the petition need not be considered as evidence of liability or of the quantum of damages.

5. Claims of a guaranty association or foreign guaranty association shall be in the form and contain the substantiation as may be agreed to by the association and the liquidator.

84 Acts, ch 1175, §36
Referred to in §507C.22, 507C.35, 507C.56

507C.37 Special claims.

1. The claim of a third party which is contingent only on the third party first obtaining a judgment against the insured shall be considered and allowed as if there were no such contingency.

2. A claim may be allowed even if contingent, if it is filed in accordance with section 507C.35. It may be allowed and the claimant may participate in all distributions declared after it is filed to the extent that it does not prejudice the orderly administration of the liquidation.

3. Claims that are due except for the passage of time shall be treated as absolute claims are treated. However, the claims may be discounted at the legal rate of interest.

4. Claims made under employment contracts by directors, principal officers, or persons in fact performing similar functions or having similar powers are limited to payment for services rendered prior to the issuance of an order of rehabilitation or liquidation under section 507C.13 or 507C.18.

84 Acts, ch 1175, §37
Referred to in §507C.18, 507C.45

507C.38 Special provisions for third-party claims.

1. If a third party asserts a cause of action against an insured of an insurer in liquidation, the third party may file a claim with the liquidator.

2. Whether or not the third party files a claim, the insured may file a claim on the insured's own behalf in the liquidation. If the insured fails to file a claim by the date for filing claims specified in the order of liquidation or within sixty days after mailing of the notice required by section 507C.22, whichever is later, the insured is an unexcused late filer.

3. The liquidator shall make recommendations to the court under section 507C.42, for the allowance of an insured's claim under subsection 2 after consideration of the probable outcome of a pending action against the insured on which the claim is based, the probable damages recoverable in the action and the probable costs and expenses of defense. After allowance by the court, the liquidator shall withhold dividends payable on the claim, pending the outcome of litigation and negotiation with the insured. If it seems appropriate, the liquidator shall reconsider the claim on the basis of additional information and amend the recommendations to the court. The insured shall be afforded the same notice and opportunity to be heard on all changes in the recommendation as in its initial determination. The court may amend its allowance as it finds appropriate. As claims against the insured are settled or barred, the insured shall be paid from the amount withheld the same percentage dividend as was paid on other claims of like property, based on the lesser of:

a. The amount actually recovered from the insured by action or paid by agreement plus the reasonable costs and expenses of defense.

b. The amount allowed on the claims by the court. After all claims are settled or barred, any sum remaining from the amount withheld shall revert to the undistributed assets of the insurer. Delay in final payment under this subsection shall not be a reason for unreasonable delay of final distribution and discharge of the liquidator.

4. If several claims founded upon one policy are filed, whether by third parties or as claims by the insured under this section, and the aggregate allowed amount of the claims to which the same limit of liability in the policy is applicable exceeds that limit, each claim as allowed shall be reduced in the same proportion so that the total equals the policy limit. Claims by the insured shall be evaluated as in subsection 3. If any insured's claim is subsequently reduced under subsection 3, the amount thus freed shall be apportioned ratably among the claims which have been reduced under this subsection.

5. A claim may not be presented under this section if it is or may be covered by any guaranty association or foreign guaranty association.

84 Acts, ch 1175, §38

507C.39 Disputed claims.

1. If a claim is denied in whole or in part by the liquidator, written notice of the determination shall be given to the claimant or the claimant's attorney by first class mail at the address shown in the proof of claim. Within sixty days from the mailing of the notice, the claimant may file objections with the liquidator. Unless a filing is made, the claimant may not further object to the determination.

2. If objections are filed with the liquidator and the liquidator does not alter the denial of the claim as a result of the objections, the liquidator shall ask the court for a hearing as soon as practicable and give notice of the hearing by first class mail to the claimant or the claimant's attorney and to any other persons directly affected. The notice shall be given not less than ten nor more than thirty days before the date of the hearing. The matter shall be heard by the court or by a court-appointed referee. The referee shall submit findings of fact along with a recommendation.

84 Acts, ch 1175, §39
Referred to in §507C.43, 507C.56

507C.40 Claims of other person.

If a creditor, whose claim against an insurer is secured in whole or in part by the undertaking of another person, fails to prove and file that claim, then the other person may do so in the creditor's name and shall be subrogated to the rights of the creditor, whether the claim has been filed by the creditor or by the other person in the creditor's name to the extent that the other person discharges the undertaking. However, in the absence of an agreement with the creditor to the contrary, the other person is not entitled to any distribution until the amount paid to the creditor on the undertaking plus the distributions paid on the claim from the insurer's estate to the creditor equal the amount of the entire claim of the creditor. An excess received by the creditor shall be held by the creditor in trust for the other person. As used in this section, *"other person"* is not intended to apply to a guaranty association or foreign guaranty association.

84 Acts, ch 1175, §40; 92 Acts, ch 1117, §28

507C.41 Secured creditor's claims.

1. The value of security held by a secured creditor shall be determined in one of the following ways, as the court may direct:

a. By converting the security into money according to the terms of the agreement pursuant to which the security was delivered to the creditors.

b. By agreement, arbitration, compromise or litigation between the creditor and the liquidator.

2. The determination shall be under the supervision and control of the court with due regard for the recommendation of the liquidator. The amount so determined shall be credited upon the secured claim. A deficiency shall be treated as an unsecured claim. If the claimant surrenders the security to the liquidator, the entire claim shall be allowed as if unsecured.

84 Acts, ch 1175, §41
Referred to in §507C.35, 507C.58

507C.42 Priority of distribution.

The priority of distribution of claims from the insurer's estate shall be in accordance with the order in which each class of claims is set forth. Claims in each class shall be paid in full or adequate funds retained for the payment before the members of the next class receive any payment. Subclasses shall not be established within a class. As used in this section, *"insurer's estate"* means the general assets of the insurer. The order of distribution of claims is:

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

a. The actual and necessary costs of preserving or recovering the assets of the insurer.

b. Compensation for all authorized services rendered in the liquidation.

c. Necessary filing fees.

d. The fees and mileage payable to witnesses.

e. Authorized reasonable attorney's fees and other professional services rendered in the liquidation.

f. The reasonable expenses of a guaranty association or foreign guaranty association in handling claims.

2. *Class 2.* Claims under policies, including claims of the federal or any state or local government, for losses incurred, including third-party claims, claims against the insurer for liability for bodily injury or for injury to or destruction of tangible property which are not under policies, claims of a guaranty association or foreign guaranty association, claims under funding agreements as provided in section 508.31A, subsection 3, claims for an insufficiency in the assets allocated to and accumulated in a separate account as provided in section 508A.1, subsection 8, and claims for unearned premium. Claims under life insurance and annuity policies, whether for death proceeds, annuity proceeds, or investment values, shall be treated as loss claims. That portion of a loss, indemnification for which is provided by other benefits or advantages recovered by the claimant, shall not be included in this class, other than benefits or advantages recovered or recoverable in discharge of familial obligations of support or by way of succession at death or as proceeds of life insurance, or as gratuities. A payment by an employer to an employee is not a gratuity.

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

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

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

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

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

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

9. *Class 9.* The claims of shareholders or other owners.

84 Acts, ch 1175, §42; 92 Acts, ch 1117, §29; 93 Acts, ch 88, §8; 94 Acts, ch 1023, §114; 97 Acts, ch 186, §4; 2006 Acts, ch 1117, §28, 29

Referred to in §507C.20, 507C.21, 507C.34, 507C.38, 507C.45, 507C.55, 507C.59, 508.31A, 508A.1

507C.43 Liquidator's recommendations to the court.

1. The liquidator shall review claims duly filed in the liquidation and shall make further investigation as necessary. The liquidator may compound, compromise or in any other manner negotiate the amount for which claims will be recommended to the court except where the liquidator is required by law to accept claims as settled by a person or organization, including a guaranty association or foreign guaranty association. Unresolved disputes shall be determined under section 507C.39. As soon as practicable, the liquidator shall present to the court a report of the claims against the insurer with the liquidator's recommendations. The report shall include the name and address of each claimant and the amount of the claim finally recommended. If the insurer has issued annuities or life insurance policies, the liquidator shall report the persons to whom, according to the records of the insurer, amounts are owed as cash surrender values or other investment value and the amounts owed.

2. The court may approve, disapprove, or modify the report on claims by the liquidator. Reports not modified by the court within sixty days following submission by the liquidator

shall be treated by the liquidator as allowed claims, subject to later modification or to rulings made by the court pursuant to section 507C.39. A claim under a policy of insurance shall not be allowed for an amount in excess of the applicable policy limits.

84 Acts, ch 1175, §43
Referred to in §507C.56

507C.44 Distribution of assets.

Under the direction of the court, the liquidator shall pay distributions in a manner that will assure the proper recognition of priorities and a reasonable balance between the expeditious completion of the liquidation and the protection of unliquidated and undetermined claims, including third-party claims. Distribution of assets in kind may be made at valuations set by agreement between the liquidator and the creditor and approved by the court.

84 Acts, ch 1175, §44

507C.45 Unclaimed and withheld funds.

1. Unclaimed funds subject to distribution remaining in the liquidator's hands when the liquidator is ready to apply to the court for discharge, including the amount distributable to a creditor, shareholder, member, or other person who is unknown or cannot be found, shall be deposited with the state treasurer, and shall be paid without interest, except in accordance with section 507C.42, to the person entitled or the person's legal representative upon proof satisfactory to the state treasurer of the right to the funds. An amount on deposit not claimed within six years from the discharge of the liquidator is deemed to have been abandoned and shall become the property of the state without formal escheat proceedings and be deposited with the general fund.

2. Funds withheld under section 507C.37 and not distributed shall upon discharge of the liquidator be deposited with the state treasurer and paid in accordance with section 507C.42. Sums remaining which under section 507C.42 would revert to the undistributed assets of the insurer shall be transferred to the state treasurer and become the property of the state under subsection 1, unless the commissioner in the commissioner's discretion petitions the court to reopen the liquidation under section 507C.47.

3. Notwithstanding any other provision of this chapter, funds as identified in subsection 1, with the approval of the court, shall be made available to the commissioner for use in the detection and prevention of future insolvencies. The commissioner shall hold these funds and shall pay without interest, except as provided in section 507C.42, to the person entitled to the funds or the person's legal representative upon proof satisfactory to the commissioner of the person's right to the funds. The funds shall be held by the commissioner for a period of two years at which time the rights and duties to the unclaimed funds shall vest in the commissioner.

84 Acts, ch 1175, §45; 92 Acts, ch 1117, §30

507C.46 Termination of proceedings.

1. When all assets justifying the expense of collection and distribution have been collected and distributed under this chapter, the liquidator shall apply to the court for discharge. The court may grant the discharge and make any other orders, including an order to transfer remaining funds that are uneconomical to distribute, as appropriate.

2. Any other person may apply to the court at any time for an order under subsection 1. If the application is denied, the applicant shall pay the costs and expenses of the liquidator in resisting the application including a reasonable attorney fee.

84 Acts, ch 1175, §46; 92 Acts, ch 1117, §31

507C.47 Reopening liquidation.

At any time after the liquidation proceeding has been terminated and the liquidator discharged, the commissioner or other interested party may petition the court to reopen the proceedings for good cause including the discovery of additional assets. The court shall order the proceeding reopened if it is satisfied that there is justification for the reopening.

84 Acts, ch 1175, §47
Referred to in §507C.45

507C.48 Disposition of records during and after termination of liquidation.

If it appears to the commissioner that the records of an insurer in process of liquidation or completely liquidated are no longer useful, the commissioner may recommend to the court and the court shall direct what records shall be retained for future reference and what shall be destroyed.

84 Acts, ch 1175, §48

507C.49 External audit of the receiver's books.

The court may order audits to be made of the books of the commissioner relating to a receivership established under this chapter, and a report of each audit shall be filed with the commissioner and with the court. The books, records, and other documents of the receivership shall be made available to the auditor at any time without notice. The expense of an audit shall be considered a cost of administration of the receivership.

84 Acts, ch 1175, §49

SUBCHAPTER IV

INTERSTATE RELATIONS

507C.50 Conservation of property of foreign or alien insurers found in this state.

1. If a domiciliary liquidator has not been appointed, the commissioner may apply to the court by verified petition for an order directing the commissioner to act as conservator to conserve the property of an alien insurer not domiciled in this state or a foreign insurer on any of the following grounds:

a. Any of the grounds in section 507C.12.

b. That property has been sequestered by official action in the insurer's domiciliary state, or in any other state.

c. That enough of its property has been sequestered in a foreign country to give reasonable cause to fear that the insurer is or may become insolvent.

d. That both of the following are found:

(1) That its certificate of authority to do business in this state has been revoked or that no certificate was ever issued.

(2) That there are residents of this state with outstanding claims or outstanding policies.

2. When an order is sought under subsection 1, the court shall cause the insurer to be given notice and time to respond to the petition as is reasonable under the circumstances.

3. The court may issue the order in whatever terms it deems appropriate. The filing or recording of the order with the clerk of court or the recorder of deeds of the county in which the principal business of the company is located or the county in which its principal office or place of business is located is the same notice as a deed, bill of sale, or other evidence of title duly filed or recorded with that recorder of deeds.

4. The conservator may at any time petition for and the court may grant an order under section 507C.51 to liquidate assets of a foreign or alien insurer under conservation, or, for an order under section 507C.53, to be appointed ancillary receiver.

5. The conservator may at any time petition the court for an order terminating conservation of an insurer. If the court finds that the conservation is no longer necessary, it shall order that the insurer be restored to possession of its property and the control of its business. The court may also make such finding and issue such order at any time upon motion of any interested party, but if the motion is denied costs shall be assessed against the party.

84 Acts, ch 1175, §50; 85 Acts, ch 67, §49

Referred to in §507C.51, 507C.52

507C.51 Liquidation of property of foreign or alien insurers found in this state.

1. If a domiciliary receiver has not been appointed, the commissioner may apply to the court by verified petition for an order directing the commissioner to liquidate the assets found

in this state of a foreign insurer or an alien insurer not domiciled in this state on any of the following grounds:

a. Any of the grounds in section 507C.12 or 507C.17.

b. Any of the grounds specified in section 507C.50, subsection 1, paragraphs *"b"* through *"d"*.

2. When an order is sought under subsection 1, the court shall cause the insurer to be given notice and time to respond to the petition as is reasonable under the circumstances.

3. If it appears to the court that the best interests of creditors, policyholders, and the public require, the court may issue an order to liquidate in whatever terms it deems appropriate. The filing or recording of the order with the clerk of the court or the recorder of deeds of the county in which the principal business of the company is located or the county in which its principal office or place of business is located, is same notice as a deed, bill of sale, or other evidence of title duly filed or recorded with that recorder of deeds.

4. If a domiciliary liquidator is appointed in a reciprocal state while a liquidation is proceeding under this section, the liquidator under this section shall act as ancillary receiver under section 507C.53. If a domiciliary liquidator is appointed in a nonreciprocal state while a liquidation is proceeding under this section, the liquidator under this section may petition the court for permission to act as ancillary receiver under section 507C.53.

5. On the same grounds as are specified in subsection 1, the commissioner may petition an appropriate federal district court to be appointed receiver to liquidate that portion of the insurer's assets and business over which the court will exercise jurisdiction, or any lesser part that the commissioner deems desirable for the protection of the policyholders and creditors in this state.

6. When the commissioner has liquidated the assets of a foreign or alien insurer under this section, the court may order the commissioner to pay claims of residents of this state against the insurer under rules as to the liquidation of insurers under this chapter as are otherwise compatible with this section.

84 Acts, ch 1175, §51
Referred to in §507C.50, 507C.52

507C.52 Domiciliary liquidators in other states.

1. Except as to special deposits and security on secured claims under section 507C.53, subsection 3, the domiciliary liquidator of an insurer domiciled in a reciprocal state shall be vested with the title to the assets, property, contracts, rights of action, agents' balances, books, accounts, and other records of the insurer located in this state. The date of vesting is the date of the filing of the petition, if that date is specified by the domiciliary law for the vesting of property in the domiciliary state. Otherwise, the date of vesting is the date of entry of the order directing possession to be taken. The domiciliary liquidator may immediately recover balances due from agents and obtain possession of the books, accounts, and other records of the insurer located in this state. The domiciliary liquidator may also have the right to recover all other assets of the insurer located in this state, subject to section 507C.53.

2. If a domiciliary liquidator is appointed for an insurer not domiciled in a reciprocal state, the commissioner of this state shall be vested with the title to the property, contracts and rights of action, books, accounts and other records of the insurer located in this state, at the same time that the domiciliary liquidator is vested with title in the domicile. The commissioner of this state may petition for a conservation or liquidation order under section 507C.50 or 507C.51, or for an ancillary receivership under section 507C.53, or after approval by the court may transfer title to the domiciliary liquidator, as the interests of justice and the equitable distribution of the assets require.

3. Claimants residing in this state may file claims with the liquidator or ancillary receiver in this state or with the domiciliary liquidator, if the domiciliary law permits. The claims shall be filed on or before the last date fixed for the filing of claims in the domiciliary liquidation proceedings.

84 Acts, ch 1175, §52; 92 Acts, ch 1117, §32
Referred to in §507C.2

507C.53 Ancillary formal proceedings.

1. If a domiciliary liquidator has been appointed for an insurer not domiciled in this state, the commissioner may file a petition with the court requesting appointment as ancillary receiver in this state if both of the following exist:

a. If the domiciliary liquidator finds that there are sufficient assets of the insurer located in this state to justify the appointment of an ancillary receiver.

b. If the protection of creditors or policyholders in this state so requires.

2. The court may issue an order appointing an ancillary receiver in whatever terms it deems appropriate. The filing or recording of the order with the recorder of deeds in this state is the same notice as a deed, bill of sale, or other evidence of title duly filed or recorded with that recorder of deeds.

3. When a domiciliary liquidator has been appointed in a reciprocal state, then the ancillary receiver appointed in this state may aid and assist the domiciliary liquidator in recovering assets of the insurer located in this state. As soon as practicable, the ancillary receiver shall liquidate from their respective securities those special deposit claims and secured claims which are proved and allowed in the ancillary proceedings in this state. The ancillary receiver shall pay the necessary expenses of the proceedings and shall promptly transfer all remaining assets, books, accounts and records to the domiciliary liquidator. Subject to this section, the ancillary receiver and any deputies have the same powers and are subject to the same duties with respect to the administration of assets as a liquidator of an insurer domiciled in this state.

4. As to assets and books, accounts, and other records in their respective states, when a domiciliary liquidator has been appointed in this state, ancillary receivers appointed in reciprocal states shall have corresponding rights, duties and powers to those provided in subsection 3 for ancillary receivers appointed in this state.

84 Acts, ch 1175, §53
Referred to in §507C.2, 507C.50, 507C.51, 507C.52

507C.54 Ancillary summary proceedings.

In the sole discretion of the commissioner, the commissioner may institute proceedings under sections 507C.9 through 507C.11 at the request of the commissioner or other appropriate insurance official of the domiciliary state of a foreign or alien insurer having property located in this state.

84 Acts, ch 1175, §54

507C.55 Claims of nonresidents against insurers domiciled in this state.

1. In a liquidation proceeding begun in this state against an insurer domiciled in this state, claimants residing in foreign countries or in nonreciprocal states shall file claims in this state, and claimants residing in reciprocal states shall file claims either with the ancillary receivers in their respective states or with the domiciliary liquidator. Claims shall be filed on or before the last date fixed for the filing of claims in the domiciliary liquidation proceeding.

2. Claims belonging to claimants residing in reciprocal states shall be proved either in the liquidation proceeding in this state as provided in this chapter or in ancillary proceedings in the reciprocal states, if a claim filing procedure is established in the ancillary proceeding. If notice of the claims and opportunity to appear and be heard is afforded the domiciliary liquidator of this state as provided in section 507C.56, subsection 2, with respect to ancillary proceedings, the final allowance of claims by the courts in ancillary proceedings in reciprocal states shall be conclusive as to amount and as to priority against special deposits or other security located in such ancillary states, but shall not be conclusive with respect to priorities against general assets under section 507C.42.

84 Acts, ch 1175, §55; 92 Acts, ch 1117, §33
Referred to in §507C.2

507C.56 Claims of residents against insurers domiciled in reciprocal states.

1. Promptly after the appointment of the commissioner as ancillary receiver for an insurer not domiciled in this state, the commissioner shall determine whether there are claimants residing in this state who are not protected by guaranty funds and whether the

protection of such claimants requires the establishing of a claim filing procedure in the ancillary proceeding. If a claim filing procedure is established, claimants against the insurer who reside within this state may file claims either with the ancillary receiver in this state, or with the domiciliary liquidator. Claims shall be filed on or before the last dates fixed for the filing of claims in the domiciliary liquidation proceeding.

2. Claims belonging to claimants residing in this state may be proved either in the domiciliary state under the law of that state, or in ancillary proceedings in this state, provided a claim filing procedure is established in the ancillary proceeding. If a claimant elects to prove the claim in this state, the claimant shall file the claim with the liquidator in the manner provided in sections 507C.35 and 507C.36. The ancillary receiver shall make a recommendation to the court as under section 507C.43. The ancillary receiver shall also arrange a date for hearing if necessary under section 507C.39 and shall give notice to the liquidator in the domiciliary state, either by certified mail or by personal service at least forty days prior to the date set for hearing. Within thirty days after the giving of the notice, if the domiciliary liquidator gives notice in writing either by certified mail or by personal service to the ancillary receiver and to the claimant of an intention to contest the claim, the domiciliary liquidator is entitled to appear or to be represented in a proceeding in this state involving the adjudication of the claim.

3. The final allowance of the claim by the courts of this state shall be accepted as conclusive as to amount and as to priority against special deposits or other security located in this state.

84 Acts, ch 1175, §56; 92 Acts, ch 1117, §34
Referred to in §507C.2, 507C.55

507C.57 Attachment, garnishment, and levy of execution.

An action or proceeding in the nature of an attachment, garnishment, or levy of execution shall not be commenced or maintained in this state against the delinquent insurer or its assets during the pendency in this or any other state of a liquidation proceeding, whether called by that name or not.

84 Acts, ch 1175, §57
Referred to in §507C.2

507C.58 Interstate priorities.

1. In a liquidation proceeding in this state involving one or more reciprocal states, the order of distribution of the domiciliary state shall control as to claims of residents of this and reciprocal states. Claims of residents of reciprocal states shall be given equal priority of payment from general assets regardless of where the assets are located.

2. The owners of special deposit claims against an insurer for which a liquidator is appointed in this or any other state is given priority against the special deposits in accordance with the statutes governing the creation and maintenance of the deposits. If there is a deficiency in a deposit so that the claims secured by it are not fully discharged from it, the claimants may share in the general assets. However, the sharing shall be deferred until general creditors and claimants against other special deposits who have received smaller percentages from their respective special deposits have been paid percentages of their claims equal to the percentage paid from the special deposit.

3. The owner of a secured claim against an insurer for which a liquidator has been appointed in this or any other state may surrender the security and file the claim as a general creditor, or the claim may be discharged by resort to the security in accordance with section 507C.41, in which case the deficiency shall be treated as a claim against the general assets of the insurer on the same basis as claims of unsecured creditors.

84 Acts, ch 1175, §58

507C.59 Subordination of claims for noncooperation.

If an ancillary receiver in another state or foreign country, whether called by that name or not, fails to transfer to the domiciliary liquidator in this state assets within the ancillary receiver's control other than special deposits, diminished only by the expenses of the ancillary

receivership, the claims filed in the ancillary receivership, other than special deposit claims or secured claims, shall be placed in the class of claims under section 507C.42, subsection 8.

84 Acts, ch 1175, §59; 97 Acts, ch 186, §5

507C.60 Suspension of certificate of authority.

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

2002 Acts, ch 1111, §7

CHAPTER 507D

INSURANCE ASSISTANCE

Referred to in §87.4, 296.7, 331.301, 364.4, 505.28, 505.29, 669.14, 670.7

507D.1	Short title.	507D.4	Financing of assistance programs.
507D.2	Collection and analysis of information.	507D.5	Rate adjustment review.
507D.3	Authorized assistance programs.	507D.6	Continuing studies.

507D.1 Short title.

This chapter shall be known as the *"Insurance Assistance Act"*.

86 Acts, ch 1211, §26

507D.2 Collection and analysis of information.

The commissioner of insurance may adopt rules pursuant to chapter 17A for the collection of necessary additional information relating to the availability, obtainability, costs, profits, and losses associated with the provision of property, casualty, product, professional, or other liability insurance within the state, and relating to the feasibility and implementation of market assistance programs, mandatory risk allocation programs, risk-sharing programs, risk management programs, or any other authorized program under section 507D.3.

The commissioner shall provide for the analysis of such information gathered pursuant to this or any other section and shall make such analysis available to the general assembly on an annual basis.

86 Acts, ch 1211, §27

Referred to in §507D.4

507D.3 Authorized assistance programs.

The commissioner of insurance is authorized to institute programs, order the institution of programs within the private sector, or to contract with or delegate authority to the department of administrative services for the institution of programs relating to insurance assistance including, but not limited to, the following:

1. The development and implementation of a market assistance program to facilitate, arrange, or provide for the acquisition of property, casualty, product, professional, or other liability insurance coverage for all persons or entities seeking such coverage but for which the coverage is presently unavailable or unobtainable to the person or entity.

2. The development and implementation of a mandatory risk allocation system for property, casualty, product, professional, or other liability insurance, except asbestos and environmental impairment liability, in order to assure that all persons or entities for which such insurance is essential may obtain such insurance from insurers authorized to do business within this state.

3. The development and implementation of a risk-sharing program to assist and advise persons or entities seeking property, casualty, product, professional, or other liability

insurance, except asbestos and environmental impairment liability, on the most efficient manner in which to share or pool similar risks in order to obtain essential insurance coverage at the minimum cost.

4. The development and implementation of a risk management program for persons or entities to which property, casualty, product, professional, or other liability insurance is essential, such program to include at a minimum the following:

a. Assistance in developing and maintaining loss and loss exposure data on such liability risks.

b. Recommendations regarding risk reduction and risk elimination programs.

c. Recommendations of those practices which will permit protection against such losses at the lowest costs, consistent with good underwriting practices and sound risk management techniques.

5. Subsections 2 and 3 shall have no application or effect after July 1, 1991.

6. An assistance program for the facilitation of insurance and financial responsibility coverage for owners and operators of underground storage tanks which store petroleum shall not be affected by the exceptions of subsections 2 and 3.

86 Acts, ch 1211, §28; 87 Acts, ch 225, §601; 88 Acts, ch 1134, §94; 89 Acts, ch 76, §9; 2003 Acts, ch 145, §286

Referred to in §507D.2, 507D.4

507D.4 Financing of assistance programs.

The insurance commissioner may, by rule, provide for the financing, as necessary, for any or all programs under sections 507D.2 and 507D.3 by the assessment of fees to insurers authorized to write property, casualty, product, professional, or other liability insurance within this state. The commissioner of insurance may assess fees and charges against persons or entities for costs incurred in providing assistance to the person or entity pursuant to section 507D.3. Fees collected pursuant to such rules shall be used solely for the purposes of the program for which assessed, and are not to be transmitted to the general fund or used for any other purposes.

86 Acts, ch 1211, §29

507D.5 Rate adjustment review.

The commissioner of insurance shall conduct a rate adjustment review for all insurers authorized to write property, casualty, product, professional, or other liability insurance within this state and who make a request for rate adjustment regarding such insurance. The commissioner of insurance may employ or contract with actuarial consultants as necessary to review the request. The person conducting the review shall report to the commissioner as to the advisability of the adjustment requested.

The reasonable fees and expenses of an actuarial consultant employed or contracted by the commissioner of insurance for purposes of a rate adjustment review shall be assessed against and paid by the person requesting such rate adjustment.

86 Acts, ch 1211, §30

507D.6 Continuing studies.

The commissioner of insurance is authorized to conduct such further surveys, market reviews, data collection and analysis, studies of a mandatory risk allocation system and a risk-sharing program and such other studies as the commissioner deems necessary for the proper implementation of this chapter.

86 Acts, ch 1211, §31

CHAPTER 507E

INSURANCE FRAUD

Referred to in §87.4, 296.7, 331.301, 364.4, 505.28, 505.29, 669.14, 670.7

507E.1 Title.
507E.2 Purpose.
507E.2A Definitions.
507E.3 Fraudulent submissions — penalty.
507E.3A Fraudulent sales practices — penalties.
507E.4 Examination of information outside the state.
507E.5 Confidentiality.
507E.6 Duties of insurer.
507E.7 Immunity from liability.
507E.8 Law enforcement officer status.

507E.1 Title.

This chapter may be cited as the *"Iowa Insurance Fraud Act"*.

94 Acts, ch 1072, §1, 9; 95 Acts, ch 185, §46

507E.2 Purpose.

An insurance fraud bureau is created within the insurance division. Upon a reasonable determination by the division, by its own inquiries or as a result of complaints filed with the division, that a person has engaged in, is engaging in, or may be engaging in an act or practice that violates this chapter or any other provision of the insurance code, the division may administer oaths and affirmations, serve subpoenas ordering the attendance of witnesses, and collect evidence related to such act or practice.

94 Acts, ch 1072, §2

507E.2A Definitions.

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

1. *"Insurance"* means any and all contracts, arrangements, and agreements by or through which one party, for compensation, assumes risks of another party and promises to pay the second party or the second party's nominee a certain or ascertainable sum of money on the occurrence of a specified contingency. *"Insurance"* includes any and all contracts, arrangements, or agreements contemplated by, falling within, and coming under section 87.11. Without limiting the foregoing, *"insurance"* includes any contract of insurance, indemnity, subscription, membership, suretyship, or annuity that has been issued, is proposed for issuance, or is intended for issuance by any person or entity.

2. *"Insurer"* includes an insurer that issues a policy of workers' compensation, a self-insured business for purposes of workers' compensation liability, or a group or self-insured plan as described in section 87.4.

2018 Acts, ch 1169, §22
NEW section

507E.3 Fraudulent submissions — penalty.

1. For purposes of this chapter, *"statement"* includes, but is not limited to, any notice, statement, proof of loss, bill of lading, receipt for payment, invoice, account, estimate of property damage, bill for services, diagnosis, prescription, hospital or physician record, X ray, test result, or other evidence of loss, injury, or expense.

2. A person commits a class "D" felony if the person, with the intent to defraud an insurer, does any of the following:

a. Presents or causes to be presented to an insurer, any written document or oral statement, including a computer-generated document, as part of, or in support of, a claim for payment or other benefit pursuant to an insurance policy, knowing that such document or statement contains any false information concerning a material fact.

b. Assists, abets, solicits, or conspires with another to present or cause to be presented to an insurer, any written document or oral statement, including a computer-generated document, that is intended to be presented to any insurer in connection with, or in support

of, any claim for payment or other benefit pursuant to an insurance policy, knowing that such document or statement contains any false information concerning a material fact.

c. Presents or causes to be presented to an insurer, any written document or oral statement, including a computer-generated document, as part of, or in, an application for insurance coverage, knowing that such document or statement contains false information concerning a material fact.

94 Acts, ch 1072, §3, 9; 95 Acts, ch 185, §46; 96 Acts, ch 1045, §2
Referred to in §507E.6, 910.1

507E.3A Fraudulent sales practices — penalties.

1. A person commits the offense of fraudulent sales practices if the person, with the intent to defraud another person in connection with any sale, solicitation, or negotiation of insurance in this state, willfully does any of the following:

a. Employs any deception, device, scheme, or artifice to defraud.

b. Misrepresents, conceals, or suppresses any material fact.

c. Engages in any act, practice, or course of business which operates as a fraud or deceit upon any person.

2. A person who violates subsection 1 commits a class "D" felony.

3. Notwithstanding subsection 2, a person commits a class "C" felony if the person violates subsection 1, and such violation results in a loss of more than ten thousand dollars.

2016 Acts, ch 1122, §5; 2017 Acts, ch 29, §143
Referred to in §910.1

507E.4 Examination of information outside the state.

The bureau shall seek to obtain by request, any information related to the enforcement of this chapter in the possession of a person located outside the state. The bureau may designate a representative, including an official of the state where the information is located, to inspect the information on behalf of the bureau at the place where the information is located. The bureau may respond to similar requests from an official from another state.

94 Acts, ch 1072, §4

507E.5 Confidentiality.

1. All investigation files, investigation reports, and all other investigative information in the possession of the bureau are confidential records under chapter 22 except as specifically provided in this section and are not subject to discovery, subpoena, or other means of legal compulsion for their release until opened for public inspection by the bureau, or upon the consent of the bureau, or until a court of competent jurisdiction determines, after notice to the bureau and hearing, that the bureau will not be unnecessarily hindered in accomplishing the purposes of this chapter by their opening for public inspection. However, investigative information in the possession of the bureau may be disclosed, in the commissioner's discretion, to appropriate licensing authorities within this state, another state or the District of Columbia, or a territory or country in which a licensee is licensed or has applied for a license.

2. The commissioner may share documents, materials, or other information, including confidential and privileged documents, materials, or other information, with other state, federal, and international regulatory agencies, with the national association of insurance commissioners and its affiliates or subsidiaries, and with state, federal, and international law enforcement authorities, provided that the recipient agrees to maintain the confidential and privileged status of the document, material, or other information, pursuant to Iowa law.

3. The commissioner may receive documents, materials, or other information, including otherwise confidential and privileged documents, materials, or other information, from other local, state, federal, and international regulatory agencies, the national association of insurance commissioners and its affiliates or subsidiaries, and local, state, federal, and international law enforcement authorities, and shall maintain as confidential and privileged any document, material, or other information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material, or other information.

4. The commissioner may enter into agreements governing the sharing and use of documents, materials, or other information consistent with this section.

5. An investigator or other staff member of the bureau is not subject to subpoena in a civil action concerning any matter of which the investigator or other staff member has knowledge pursuant to a pending or continuing investigation being conducted by the bureau pursuant to this chapter.

94 Acts, ch 1072, §5; 2006 Acts, ch 1117, §30
Referred to in §22.7(54)

507E.6 Duties of insurer.

An insurer which believes that a claim or application for insurance coverage is being made which is a violation of section 507E.3 shall provide, within sixty days of the receipt of such claim or application, written notification to the bureau of the claim or application on a form prescribed by the bureau, including any additional information requested by the bureau related to the claim or application or the party making the claim or application. The fraud bureau shall review each notification and determine whether further investigation is warranted. If the bureau determines that further investigation is warranted, the bureau shall conduct an independent investigation of the facts surrounding the claim or application for insurance coverage to determine the extent, if any, to which fraud occurred in the submission of the claim or application. The bureau shall report any alleged violation of law disclosed by the investigation to the appropriate licensing agency or prosecuting authority having jurisdiction with respect to such violation.

94 Acts, ch 1072, §6; 2008 Acts, ch 1123, §13

507E.7 Immunity from liability.

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

a. Law enforcement officials, their agents and employees.

b. The national association of insurance commissioners, the insurance division, a federal or state governmental agency or bureau established to detect and prevent fraudulent insurance acts, or any other organization established for such purpose, and their agents, employees, or designees.

c. An authorized representative of an insurer.

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

94 Acts, ch 1072, §7, 9; 95 Acts, ch 185, §46; 96 Acts, ch 1045, §3; 2002 Acts, ch 1111, §9

507E.8 Law enforcement officer status.

1. Bureau investigators shall have the power and status of law enforcement officers who by the nature of their duties may be required to perform the duties of a peace officer when making arrests for criminal violations established as a result of their investigations pursuant to this chapter.

2. The general laws applicable to arrests by law enforcement officers of the state also apply to bureau investigators. Bureau investigators shall have the power to execute arrest warrants and search warrants for the same criminal violations, serve subpoenas issued for the examination, investigation, and trial of all offenses identified through their investigations, and arrest upon probable cause without warrant a person found in the act of committing a violation of the provisions of this chapter.

94 Acts, ch 1072, §8; 2011 Acts, ch 70, §7
Referred to in §97B.49B

CHAPTER 508

LIFE INSURANCE COMPANIES

Referred to in §87.4, 235F.1, 296.7, 331.301, 364.4, 423.3, 505.28, 505.29, 506.14, 507.1, 507.12, 507B.4C, 508A.1, 508A.5, 508B.1, 509.5, 510.11, 511.8, 511.26, 514A.1, 514G.103, 515.1, 515B.2, 515B.9, 518C.10, 521.1, 521A.1, 521A.14, 521E.1, 521F.2, 521G.2, 521G.3, 522B.1, 533C.103, 535.8, 669.14, 670.7

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508.1 Level premium and natural premium plan companies.

Every life insurance company upon the level premium or the natural premium plan, created under the laws of this or any other state or country, shall, before issuing policies in the state, comply with the provisions of this chapter applicable to such companies.

[C73, §1161; C97, §1768; S13, §1768; C24, 27, 31, 35, 39, §**8643;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §508.1]

508.2 Articles — approval — bylaws.

The articles of incorporation, and any subsequent amendments, of a company shall be filed with and approved by the commissioner of insurance before filing with the secretary of state. A company shall file with the commissioner bylaws and subsequent amendments to the bylaws within thirty days of adoption of the bylaws and amendments.

[S13, §1768; C24, 27, 31, 35, 39, §**8644;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §508.2]
2009 Acts, ch 145, §5

508.3 Requirements of articles.

Such articles shall show the name, location of principal place of business, object, amount of capital, if a stock company, and shall contain such other provisions as may be necessary to a full understanding of the nature of the business to be transacted and the plan upon which the same is to be conducted.

[S13, §1768; C24, 27, 31, 35, 39, §**8645;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §508.3]

508.4 Approval of amendments to articles — bylaws.

1. All amendments to the articles of incorporation of companies already organized under the laws of this state shall be approved in like manner.

2. A company shall file with the commissioner bylaws and subsequent amendments to such bylaws within thirty days of the adoption of such bylaws and amendments.

[C97, §1768; C24, 27, 31, 35, 39, §**8646;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §508.4]

2000 Acts, ch 1023, §7; 2018 Acts, ch 1041, §127

Code editor directive applied

508.5 Capital and surplus required.

1. A stock life insurance company shall not be authorized to transact business under this chapter with less than five million dollars of capital and surplus paid in cash or invested as provided by law. A stock life insurance company shall not increase its capital stock unless the amount of the increase is fully paid in cash. A stock life insurance company authorized to do business in Iowa that undergoes a change of control as defined under chapter 521A shall maintain the minimum capital and surplus requirements mandated by this section.

2. Notwithstanding subsection 1, a stock life insurance company, or any other life insurance company authorized to transact business under this chapter, shall comply with the minimum capital and surplus requirements of this chapter or chapter 521E, whichever is greater.

[C73, §1162; C97, §1769; C24, 27, 31, 35, 39, §**8647;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §508.5]

90 Acts, ch 1234, §5; 95 Acts, ch 185, §7; 96 Acts, ch 1046, §1, 21; 98 Acts, ch 1057, §3

Referred to in §508.6, 508.9, 508.33A

508.6 Deposit of securities — certificate.

Securities in the amount of the capital and surplus required under section 508.5 shall be deposited with the commissioner of insurance or at such places as the commissioner may designate. When the deposit is made and evidence furnished, by affidavit or otherwise, satisfactory to the commissioner, that the capital stock is all fully paid and the company possessed of the surplus required and that the company is the actual and unqualified owner of the securities representing the paid-up capital stock or other funds of the company, and all laws have been complied with, the commissioner shall issue the company the certificate provided for in this chapter.

[C73, §1162; C97, §1769; C24, 27, 31, 35, 39, §**8648;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §508.6; 82 Acts, ch 1095, §1]

85 Acts, ch 228, §1

Referred to in §508.33A

508.7 Loans to officers.

Except as permitted in sections 508.8 and 508.8A, the capital or other funds shall not be loaned directly or indirectly to an officer, director, stockholder, or employee of the company or directly or indirectly to a relative of an officer or director of the company.

[C73, §1162; C97, §1769; C24, 27, 31, 35, 39, §**8649;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §508.7; 81 Acts, ch 166, §1]

91 Acts, ch 213, §4

508.8 Insurance company officers — conflicts of interest — exceptions.

1. As used in this section, *"employee"* includes but is not limited to the officers of a life insurance company.

2. A director or officer of a life insurance company shall not receive, in addition to fixed salary or compensation, money or other valuable thing, either directly or indirectly, or through a substantial interest in another corporation or business unit, for negotiating, procuring, recommending or aiding in the purchase or sale of property, or loan, made by the insurer or an affiliate or subsidiary of the insurer; nor shall a director or officer be pecuniarily interested, either as principal, coprincipal, agent or beneficiary, either directly or indirectly, or through a substantial interest in another corporation or business unit, in the

purchase, sale or loan. However, a life insurance company, in connection with the relocation of the place of employment of an employee including relocation upon the initial employment of the employee, may do either of the following:

a. Make a mortgage loan on real property owned by the employee which is to serve as the employee's dwelling.

b. Acquire at not more than fair market value the dwelling which the employee vacates upon relocation.

[C24, 27, 31, 35, 39, §**8650;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §508.8; 81 Acts, ch 166, §2]

2012 Acts, ch 1023, §103

Referred to in §508.7

508.8A Loans to employees.

1. A life insurance company having a ratio of statutory surplus to admitted assets of at least four percent may make, acquire, and hold loans to employees, officers, and directors under the following terms and conditions:

a. The company may make a mortgage loan on real property owned by an employee of the company which is to serve as the employee's dwelling, provided the company is regularly and actively involved in making residential mortgage loans to the public.

b. The company may acquire a mortgage loan on real property owned by an employee of the company which is to serve as the employee's dwelling, provided the company acquiring such loan is regularly and actively involved in acquiring residential mortgage loans not involving employees from sources in the secondary market.

c. The company may acquire a mortgage loan on real property owned by an employee, officer, or director which is included in a portfolio of mortgages initiated by others and acquired by the life insurance company. The mortgage loans in any such acquired portfolio of mortgage loans must satisfy both of the following conditions:

(1) More than seventy-five percent of the dollar value of the mortgage loans must be for real property that is owned by persons who are not employees, officers, or directors of the company.

(2) More than seventy-five percent of the mortgage loans must be for real property that is owned by persons who are not employees, officers, or directors of the company.

d. The company may continue to hold a mortgage loan on real estate which is assumed by an employee, officer, or director if the mortgage was originally properly made or acquired by the life insurance company, provided that all terms and conditions of the mortgage loan remain unchanged and the mortgage loan is serviced in accordance with customary servicing practices of prudent lending institutions.

e. The company may continue to hold a mortgage on real estate owned by an officer or director which was properly made or acquired by the company before the officer or director became an officer or director of the company, provided that all terms and conditions of the mortgage loan remain unchanged and the mortgage loan is serviced in accordance with customary servicing practices of prudent lending institutions.

2. As used in this section, *"employee"* does not include officers or directors of a life insurance company.

91 Acts, ch 213, §5

Referred to in §508.7

508.9 Mutual companies — conditions.

1. Level premium and natural premium life insurance companies organized under the laws of this state upon the mutual plan shall, before issuing policies, have actual applications on at least two hundred and fifty lives for an average amount of one thousand dollars each. A list of the applications giving the name, age, residence, amount of insurance, and annual premium of each applicant shall be filed with the commissioner of insurance, and a deposit made with the commissioner of an amount equal to three-fifths of the whole annual premium on the applications, in cash or the securities required by section 508.5. In addition, a deposit of cash or securities of the character provided by law for the investment of funds for life

insurance companies in the sum of five million dollars shall be made with the commissioner, which shall constitute a security fund for the protection of policyholders. The contribution to the security fund shall not give to contributors to the fund or to other persons any voting or other power in the management of the affairs of the company. The security fund may be repaid to the contributors to the security fund with interest at six percent from the date of contribution, at any time, in whole or in part, if the repayment does not reduce the surplus of the company below the amount of five million dollars and then only if consent in writing for the repayment is obtained from the commissioner of insurance. Upon compliance with this section, the commissioner shall issue to the mutual company the certificate prescribed in this chapter. A mutual insurance company authorized to do business in Iowa that undergoes a change of control as defined in chapter 521A shall maintain the minimum surplus requirement mandated by this section.

2. Notwithstanding subsection 1, a mutual insurance company authorized to transact business under this chapter shall comply with the minimum surplus requirements of this section or chapter 521E, whichever is greater.

[C73, §1163; C97, §1770; C24, 27, 31, 35, 39, §**8651;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §508.9]

90 Acts, ch 1234, §6; 92 Acts, ch 1162, §4; 95 Acts, ch 185, §8; 96 Acts, ch 1046, §2

508.10 Foreign companies — capital or surplus — investments.

1. A company incorporated by or organized under the laws of any other state or government shall not transact business in this state unless it is possessed of the actual amount of capital and surplus required of any company organized by the laws of this state, or, if it be a mutual company, of surplus equal in amount thereto.

2. An alien insurer, with the approval of the commissioner, may be treated as a domestic insurer of this state in whole or in part, and if so approved is deemed to be organized under the laws of this state and is an Iowa domestic insurer as provided by rules adopted by the commissioner. The approval of the commissioner may be based upon such factors as:

a. Maintenance of an appropriate trust account, surplus account, or other financial mechanism in this state.

b. Maintenance of all books and records of United States operations in this state.

c. Maintenance of a separate financial reporting system for its United States operations.

d. Any other provisions deemed necessary by the commissioner.

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

[C73, §1164; C97, §1772; C24, 27, 31, 35, 39, §**8652;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §508.10]

90 Acts, ch 1234, §69; 92 Acts, ch 1244, §47; 97 Acts, ch 186, §6; 2003 Acts, ch 145, §286; 2007 Acts, ch 137, §9

508.11 Annual statement.

The president or vice president and secretary or actuary, or a majority of the directors of each company organized under this chapter, shall annually, on or before the first day of March, prepare under oath and file in the office of the commissioner of insurance or a depository designated by the commissioner a statement of its affairs for the year terminating on the thirty-first day of December preceding, showing:

1. The name of the company and where located.
2. The names of officers.
3. The amount of capital, if a stock company.
4. The amount of capital paid in, if a stock company.
5. The value of real estate owned by the company.
6. The amount of cash on hand.
7. The amount of cash deposited in banks, giving the name of the bank or banks.
8. The amount of cash in the hands of agents, and in the course of transmission.

9. The amount of bank stock, with the name of each bank, giving par and market value of the same.
10. The amount of bonds of the United States, and all other bonds and securities, giving names and amounts, with the par and market value of each kind.
11. The amount of loans secured by first mortgage on real estate, and where such real estate is situated.
12. The amount of all other bonds, loans, how secured, and the rate of interest.
13. The amount of premium notes and their value on policies in force, if a mutual company.
14. The amount of notes given for unpaid stock, and their value in detail, if a stock company.
15. The amount of assessments unpaid on stock or premium notes.
16. The amount of interest due and unpaid.
17. The amount of all other securities.
18. The amount of losses due and unpaid.
19. The amount of losses adjusted but not due.
20. The amount of losses unadjusted.
21. The amount of claims for losses resisted.
22. The amount of money borrowed and evidences thereof.
23. The amount of dividends unpaid on stock.
24. The amount of dividends unpaid on policies.
25. The amount required to safely reinsure all outstanding risks.
26. The amount of all other claims against the company.
27. The amount of net cash premiums received.
28. The amount of notes received for premiums.
29. The amount of interest received from all sources.
30. The amount received from all other sources.
31. The amount paid for losses.
32. The amount of dividends paid to policyholders, and the amount to stockholders, if a stock company.
33. The amount of commissions and salaries paid to agents.
34. The amount paid to officers for salaries and other compensation.
35. The amount paid for taxes.
36. The amount of all other payments and expenditures.
37. The greatest amount insured on any one life.
38. The amount deposited in other states or territories as security for policyholders therein, stating the amount in each state or territory.
39. The amount of premiums received in this state during the year.
40. The amount paid for losses in this state during the year.
41. The whole number of policies issued during the year, with the amount of insurance effected thereby, and total amount of risk.
42. All other items of information necessary to enable the commissioner of insurance to correctly estimate the cash value of policies, or to judge of the correctness of the valuation thereof.
43. All other information as required by the national association of insurance commissioners' annual statement blank. The annual statement blank shall be prepared in accordance with instructions prescribed by the commissioner. All financial information reflected in the annual report shall be kept and prepared in accordance with accounting practices and procedures prescribed by the commissioner. The commissioner may adopt by reference the annual statement handbook and the accounting practices and procedures manual of the national association of insurance commissioners.

[C73, §1167; C97, §1773; C24, 27, 31, 35, 39, §**8653;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §508.11]

91 Acts, ch 26, §36; 2003 Acts, ch 91, §6

508.12 Redomestication of insurers.

1. An insurer which is organized under the laws of any state and has created or will create

jobs in this state or which is an affiliate or subsidiary of a domestic insurer, and is admitted to do business in this state for the purpose of writing insurance authorized by this chapter may become a domestic insurer by complying with section 490.902 or 491.33 and with all of the requirements of law relative to the organization and licensing of a domestic insurer of the same type and by designating its principal place of business in this state may become a domestic corporation and be entitled to like certificates of its corporate existence and license to transact business in this state, and be subject in all respects to the authority and jurisdiction thereof.

2. The certificates of authority, agent's appointments and licenses, rates, and other items which are in existence at the time any insurer transfers its corporate domicile to this state, pursuant to this section, shall continue in full force and effect upon such transfer. For purposes of existing authorizations and all other corporate purposes, the insurer is deemed the same entity as it was prior to the transfer of its domicile. All outstanding policies of any transferring insurer shall remain in full force and effect and need not be endorsed as to any new name of the company or its new location unless so ordered by the commissioner of insurance.

[C75, 77, 79, 81, §508.12]

88 Acts, ch 1112, §503; 89 Acts, ch 288, §191; 2011 Acts, ch 66, §1

Referred to in §508B.1

508.13 Annual certificate of authority.

1. On receipt of an application for a certificate of authority or renewal of a certificate of authority, fees, the deposit provided in section 511.8, subsection 16, and the statement, and the statement and evidence of investment of foreign companies, the commissioner of insurance shall issue a certificate or a renewal of a certificate setting forth the corporate name of the company, its home office, that it has fully complied with the laws of the state and is authorized to transact the business of life insurance for the ensuing year, which certificate shall expire on the first day of June of the ensuing year, or sooner upon thirty days' notice given by the commissioner, of the next annual valuation of its policies.

2. A company shall submit annually on or before March 1 a completed application for renewal of its certificate of authority. A certificate of authority shall expire on the first day of June next succeeding its issue and shall be renewed annually so long as the company transacts business in accordance with all legal requirements of the state.

3. A company that fails to timely file an application for renewal of its certificate of authority shall pay an administrative penalty of five hundred dollars to the treasurer of state for deposit as provided in section 505.7.

4. A copy of a certificate of authority, when certified by the commissioner, shall be admissible in evidence for or against a company, with the same effect as the original.

[C73, §1170; C97, §1775; C24, 27, 31, 35, 39, §**8657;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §508.13]

88 Acts, ch 1112, §103; 2006 Acts, ch 1117, §31; 2009 Acts, ch 181, §66

508.14 Violation by domestic company — dissolution — administrative penalties.

1. Upon a failure of a company organized under the laws of this state to make the deposit provided in section 511.8, subsection 16, or file the statement in the time herein stated, or to file in a timely manner any financial statement required by rule of the commissioner of insurance, the commissioner of insurance shall notify the attorney general of the default, who shall at once apply to the district court of the county where the home office of the company is located for an order requiring the company to show cause, upon reasonable notice to be fixed by the court, why its business shall not be discontinued. If, upon the hearing, sufficient cause is not shown, the court shall decree its dissolution.

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

3. The commissioner may give notice to a company, which has failed to file evidence of

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

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

[C73, §1171; C97, §1776; C24, 27, 31, 35, 39, §**8658;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §508.14]

89 Acts, ch 321, §33; 97 Acts, ch 186, §7; 2009 Acts, ch 181, §67

508.15 Violation by foreign company.

Companies organized and chartered by the laws of a foreign state or country, failing to file the evidence of investment and statement within the time fixed, or failing to timely file any financial statement required by rule of the commissioner of insurance, shall forfeit and pay five hundred dollars, to be collected in an action in the name of the state and paid to the treasurer of state for deposit as provided in section 505.7, and their right to transact further new business in this state shall immediately cease until the requirements of this chapter have been fully complied with. The commissioner may give notice to a company which has failed to file within the time fixed that the company is in violation of this section and if the company fails to file the evidence of investment and statement within ten days of the date of the notice the company shall forfeit and pay the additional sum of one hundred dollars for each day the failure continues, to be paid to the treasurer of state for deposit as provided in section 505.7.

[C73, §1171; C97, §1776; C24, 27, 31, 35, 39, §**8659;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §508.15]

83 Acts, ch 185, §48, 62; 83 Acts, ch 186, §10105, 10201, 10204; 89 Acts, ch 321, §34; 91 Acts, ch 213, §6; 2009 Acts, ch 181, §68

508.15A Suspension and summary suspension.

The commissioner may do one or more of the following:

1. For a violation of Title XIII, subtitle 1, after a hearing provided pursuant to chapter 17A, order the suspension of the license or authority to transact the business of insurance within the state.

2. Upon three days' notice, if the commissioner has reason to believe that there is imminent substantial risk to an insurer's solvency, order the insurer to appear before the commissioner and show cause why its license or authority to do insurance business within the state should not be suspended. At the hearing to show cause, the commissioner may summarily suspend the license or authority of the insurer to do business within the state.

3. Summarily order an insurer to cease and desist from a violation, anticipated violation, or suspected violation of chapter 507B, 510, or 513A, if a hearing is provided pursuant to chapter 17A within thirty days of the summary cease and desist order.

91 Acts, ch 213, §7

508.16 Examination.

The commissioner of insurance at any time may make a personal examination of the books, papers, securities, and business of any life insurance company doing business in this state, or authorize any other suitable person to make the same, and the commissioner or the person so authorized may examine under oath any officer or agent of the company, or others, relative to its business and management.

[C73, §1172; C97, §1777; C24, 27, 31, 35, 39, §**8660;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §508.16]

508.17 Injunction — receivership — dissolution. Repealed by 91 Acts, ch 26, §61.

508.18 Decree.

The court, on the final hearing, may make decree subject to the provisions of section 508.19 as to the appointment of a receiver, the disposition of the deposits of the company in the hands of the commissioner, and its dissolution, if a domestic company.

[C73, §1172; C97, §1777; C24, 27, 31, 35, 39, §**8662;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §508.18]

Referred to in §507.12, 508.19, 511.8(16)(b), 511.8(16)(d), 511.8(21)(b), 511.8(22)(b), 511.8(22)(c), 511.8(22)(d), 511.8(22)(e)

508.19 Securities.

The securities that are on deposit of a defaulting or insolvent company, or a company against which proceedings are pending under section 508.18, shall vest in the state for the benefit of all policyholders of the company.

[C73, §1173; C97, §1778; C24, 27, 31, 35, 39, §**8663;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §508.19]

85 Acts, ch 228, §2; 91 Acts, ch 26, §58

Referred to in §507.12, 508.18

508.20 Reinsurance securities — title vested in commissioner.

The title to all securities deposited with the commissioner of insurance by any domestic life insurance company or association which has been, or hereafter shall be, reinsured by a foreign life insurance company, shall be vested in the commissioner for the use and benefit of only the policies of the company reinsured in force at the date of such reinsurance agreement.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §508.20]

508.21 Amount to be deposited.

The reinsuring company shall at all times maintain such deposits in at least the amount of the net reserve, as determined by the commissioner of insurance, on all policies reinsured.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §508.21]

508.22 Insolvency of company — procedure.

In the event of insolvency or receivership of such reinsuring company or its successors, the commissioner shall be appointed by the district court of the state in and for Polk county as receiver of said insolvent reinsuring company, and shall proceed, subject to the court's approval, to reinsure said policies in another life insurance company or to liquidate the deposits for the sole benefit of the reinsured policies, and pending liquidation or reinsurance, shall have the sole right to collect premiums due on such policies.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §508.22]

508.23 and 508.24 Reserved.

508.25 Policy forms — approval.

It shall be unlawful for any insurance company transacting business within this state, under the provisions of this chapter, to write or use any form of policy or contract of insurance, on the life of any individual in this state, until a copy of such form of policy or contract has been filed with and approved by the commissioner of insurance.

[S13, §1783-a; C24, 27, 31, 35, 39, §**8668;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §508.25]

508.26 Failure to file copy.

Should any company decline to file a copy of its form of policies or contracts, the commissioner of insurance shall suspend its authority to transact business within the state until such forms of policies or contracts have been so filed and approved.

[S13, §1783-c; C24, 27, 31, 35, 39, §**8669;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §508.26]

508.27 Violations. Repealed by 2004 Acts, ch 1110, §71.

508.28 Approval by commissioner — contestability of policy.

The commissioner of insurance shall decline to approve any such form of policy or contract of insurance unless the same shall, in all respects, conform to the laws of this state applicable thereto. The policy shall be incontestable after it shall have been in force during the lifetime of the insured for two years from its date, except for nonpayment of premiums.

[SS15, §1783-b; C24, 27, 31, 35, 39, §**8671;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §508.28]

Referred to in §514G.106

508.29 Authority to write other insurance.

1. Any life insurance company organized on the stock or mutual plan and authorized by its charter or articles of incorporation so to do, may in addition to such life insurance, insure, either individually or on the group plan, the health of persons and against personal injuries, disablement or death, resulting from traveling or general accidents by land or water, and insure employers against loss in consequence of accidents or casualties of any kind to employees or other persons, or to property resulting from any act of the employee or any accident or casualty to persons or property, or both, occurring in or connected with the transaction of their business, or from the operation of any machinery connected therewith, but nothing contained in this section shall be construed to authorize any life insurance company to insure against loss or injury to person, or property, or both, growing out of explosion or rupture of steam boilers. An insurer may contract with health care service providers and offer different levels of benefits to policyholders based upon the provider contracts.

2. A company insuring risks authorized by this section shall invest or hold in cash, funds equal to seventy-five percent of the aggregate reserves and policy and contract claims for such risks. Investments required by this subsection shall only be made in securities enumerated in section 511.8, and are subject to the same limitations as provided for the investment of legal reserve, and are subject to section 511.8, subsections 16, 17, and 21.

[S13, §1783-d; C24, 27, 31, 35, 39, §**8672;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §508.29]

85 Acts, ch 239, §2; 92 Acts, ch 1162, §5; 2018 Acts, ch 1026, §156

Referred to in §508.31A

Section amended

508.30 Liability. Repealed by 2008 Acts, ch 1123, §56.

508.31 Annuities.

Any life insurance company organized on the stock or mutual plan may grant and sell annuities.

[C35, §8673-e1; C39, §**8673.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §508.31]

508.31A Funding agreements.

1. A life insurance company organized under this chapter may issue funding agreements. The issuance of a funding agreement under this section is deemed to be doing insurance business. For purposes of this section, *"funding agreement"* means an agreement for an insurer to accept and accumulate funds and to make one or more payments at future dates in amounts that are not based on mortality or morbidity contingencies of the person to whom the funding agreement is issued. A funding agreement does not constitute life insurance, an annuity, or other insurance authorized by section 508.29, and does not constitute a security as defined in section 502.102.

2. *a.* Funding agreements may be issued to the following:

(1) A person authorized by a state or foreign country to engage in an insurance business or a subsidiary of such business.

(2) A person for the purpose of funding any of the following:

(a) Benefits under an employee benefit plan as defined in the federal Employee Retirement Income Security Act of 1974, 29 U.S.C. §1001 et seq., maintained in the United States or in a foreign country.

(b) Activities of an organization exempt from taxation pursuant to section 501(c) of the Internal Revenue Code, or any similar organization in any foreign country.

(c) A program of the United States government, another state government or political subdivision of such state, or of a foreign country, or any agency or instrumentality of any such government, political subdivision, or foreign country.

(d) An agreement providing for periodic payments in satisfaction of a claim.

(e) A program of an institution which has assets in excess of twenty-five million dollars.

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

(4) A person other than a natural person for the purpose of providing collateral security for securities registered with the federal securities and exchange commission.

b. A funding agreement issued pursuant to paragraph "*a*", subparagraph (1), (2), or (3), shall be for a total amount of not less than one million dollars.

c. An amount under a funding agreement shall not be guaranteed or credited except upon reasonable assumptions as to investment income and expenses and on a basis equitable to all holders of funding agreements of a given class. Such funding agreements shall not provide for payments to the insurer based on mortality or morbidity contingencies.

d. Amounts paid to the insurer pursuant to a funding agreement, and proceeds applied under optional modes of settlement, may be allocated by the insurer to one or more separate accounts pursuant to section 508A.1.

3. A funding agreement is a class 2 claim under section 507C.42, subsection 2.

4. The commissioner may adopt rules to implement funding agreements.

98 Acts, ch 1057, §4; 99 Acts, ch 3, §1, 2; 2002 Acts, ch 1111, §8; 2003 Acts, ch 91, §7; 2003 Acts, ch 179, §75; 2003 Acts, 1st Ex, ch 2, §28, 209; 2004 Acts, ch 1086, §86

Referred to in §507C.42, 508C.3

508.32 Proceeds of policy held in trust.

1. Any life insurance company organized under the provisions of this chapter and doing business in this state, shall have the power to hold in trust the premiums or consideration paid for, or the proceeds of any life insurance policy or annuity contract, either individual or group, issued by it, upon such terms and subject to such limitations as to revocation or control by the policyholder or beneficiary thereunder, as shall have been agreed to in writing by such company and the policyholder; provided that the trust provisions herein contemplated shall in no manner subject said corporation to any of the provisions of the laws of Iowa relating to banks or trust companies; and provided further, that the trust or trusts for premiums or considerations may be invested by such company in the manner specified in the trust instruments or agreements and held in a separate or segregated account; and provided further, that the forms of such trust agreements for beneficiaries shall be first submitted to and approved by the commissioner of insurance. The word "*trust*" shall include, but not be limited to settlement options and contracts issued pursuant to policies or contracts, and funds held in a separate or segregated account in connection with pension or profit-sharing plans pursuant to agreements with the policyholders.

2. As used in this section, life insurance policies and annuity contracts include accident and health insurance policies and contracts, and include undertakings, duties, and obligations incidental to or in furtherance of any such policies or contracts. As used in this section, proceeds include additions and contributions. Funds held by an insurance company as authorized by this section may be held in a separate account established pursuant to section 508A.1, except that section 508A.1, subsection 5, shall not be applicable to such account. However, funds held by an insurance company as authorized in this section shall not be chargeable with liabilities arising out of any other business the company may conduct.

3. An instrument or agreement issued or used by an insurance company as authorized by this section does not constitute a security as defined in section 502.102.

[C24, 27, 31, 35, 39, §**8674;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §508.32]

97 Acts, ch 5, §1; 2018 Acts, ch 1041, §127

Code editor directive applied

508.32A Funds held in custodial or similar account.

1. A life insurance company organized under this chapter and doing business in this state may hold funds, including additions and contributions, as custodian in a custodial or similar account in conjunction with an accident and health insurance policy. Funds held by an insurance company as authorized by this section may be invested by such company in the manner specified in the account instrument or agreement, and may be held in a separate account established pursuant to section 508A.1. Funds held by an insurance company as authorized by this section shall not be chargeable with liabilities arising out of any other business the company may conduct.

2. An instrument or agreement issued or used by an insurance company as authorized by this section does not constitute a security as defined in section 502.102.

97 Acts, ch 5, §2; 2018 Acts, ch 1041, §127
Code editor directive applied

508.33 Subsidiary companies acquired.

Any life insurance company incorporated in this state may organize, or acquire by purchase, in whole or in part subsidiary insurance and investment companies in which it owns not less than fifty-one percent of the common stock, and notwithstanding any other provisions of this subtitle inconsistent herewith may do all of the following:

1. Invest funds from surplus for such purpose.
2. Make loans to such subsidiaries.
3. Permit all or part of its officers and directors to serve as officers or directors of such subsidiary companies.

[C66, 71, 73, 75, 77, 79, 81, §508.33]
2011 Acts, ch 34, §116
Referred to in §511.8(18)(b)

508.33A Limited purpose subsidiary life insurance companies.

1. As used in this section unless the context otherwise requires:

a. "Affiliated company" means a domestic life insurance company that is a directly or indirectly wholly owned subsidiary of the same parent.

b. "Parent" means a person as defined in section 521A.1 who directly or indirectly through one or more intermediaries wholly owns the organizing life insurance company.

c. "Risks" means risks associated with the life insurance policies and contracts written by the ceding domestic life insurance company or assumed by the ceding domestic life insurance company from an affiliated company, which were written by the affiliated company and for which the ceding domestic life insurance company holds direct statutory reserves for those policies and contracts as required by section 508.36.

2. *a.* A domestic life insurance company organized pursuant to the provisions of this chapter may organize a domestic limited purpose subsidiary life insurance company pursuant to the provisions of this chapter that is wholly owned by the organizing life insurance company. The limited purpose subsidiary life insurance company may reinsure risks of the organizing life insurance company, reinsure risks of affiliated companies, and access alternative forms of financing.

b. A limited purpose subsidiary life insurance company shall submit a plan of operation to the commissioner, and the commissioner shall approve the plan of operation with such amendments as the commissioner requires, before the limited purpose subsidiary life insurance company assumes any risks under a reinsurance contract. The plan of operation and any records, books, documents, reports, or other information that the commissioner requires a limited purpose subsidiary life insurance company to produce or disclose pursuant to rules adopted under subsection 6 or pursuant to an order of the commissioner shall be treated the same as information obtained by or disclosed to the commissioner pursuant to section 521A.6 and the commissioner shall have the powers enumerated in section 521A.6 as to that insurer.

3. The organizing life insurance company may invest funds from its surplus in a limited purpose subsidiary life insurance company organized pursuant to this section.

4. The organizing life insurance company's officers and directors may serve as officers and directors of a limited purpose subsidiary life insurance company organized pursuant to this section.

5. A limited purpose subsidiary life insurance company organized pursuant to this section shall be deemed to be licensed to transact the business of reinsurance for the purposes of section 521B.102, subsection 1, but may only reinsure risks of its organizing life insurance company and of affiliated companies. A limited purpose subsidiary life insurance company organized pursuant to this section may, upon approval of the commissioner, purchase reinsurance to cede the reinsurance risks assumed by the limited purpose subsidiary life insurance company.

6. The commissioner shall adopt rules pursuant to chapter 17A concerning limited purpose subsidiary life insurance companies, including but not limited to the organization, plans of operation, capital requirements including risk-based capital requirements, reserves, authorized investments, reinsurance assumed, material transaction restrictions and requirements, dividends and distributions, operations, and the conditions, forms, and approval of financing of limited purpose subsidiary life insurance companies organized pursuant to this section.

7. Admitted assets of a limited purpose subsidiary life insurance company shall include assets approved by the commissioner which shall be deemed to be, and reported as, admitted assets of the limited purpose subsidiary life insurance company.

8. The provisions of sections 508.5, 508.6, and 511.8, section 521.2, subsection 4, sections 521A.4 and 521A.5, and chapter 521E shall not be applicable to a limited purpose subsidiary life insurance company organized pursuant to this section.

9. A limited purpose subsidiary life insurance company shall not be organized pursuant to this section prior to the effective date of rules adopted by the commissioner regulating the organization and operation of limited purpose subsidiary life insurance companies as provided in subsection 6.

2010 Acts, ch 1121, §9; 2013 Acts, ch 39, §9, 11

508.34 Required to be separate company.

Any subsidiary company shall be a separate and distinct company, with neither the organizing or acquiring life company nor such subsidiary having any liability to the creditors, policyholders or stockholders, if any, of the other. The organizing or acquiring company may be either a mutual or stock company.

[C66, 71, 73, 75, 77, 79, 81, §508.34]

508.35 Qualifications to do business.

Any such subsidiary company organized by any such life insurance company shall comply with all the laws of the state of its incorporation pertaining to the organization and qualification to do business of its class or kind, and if incorporated outside of the state of Iowa shall be admitted to do business in this state only upon qualification under the laws of the state of Iowa relating to such foreign corporations.

[C66, 71, 73, 75, 77, 79, 81, §508.35]

508.36 Standard valuations.

This section shall be known as the "*Standard Valuation Law*".

1. *Definitions.*

a. As used in this section, unless the context otherwise requires:

(1) *"Accident and health insurance"* means policies or contracts that incorporate morbidity risk and provide protection against economic loss resulting from accident, sickness, or medical conditions and as may be specified in the valuation manual.

(2) *"Appointed actuary"* means a qualified actuary who is appointed in accordance with the valuation manual to prepare the actuarial opinion required in subsection 3, paragraph *"b"*.

(3) *"Company"* means an entity which has done any of the following:

(a) Written, issued, or reinsured life insurance policies or contracts, accident and health

insurance policies or contracts, or deposit-type policies or contracts in this state and has at least one such policy or contract in force or on claim.

(b) Written, issued, or reinsured life insurance policies or contracts, accident and health insurance policies or contracts, or deposit-type policies or contracts in any state and is required to hold a certificate of authority to write life insurance, accident and health insurance, or deposit-type policies or contracts in any state and is required to hold a certificate of authority to write life insurance, accident and health insurance, or deposit-type policies or contracts in this state.

(4) *"Deposit-type policy or contract"* means policies or contracts that do not incorporate mortality or morbidity risks and such policies or contracts as may be specified in the valuation manual.

(5) *"Life insurance"* means policies or contracts that incorporate mortality risk, including annuity and pure endowment contracts, and such policies or contracts as may be specified in the valuation manual.

(6) *"NAIC"* means the national association of insurance commissioners.

(7) *"Operative date of the valuation manual"* means the operative date of the valuation manual as provided in subsection 14.

(8) *"Policyholder behavior"* means any action a policyholder, contract holder, or any other person with the right to elect options, such as a certificate holder, may take under a policy or contract subject to this section including but not limited to lapse, withdrawal, transfer, deposit, premium payment, loan, annuitization, or benefit elections prescribed by the policy or contract, but excluding events of mortality or morbidity that result in benefits prescribed in their essential aspects by the terms of the policy or contract.

(9) *"Principle-based valuation"* means a reserve valuation that uses one or more methods or one or more assumptions determined by the insurer and that is required to comply with subsection 15 as specified in the valuation manual.

(10) *"Qualified actuary"* means an individual who is qualified to sign the applicable statement of actuarial opinion in accordance with the American academy of actuaries qualification standards for actuaries signing such statements and who meets the requirements specified in the valuation manual.

(11) *"Tail risk"* means a risk that occurs either where the frequency of low probability events is higher than expected under a normal probability distribution or where there are observed events of very significant size or magnitude.

(12) *"Valuation manual"* means the manual of valuation instructions adopted by the NAIC as specified in this section or as subsequently amended.

b. This subsection is applicable on or after the operative date of the valuation manual.

2. *Reserve valuation.*

a. Policies and contracts issued prior to operative date of valuation manual.

(1) The commissioner shall annually value, or cause to be valued, the reserve liabilities, referred to in this section as reserves, for all outstanding life insurance policies and annuity and pure endowment contracts of every life insurance company doing business in this state, issued on or after July 1, 1973, and prior to the operative date of the valuation manual. In calculating the reserves, the commissioner may use group methods and approximate averages for fractions of a year or otherwise. In lieu of the valuation of the reserves required in this section of any foreign or alien company, the commissioner may accept any valuation made, or caused to be made, by the insurance supervisory official of any state or other jurisdiction when such valuation complies with the minimum standard provided for in this section .

(2) The provisions set forth in subsections 4 through 13 shall apply to all policies and contracts, as appropriate, subject to this section that were issued on or after July 1, 1973, and prior to the operative date of the valuation manual and the provisions set forth in subsections 14 and 15 shall not apply to any such policies or contracts.

(3) The minimum standard for the valuation of policies and contracts issued prior to July 1, 1973, shall be the standard provided by the laws in effect immediately prior to that date.

b. Policies and contracts issued on or after operative date of valuation manual.

(1) The commissioner shall annually value, or cause to be valued, the reserve liabilities

for all outstanding life insurance policies or contracts, annuity and pure endowment policies or contracts, accident and health insurance policies or contracts, and deposit-type policies or contracts of every company issued on or after the operative date of the valuation manual. In lieu of the valuation of the reserves required of a foreign or alien company, the commissioner may accept a valuation made, or caused to be made, by the insurance supervisory official of any state or other jurisdiction when the valuation complies with the minimum standard provided in this section.

(2) The provisions set forth in subsections 14 and 15 shall apply to all policies or contracts issued on or after the operative date of the valuation manual.

3. *Actuarial opinion of reserves.*

a. Actuarial opinion of reserves prior to operative date of valuation manual. This paragraph *"a"* applies to an actuarial opinion of reserves submitted prior to the operative date of the valuation manual.

(1) *General.* A life insurance company doing business in this state shall annually submit the written opinion of a qualified actuary as to whether the reserves and related actuarial items held in support of the policies and contracts specified by the commissioner by regulation are computed appropriately, are based on assumptions which satisfy contractual provisions, are consistent with prior reported amounts, and are in compliance with applicable laws of this state. The commissioner shall define by rule the requirements and content of this opinion and add any other items deemed to be necessary.

(2) *Actuarial analysis of reserves and assets supporting such reserves.*

(a) Unless exempted by rule, a life insurance company shall also annually include in the opinion required by subparagraph (1), an opinion of the same qualified actuary as to whether the reserves and related actuarial items held in support of policies and contracts specified by the commissioner by rule, when considered in light of the assets held by the company with respect to the reserves and related actuarial items, including but not limited to the investment earnings on the assets and the considerations anticipated to be received and retained under the policies and contracts, make adequate provision for the company's obligations under the policies and contracts, including but not limited to the benefits under and expenses associated with the policies and contracts.

(b) The commissioner may provide by rule for a transition period for establishing any higher reserves which the qualified actuary may deem necessary in order to render the opinion required by this paragraph *"a"*.

(3) *Requirements for opinions subject to subparagraph (2).* An opinion required by subparagraph (2) shall be governed by the following provisions:

(a) A memorandum, in form and substance acceptable to the commissioner as specified by rule, shall be prepared to support each actuarial opinion.

(b) If the insurance company fails to provide a supporting memorandum at the request of the commissioner within a period specified by rule or the commissioner determines that the supporting memorandum provided by the insurance company fails to meet the standards prescribed by the rules or is otherwise unacceptable to the commissioner, the commissioner may engage a qualified actuary at the expense of the company to review the opinion and the basis for the opinion and prepare such supporting memorandum as is required by the commissioner.

(4) *Requirement for all opinions subject to this paragraph.* An opinion required under this paragraph *"a"* is governed by the following provisions:

(a) The opinion shall be submitted with the annual statement reflecting the valuation of such reserve liabilities for each year ending on or after December 31, 1995.

(b) The opinion shall apply to all business in force, including individual and group health insurance plans, in form and substance acceptable to the commissioner as specified by rule.

(c) The opinion shall be based on standards adopted from time to time by the actuarial standards board and on such additional standards as the commissioner may by rule prescribe.

(d) In the case of an opinion required to be submitted by a foreign or alien company, the commissioner may accept the opinion filed by that company with the insurance supervisory official of another state if the commissioner determines that the opinion reasonably meets the requirements applicable to a company domiciled in this state.

(e) For the purposes of this paragraph *"a"*, *"qualified actuary"* means a member in good standing of the American academy of actuaries who meets the requirements of the commissioner as specified by rule.

(f) Except in cases of fraud or willful misconduct, a qualified actuary is not liable for damages to any person, other than to the insurance company and the commissioner, for any act, error, omission, decision, or conduct with respect to the actuary's opinion.

(g) Disciplinary action which may be taken by the commissioner against the company or the qualified actuary shall be defined in rules adopted by the commissioner.

(h) (i) Any memorandum in support of the opinion, and any other material provided by the company to the commissioner in connection with the opinion, shall be kept confidential by the commissioner and shall not be made public and shall not be subject to subpoena, other than for the purpose of defending an action seeking damages from any person by reason of any action required by this paragraph *"a"* or by rules adopted pursuant to this paragraph *"a"*. Notwithstanding this subparagraph division, the memorandum or other material may be released by the commissioner if either of the following applies:

(A) The commissioner receives the written consent of the company with which the opinion is associated.

(B) The American academy of actuaries requests that the memorandum or other material is required for the purpose of professional disciplinary proceedings and setting forth procedures satisfactory to the commissioner for preserving the confidentiality of the memorandum or other material.

(ii) Once any portion of the confidential memorandum is cited by the company in its marketing, is cited before any governmental agency other than a state insurance department, or is released by the company to the news media, all portions of the confidential memorandum are no longer confidential.

b. Actuarial opinion of reserves on or after operative date of valuation manual. This paragraph *"b"* applies to an actuarial opinion of reserves submitted on or after the operative date of the valuation manual.

(1) *General.* Every company with outstanding life insurance policies or contracts, accident and health insurance policies or contracts, or deposit-type policies or contracts in this state and subject to regulation by the commissioner shall annually submit the opinion of the appointed actuary as to whether the reserves and related actuarial items held in support of the policies and contracts are computed appropriately, are based on assumptions that satisfy contractual provisions, are consistent with prior reported amounts, and comply with applicable laws of this state. The valuation manual shall prescribe the specifics of this opinion including any items deemed to be necessary to its scope.

(2) *Actuarial analysis of reserves and assets supporting reserves.* Every company with outstanding life insurance policies or contracts, accident and health insurance policies or contracts, or deposit-type policies or contracts in this state and subject to regulation by the commissioner, except as exempted in the valuation manual, shall annually include in the opinion required by subparagraph (1), an opinion of the same appointed actuary as to whether the reserves and related actuarial items held in support of the policies and contracts specified in the valuation manual, when considered in light of the assets held by the company with respect to the reserves and related actuarial items, including but not limited to the investment earnings on the assets and the considerations anticipated to be received and retained under the policies and contracts, make adequate provision for the company's obligations under the policies and contracts, including but not limited to the benefits under and expenses associated with the policies and contracts.

(3) *Requirements for opinions subject to subparagraph (2).* An opinion required by subparagraph (2) shall be governed by the following provisions:

(a) A memorandum, in form and substance as specified in the valuation manual, and that is acceptable to the commissioner, shall be prepared to support each actuarial opinion.

(b) If the company fails to provide a supporting memorandum at the request of the commissioner within a period specified in the valuation manual or the commissioner determines that the supporting memorandum provided by the company fails to meet the standards prescribed by the valuation manual or is otherwise unacceptable to the

commissioner, the commissioner may engage a qualified actuary at the expense of the company to review the opinion and the basis for the opinion and prepare the supporting memorandum required by the commissioner.

(4) *Requirements for all opinions subject to this paragraph.* Every opinion subject to this paragraph *"b"* shall be governed by the following provisions:

(a) The opinion shall be in form and substance as specified in the valuation manual and acceptable to the commissioner.

(b) The opinion shall be submitted with the annual statement reflecting the valuation of such reserve liabilities for each year ending on or after the operative date of the valuation manual.

(c) The opinion shall apply to all policies and contracts subject to subparagraph (2) plus other actuarial liabilities as may be specified in the valuation manual.

(d) The opinion shall be based on standards adopted from time to time by the actuarial standards board or its successor, and on such additional standards as may be prescribed in the valuation manual.

(e) In the case of an opinion required to be submitted by a foreign or alien company, the commissioner may accept the opinion filed by that company with the insurance supervisory official of another state if the commissioner determines that the opinion reasonably meets the requirements applicable to a company domiciled in this state.

(f) Except in cases of fraud or willful misconduct, the appointed actuary shall not be liable for damages to any person, other than the company and the commissioner, for any act, error, omission, decision, or conduct with respect to the appointed actuary's opinion.

(g) Disciplinary action by the commissioner against the company or the appointed actuary shall be defined in rules adopted by the commissioner pursuant to chapter 17A.

4. *Computations of minimum standards.* Except as otherwise provided in subsections 5, 6, and 13, the minimum standard for the valuation of all such policies and contracts issued prior to July 1, 1994, shall be that provided by the laws in effect immediately prior to such date. Except as otherwise provided in subsections 5, 6, and 13, the minimum standard for the valuation of all such policies and contracts shall be the commissioner's reserve valuation methods defined in subsections 7, 8, 11, and 12, five percent interest for group annuity and pure endowment contracts and three and one-half percent interest for all other policies and contracts, or in the case of policies and contracts, other than annuity and pure endowment contracts, issued on or after July 1, 1974, four percent interest for such policies issued prior to January 1, 1980, five and one-half percent interest for single premium life insurance policies and four and one-half percent interest for all other such policies issued on and after January 1, 1980, and the following tables:

a. For ordinary policies of life insurance issued on the standard basis, excluding any disability and accidental death benefits in the policies, the following:

(1) The commissioners 1941 standard ordinary mortality table for policies issued prior to the operative date of section 508.37, subsection 6, paragraph *"a"*.

(2) The commissioners 1958 standard ordinary mortality table for such policies issued on or after the operative date of section 508.37, subsection 6, paragraph *"a"*, and prior to the operative date of section 508.37, subsection 6, paragraph *"c"*, provided that for any category of policies issued on female risks, all modified net premiums and present values referred to in this section may be calculated according to an age not more than six years younger than the actual age of the insured.

(3) For policies issued on or after the operative date of section 508.37, subsection 6, paragraph *"c"*, any of the following:

(a) The commissioners 1980 standard ordinary mortality table.

(b) At the election of the company for any one or more specified plans of life insurance, the commissioners 1980 standard ordinary mortality table with ten-year select mortality factors.

(c) Any ordinary mortality table, adopted after 1980 by the national association of insurance commissioners, that is approved by rule adopted by the commissioner for use in determining the minimum standard of valuation for such policies.

b. For all industrial life insurance policies issued on the standard basis, excluding any disability and accidental death benefits in the policies, the following:

(1) For policies issued prior to the operative date of section 508.37, subsection 6, paragraph *"b"*, the 1941 standard industrial mortality table.

(2) For policies issued on or after the operative date of section 508.37, subsection 6, paragraph *"b"*, the commissioners 1961 standard industrial mortality table, or any industrial mortality table adopted after 1980 by the national association of insurance commissioners, that is approved by rule adopted by the commissioner for use in determining the minimum standard of valuation for such policies.

c. For individual annuity and pure endowment contracts, excluding any disability and accidental death benefits in such policies, the 1937 standard annuity mortality table or, at the option of the company, the annuity mortality table for 1949, ultimate, or any modification of either of these tables approved by the commissioner.

d. For group annuity and pure endowment contracts, excluding any disability and accidental death benefits in such policies, the group annuity mortality table for 1951, or a modification of the table approved by the commissioner, or at the option of the company, any of the tables or modifications of tables specified for individual annuity and pure endowment contracts.

e. (1) For total and permanent disability benefits in or supplementary to ordinary policies or contracts, the following:

(a) For policies or contracts issued on or after January 1, 1966, the tables of period 2 disablement rates and the 1930 to 1950 termination rates of the 1952 disability study of the society of actuaries, with due regard to the type of benefit, or any tables of disablement rates and termination rates adopted after 1980 by the national association of insurance commissioners and approved by rule adopted by the commissioner for use in determining the minimum standard of valuation for such policies.

(b) For policies or contracts issued on or after January 1, 1961, and prior to January 1, 1966, either of the tables identified under subparagraph division (a), or at the option of the company, the class (3) disability table (1926).

(c) For policies issued prior to January 1, 1961, the class (3) disability table (1926).

(2) A table used under this paragraph *"e"* shall, for active lives, be combined with a mortality table permitted for calculating the reserves for life insurance policies.

f. (1) For accidental death benefits in or supplementary to policies, the following:

(a) For policies issued on or after January 1, 1966, the 1959 accidental death benefits table, or any accidental death benefits table adopted after 1980 by the national association of insurance commissioners and approved by rule adopted by the commissioner for use in determining the minimum standard of valuation for such policies.

(b) For policies issued on or after January 1, 1961, and prior to January 1, 1966, either of the tables identified under subparagraph division (a), or at the option of the company, the intercompany double indemnity mortality table.

(c) For policies issued prior to January 1, 1961, the intercompany double indemnity mortality table.

(2) A table used under this paragraph *"f"* shall be combined with a mortality table for calculating the reserves for life insurance policies.

g. For group life insurance, life insurance issued on the substandard basis, and other special benefits, tables approved by the commissioner.

5. *Computation for minimum standards for annuities.*

a. Except as provided in subsection 6, the minimum standard for the valuation of all individual annuity and pure endowment contracts issued on or after the operative date of this subsection, and for all annuities and pure endowments purchased on or after the operative date of this subsection under group annuity and pure endowment contracts, shall be the commissioner's reserve valuation methods defined in subsections 7 and 8, and the following tables and interest rates:

(1) For individual annuity and pure endowment contracts issued prior to January 1, 1980, excluding any disability and accidental death benefits in such contracts, both of the following:

(a) The 1971 individual annuity mortality table, or any modification of this table approved by the commissioner.

(b) Six percent interest for single premium immediate annuity contracts, and four percent interest for all other individual annuity and pure endowment contracts.

(2) For individual single premium immediate annuity contracts issued on or after January 1, 1980, excluding any disability and accidental death benefits in such contracts, both of the following:

(a) One of the following tables:

(i) The 1971 individual annuity mortality table.

(ii) An individual annuity mortality table, adopted after 1980 by the national association of insurance commissioners and approved by rule adopted by the commissioner for use in determining the minimum standard of valuation for such contracts.

(iii) A modification of the tables identified in subparagraph subdivisions (i) and (ii) approved by the commissioner.

(b) Seven and one-half percent interest.

(3) For individual annuity and pure endowment contracts issued on or after January 1, 1980, other than single premium immediate annuity contracts, excluding any disability and accidental death benefits in such contracts, both of the following:

(a) One of the following tables:

(i) The 1971 individual annuity mortality table.

(ii) An individual annuity mortality table adopted after 1980 by the national association of insurance commissioners and approved by rule adopted by the commissioner for use in determining the minimum standard of valuation for such contracts.

(iii) A modification of the tables identified in subparagraph subdivisions (i) and (ii) approved by the commissioner.

(b) Five and one-half percent interest for single premium deferred annuity and pure endowment contracts and four and one-half percent interest for all other such individual annuity and pure endowment contracts.

(4) For all annuities and pure endowments purchased prior to January 1, 1980, under group annuity and pure endowment contracts, excluding any disability and accidental death benefits purchased under such contracts, both of the following:

(a) The 1971 group annuity mortality table or any modification of this table approved by the commissioner.

(b) Six percent interest.

(5) For all annuities and pure endowments purchased on or after January 1, 1980, under group annuity and pure endowment contracts, excluding any disability and accidental death benefits purchased under such contracts, both of the following:

(a) One of the following tables:

(i) The 1971 group annuity mortality table.

(ii) A group annuity mortality table adopted after 1980 by the national association of insurance commissioners and approved by rule adopted by the commissioner for use in determining the minimum standard of valuation for such annuities and pure endowments.

(iii) A modification of the tables identified in subparagraph subdivisions (i) and (ii) approved by the commissioner.

(b) Seven and one-half percent interest.

b. After July 1, 1973, a company may file with the commissioner a written notice of its election to comply with the provisions of this subsection after a specified date before January 1, 1979, which shall be the operative date of this section for such company, provided, if a company makes no election, the effective date of this section for a company is January 1, 1979.

6. *Computation of minimum standard by calendar year of issue.*

a. Applicability of this subsection. The calendar year statutory valuation interest rates, as defined in this subsection, shall be used in determining the minimum standard for the valuation of all of the following:

(1) All life insurance policies issued in a particular calendar year, on or after the operative date of section 508.37, subsection 6, paragraph "*c*".

(2) All individual annuity and pure endowment contracts issued in a particular calendar year on or after January 1, 1995.

(3) All annuities and pure endowments purchased in a particular calendar year on or after January 1, 1995, under group annuity and pure endowment contracts.

(4) The net increase, if any, in a particular calendar year on or after January 1, 1995, in amounts held under guaranteed interest contracts.

b. Calendar year statutory valuation interest rates.

(1) The calendar year statutory valuation interest rates, referred to in this paragraph as "I", shall be determined as follows and the results rounded to the nearer one-quarter of one percent:

(a) For life insurance,

$$I \text{ equals } .03 + W(R1 - .03) + \frac{W}{2}(R2 - .09),$$

where R1 is the lesser of R and .09, R2 is the greater of R and .09, R is the reference interest rate defined in paragraph *"d"* of this subsection, and W is the weighting factor defined in paragraph *"c"* of this subsection.

(b) For single premium immediate annuities and for annuity benefits involving life contingencies arising from other annuities with cash settlement options and from guaranteed interest contracts with cash settlement options,

$$I \text{ equals } .03 + W(R - .03),$$

where R1 is the lesser of R and .09, R2 is the greater of R and .09, R is the reference interest rate defined in paragraph *"d"* of this subsection, and W is the weighting factor defined in paragraph *"c"* of this subsection.

(c) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on an issue-year basis, except as stated in subparagraph division (b), the formula for life insurance stated in subparagraph division (a) applies to annuities and guaranteed interest contracts with guarantee durations in excess of ten years, and the formula for single premium immediate annuities stated in subparagraph division (b) applies to annuities and guaranteed interest contracts with guarantee durations of ten years or less.

(d) For other annuities with no cash settlement options and for guaranteed interest contracts with no cash settlement options, the formula for single premium immediate annuities stated in subparagraph division (b) applies.

(e) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a change-in-fund basis, the formula for single premium immediate annuities stated in subparagraph division (b) applies.

(2) However, if the calendar year statutory valuation interest rate for any life insurance policies issued in any calendar year determined under subparagraph (1), subparagraph division (a), without reference to this sentence differs from the corresponding actual rate for similar policies issued in the immediately preceding calendar year by less than one-half of one percent, the calendar year statutory valuation interest rate for the life insurance policies is equal to the corresponding actual rate for the immediately preceding calendar year. For purposes of applying the immediately preceding sentence, the calendar year statutory valuation interest rate for life insurance policies issued in a calendar year shall be determined for 1980, using the reference interest rate defined in 1979, and shall be determined for each subsequent calendar year regardless of the operative date of section 508.37, subsection 6, paragraph *"c"*.

c. Weighting factors.

(1) The weighting factors referred to in paragraph *"b"* are given in the following tables:

(a) (i) Weighting Factors for Life Insurance:

Guarantee Duration (Years)	Weighting Factors
10 or less	.50
More than 10, but not more than 20	.45
More than 20	.35

(ii) For life insurance, the guarantee duration is the maximum number of years the life insurance can remain in force on a basis guaranteed in the policy or under options to convert to plans of life insurance with premium rates or nonforfeiture values or both which are guaranteed in the original policy.

(b) The weighting factors for single premium immediate annuities and for annuity benefits involving life contingencies arising from other annuities with cash settlement options and guaranteed interest contracts with cash settlement options is .80.

(c) Weighting factors for other annuities and for guaranteed interest contracts, except as stated in subparagraph division (b), shall be as specified in subparagraph subdivisions (i), (ii), and (iii) of this subparagraph division, according to the rules and definitions in subparagraph subdivisions (iv), (v), and (vi) of this subparagraph division:

(i) For annuities and guaranteed interest contracts valued on an issue-year basis:

	Weighting Factor for Plan Type		
Guarantee Duration (Years)	A	B	C
5 or less	.80	.60	.50
More than 5, but not more than 10	.75	.60	.50
More than 10, but not more than 20	.65	.50	.45
More than 20	.45	.35	.35

(ii) For annuities and guaranteed interest contracts valued on a change-in-fund basis, the factors shown in subparagraph subdivision (i) of this subparagraph division increased by:

Plan Type		
A	B	C
.15	.25	.05

(iii) For annuities and guaranteed interest contracts valued on an issue-year basis, other than those with no cash settlement options, which do not guarantee interest on considerations received more than one year after issue or purchase and for annuities and guaranteed interest contracts valued on a change-in-fund basis which do not guarantee interest rates on considerations received more than twelve months beyond the valuation date, the factors shown in subparagraph subdivision (i) of this subparagraph division or derived in subparagraph subdivision (ii) of this subparagraph division increased by:

Plan Type		
A	B	C
.05	.05	.05

(iv) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, the guarantee duration is the number of years for which the contract guarantees interest rates in excess of the calendar year statutory valuation interest rate for life insurance policies with guarantee durations in excess of twenty years. For other annuities with no cash settlement options and for guaranteed interest contracts with no cash settlement options, the guarantee duration is the number of years from the date of issue or date of purchase to the date annuity benefits are scheduled to commence.

(v) *"Plan type"*, as used in subparagraph subdivisions (i), (ii), and (iii) of this subparagraph division, is defined as follows:

(A) *"Plan Type A"*: At any time, the policyholder may withdraw funds only with an adjustment to reflect changes in interest rates or asset values since receipt of the funds by the insurance company, or may withdraw funds without that adjustment but in installments over five years or more, or may withdraw funds as in immediate life annuity; or no withdrawal is permitted.

(B) *"Plan Type B"*: Before expiration of the interest rate guarantee, the policyholder may withdraw funds only with an adjustment to reflect changes in interest rates or asset values since receipt of the funds by the insurance company, or may withdraw funds without that

adjustment but in installments over five years or more; or no withdrawal is permitted. At the end of interest rate guarantee, funds may be withdrawn without adjustment in a single sum or installments over less than five years.

(C) *"Plan Type C"*: The policyholder may withdraw funds before expiration of interest rate guarantee in a single sum or installments over less than five years either without adjustment to reflect changes in interest rates or asset values since receipt of the funds by the insurance company, or subject only to a fixed surrender charge stipulated in the contract as a percentage of the fund.

(vi) A company may elect to value guaranteed interest contracts with cash settlement options and annuities with cash settlement options on either an issue-year basis or on a change-in-fund basis. Guaranteed interest contracts with no cash settlement options and other annuities with no cash settlement options must be valued on an issue-year basis. As used in this section, an issue-year basis of valuation refers to a valuation basis under which the interest rate used to determine the minimum valuation standard for the entire duration of the annuity or guaranteed interest contract is the calendar year valuation interest rate for the year of issue or year of purchase of the annuity or guaranteed interest contract, and the change-in-fund basis of valuation refers to a valuation basis under which the interest rate used to determine the minimum valuation standard applicable to each change in the fund held under the annuity or guaranteed interest contract is the calendar year valuation interest rate for the year of the change in the fund.

d. Reference interest rate. The reference interest rate referred to in paragraph *"b"* is defined as follows:

(1) For all life insurance, the lesser of the average over a period of thirty-six months and the average over a period of twelve months, ending on June 30 of the calendar year next preceding the year of issue, of the monthly average of the composite yield on seasoned corporate bonds, as published by Moody's investors service, inc.

(2) For single premium immediate annuities and for annuity benefits involving life contingencies arising from other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, the average over a period of twelve months, ending on June 30 of the calendar year of issue or year of purchase, of the monthly average of the composite yield on seasoned corporate bonds, as published by Moody's investors service, inc.

(3) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on an issue-year basis, except as stated in subparagraph (2), with guarantee duration in excess of ten years, the lesser of the average over a period of thirty-six months and the average over a period of twelve months, ending on June 30 of the calendar year of issue or purchase, of the monthly average of the composite yield on seasoned corporate bonds, as published by Moody's investors service, inc.

(4) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on an issue-year basis, except as stated in subparagraph (2), with guarantee duration of ten years or less, the average over a period of twelve months, ending on June 30 of the calendar year of issue or purchase, of the monthly average of the composite yield on seasoned corporate bonds, as published by Moody's investors service, inc.

(5) For other annuities with no cash settlement options and for guaranteed interest contracts with no cash settlement options, the average over a period of twelve months, ending on June 30 of the calendar year of issue or purchase, of the monthly average of the composite yield on seasoned corporate bonds, as published by Moody's investors service, inc.

(6) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a change-in-fund basis, except as stated in subparagraph (2), the average over a period of twelve months, ending on June 30 of the calendar year of the change in the fund, of the monthly average of the composite yield on seasoned corporate bonds, as published by Moody's investors service, inc.

e. Alternative method for determining reference interest rates. In the event that the monthly average of the composite yield on seasoned corporate bonds is no longer published by Moody's investors service, inc., or in the event that the national association of insurance

commissioners determines that the monthly average of the composite yield on seasoned corporate bonds as published by Moody's investors service, inc. is no longer appropriate for the determination of the reference interest rate, an alternative method for determination of the reference interest rate, which is adopted by the national association of insurance commissioners and approved by rule adopted by the commissioner, may be substituted.

7. *Reserve valuation method — life insurance and endowment benefits.*

a. Except as otherwise provided in subsections 8, 11, and 12, reserves calculated according to the commissioner's reserve valuation method, for the life insurance and endowment benefits of policies providing for a uniform amount of insurance and requiring the payment of uniform premiums, shall be the excess, if any, of the present value, at the date of valuation, of future guaranteed benefits provided for by such policies, over the present value, at the date of valuation, of any future modified net premiums for such policies. The modified net premiums for such policy is the uniform percentage of the respective contract premiums for the benefits such that the present value, at the date of issue of the policy, of all modified net premiums shall be equal to the sum of the present value, at the date of valuation, of such benefits provided for by the policy and the excess of the amount determined in subparagraph (1) over the amount determined in subparagraph (2), as follows:

(1) A net level annual premium equal to the present value at the date of issue, of the benefits provided for after the first policy year, divided by the present value at the date of issue, of an annuity of one per annum payable on the first, and each subsequent, anniversary of the policy on which a premium falls due. However, the net level annual premium shall not exceed the net level annual premium on the nineteen-year premium whole life plan for insurance of the same amount at an age one year more than the age of the insured at issue of the policy.

(2) A net one-year term premium for the benefits provided for in the first policy year.

b. (1) However, for a life insurance policy issued on or after January 1, 1998, for which the contract premium in the first policy year exceeds that of the second year and for which no comparable additional benefit is provided in the first year for such additional premium and which provides an endowment benefit or a cash surrender value or a combination of such benefit or value in an amount greater than the additional premium, the reserve according to the commissioner's reserve valuation method as of any policy anniversary occurring on or before the assumed ending date defined as the first policy anniversary on which the sum of any endowment benefit and any cash surrender value then available is greater than such additional premium shall be, except as otherwise provided in subsection 11, the greater of the reserve as of such policy anniversary calculated as described in paragraph "*a*" and the reserve as of such policy anniversary calculated as described in paragraph "*a*", but with the following modifications:

(a) The value defined in paragraph "*a*" being reduced by fifteen percent of the amount of such excess first year premium.

(b) All present values of benefits and premiums being determined without reference to premiums or benefits provided for by the policy after the assumed ending date.

(c) The policy being assumed to mature on such date as an endowment.

(d) The cash surrender value provided on such date being considered as an endowment benefit.

(2) In making the above comparison the mortality and interest bases stated in subsections 5 and 6 shall be used.

c. Reserves according to the commissioner's reserve valuation method shall be calculated pursuant to a method consistent with this subsection for all of the following:

(1) Life insurance policies providing for a varying amount of insurance or requiring the payment of varying premiums.

(2) Group annuity and pure endowment contracts purchased under a retirement plan or plan of deferred compensation established or maintained by an employer, including a partnership or sole proprietorship, or by an employee organization, or by both, other than a plan providing individual retirement accounts or individual retirement annuities under section 408 of the Internal Revenue Code.

(3) Disability and accidental death benefits in all policies and contracts.

(4) All other benefits, except life insurance and endowment benefits in life insurance policies and benefits provided by all other annuity and pure endowment contracts.

8. *Reserve valuation method — annuity and pure endowment benefits.*

a. This subsection applies to all annuity and pure endowment contracts other than group annuity and pure endowment contracts purchased under a retirement plan or plan of deferred compensation established or maintained by an employer, including a partnership or sole proprietorship, or by an employee organization, or by both, other than a plan providing individual retirement accounts or individual retirement annuities under section 408 of the Internal Revenue Code.

b. Reserves according to the commissioner's annuity reserve method for benefits under annuity or pure endowment contracts, excluding any disability and accidental death benefits in such contracts, shall be the greatest of the respective excesses of the present values, at the date of valuation, of the future guaranteed benefits, including guaranteed nonforfeiture benefits, provided for by such contracts at the end of each respective contract year, over the present value, at the date of valuation, of any future valuation considerations derived from future gross considerations, required by the terms of such contract, that become payable prior to the end of such respective contract year. The future guaranteed benefits shall be determined by using the mortality table, if any, and the interest rate or rates, specified in such contracts for determining guaranteed benefits. The valuation considerations are the portions of the respective gross considerations applied under the terms of such contracts to determine nonforfeiture values.

9. *Minimum reserves.*

a. A company's aggregate reserves for all life insurance policies, excluding disability and accidental death benefits, issued on or after the operative date of section 508.37, shall not be less than the aggregate reserves calculated in accordance with the methods set forth in subsections 7, 8, 11, and 12, and the mortality table or tables and rate or rates of interest used in calculating nonforfeiture benefits for such policies.

b. A company's aggregate reserves for all policies, contracts, and benefits shall not be less than the aggregate reserves determined by the qualified actuary to be necessary to render the opinion required by subsection 3.

10. *Optional reserve calculation.*

a. Reserves for all policies and contracts issued prior to the operative date of section 508.37, may be calculated, at the option of the company, according to any standards which produce greater aggregate reserves for all such policies and contracts than the minimum reserves required prior to July 1, 1994.

b. Reserves for any category of policies, contracts, or benefits, as established by the commissioner, issued on or after the operative date of section 508.37, may be calculated, at the option of the company, according to any standards which produce greater aggregate reserves for such category than those calculated according to the minimum standard as provided in this section, but the rate or rates of interest used for policies and contracts, other than annuity and pure endowment contracts, shall not be higher than the corresponding rate or rates of interest used in calculating any nonforfeiture benefits as provided in this section.

c. A company which at any time adopts a standard of valuation producing greater aggregate reserves than those calculated according to the minimum standard as provided in this section may adopt, with the approval of the commissioner, any lower standard of valuation, not to be lower than the minimum as provided in this section, provided, however, that, for purposes of this section, the holding of additional reserves previously determined by a qualified actuary to be necessary to render the opinion required by subsection 3 shall not be deemed to be the adoption of a higher standard of valuation.

11. *Reserve calculation — valuation net premium exceeding the gross premium charge.*

a. If in any contract year the gross premium charged by a company on a policy or contract is less than the valuation net premium for the policy or contract, as calculated by the method used in calculating the reserve for such policy or contract but using the minimum valuation standards of mortality and rate of interest, the minimum reserve required for such policy or contract is the greater of either the reserve calculated according to the mortality table, rate of interest, and method actually used for such policy or contract, or the reserve calculated by the

method actually used for such policy or contract but using the minimum valuation standards of mortality and rate of interest and replacing the valuation net premium by the actual gross premium in each contract year for which the valuation net premium exceeds the actual gross premium. The minimum valuation standards of mortality and rate of interest referred to in this section are those standards established in subsections 5 and 6.

b. However, for any life insurance policy issued on or after January 1, 1998, for which the gross premium in the first policy year exceeds that of the second year and for which no comparable additional benefit is provided in the first year for such excess and which provides an endowment benefit or a cash surrender value, or a combination of such benefit and value, in an amount greater than the excess premium, the provisions of paragraph *"a"* apply as if the method actually used in calculating the reserve for such policy is the method established in subsection 7, excluding paragraph *"b"* of that subsection. The minimum reserve of the policy at each policy anniversary shall be the greater of the minimum reserve calculated pursuant to subsection 7 and the minimum reserve calculated in accordance with this subsection.

12. *Reserve calculation — indeterminate premium plans.* In the case of any plan of life insurance which provides for future premium determination, the amounts of such premium which are to be determined by the insurance company based on estimates of future experience, or in the case of any plan of life insurance or annuity, the minimum reserves of which cannot be determined by the methods established in subsections 7, 8, and 11, the reserves which are held under the plan must be appropriate in relation to the benefits and the pattern of premiums for that plan, and shall be computed by a method which is consistent with this section, as determined by rules adopted by the commissioner.

13. *Minimum standards for accident and health insurance policies or contracts.* For accident and health insurance policies or contracts issued on or after the operative date of the valuation manual, the standard prescribed in the valuation manual is the minimum standard of valuation required under subsection 2, paragraph *"b"*. For health, disability, and sickness and accident insurance policies or contracts issued on or after July 1, 1973, and prior to the operative date of the valuation manual, the minimum standard of valuation is the standard adopted by the commissioner by rule.

14. *Valuation manual for policies or contracts issued on or after operative date of valuation manual.*

a. For policies or contracts issued on or after the operative date of the valuation manual, the standard prescribed in the valuation manual is the minimum standard of valuation required under subsection 2, paragraph *"b"*, except as provided under paragraph *"e"* or *"g"* of this subsection.

b. The operative date of the valuation manual is January 1 of the first calendar year following the first July 1 as of which all of the following have occurred:

(1) The valuation manual has been adopted by the NAIC by an affirmative vote of at least forty-two members, or three-fourths of the members voting, whichever is greater.

(2) The standard valuation law, as amended by the NAIC in 2009, or legislation including substantially similar terms and provisions, has been enacted by states representing greater than seventy-five percent of the direct premiums written as reported in the following annual statements submitted for 2008:

(a) Life, accident, and health insurance annual statements.

(b) Health insurance annual statements.

(c) Fraternal benefit society annual statements.

(3) The standard valuation law, as amended by the NAIC in 2009, or legislation including substantially similar terms and provisions, has been enacted by at least forty-two of the following fifty-five jurisdictions: the fifty states of the United States, American Samoa, the American Virgin Islands, the District of Columbia, Guam, and Puerto Rico.

c. Unless a change in the valuation manual specifies a later effective date, changes to the valuation manual shall be effective on January 1 following the date when all of the following have occurred:

(1) The changes to the valuation manual have been adopted by the NAIC by an affirmative vote representing:

(a) At least three-fourths of the members of the NAIC voting, but not less than a majority of the total membership.

(b) Members of the NAIC representing jurisdictions totaling greater than seventy-five percent of the direct premiums written as reported in the following annual statements most recently available prior to the vote in subparagraph division (a):

(i) Life, accident, and health insurance annual statements.

(ii) Health insurance annual statements.

(iii) Fraternal benefit society annual statements.

d. The valuation manual shall specify all of the following:

(1) Minimum valuation standards for and definitions of the policies or contracts subject to subsection 2, paragraph *"b"*. Such minimum valuation standards shall include all of the following:

(a) The commissioner's reserve valuation method for life insurance contracts, other than annuity contracts, subject to subsection 2, paragraph *"b"*.

(b) The commissioner's annuity reserve valuation method for annuity contracts subject to subsection 2, paragraph *"b"*.

(c) Minimum reserves for all other policies or contracts subject to subsection 2, paragraph *"b"*.

(2) Which policies or contracts or types of policies or contracts are subject to the requirements of a principle-based valuation in subsection 15, paragraph *"a"*, and the minimum valuation standards consistent with those requirements.

(3) For policies and contracts subject to a principle-based valuation under subsection 15, specify all of the following:

(a) Requirements for the format of reports to the commissioner under subsection 15 which shall include information necessary to determine if the valuation is appropriate and in compliance with this section.

(b) Assumptions that are prescribed for risks over which the company does not have significant control or influence.

(c) Procedures for corporate governance and oversight of the actuarial function, and a process for appropriate waiver or modification of such procedures.

(4) For policies or contracts not subject to a principle-based valuation under subsection 15, the minimum valuation standard shall do either of the following:

(a) Be consistent with the minimum standard of valuation prior to the operative date of the valuation manual.

(b) Develop reserves that quantify the benefits and guarantees, and the funding, associated with the policies or contracts and their risks at a level of conservatism that reflects conditions that include unfavorable events that have a reasonable probability of occurring.

(5) Other requirements, including but not limited to those relating to reserve methods, models for measuring risk, generation of economic scenarios, assumptions, margins, use of company experience, risk measurement, disclosure, certifications, reports, actuarial opinions and memorandums, transition rules, and internal controls.

(6) The data and form of the data required under subsection 16, to whom the data must be submitted, and other specified requirements, including data analyses and reporting of analyses.

e. In the absence of a specific valuation requirement or if a specific valuation requirement in the valuation manual is not, in the opinion of the commissioner, in compliance with this subsection, then the company shall, with respect to such requirements, comply with minimum valuation standards prescribed by the commissioner by rule.

f. The commissioner may engage a qualified actuary, at the expense of the company, to perform an actuarial examination of the company and opine on the appropriateness of any reserve assumption or method used by the company, or to review and opine on a company's compliance with any requirements set forth in this section. The commissioner may rely upon the opinion, regarding provisions contained in this section, of a qualified actuary engaged by the commissioner of another state, district, or territory of the United States. As used in this paragraph, *"engage"* includes employment of and contracting with a qualified actuary.

g. The commissioner may require a company to change any assumption or method that in

the opinion of the commissioner is necessary in order to comply with the requirements of the valuation manual or this section and the company shall adjust the reserves as required by the commissioner. The commissioner may take other disciplinary action as authorized pursuant to section 505.8.

15. *Requirements of principle-based valuation.*

a. A company shall establish reserves using a principle-based valuation that meets all of the following conditions for policies or contracts as specified in the valuation manual:

(1) Quantifies the benefits and guarantees, and the funding, associated with the policies or contracts and the risks of the policies or contracts at a level of conservatism that reflects conditions that include unfavorable events that have a reasonable probability of occurring during the lifetime of the policies or contracts. For policies or contracts with a significant tail risk, the valuation reflects conditions appropriately adverse to quantify the tail risk.

(2) Incorporates assumptions, risk analysis methods, and financial models and management techniques that are consistent with, but not necessarily identical to, those utilized within the company's overall risk assessment process, while recognizing potential differences in financial reporting structures and any prescribed assumptions or methods.

(3) Incorporates assumptions that are derived in one of the following manners:

(a) The assumption is prescribed in the valuation manual.

(b) For assumptions that are not prescribed in the valuation manual, the assumptions shall meet either of the following requirements:

(i) Be established utilizing the company's available experience, to the extent that the experience is relevant and statistically credible.

(ii) To the extent that company data is not available, relevant, or statistically credible, be established utilizing other relevant, statistically credible experience.

(4) Provides margins for uncertainty including adverse deviation and estimation error, such that the greater the uncertainty the larger the margin and resulting reserve.

b. A company using a principle-based valuation for one or more policies or contracts subject to this subsection as specified in the valuation manual shall do all of the following:

(1) Establish procedures for corporate governance and oversight of the actuarial valuation function consistent with those described in the valuation manual.

(2) Provide to the commissioner and the board of directors an annual certification of the effectiveness of the company's internal controls with respect to the principle-based valuation. Such controls shall be designed to assure that all material risks inherent in the liabilities and associated assets subject to such valuation are included in the valuation, and that the valuation is made in accordance with the valuation manual. The certification shall be based on the internal controls in place as of the end of the preceding calendar year.

(3) Develop, and file with the commissioner upon request, a principle-based valuation report that complies with standards prescribed in the valuation manual.

c. A principle-based valuation may include a prescribed formulaic reserve component.

16. *Experience reporting for policies or contracts in force on or after operative date of valuation manual.* A company shall submit mortality, morbidity, policyholder behavior, or expense experience and other data as prescribed in the valuation manual.

17. *Confidentiality.*

a. Definition. For purposes of this subsection, "*confidential information*" means all of the following:

(1) A memorandum in support of an opinion submitted under subsection 3 and any other documents, materials, or other information, including but not limited to all working papers, and copies thereof, created, produced, obtained by, or disclosed to the commissioner or any other person in connection with the memorandum.

(2) All documents, materials, or other information, including but not limited to all working papers, and copies thereof, created, produced, obtained by, or disclosed to the commissioner or any other person in the course of an examination made under subsection 14, paragraph "*f*"; provided, however, that if an examination report or other materials prepared in connection with an examination made under chapter 507 is not held as private and confidential information under section 507.14, an examination report or other material prepared in connection with an examination made under subsection 14, paragraph "*f*", shall

not be *"confidential information"* to the same extent as if such examination report or other material had been prepared under chapter 507.

(3) Any reports, documents, materials, or other information developed by a company in support of, or in connection with, an annual certification by the company under subsection 15, paragraph *"b"*, subparagraph (2), evaluating the effectiveness of the company's internal controls with respect to a principle-based valuation and any other documents, materials, or other information, including but not limited to all working papers, and copies thereof, created, produced, obtained by, or disclosed to the commissioner or any other person in connection with such reports, documents, materials, or other information.

(4) Any principle-based valuation report developed under subsection 15, paragraph *"b"*, subparagraph (3), and any other documents, materials, or other information, including but not limited to all working papers, and copies thereof, created, produced, obtained by, or disclosed to the commissioner or any other person in connection with such report.

(5) Any documents, materials, data, or other information submitted by a company under subsection 16, collectively known as "experience data" or "experience materials", and any other documents, materials, data, or other information, including but not limited to all working papers, and copies thereof, created or produced in connection with such experience data, in each case that includes any potentially company-identifying or personally identifiable information, that is provided to or obtained by the commissioner, together with any "experience data" or "experience materials", and any other documents, materials, data, or other information, including but not limited to all working papers, and copies thereof, created, produced, obtained by, or disclosed to the commissioner or any other person in connection with such experience data or experience materials.

b. Privilege for, and confidentiality of, confidential information.

(1) Except as provided in this subsection, a company's confidential information is confidential by law and privileged, and shall not be subject to chapter 22, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action; provided, however, that the commissioner is authorized to use the confidential information in the furtherance of any regulatory or legal action brought against the company as a part of the commissioner's official duties.

(2) Neither the commissioner nor any person who received confidential information while acting under the authority of the commissioner shall be permitted or required to testify in any private civil action concerning any confidential information.

(3) In order to assist in the performance of the commissioner's duties, the commissioner may share confidential information as follows:

(a) With other state, federal, or international regulatory agencies and with the NAIC and its affiliates and subsidiaries.

(b) In the case of confidential information specified in paragraph *"a"*, subparagraphs (1) and (4) only, with the actuarial board for counseling and discipline or its successor upon request stating that the confidential information is required for the purpose of professional disciplinary proceedings, and with state, federal, and international law enforcement officials.

(c) The sharing of confidential information under subparagraph division (a) or (b) requires that the recipient of the confidential information agrees, and has the legal authority to agree to maintain the confidentiality and privileged status of such documents, materials, data, and other information in the same manner and to the same extent as required for the commissioner.

(4) The commissioner may receive documents, materials, data, and other information, including otherwise confidential and privileged documents, materials, data, or information, from the NAIC and its affiliates and subsidiaries, from regulatory or law enforcement officials of other foreign or domestic jurisdictions, and from the actuarial board for counseling and discipline, or its successor, and shall maintain as confidential or privileged any documents, materials, data, or other information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the documents, materials, data, or other information.

(5) The commissioner may enter into agreements governing the sharing and use of information consistent with this paragraph *"b"*.

(6) No waiver of any applicable privilege or claim of confidentiality in the confidential information shall occur as a result of disclosure to the commissioner under this subsection or as a result of sharing as authorized in subparagraph (3).

(7) A privilege established under the law of any state or jurisdiction that is substantially similar to the privilege established in this paragraph *"b"* shall be available and enforced in any proceeding in, and in any court of, this state.

(8) For the purposes of this subsection, *"regulatory agency"*, *"law enforcement agency"*, and the *"NAIC"*, include but are not limited to their employees, agents, consultants, and contractors.

c. Sharing of confidential information. Notwithstanding paragraph *"b"*, any confidential information specified in paragraph *"b"* may be shared as follows:

(1) May be subject to subpoena for the purpose of defending an action seeking damages from the appointed actuary submitting the related memorandum in support of an opinion submitted under subsection 3 or a principle-based valuation report developed under subsection 15, paragraph *"b"*, subparagraph (3), by reason of an action required by this section or by rules promulgated under this section.

(2) May otherwise be released by the commissioner with the written consent of the company.

(3) Once any portion of a memorandum in support of an opinion submitted under subsection 3 or a principle-based valuation report developed under subsection 15, paragraph *"b"*, subparagraph (3), is cited by a company in its marketing or is publicly volunteered to or before a governmental agency other than a state insurance department or is released by the company to the news media, all portions of such memorandum or report shall no longer be confidential information.

18. *Single state exemption.*

a. The commissioner may exempt specific product forms or product lines of a domestic company that is licensed and doing business only in this state from the requirements of subsection 14 provided that all of the following have occurred:

(1) The commissioner has issued an exemption in writing to the company and has not subsequently revoked the exemption in writing.

(2) The company computes reserves using assumptions and methods used prior to the operative date of the valuation manual in addition to any requirements established by the commissioner and promulgated by rule.

b. For any company granted an exemption under this subsection, subsections 3 through 13 shall be applicable. With respect to any company applying this exemption, any reference to subsection 14 found in subsections 3 through 13 shall not be applicable.

[C73, §1169; C97, §1774; C24, 27, 31, 35, 39, §**8654;** C46, 50, 54, 58, 62, §508.12; C66, 71, 73, 75, 77, 79, 81, §508.36; 82 Acts, ch 1072, §1, 2]

94 Acts, ch 1176, §7, 8; 95 Acts, ch 67, §36; 2009 Acts, ch 41, §148 – 156; 2012 Acts, ch 1023, §104, 157; 2013 Acts, ch 30, §121 – 123; 2014 Acts, ch 1020, §1 – 9, 15; 2014 Acts, ch 1141, §23, 24

Referred to in §508.33A, 508.37, 511.8(10)(a), 521B.105

2014 amendments to this section apply on and after the operative date of the valuation manual as provided in this section; 2014 Acts, ch 1020, §15; Code editor notified by commissioner of insurance that the operative date of the valuation manual is January 1, 2017

508.37 Standard nonforfeitures — life insurance.

This section shall be known as the *"Standard Nonforfeiture Law for Life Insurance"*.

1. As used in this section, *"operative date of the valuation manual"* means the same as provided in section 508.36, subsection 14.

2. In the case of policies issued on or after the operative date of this section as defined in subsection 12, a policy of life insurance shall not, except as stated in subsection 11, be delivered or issued for delivery in this state unless it contains in substance the following provisions, or corresponding provisions which in the opinion of the commissioner are at least as favorable to the defaulting or surrendering policyholder as the following provisions and are essentially in compliance with subsection 10:

a. That, in the event of default in any premium payment, the company will grant, upon proper request not later than sixty days after the due date of the premium in default, a paid-up

nonforfeiture benefit on a plan stipulated in the policy, effective as of the due date of the premium in default, and of an amount as specified in this section. In lieu of the stipulated paid-up nonforfeiture benefit, the company may substitute, upon proper request not later than sixty days after the due date of the premium in default, an actuarially equivalent alternative paid-up nonforfeiture benefit which provides a greater amount or longer period of death benefits or, if applicable, a greater amount or earlier payment of endowment benefits.

b. That, upon surrender of the policy within sixty days after the due date of any premium payment in default after premiums have been paid for at least three full years in the case of ordinary insurance or five full years in the case of industrial insurance, the company will pay, in lieu of any paid-up nonforfeiture benefit, a cash surrender value of an amount as may be specified in this section.

c. That a specified paid-up nonforfeiture benefit shall become effective as specified in the policy unless the person entitled to make an election elects another available option not later than sixty days after the due date of the premium in default.

d. That, if the policy has become paid up by completion of all premium payments or if it is continued under any paid-up nonforfeiture benefit which became effective on or after the third policy anniversary in the case of ordinary insurance or the fifth policy anniversary in the case of industrial insurance, the company will pay, upon surrender of the policy within thirty days after any policy anniversary, a cash surrender value of an amount as specified in this section.

e. In the case of policies which cause on a basis guaranteed in the policy unscheduled changes in benefits or premiums, or which provide an option for changes in benefits or premiums other than a change to a new policy, a statement of the mortality table, interest rate, and method used in calculating cash surrender values and the paid-up nonforfeiture benefits available under the policy. In the case of all other policies, a statement of the mortality table and interest rate used in calculating the cash surrender values and the paid-up nonforfeiture benefits available under the policy, together with a table showing the cash surrender value, if any, and paid-up nonforfeiture benefit, if any, available under the policy on each policy anniversary, either during the first twenty policy years or during the term of the policy, whichever is shorter, the values and benefits to be calculated upon the assumption that there are no dividends or paid-up additions credited to the policy and that there is no indebtedness to the company on the policy.

f. A statement that the cash surrender values and the paid-up nonforfeiture benefits available under the policy are not less than the minimum values and benefits required by or pursuant to the insurance law of the state in which the policy is delivered; an explanation of the manner in which the cash surrender values and the paid-up nonforfeiture benefits are altered by the existence of any paid-up additions credited to the policy or any indebtedness to the company on the policy; if a detailed statement of the method of computation of the values and benefits shown in the policy is not stated in the policy, a statement that the method of computation has been filed with the insurance supervisory official of the state in which the policy is delivered; and a statement of the method to be used in calculating the cash surrender value and paid-up nonforfeiture benefit available under the policy on any policy anniversary beyond the last anniversary for which such values and benefits are consecutively shown in the policy.

3. Any of the provisions or portions of provisions set forth in subsection 2 which are not applicable by reason of the plan of insurance may, to the extent inapplicable, be omitted from the policy. The company shall reserve the right to defer the payment of any cash surrender value for a period of six months after demand with surrender of the policy.

4. *a.* Any cash surrender value available under the policy in the event of default in a premium payment due on any policy anniversary, whether or not required by subsection 2, shall be an amount not less than the excess, if any, of the present value, on that anniversary, of the future guaranteed benefits which would have been provided for by the policy, including any existing paid-up additions, if there had been no default, over the sum of the then present value of the adjusted premiums as defined in subsections 6 and 7, corresponding to premiums which would have fallen due on and after that anniversary, plus the amount of any indebtedness to the company on the policy.

b. However, for a policy issued on or after the operative date of subsection 7 as defined in paragraph "*k*" of that subsection, which provides supplemental life insurance or annuity benefits at the option of the insured and for an identifiable additional premium by rider or supplemental policy provision, the cash surrender value referred to in paragraph "*a*" shall be an amount not less than the sum of the cash surrender value as defined in that paragraph for an otherwise similar policy issued at the same age without such rider or supplemental policy provision and the cash surrender value as defined in that paragraph for a policy which provides only the benefits otherwise provided by such rider or supplemental policy provision.

c. Provided further that for a family policy issued on or after the operative date of subsection 7 as defined in paragraph "*k*" of that subsection, which defines a primary insured and provides term insurance on the life of the spouse of the primary insured expiring before the spouse's age seventy-one, the cash surrender value referred to in paragraph "*a*" shall be an amount not less than the sum of the cash surrender value as defined in paragraph "*a*" for an otherwise similar policy issued at the same age without term insurance on the life of the spouse and the cash surrender value as defined in paragraph "*a*" for a policy which provides only the benefits otherwise provided by the term insurance on the life of the spouse.

d. Any cash surrender value available within thirty days after any policy anniversary under any policy paid up by completion of all premium payments or any policy continued under any paid-up nonforfeiture benefit, whether or not required by subsection 2, shall be an amount not less than the present value, on the anniversary, of the future guaranteed benefits provided for by the policy, including any existing paid-up additions, decreased by any indebtedness to the company on the policy.

5. Any paid-up nonforfeiture benefit available under the policy in the event of default in a premium payment due on any policy anniversary shall be such that its present value as of that anniversary shall be at least equal to the cash surrender value then provided for by the policy or, if none is provided for, that cash surrender value which would have been required by this section in the absence of the condition that premiums shall have been paid for at least a specified period.

6. *a.* (1) This subsection does not apply to policies issued on or after the operative date of subsection 7 as defined in paragraph "*k*" of that subsection. Except as provided in paragraph "*c*", the adjusted premiums for any policy shall be calculated on an annual basis and shall be such uniform percentage of the respective premiums specified in the policy for each policy year, excluding any extra premiums charged because of impairments or special hazards, that the present value, at the date of issue of the policy, of all such adjusted premiums is equal to the sum of the following:

(a) The then present value of the future guaranteed benefits provided for by the policy.

(b) Two percent of the amount of the insurance, if the insurance is uniform in amount, or of the equivalent uniform amount, as defined in paragraph "*b*", if the amount of insurance varies with duration of the policy.

(c) Forty percent of the adjusted premium for the first policy year.

(d) Twenty-five percent of either the adjusted premium for the first policy year or the adjusted premium for a whole life policy of the same uniform or equivalent uniform amount with uniform premiums for the whole of life issued at the same age for the same amount of insurance, whichever is less.

(2) However, in applying the percentages specified in subparagraph (1), subparagraph divisions (c) and (d), no adjusted premium shall be deemed to exceed four percent of the amount of insurance or an equivalent uniform amount. The date of issue of a policy for the purpose of this subsection is the date as of which the rated age of the insured is determined.

b. In the case of a policy providing an amount of insurance varying with duration of the policy, the equivalent uniform amount for the purpose of this subsection shall be deemed to be the uniform amount of insurance provided by an otherwise similar policy, containing the same endowment benefit or benefits, if any, issued at the same age and for the same term, the amount of which does not vary with duration and the benefits under which have the same present value at the date of issue as the benefits under the policy, provided that in the case of a policy providing a varying amount of insurance issued on the life of a child under age ten, the equivalent uniform amount may be computed as though the amount of insurance

provided by the policy prior to the attainment of age ten were the amount provided by the policy at age ten.

c. The adjusted premiums for a policy providing term insurance benefits by rider or supplemental policy provision shall be equal to (1) the adjusted premiums for an otherwise similar policy issued at the same age without such term insurance benefits, increased during the period for which premiums for such term insurance benefits are payable, by (2) the adjusted premiums for such term insurance, the foregoing items (1) and (2) being calculated separately and as specified in paragraphs *"a"* and *"b"* of this subsection except that, for the purposes of paragraph *"a"*, subparagraph (1), subparagraph divisions (b), (c), and (d), the amount of insurance or equivalent uniform amount of insurance used in the calculation of the adjusted premiums referred to in item (2) in this paragraph shall be equal to the excess of the corresponding amount determined for the entire policy over the amount used in the calculation of the adjusted premiums in item (1) in this paragraph.

d. (1) All adjusted premiums and present values referred to in this section shall for policies of ordinary insurance be calculated on the basis of the commissioners 1958 standard ordinary mortality table, provided that for any category of ordinary insurance issued on female risks, adjusted premiums and present values may be calculated according to an age not more than six years younger than the actual age of the insured. The calculations for all policies of industrial insurance issued before January 1, 1968, shall be made on the basis of the 1941 standard industrial mortality table, except that a company may file with the commissioner a written notice of its election that the adjusted premiums and present values shall be calculated on the basis of the commissioners 1961 standard industrial mortality table, after a specified date before January 1, 1968. Whether or not any election has been made, the commissioners 1961 standard industrial mortality table shall be the basis for these calculations as to all policies of industrial insurance issued on or after January 1, 1968. All calculations shall be made on the basis of the rate of interest specified in the policy for calculating cash surrender values and paid-up nonforfeiture benefits, provided that the rate of interest shall not exceed three and one-half percent per annum, except that a rate of interest not exceeding four percent per annum may be used for policies issued on or after July 1, 1974, and prior to January 1, 1980, and a rate of interest not exceeding five and one-half percent per annum may be used for policies issued on or after January 1, 1980.

(2) However, in calculating the present value under subparagraph (1) of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed in the case of policies of ordinary insurance, may be not more than those shown in the commissioners 1958 extended term insurance table, and in the case of policies of industrial insurance, may be not more than one hundred thirty percent of the rates of mortality according to the 1941 standard industrial mortality table, except that when the commissioners 1961 standard industrial mortality table becomes applicable as specified in this paragraph, the rates of mortality assumed may be not more than those shown in the commissioners 1961 industrial extended term insurance table. In addition, for insurance issued on a substandard basis, the calculation under subparagraph (1) of adjusted premiums and present values may be based on any other table of mortality that is specified by the company and approved by the commissioner.

7. *a.* (1) This subsection applies to all policies issued on or after the operative date of this subsection, as defined in paragraph *"k"*. Except as provided in paragraph *"g"*, the adjusted premiums for a policy shall be calculated on an annual basis and shall be such uniform percentage of the respective premiums specified in the policy for each policy year, excluding amounts payable as extra premiums to cover impairments or special hazards and also excluding any uniform annual contract charge or policy fee specified in the policy in a statement of the method to be used in calculating the cash surrender values and paid-up nonforfeiture benefits, that the present value, at the date of issue of the policy, of all adjusted premiums is equal to the sum of the following:

(a) The then present value of the future guaranteed benefits provided for by the policy.

(b) One percent of either the amount of insurance, if the insurance is uniform in amount, or the average amount of insurance at the beginning of each of the first ten policy years.

(c) One hundred twenty-five percent of the nonforfeiture net level premium, as defined in

paragraph *"b"*. However, in applying this percentage a nonforfeiture net level premium shall not be deemed to exceed four percent of either the amount of insurance, if the insurance is uniform in amount, or the average amount of insurance at the beginning of each of the first ten policy years.

(2) The date of issue of a policy for the purpose of this subsection is the date as of which the rated age of the insured is determined.

b. The nonforfeiture net level premium shall be equal to the present value, at the date of issue of the policy, of the guaranteed benefits provided for by the policy divided by the present value, at the date of issue of the policy, of an annuity of one per annum payable on the date of issue of the policy and on each anniversary of the policy on which a premium falls due.

c. In the case of policies which on a basis guaranteed in the policy cause unscheduled changes in benefits or premiums, or which provide an option for changes in benefits or premiums other than a change to a new policy, the adjusted premiums and present values shall initially be calculated on the assumption that future benefits and premiums do not change from those stipulated at the date of issue of the policy. At the time of a change in the benefits or premiums, the future adjusted premiums, nonforfeiture net level premiums, and present values shall be recalculated on the assumption that future benefits and premiums do not change from those stipulated by the policy immediately after the change.

d. Except as otherwise provided in paragraph *"g"*, the recalculated future adjusted premiums for a policy shall be such uniform percentage of the respective future premiums specified in the policy for each policy year, excluding amounts payable as extra premiums to cover impairments and special hazards, and also excluding any uniform annual contract charge or policy fee specified in the policy in a statement of the method to be used in calculating the cash surrender values and paid-up nonforfeiture benefits, that the present value, at the time of change to the newly defined benefits or premiums, of all future adjusted premiums is equal to the excess of the sum of the then present value of the then future guaranteed benefits provided for by the policy plus the additional expense allowance, if any, over the then cash surrender value, if any, or present value of any paid-up nonforfeiture benefit under the policy.

e. The additional expense allowance, at the time of the change to the newly defined benefits or premiums, shall be the sum of one percent of the excess, if positive, of the average amount of insurance at the beginning of each of the first ten policy years subsequent to the change over the average amount of insurance prior to the change at the beginning of each of the first ten policy years subsequent to the time of the most recent previous change, or, if there has been no previous change, the date of issue of the policy, plus one hundred twenty-five percent of the increase, if positive, in the nonforfeiture net level premium.

f. The recalculated nonforfeiture net level premium shall be equal to the result obtained by dividing the amount described in subparagraph (1) by the amount described in subparagraph (2), where subparagraph (1) and subparagraph (2) are as follows:

(1) The sum of the nonforfeiture net level premium applicable prior to the change times the present value of an annuity of one per annum payable on each anniversary of the policy on or subsequent to the date of the change on which a premium would have fallen due had the change not occurred, plus the present value of the increase in future guaranteed benefits provided for by the policy.

(2) The present value of an annuity of one per annum payable on each anniversary of the policy on or subsequent to the date of change on which a premium falls due.

g. Notwithstanding any contrary provision of this subsection, in the case of a policy issued on a substandard basis which provides reduced graded amounts of insurance so that, in each policy year, the policy has the same tabular mortality cost as an otherwise similar policy issued on the standard basis which provides higher uniform amounts of insurance, adjusted premiums and present values for the substandard policy may be calculated as if it were issued to provide those higher uniform amounts of insurance on the standard basis.

h. Adjusted premiums and present values referred to in this section shall for all policies of ordinary insurance be calculated on the basis of either the commissioners 1980 standard ordinary mortality table or, at the election of the company for any one or more specified plans of life insurance, the commissioners 1980 standard ordinary mortality table with ten-year

select mortality factors; shall for all policies of industrial insurance be calculated on the basis of the commissioners 1961 standard industrial mortality table; and shall for all policies issued in a particular calendar year be calculated on the basis of a rate of interest not exceeding the nonforfeiture interest rate as defined in paragraph "*i*" for policies issued in that calendar year. However:

(1) At the option of the company, calculations for all policies issued in a particular calendar year may be made on the basis of a rate of interest not exceeding the nonforfeiture interest rate, as defined in paragraph "*i*", for policies issued in the immediately preceding calendar year.

(2) Under any paid-up nonforfeiture benefit, including any paid-up dividend additions, any cash surrender value available, whether or not required by subsection 2, shall be calculated on the basis of the mortality table and rate of interest used in determining the amount of the paid-up nonforfeiture benefit and paid-up dividend additions, if any.

(3) A company may calculate the amount of any guaranteed paid-up nonforfeiture benefit including any paid-up additions under the policy on the basis of an interest rate no lower than that specified in the policy for calculating cash surrender values.

(4) In calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than those shown in the commissioners 1980 extended term insurance table for policies of ordinary insurance and not more than the commissioners 1961 industrial extended term insurance table for policies of industrial insurance.

(5) For insurance issued on a substandard basis, the calculation of adjusted premiums and present values may be based on appropriate modifications of the tables referred to in this paragraph.

(6) For policies issued prior to the operative date of the valuation manual, any commissioners standard ordinary mortality tables adopted after 1980 by the national association of insurance commissioners and approved by rule adopted by the commissioner for use in determining the minimum nonforfeiture standard may be substituted for the commissioners 1980 standard ordinary mortality table with or without ten-year select mortality factors or for the commissioners 1980 extended term insurance table.

(7) For policies issued on or after the operative date of the valuation manual, the valuation manual shall provide the commissioners standard mortality table for use in determining the minimum forfeiture standard that may be substituted for the commissioners 1980 standard ordinary mortality table with or without ten-year select mortality factors or for the commissioners 1980 extended term insurance table. If the commissioner approves by rule the commissioners standard ordinary mortality table adopted by the national association of insurance commissioners for use in determining the minimum nonforfeiture standard for policies or contracts issued on or after the operative date of the valuation manual, then that minimum nonforfeiture standard supersedes the minimum nonforfeiture standard provided by the valuation manual.

(8) Any industrial mortality tables adopted after 1980 by the national association of insurance commissioners and approved by rule adopted by the commissioner for use in determining the minimum nonforfeiture standard may be substituted for the commissioners 1961 standard industrial mortality table or the commissioners 1961 industrial extended term insurance table.

(9) For policies issued on or after the operative date of the valuation manual, the valuation manual shall provide the commissioners standard ordinary mortality table for use in determining the minimum nonforfeiture standard that may be substituted for the commissioners 1961 standard industrial mortality table or the commissioners 1961 industrial extended term insurance table. If the commissioner approves by rule any commissioners standard industrial mortality table adopted by the national association of insurance commissioners for use in determining the minimum nonforfeiture standard for policies issued on or after the operative date of the valuation manual, then that minimum nonforfeiture standard supersedes the minimum nonforfeiture standard provided by the valuation manual.

i. The nonforfeiture interest rate is defined as follows:

(1) For policies issued prior to the operative date of the valuation manual, the nonforfeiture interest rate per annum for any policy issued in a particular calendar year shall be equal to one hundred twenty-five percent of the calendar year statutory valuation interest rate for the policy as defined in section 508.36, rounded to the nearest one quarter of one percent, provided, however, that the nonforfeiture interest rate shall not be less than four percent.

(2) For policies issued on or after the operative date of the valuation manual, the nonforfeiture interest rate per annum for any policy issued in a particular calendar year shall be provided by the valuation manual.

j. Notwithstanding any contrary provision of the insurance laws of this state, any refiling of nonforfeiture values or their methods of computation for any previously approved policy form which involves only a change in the interest rate or mortality table used to compute nonforfeiture values shall not require refiling of any other provisions of that policy form.

k. After the effective date of this subsection, a company may file with the commissioner a written notice of its election to comply with this subsection after a specified date before January 1, 1989, which shall be the operative date of this subsection for that company. If a company makes no election, the operative date of this subsection for the company is January 1, 1989.

8. In the case of any plan of life insurance which provides for future premium determination, the amounts of which are to be determined by the insurance company based on then estimates of future experience, or in the case of any plan of life insurance which is of such a nature that minimum values cannot be determined by the methods described in subsection 2, 3, 4, 5, 6, or 7, then all of the following conditions must be met:

a. The commissioner must be satisfied that the benefits provided under the plan are substantially as favorable to policyholders and insureds as the minimum benefits otherwise required by subsection 2, 3, 4, 5, 6, or 7.

b. The commissioner must be satisfied that the benefits and the pattern of premiums of that plan are not misleading to prospective policyholders or insureds.

c. The cash surrender values and paid-up nonforfeiture benefits provided by the plan must not be less than the minimum values and benefits required for the plan computed by a method consistent with the principles of this section, as determined by rules adopted by the commissioner.

9. Any cash surrender value and any paid-up nonforfeiture benefit, available under the policy in the event of default in a premium payment due at any time other than on the policy anniversary, shall be calculated with allowance for the lapse of time and the payment of fractional premiums beyond the last preceding policy anniversary. All values referred to in subsections 4, 5, 6, and 7 may be calculated upon the assumption that any death benefit is payable at the end of the policy year of death. The net value of any paid-up additions, other than paid-up term additions, shall be not less than the amounts used to provide the additions. Notwithstanding subsection 4, additional benefits payable in the event of death or dismemberment by accident or accidental means, or in the event of total and permanent disability, or as reversionary annuity or deferred reversionary annuity benefits, or as term insurance benefits provided by a rider or supplemental policy provision to which, if issued as a separate policy, this section would not apply, or as term insurance on the life of a child or on the lives of children provided in a policy on the life of a parent of the child, if the term insurance expires before the child's age is twenty-six, is uniform in amount after the child's age is one, and has not become paid up by reason of the death of a parent of the child, or as other policy benefits additional to life insurance and endowment benefits, and the premiums for all of these additional benefits, shall be disregarded in ascertaining cash surrender values and nonforfeiture benefits required by this section, and none of these additional benefits shall be required to be included in any paid-up nonforfeiture benefits.

10. *a.* This subsection, in addition to all other applicable subsections of this section, applies to all policies issued on or after January 1, 1985. Any cash surrender value available under the policy in the event of default in a premium payment due on any policy anniversary shall be in an amount which does not differ by more than two-tenths of one percent of either the amount of insurance, if the insurance is uniform in amount, or the average amount of

insurance at the beginning of each of the first ten policy years, from the sum of the greater of zero and the basic cash value specified in paragraph "*b*" plus the present value of any existing paid-up additions less the amount of any indebtedness to the company under the policy.

b. The basic cash value shall be equal to the present value, on the anniversary, of the future guaranteed benefits which would have been provided for by the policy, excluding any existing paid-up additions and before deduction of any indebtedness to the company, if there had been no default, less the then present value of the nonforfeiture factors, as defined in paragraph "*c*", corresponding to premiums which would have fallen due on and after the anniversary. However, the effects on the basic cash value of supplemental life insurance or annuity benefits or of family coverage, as described in subsection 4 or 6, whichever is applicable, shall be the same as the effects specified in subsection 4 or 6, whichever is applicable, on the cash surrender values defined in that subsection.

c. (1) The nonforfeiture factor for each policy year shall be an amount equal to a percentage of the adjusted premium for the policy year, as defined in subsection 6 or 7, whichever is applicable. Except as is required by subparagraph (2) of this paragraph, this percentage must satisfy both of the following requirements:

(a) It must be the same percentage for each policy year between the second policy anniversary and the later of the fifth policy anniversary or the first policy anniversary at which there is available under the policy a cash surrender value in an amount, before including any paid-up additions and before deducting any indebtedness, of at least two-tenths of one percent of either the amount of insurance, if the insurance is uniform in amount, or the average amount of insurance at the beginning of each of the first ten policy years.

(b) It must be such that no percentage after the later of the two policy anniversaries specified in division (a) of this subparagraph may apply to fewer than five consecutive policy years.

(2) A basic cash value shall not be less than the value which would be obtained if the adjusted premiums for the policy, as defined in subsection 6 or 7, whichever is applicable, were substituted for the nonforfeiture factors in the calculation of the basic cash value.

d. Adjusted premiums and present values referred to in this subsection shall for a particular policy be calculated on the same mortality and interest bases as are used in demonstrating the policy's compliance with the other subsections of this section. The cash surrender values referred to in this subsection shall include any endowment benefits provided for by the policy.

e. Any cash surrender value available other than in the event of default in a premium payment due on a policy anniversary, and the amount of any paid-up nonforfeiture benefit available under the policy in the event of default in a premium payment, shall be determined in manners consistent with the manners specified for determining the analogous minimum amounts in subsections 2, 3, 4, 5, 7, and 9. The amounts of any cash surrender values and of any paid-up nonforfeiture benefits granted in connection with additional benefits such as those described in subsection 8 shall conform with the principles of this subsection.

11. *a.* This section does not apply to any of the following:

(1) Reinsurance.

(2) Group insurance.

(3) Pure endowment contracts.

(4) Annuity or reversionary annuity contracts.

(5) A term policy of uniform amount which provides no guaranteed nonforfeiture or endowment benefits, or a renewal thereof of twenty years or less expiring before age seventy-one, for which uniform premiums are payable during the entire term of the policy.

(6) A term policy of decreasing amount, which provides no guaranteed nonforfeiture or endowment benefits, on which each adjusted premium, calculated as specified in subsections 6 and 7, is less than the adjusted premium so calculated, on a term policy of uniform amount, or renewal thereof, which provides no guaranteed nonforfeiture or endowment benefits, issued at the same age and for the same initial amount of insurance and for a term of twenty years or less expiring before age seventy-one, for which uniform premiums are payable during the entire term of the policy.

(7) A policy, which provides no guaranteed nonforfeiture or endowment benefits, for which no cash surrender value, if any, or present value of any paid-up nonforfeiture benefit, at the beginning of any policy year, calculated as specified in subsections 4, 5, 6, and 7, exceeds two and one-half percent of the amount of insurance at the beginning of the same policy year.

(8) A policy delivered outside this state through an agent or other representative of the company issuing the policy.

b. For purposes of determining the applicability of this section, the age at expiry for a joint term life insurance policy shall be the age at expiry of the oldest life.

12. After July 4, 1963, a company may file with the commissioner a written notice of its election to comply with this section after a specified date before January 1, 1966. The date specified by the company in the notice shall be the operative date of this section for the company, and this section shall apply to policies issued after that date by the company. If a company makes no election, the operative date of this section for the company is January 1, 1966.

[C66, 71, 73, 75, 77, 79, 81, §508.37; 82 Acts, ch 1072, §3 – 7]

2012 Acts, ch 1023, §105, 157; 2012 Acts, ch 1138, §72; 2014 Acts, ch 1020, §10 – 15; 2014 Acts, ch 1141, §25; 2016 Acts, ch 1011, §89 – 91; 2017 Acts, ch 29, §144

Referred to in §508.36, 508A.5

2014 amendments adding NEW subsection 1 and amending subsection 7, paragraphs h and i, apply on and after the operative date of the valuation manual as provided in §508.36; 2014 Acts, ch 1020, §15; Code editor notified by commissioner of insurance that the operative date of the valuation manual is January 1, 2017

508.38 Standard nonforfeitures — deferred annuities.

This section shall be known as the "*Standard Nonforfeiture Law for Individual Deferred Annuities*".

1. This section does not apply to any reinsurance, group annuity purchased under a retirement plan or plan of deferred compensation established or maintained by an employer, including a partnership or sole proprietorship, or by an employee organization, or by both, other than a plan providing individual retirement accounts or individual retirement annuities under section 408 of the United States Internal Revenue Code, as now or hereafter amended, premium deposit fund, variable annuity, investment annuity, immediate annuity, any deferred annuity contract after annuity payments have commenced, or reversionary annuity, nor to any contract which is delivered outside this state through an agent or other representative of the company issuing the contract.

2. *a.* In the case of contracts issued on or after the operative date of this section as defined in subsection 11, no contract of annuity, except as stated in subsection 1, shall be delivered or issued for delivery in this state unless it contains in substance the following provisions, or corresponding provisions that in the opinion of the commissioner are at least as favorable to the contract holder, upon cessation of payment of considerations under the contract:

(1) That upon cessation of payment of considerations under a contract or upon the written request of the contract owner, the company shall grant a paid-up annuity benefit on a plan stipulated in the contract of such value as is specified in subsections 4, 5, 6, 7, and 9.

(2) If a contract provides for a lump sum settlement at maturity, or at any other time, that upon surrender of the contract at or prior to the commencement of any annuity payments, the company shall pay in lieu of a paid-up annuity benefit a cash surrender benefit of such amount as is specified in subsections 4, 5, 7, and 9. The company may reserve the right to defer the payment of such cash surrender benefit for a period not to exceed six months after demand therefore with surrender of the contract after making written request and receiving written approval of the commissioner. The request shall address the necessity and equitability to all policyholders of the deferral.

(3) A statement of the mortality table, if any, and interest rates used in calculating any minimum paid-up annuity, cash surrender or death benefits that are guaranteed under the contract, together with sufficient information to determine the amounts of such benefits.

(4) A statement that any paid-up annuity, cash surrender or death benefits that may be available under the contract are not less than the minimum benefits required by any statute of the state in which the contract is delivered and an explanation of the manner in which such

benefits are altered by the existence of any additional amounts credited by the company to the contract, any indebtedness to the company on the contract or any prior withdrawals from or partial surrenders of the contract.

b. Notwithstanding the requirements of this subsection 2, any deferred annuity contract may provide that if no considerations have been received under a contract for a period of two full years and the portion of the paid-up annuity benefit at maturity on the plan stipulated in the contract arising from considerations paid prior to such period would be less than twenty dollars monthly, the company may at its option terminate such contract by payment in cash of the then present value of such portion of the paid-up annuity benefit, calculated on the basis of the mortality table, if any, and interest rate specified in the contract for determining the paid-up annuity benefit, and by such payment shall be relieved of any further obligation under such contract.

3. The minimum values as specified in subsections 4, 5, 6, 7, and 9 of any paid-up annuity, cash surrender, or death benefits available under an annuity contract shall be based upon minimum nonforfeiture amounts as defined in this section.

a. (1) The minimum nonforfeiture amount at any time at or prior to the commencement of any annuity payments shall be equal to an accumulation up to such time at rates of interest as indicated in paragraph *"b"* of the net considerations, as hereinafter defined, paid prior to such time, decreased by the sum of all of the following:

(a) Any prior withdrawals from or partial surrenders of the contract accumulated at rates of interest as indicated in paragraph *"b"*.

(b) An annual contract charge of fifty dollars, accumulated at rates of interest as indicated in paragraph *"b"*.

(c) The amount of any indebtedness to the company on the contract, including interest due and accrued.

(2) The net considerations for a given contract year used to define the minimum nonforfeiture amount shall be an amount equal to eighty-seven and one-half percent of the gross considerations credited to the contract during the contract year.

b. (1) The interest rate used in determining minimum nonforfeiture amounts shall be an annual rate of interest determined as the lesser of three percent per annum and all of the following, which shall be specified in the contract if the interest rate will be reset:

(a) The five-year constant maturity treasury rate reported by the federal reserve as of a date, or average over a period, rounded to the nearest one-twentieth of one percent, specified in the contract no longer than fifteen months prior to the contract issue date or redetermination date under subparagraph division (d).

(b) The result of subparagraph division (a) shall be reduced by one hundred twenty-five basis points.

(c) The resulting interest guarantee shall not be less than one percent.

(d) The interest rate shall apply for an initial period and may be redetermined for additional periods. The redetermination date, basis, and period, if any, shall be stated in the contract. The basis is the date or average over a specified period that produces the value of the five-year constant maturity treasury rate to be used at each redetermination date.

(2) During the period or term that a contract provides substantive participation in an equity indexed benefit, it may increase the reduction described in subparagraph (1), subparagraph division (b), by up to an additional one hundred basis points to reflect the value of the equity index benefit. The present value at the contract issue date and at each redetermination date thereafter of the additional reduction shall not exceed the market value of the benefit. The commissioner may require a demonstration that the present value of the reduction does not exceed the market value of the benefit. Lacking such a demonstration that is acceptable to the commissioner, the commissioner may disallow or limit the additional reduction.

(3) The commissioner may adopt rules to implement the provisions of subparagraph (1), subparagraph division (d), and to provide for further adjustments to the calculation of minimum nonforfeiture amounts for contracts that provide substantive participation in an equity index benefit and for other contracts that the commissioner determines adjustments are justified.

4. Any paid-up annuity benefit available under a contract shall be such that its present value on the date annuity payments are to commence is at least equal to the minimum nonforfeiture amount on that date. Such present value shall be computed using the mortality table, if any, and the interest rate specified in the contract for determining the minimum paid-up annuity benefits guaranteed in the contract.

5. For contracts which provide cash surrender benefits, such cash surrender benefits available prior to maturity shall not be less than the present value as of the date of surrender of that portion of the maturity value of the paid-up annuity benefit which would be provided under the contract at maturity arising from considerations paid prior to the time of cash surrender reduced by the amount appropriate to reflect any prior withdrawals from or partial surrenders of the contract, such present value being calculated on the basis of an interest rate not more than one percent higher than the interest rate specified in the contract for accumulating the net considerations to determine such maturity value, decreased by the amount of any indebtedness to the company on the contract, including interest due and accrued, and increased by any existing additional amounts credited by the company to the contract. In no event shall any cash surrender benefit be less than the minimum nonforfeiture amount at that time. The death benefit under such contracts shall be at least equal to the cash surrender benefit.

6. For contracts which do not provide cash surrender benefits, the present value of any paid-up annuity benefit available as a nonforfeiture option at any time prior to maturity shall not be less than the present value of that portion of the maturity value of the paid-up annuity benefit provided under the contract arising from considerations paid prior to the time the contract is surrendered in exchange for or changed to, a deferred paid-up annuity, such present value being calculated for the period prior to the maturity date on the basis of the interest rate specified in the contract for accumulating the net considerations to determine such maturity value, and increased by any existing additional amounts credited by the company to the contract. For contracts which do not provide any death benefits prior to the commencement of any annuity payments, such present values shall be calculated on the basis of such interest rate and the mortality table specified in the contract for determining the maturity value of the paid-up annuity benefit. However, in no event shall the present value of a paid-up annuity benefit be less than the minimum nonforfeiture amount at that time.

7. For the purpose of determining the benefits calculated under subsections 5 and 6, in the case of annuity contracts under which an election may be made to have annuity payments commence at optional maturity dates, the maturity date shall be deemed to be the latest date for which election shall be permitted by the contract, but shall not be deemed to be later than the anniversary of the contract next following the annuitant's seventieth birthday or the tenth anniversary of the contract, whichever is later.

8. Any contract which does not provide cash surrender benefits or does not provide death benefits at least equal to the minimum nonforfeiture amount prior to the commencement of any annuity payments shall include a statement in a prominent place in the contract that such benefits are not provided.

9. Any paid-up annuity, cash surrender or death benefits available at any time, other than on the contract anniversary under any contract with fixed scheduled considerations, shall be calculated with allowance for the lapse of time and the payment of any scheduled considerations beyond the beginning of the contract year in which cessation of payment of considerations under the contract occurs.

10. *a.* For any contract which provides, within the same contract by rider or supplemental contract provision, both annuity benefits and life insurance benefits that are in excess of the greater of cash surrender benefits or a return of the gross considerations with interest, the minimum nonforfeiture benefits shall be equal to the sum of the minimum nonforfeiture benefits for the annuity portion and the minimum nonforfeiture benefits, if any, for the life insurance portion computed as if each portion were a separate contract. Notwithstanding the provisions of subsections 4, 5, 6, 7, and 9, additional benefits shall be disregarded in ascertaining the minimum nonforfeiture amounts, paid-up annuity, cash surrender and death benefits that may be required by this section, if the additional benefits are payable:

(1) In the event of total and permanent disability.
(2) As reversionary annuity or deferred reversionary annuity benefits.
(3) As other policy benefits additional to life insurance, endowment, and annuity benefits, and considerations for all such additional benefits.

b. The inclusion of such additional benefits shall not be required in any paid-up benefits, unless such additional benefits separately would require minimum nonforfeiture amounts, paid-up annuity, cash surrender and death benefits.

11. After July 1, 2003, a company may elect either to apply the provisions of this section as it existed prior to July 1, 2003, or to apply the provisions of this section as amended by 2003 Iowa Acts, ch. 91, §8 – 10, to annuity contracts on a contract form-by-form basis before July 1, 2005. In all other instances, this section shall become operative with respect to annuity contracts issued by the company two years after July 1, 2003.

[C81, §508.38]

2002 Acts, ch 1111, §10; 2003 Acts, ch 91, §8 – 10; 2004 Acts, ch 1086, §103, 107; 2004 Acts, ch 1101, §70; 2012 Acts, ch 1023, §106, 157; 2013 Acts, ch 90, §151; 2014 Acts, ch 1026, §143; 2015 Acts, ch 29, §71; 2016 Acts, ch 1011, §92

508.39 Dividends.

The directors or managers of a stock company, incorporated under the laws of this state, shall make no dividends except from the earned profits arising from their business, which shall not include contributed capital or contributed surplus.

88 Acts, ch 1112, §603

CHAPTER 508A

VARIABLE ANNUITIES AND LIFE INSURANCE

Referred to in §87.4, 296.7, 331.301, 364.4, 505.28, 505.29, 510.11, 669.14, 670.7

508A.1 Basic requirements.
508A.2 Statement of variables.
508A.3 License requirements.
508A.4 Authority of commissioner.
508A.5 Other provisions applicable.

508A.1 Basic requirements.

A domestic life insurance company organized under chapter 508 may establish one or more separate accounts, and may allocate to such accounts amounts, including without limitation proceeds applied under optional modes of settlement or under dividend options, to provide for life insurance or annuities, and benefits incidental to such life insurance or annuities, payable in fixed or variable amounts or both, and may hold and accumulate funds pursuant to funding agreements, subject to the following:

1. The income, gains and losses, realized or unrealized, from assets allocated to a separate account shall be credited to or charged against the account, without regard to other income, gains or losses of the company.

2. Except as may be provided with respect to reserves for guaranteed benefits and funds referred to in subsection 3:

a. Amounts allocated to any separate account and accumulations thereon may be invested and reinvested without regard to any requirements or limitations prescribed by the laws of this state governing the investments of such life insurance companies; and

b. The investments in such separate account or accounts shall not be taken into account in applying the investment limitations otherwise applicable to the investments of such company.

3. Except with the approval of the commissioner of insurance and under such conditions as to investments and other matters as the commissioner may prescribe, which shall recognize the guaranteed nature of the benefits provided, reserves for benefits guaranteed as to dollar amount and duration and funds guaranteed as to principal amount or stated rate of interest shall not be maintained in a separate account.

4. Unless otherwise approved by the commissioner of insurance, assets allocated to a separate account shall be valued at their market value on the date of valuation, or if there is no readily available market, then as provided under the terms of the contract or the rules or other written agreement applicable to such separate account; however, unless otherwise approved by the commissioner of insurance, the portion, if any, of the assets of such separate account equal to the company's reserve liability with regard to the guaranteed benefits and funds referred to in subsection 3 shall be valued in accordance with the rules otherwise applicable to the company's assets.

5. Amounts allocated to a separate account in the exercise of the power granted by this chapter shall be owned by the company, and the company shall not be, nor hold itself out to be, a trustee with respect to such amounts. Unless it is provided to the contrary under the applicable contracts, that portion of the assets of any such separate account equal to the reserves and other contract liabilities with respect to such account shall not be chargeable with liabilities arising out of any other business the company may conduct.

6. No sale, exchange or other transfer of assets may be made by such company between any of its separate accounts or between any other investment account and one or more of its separate accounts unless, in case of a transfer into a separate account, such transfer is made solely to establish the account or to support the operation of the contracts with respect to the separate account to which the transfer is made, and unless such transfer, whether into or from a separate account, is made by a transfer of cash, or by a transfer of securities having a readily determinable market value, provided that such transfer of securities is approved by the commissioner of insurance. The commissioner of insurance may approve other transfers among such accounts if, in the commissioner's opinion, such transfers would not be inequitable.

7. To the extent such company deems it necessary to comply with any applicable federal or state laws, such company, with respect to any separate account, including without limitation any separate account which is a management investment company or a unit investment trust, may provide for persons having an interest therein appropriate voting and other rights and special procedures for the conduct of the business of such account, including without limitation special rights and procedures relating to investment policy, investment advisory services, selection of independent public accountants, and the selection of a committee, the members of which need not be otherwise affiliated with such company, to manage the business of such account.

8. If the assets of an insurer allocated to and accumulated in a separate account in connection with any policy, annuity, agreement, instrument, or contract, after the satisfaction of any liabilities with regard to the operation of the separate account, are insufficient to fully satisfy the insurer's express obligations under the policy, annuity, agreement, instrument, or contract, then claims for the unsatisfied portions of the insurer's obligations shall be class 2 claims under section 507C.42, subsection 2.

[C75, 77, 79, 81, §508A.1]

98 Acts, ch 1057, §5; 2006 Acts, ch 1117, §32

Referred to in §507C.2, 507C.42, 508.31A, 508.32, 508.32A

508A.2 Statement of variables.

Any contract providing benefits payable in variable amounts delivered or issued for delivery in this state shall contain a statement of the essential features of the procedures to be followed by the insurance company in determining the dollar amount of such variable benefits. Any such contract under which the benefits vary to reflect investment experience, including a group contract and any certificate in evidence of variable benefits issued thereunder, shall state that such dollar amount will so vary and shall contain on its first page a statement to the effect that the benefits thereunder are on a variable basis.

[C75, 77, 79, 81, §508A.2]

508A.3 License requirements.

No company shall deliver or issue for delivery within this state variable contracts unless it is licensed or organized to do a life insurance or annuity business in this state, and the

commissioner of insurance is satisfied that its condition or method of operation in connection with the issuance of such contracts will not render its operation hazardous to the public or its policyholders in this state. In this connection, the commissioner of insurance shall consider among other things:

1. The history and financial condition of the company;
2. The character, responsibility and fitness of the officers and directors of the company; and
3. The law and regulation under which the company is authorized in the state of domicile to issue variable contracts. The state of entry of an alien company shall be deemed its place of domicile for that purpose. If the company is a subsidiary of an admitted life insurance company, or affiliated with such company through common management or ownership, it may be deemed by the commissioner of insurance to have met the provisions of this section if either it or the parent or the affiliated company meets the requirements hereof.

[C75, 77, 79, 81, §508A.3]

508A.4 Authority of commissioner.

Notwithstanding any other provision of law, the commissioner of insurance shall have sole authority to regulate the issuance and sale of variable contracts, and to issue such reasonable rules and regulations as may be appropriate to carry out the purposes and provisions of this chapter.

[C75, 77, 79, 81, §508A.4]

508A.5 Other provisions applicable.

Except for section 508.37 and section 509.2, subsection 1, and except as otherwise provided in this chapter, all pertinent provisions of chapters 508, 509, 511, and 522B shall apply to separate accounts and contracts relating thereto. Any individual variable life insurance contract, delivered or issued for delivery in this state, shall contain nonforfeiture provisions appropriate to such a contract. Any group variable life insurance contract, delivered or issued for delivery in this state, shall contain a grace provision appropriate to such a contract. The reserve liability for variable contracts shall be established in accordance with actuarial procedures that recognize the variable nature of the benefits provided and any mortality guarantees.

[C75, 77, 79, 81, §508A.5]

2001 Acts, ch 16, §7, 37

CHAPTER 508B

CONVERSION FROM MUTUAL COMPANY TO STOCK COMPANY

Referred to in §87.4, 296.7, 331.301, 364.4, 505.28, 505.29, 521.2, 521A.14, 669.14, 670.7

Applies to plans of conversion established after July 1, 1985;
85 Acts, ch 127, §16

508B.1 Definitions.
508B.2 Mutual company becoming stock company — authorization.
508B.3 Conversion plans to be fair and equitable — alternative procedures and requirements.
508B.4 Eligible policyholders participation.
508B.5 Appointment of consultant.
508B.6 Approval of plan by policyholders — notice of election — effective date.
508B.7 Review of plan by commissioner — hearing authorized — approval.
508B.8 Payment of fees, salaries and costs.
508B.9 Act of conversion — continuation of company.
508B.10 Continuation of officers.
508B.11 Rules.
508B.12 Amendments — withdrawal.
508B.13 Prohibitions on certain offers to acquire shares.
508B.14 Limitation of actions — security for attorney fees.
508B.15 Duties of secretary of state.

508B.1 Definitions.

As used in this chapter, unless the context clearly indicates otherwise:

1. *"Commissioner"* means the commissioner of insurance.

2. *"Mutual life insurance company"* or *"mutual company"* means a level premium and natural premium life insurance company authorized under chapter 508 upon the mutual plan and includes a domestic company which meets the requirements of section 508.12.

3. *a. "Plan of conversion"* or *"conversion plan"* means a plan authorized by section 508B.3 and, in the case of plans authorized by section 508B.3, subsections 1 and 3, includes a procedure by which the mutual company's participating policies and contracts in force on the effective date of the conversion plan are operated by the reorganized company as a closed block of participating business for the exclusive benefit of the policies and contracts included, for dividend purposes only; to which are allocated assets of the mutual company in an amount which together with anticipated revenue from the business is reasonably expected to be sufficient to support the business; and which includes, but is not limited to, provisions for payment of claims and reasonable expenses, and provisions for continuation of current payable dividend scales if the experience underlying the scales continues, and a procedure for appropriate adjustments in the scales if the experience changes. However, at the option of the mutual company, some or all classes of group policies and contracts shall not be placed in the closed block but shall continue to be eligible to receive dividends based on the experience of the class or classes.

b. If any amount of the policyholders' consideration as specified in section 508B.3, subsection 3, paragraph *"b"*, for certain classes of policies or contracts is to be paid in the form of increased annual dividends to the policyholders in those classes, that amount is to be added to the assets allocated as provided in paragraph *"a"* and is to be paid to those classes.

4. *"Policyholder"* means a person, determined by the mutual company, who is the holder of a policy or annuity contract for the purposes of section 508B.3, subsection 1, 2, or 3.

5. *"Policyholders' membership interest"* means all policyholders' rights as members of the mutual company including, but not limited to, rights to vote and participate in any distribution of surplus whether or not incident to liquidation of the mutual company.

6. *"Reorganized company"* means the domestic stock company into which a mutual company has been converted, converted and merged, or converted and consolidated.

7. *"Stock life insurance company"* or *"stock company"* means a life insurance company authorized under chapter 508 upon the stock plan and includes a domestic company which meets the requirements of section 508.12.

85 Acts, ch 127, §1; 86 Acts, ch 1237, §30; 90 Acts, ch 1234, §7; 99 Acts, ch 165, §2

508B.2 Mutual company becoming stock company — authorization.

1. A mutual life insurance company may become a stock life insurance company pursuant to a plan of conversion established and approved in the manner provided by this chapter.

2. A plan of conversion may provide that a mutual company may convert into a domestic stock company, convert and merge, or convert and consolidate with a domestic stock company, as provided in chapter 490 or 491, whichever is applicable. However, the mutual company is not required to comply with sections 491.102 through 491.105 or sections 490.1102 and 490.1104 relating to approval of merger or consolidation plans by boards of directors and shareholders, if at the time of approval of the plan of conversion the board of directors approves the merger or consolidation and if at the time of approval of the plan by policyholders as provided in section 508B.6, the policyholders approve the merger or consolidation. This chapter supersedes any conflicting provisions of chapters 521 and 521A. A mutual company may convert, merge, or consolidate as part of a plan of conversion in which a majority or all of the common shares of the stock company are acquired by another corporation, which may be a corporation organized for that purpose, or in which the new stock company consolidates with a stock company to form another stock company.

3. In lieu of selecting a plan of conversion provided for in this chapter, a mutual company may convert to a stock company pursuant to a plan approved by the commissioner. The commissioner or the mutual company may use any provisions or combination of provisions provided for a plan in this chapter and may adopt any other provisions which are not unfair or inequitable to the policyholders of the mutual company. If a mutual company selects this procedure for conversion purposes, the mutual company shall reimburse the state for expenses incurred by the division in connection with the conversion plan except for expenses that are normal operating expenses of the division.

85 Acts, ch 127, §2; 86 Acts, ch 1237, §31; 90 Acts, ch 1205, §35; 90 Acts, ch 1234, §8; 2002 Acts, ch 1154, §108, 125; 2018 Acts, ch 1041, §127
Code editor directive applied

508B.3 Conversion plans to be fair and equitable — alternative procedures and requirements.

A plan of conversion shall be fair and equitable to policyholders. A plan of conversion is fair and equitable if it satisfies the conditions of subsection 1, 2, or 3. The commissioner may determine whether any other plan proposed by a mutual company is fair and equitable to its policyholders.

1. Subject to paragraph *"b"*, a plan of conversion under this subsection shall provide all of the following:

a. The policyholders' membership interest shall be exchanged, in a manner which takes into account the estimated proportionate contribution of surplus of each class of participating policies and contracts, for all of the common shares of the reorganized company or its parent company, if any, or for either or a combination of the common shares of the reorganized company or its parent company, if any, and consideration equal to the proceeds of the sale of the common shares by the issuer or by a trust or other entity existing for the exclusive benefit of policyholders and established solely for the purpose of effecting the conversion, to which trust or other entity the common shares, or the options to acquire or securities convertible into the common shares, shall be issued by the issuer on the effective date of the conversion. The consideration shall be distributed to policyholders during a process of conversion specified in the plan which shall not last more than ten years after the effective date of conversion or until the death of the policyholder, whichever occurs first.

b. Unless the anticipated issuance within a shorter period is disclosed, the issuer of common shares shall not, within two years after the effective date of reorganization, issue either of the following:

(1) Any of its common shares or any securities convertible with or without consideration into the common shares or carrying any warrant to subscribe to or purchase common shares.

(2) Any warrant, right or option to subscribe to or purchase the common shares or other securities described in subparagraph (1), except for the issue of common shares to or for the benefit of policyholders pursuant to the plan of conversion and the issue of stock

in anticipation of options for the purchase of common shares being granted to officers or employees of the reorganized company or its parent company, if any, pursuant to this chapter.

c. Unless the common shares have a public market when issued, the issuer shall use its best efforts to encourage and assist in the establishment of a public market for the common shares within two years of the effective date of the conversion or a longer period as disclosed in the plan of conversion. Within one year after the offering of stock other than the initial distribution, but no later than six years after the effective date of the conversion, the reorganized company shall offer to make available to policyholders who received and retained shares of stock with minimal values on conversion, a procedure to dispose of those shares of stock at market value without brokerage commissions or similar fees.

2. A plan of conversion under this subsection shall provide all of the following:

a. The mutual company's participating business, comprised of its participating policies and contracts in force on the effective date of the conversion, shall be operated by the reorganized insurer as a closed block of participating business. However, at the option of the mutual company, group policies and group contracts may be omitted from the closed block.

b. Assets of the mutual company shall be allocated to the closed block of participating business in an amount equal to the reserves and liabilities for the mutual life insurer's participating policies and contracts in force on the effective date of the conversion.

c. The consideration to be given in exchange for the policyholders' membership interest consists of aggregate consideration in a form or forms selected by the mutual company having a value equal to the amount of the statutory surplus of the mutual life insurer.

d. The consideration is allocated among the policyholders in a manner which is fair and equitable to the policyholders.

e. The reorganized company or its parent corporation shall issue and sell shares of one or more classes having a total price equal to the estimated value in the market on the initial offering date of the shares.

f. The estimated value shall take into account all of the following:

(1) The consideration to be given to policyholders pursuant to paragraph "*c*".

(2) The proceeds of the sale of the shares.

(3) Any additional value attributable to the shares as a result of a purchaser or a group of purchasers who acted in concert to obtain shares in the initial offering, attaining, through such purchase, control of the reorganized company or its parent corporation.

g. If a purchaser or a group of purchasers acting in concert is to attain such control in the initial offering, the mutual company shall not, directly or indirectly, pay for any of the costs or expenses of conversion of the mutual company, whether or not the conversion is effected.

h. The reorganized company may share in the profits of the closed block of participating business for the benefit of stockholders.

3. A plan of conversion under this subsection shall satisfy all of paragraphs *"a"* through *"j"* and may add or substitute, as applicable, the options provided in paragraphs *"k"* and *"l"*.

a. The reorganized company or its parent corporation shall issue and sell shares of one or more classes having a total price equal to the estimated market value on the initial offering taking into account the value to be given to participating policyholders pursuant to paragraph *"b"* and the proceeds of the sale.

b. The participating policyholders' consideration shall be based on the latest annual statement, updated to the effective date of the conversion plan, and filed prior to the effective date of the adoption by the board of directors of the plan of conversion. The policyholders' consideration shall be equal to the sum of the total amount of assets allocated to the participating business and an amount equal to reserves and other liabilities attributable to any group participating policies and contracts not included in the closed block of participating business.

c. The consideration to be given in exchange for the policyholders' membership interest shall consist of the participating policyholders' consideration and nontransferable preemptive subscription rights to purchase all of the common shares of the issuer and the establishment of a liquidation account for the benefit of the policyholders in the event of a subsequent

complete liquidation of the reorganized company having the terms described in paragraph "*j*".

d. The consideration and the preemptive subscription rights to purchase the common shares shall be allocated among the participating policyholders in a manner determined by the reorganized company which takes into account the estimated contribution of each class of participating policies and contracts to the total amount of the policyholders' consideration.

e. The number of the common shares which any person, together with any affiliates or group of persons acting in concert, may subscribe for or purchase in the reorganization shall be limited to not more than five percent of the common shares. For this purpose, neither the members of the board of directors of the reorganized company nor of its parent corporation, if any, shall be deemed to be affiliates or a group of persons acting in concert solely by reason of their board membership.

f. Unless the common shares have a public market when issued, officers and directors of the issuer and their affiliates shall not, for at least ninety days after the date of conversion, purchase common shares of the issuer, except in negotiated transactions involving more than ten percent of the outstanding common shares.

g. Unless the common shares have a public market when issued, the issuer shall use its best efforts to encourage and assist in the establishment of a public market for the common shares.

h. The issuer shall not, for at least three years following the conversion, repurchase any of its common shares except pursuant to a pro rata tender offer to all shareholders.

i. Until the liquidation account has been reduced to zero, the issuer shall not declare or pay a cash dividend on, or repurchase any of, its common shares in an amount in excess of its cumulative earned surplus generated after the conversion determined in accordance with generally accepted accounting principles, if the effect would be to cause the amount of the statutory surplus of the reorganized company to be reduced below the then amount of the liquidation account.

j. The liquidation account referred to in paragraph "*c*" must be equal to the excess of the total amount of the assets of the mutual company as of the effective date of the conversion over the sum of the total amount of assets allocated to the closed block of participating business and the policyholders' consideration and other reserves and liabilities attributed to policies and contracts not included in the amount attributable to policies and contracts in force on that effective date. The determinations shall be based on the latest annual statement of the mutual company, updated to the effective date, and filed before the effective date of the conversion plan. The function of the liquidation account is solely to establish a priority on liquidation and its existence does not restrict the use or application of the surplus of the reorganized company except as specified in paragraph "*i*". The liquidation account shall be allocated equally as of the effective date of conversion among the then participating policyholders. The amount allocated to a policy or contract shall not increase and shall be reduced to zero when the policy or contract terminates. In the event of a complete liquidation of the reorganized company, the policyholders among which the liquidation account is allocated are entitled to receive a liquidation distribution in the then amount of the liquidation account before any liquidation distribution is made with respect to shares.

k. At the option of the mutual company, the consideration to be given in exchange for the policyholders' membership interests may consist of cash, securities of the reorganized company, securities of another institution, a certificate of contribution, additional life insurance, annuity benefits, increased dividends, or other consideration or any combination of forms of consideration. The consideration, if any, given to a class or category of policyholders may differ from the consideration given to another class or category of policyholders. The certificate of contribution shall be repayable in ten years, equal to one hundred percent of the value of the policyholders' membership interest, and bear interest at the highest rate charged by the reorganized company for policy loans on the effective date of the conversion.

l. At the option of the mutual company, a plan may provide that any shares of the stock of the reorganized company or its parent corporation included in the policyholders' consideration shall be placed on the effective date of the conversion in a trust or other entity

existing for the exclusive benefit of the participating policyholders and established solely for the purpose of effecting the reorganization. Under this option, the shares placed in trust shall be sold over a period of not more than ten years and the proceeds of the shares shall be distributed using the distribution priorities prescribed in the plan.

85 Acts, ch 127, §3; 90 Acts, ch 1234, §9 – 14; 2000 Acts, ch 1023, §8, 60
Referred to in §508B.1, 508B.5, 508B.13

508B.4 Eligible policyholders participation.

The policyholders who are entitled to notice of and to vote upon approval of a plan of conversion and entitled to notice of a public hearing are the policyholders whose policies or contracts are in force on the date of adoption of the plan of conversion. Each policyholder whose policy has been in force for at least one year prior to the date is entitled to the consideration, if any, provided for the policyholder in the plan based on the policyholder's membership interest determined pursuant to this chapter, but only if the policyholder's membership interest arose from a policy or contract in force on the effective date of the conversion and such membership interest has been held continuously for at least one year prior to the date of adoption of the plan. For this purpose, any changes in status of, or premiums in excess of, those required on the policies or contracts occurring or made after the date one year prior to the date of adoption of the plan shall be disregarded.

85 Acts, ch 127, §4; 2000 Acts, ch 1023, §9

508B.5 Appointment of consultant.

1. A plan may provide for the appointment by the mutual company of a person as defined in section 4.1, subsection 20, who is qualified to act as a consultant. The appointment of the consultant shall be reviewed by the commissioner and unless the commissioner finds the consultant unqualified, the consultant shall carry out the duties required by the mutual company and this chapter.

2. The consultant may assist in determining the equity of the policyholders or value of the mutual company. The consultant may consider the value of the consideration to be given to the participating policyholders in exchange for their membership interests and may consider the valuations necessary to carry out the plans provided for in section 508B.3. Valuations shall be made taking into account the latest filed annual statement of the mutual company, updated to the effective date of the conversion plan, and any significant developments occurring subsequent to the date of the statement.

3. The findings of the consultant may be modified by the mutual company at any time so long as the results are not unfair or inequitable to policyholders.

4. If it can be shown by the mutual company to the commissioner that an underwriter of the shares is a qualified person, the underwriter may be appointed as the consultant.

85 Acts, ch 127, §5; 90 Acts, ch 1234, §15; 2018 Acts, ch 1041, §127
Code editor directive applied

508B.6 Approval of plan by policyholders — notice of election — effective date.

The plan of conversion shall be submitted to and shall not take effect until approved by two-thirds of the policyholders of the mutual company voting on the plan. Notice of a meeting for the purpose of voting on the conversion plan shall be provided by mail to each policyholder entitled to vote in accordance with the articles of incorporation or bylaws of the mutual company. Each policyholder entitled to vote may cast one vote unless otherwise provided in the articles of incorporation or bylaws of the mutual company. Voting shall be by ballot, in person or by proxy. A quorum shall consist of a quorum as defined in the articles of incorporation or bylaws of the mutual company. A copy of the plan of conversion, or a summary of the plan of conversion, shall accompany the notice of meeting and election. The notice of meeting may contain the notice of any planned public hearing. An approved plan of conversion shall take effect on the date specified in the plan.

85 Acts, ch 127, §6; 99 Acts, ch 165, §3
Referred to in §508B.2

508B.7 Review of plan by commissioner — hearing authorized — approval.

The commissioner of insurance shall review the plan. The commissioner shall approve the plan if the commissioner finds the plan complies with all provisions of law, the plan is fair and equitable to the mutual company and its policyholders, and that the reorganized company will have the amount of capital and surplus deemed by the commissioner to be reasonably necessary for its future solvency. The commissioner may order a hearing on the fairness and equity of the terms of the plan after giving written notice of the hearing to the mutual company, its policyholders, and other interested persons, all of whom have the right to appear at the hearing. Costs incurred in connection with the notice shall be paid by the company.

85 Acts, ch 127, §7; 90 Acts, ch 1234, §16; 2000 Acts, ch 1023, §10, 60

Referred to in §505.23

508B.8 Payment of fees, salaries and costs.

A director, officer, agent or employee of the mutual company shall not receive a fee, commission or other valuable consideration, other than regular salary and compensation, for aiding, promoting or assisting in the conversion except as set forth in the plan approved by the commissioner. This section does not prohibit the payment of reasonable fees and compensation to a consultant, attorneys at law, accountants, actuaries or other persons specifically employed for services performed in the practice of their professions while completing the plan of conversion, even if these persons are directors of the mutual company.

85 Acts, ch 127, §8

508B.9 Act of conversion — continuation of company.

1. When the commissioner and the policyholders approve the conversion plan as provided in this chapter, the commissioner shall issue a new certificate of authority to the reorganized company effective on the effective date of the conversion as provided in the plan. The reorganized company is a continuation of the mutual life insurance company and the conversion shall not annul or modify any of the mutual company's existing suits, contracts, or liabilities except as provided in the approved conversion plan. All rights, franchises, and interests of the mutual company in and to property, assets, and other interests shall be transferred to and shall vest in the reorganized company and the reorganized company shall assume all obligations and liabilities of the mutual company.

2. The reorganized company shall exercise all rights and powers and perform all duties conferred or imposed by law on life insurance companies writing the classes of insurance written by it, and shall retain the rights and contracts existing before conversion, subject to provisions of the plan.

85 Acts, ch 127, §9; 86 Acts, ch 1237, §32; 2000 Acts, ch 1023, §11; 2018 Acts, ch 1041, §127

Code editor directive applied

508B.10 Continuation of officers.

The directors and officers of the mutual company shall serve the reorganized company until new directors and officers are elected and qualify pursuant to the articles of incorporation and bylaws of the reorganized company.

85 Acts, ch 127, §10

508B.11 Rules.

The commissioner shall issue rules pursuant to chapter 17A to carry out the provisions of this chapter.

85 Acts, ch 127, §11

508B.12 Amendments — withdrawal.

At any time before the conversion, if done pursuant to rules issued by the commissioner or as may otherwise be required by the commissioner, the board of directors of a mutual company may amend the conversion plan. An amendment to a conversion plan is subject to

the prior approval of the commissioner. The board of directors of a mutual company may withdraw the plan of conversion at any time prior to the conversion.

85 Acts, ch 127, §12; 99 Acts, ch 165, §4

508B.13 Prohibitions on certain offers to acquire shares.

Prior to and for a period of five years following the effective date of the conversion, and in the case of the plans of conversion specified in section 508B.3, subsections 1 and 3, five years following the date of distribution of consideration to the policyholders in exchange for their membership interests, a person, other than the reorganized company, other than an employee benefit plan or employee benefit trust sponsored by the reorganized company, or as otherwise specifically provided for in the plan of conversion, shall not directly or indirectly acquire or offer to acquire the beneficial ownership of more than five percent of any class of voting security of the reorganized company, and a person, other than the reorganized company or other than an employee benefit plan or employee benefit trust sponsored by the reorganized company, who acquires five percent or more of any class of voting security of the reorganized company prior to the conversion or as specifically provided for in the plan of conversion, shall not directly or indirectly acquire or offer to acquire the beneficial ownership of additional voting securities of the reorganized company, unless the acquisition is approved by the commissioner as not being contrary to the interests of the policyholders of the reorganized company or its life insurance company subsidiary and by the board of directors of the reorganized company. The commissioner and the board of directors may consider the factors set forth in section 490.1108A. The provisions of section 521A.3, except section 521A.3, subsection 4, paragraph *"a"*, shall be applicable to a proposed acquisition subject to this section. An approved plan of conversion may include a stock option plan. As used in this section, *"beneficial ownership"* means, with respect to a security, the sole or shared power to vote or direct the voting of the security or the sole power to dispose or direct the disposition of the security.

85 Acts, ch 127, §13; 90 Acts, ch 1234, §17; 99 Acts, ch 165, §5; 2002 Acts, ch 1154, §110, 125

508B.14 Limitation of actions — security for attorney fees.

1. The commissioner's order approving or disapproving a plan of conversion shall be considered final agency action under chapter 17A.

2. An action challenging the validity of a conversion plan, or any part of a conversion plan, shall not be commenced more than thirty days following the date of approval by the commissioner, unless an application for rehearing is filed pursuant to section 17A.16, subsection 2. If an application for rehearing is filed, then such action must be filed within thirty days after that application is denied or deemed denied or, if the application is granted, within thirty days after the issuance of the commissioner's final decision on rehearing.

3. The reorganized company or a defendant may petition the court in such an action to give security for the reasonable attorney fees which may be incurred by any party to the action. The amount of the security may be increased or decreased in the discretion of the court having jurisdiction if a showing is made that the security provided is or may become inadequate or excessive.

85 Acts, ch 127, §14; 90 Acts, ch 1234, §18; 99 Acts, ch 165, §6; 2000 Acts, ch 1023, §12; 2018 Acts, ch 1041, §127

Code editor directive applied

508B.15 Duties of secretary of state.

After approval of the conversion plan by the commissioner and the policyholders, the secretary of state shall accept for filing a verified copy of the amended articles of incorporation.

85 Acts, ch 127, §15; 86 Acts, ch 1237, §33

CHAPTER 508C

IOWA LIFE AND HEALTH INSURANCE GUARANTY ASSOCIATION

Referred to in §87.4, 296.7, 331.301, 364.4, 505.28, 505.29, 507C.2, 508D.3, 669.14, 670.7

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508C.1 Title.

This chapter shall be cited as the *"Iowa Life and Health Insurance Guaranty Association Act"*.

87 Acts, ch 223, §1

508C.2 Purpose.

1. The purpose of this chapter is to protect, subject to certain limitations, the persons specified in section 508C.3, subsection 1, against failure in the performance of contractual obligations under life and health insurance policies and annuity contracts specified in section 508C.3, subsection 2, because of the impairment or insolvency of the member insurer which issued the policies or contracts.

2. To provide this protection, an association of insurers is created to enable the guaranty of payments of benefits and of continuation of coverages as limited in this chapter. Members of the association are subject to assessment to provide funds to carry out the purpose of this chapter.

87 Acts, ch 223, §2

Referred to in §508C.4

508C.3 Scope.

1. This chapter shall provide coverage under the policies and contracts specified in subsection 2 to all of the following:

a. Except for nonresident certificate holders under group policies or contracts, persons who are the beneficiaries, assignees, or payees of the persons covered under paragraph *"b"*.

b. Persons who are owners of the policies or contracts specified in subsection 2, other than unallocated annuity contracts and structured settlement annuities, or are insureds or annuitants under the policies or contracts, and who are either of the following:

(1) Residents of this state.

(2) Nonresidents of this state if all of the following conditions are met:

(a) The state in which the person resides has an association similar to the association created in this chapter.

(b) The person is not eligible for coverage by an association described in subparagraph division (a) in any other state due to the fact that the insurer was not licensed in the state at the time specified in that state's guaranty association law.

(c) The insurer is domiciled in this state.

c. Persons who are the owners of unallocated annuity contracts if the contracts are issued to or in connection with a specific benefit plan whose plan sponsor has its principal place of business in this state.

d. (1) A payee, or the beneficiary of a payee if the payee is deceased, of a structured settlement annuity, if the payee or beneficiary of the structured settlement annuity is either of the following:

(a) The payee or beneficiary of the structured settlement annuity is a resident of this state regardless of where the owner of the structured settlement annuity resides.

(b) The payee or beneficiary of the structured settlement annuity is not a resident of this state and either of the following conditions is met:

(i) The owner of the structured settlement annuity is a resident of this state.

(ii) The owner of the structured settlement annuity is not a resident of this state and both of the following are applicable:

(A) The insurer that issued the structured settlement annuity is domiciled in this state.

(B) The state in which the owner of the structured settlement annuity resides has an association similar to the association created by this chapter.

(2) Subparagraph (1), subparagraph division (b) shall not be applicable if either the payee or beneficiary of the payee if the payee is deceased, or the owner of the structured settlement annuity is eligible for coverage by the association of the state in which the payee, beneficiary, or owner resides.

e. A person who is a resident of this state and, only in special circumstances, to a nonresident. In order to avoid duplicate coverage, if a person who would otherwise receive coverage under this chapter is provided coverage under the laws of any other state, that person shall not be provided coverage under this chapter. In determining the application of the provisions of this paragraph in situations where a person could be provided coverage by the association of more than one state, whether as an owner, payee, beneficiary, or assignee, this chapter shall be construed in conjunction with other state laws to result in coverage by the association of only one state.

2. This chapter shall provide coverage to the persons specified in subsection 1 under direct life insurance policies, health insurance policies including long-term care insurance and disability insurance policies, annuity contracts, supplemental contracts, certificates under group policies or contracts, and unallocated annuity contracts issued by member insurers.

3. Coverage under this chapter shall not be provided to any of the following:

a. A person who is a payee, or the beneficiary of a payee if the payee is deceased, of a contract owner who is a resident of this state, if the payee or the beneficiary of the payee is provided any coverage by the association of another state.

b. A person who is covered pursuant to subsection 1, paragraph "*c*", if that person is provided any coverage by the association of another state.

4. This chapter does not apply to:

a. Any portion of a policy or contract to the extent that the rate of interest on which it is based or the interest rate, crediting rate, or similar factor determined by use of an index or other external reference stated in the policy or contract and employed in calculating returns or changes in value, averaged over the period of four years prior to the date on which the association becomes obligated with respect to the policy or contract, exceeds a rate of interest determined by subtracting two percentage points from Moody's corporate bond yield average for the same four-year period or over such lesser period if the policy or contract was issued less than four years before the association became obligated; and on or after the date on which the association becomes obligated with respect to the policy or contract, exceeds the rate of interest determined by subtracting three percentage points from Moody's corporate bond yield average as most recently available.

b. That portion or part of a policy or contract not guaranteed by the insurer, or under which the risk is borne by the policyholder.

c. A policy or contract or part of a policy or contract assumed by the impaired or insolvent insurer under a contract of reinsurance, other than reinsurance for which assumption certificates have been issued.

d. An unallocated annuity contract issued to an employee benefit plan protected under the federal pension benefit guaranty corporation regardless of whether the federal pension benefit guaranty corporation has yet become liable to make any payments with respect to

the benefit plan, or a portion of an unallocated annuity contract which is not issued to or in connection with a specific employee, union, or association of natural persons, or any portion of a financial guarantee.

e. A policy or contract issued by a company which is licensed under chapter 509A, 512A, 512B, 514, 514B, 518, 518A, or 520.

f. Except for a policy issued pursuant to section 515.48, subsection 5, paragraph *"a"*, a policy or contract issued by a company which is licensed under chapter 515.

g. A charitable gift annuity under chapter 508F.

h. An annuity contract issued to a government lottery.

i. A funding agreement under section 508.31A.

j. An obligation that does not arise under the express written terms of a covered policy or contract issued by the insurer to the policy or contract owner including without limitation all of the following:

(1) Claims based on marketing materials.

(2) Claims based on side letters, riders, or other documents that were issued by the insurer without meeting applicable policy form filing or approval requirements.

(3) Misrepresentation of or regarding policy benefits.

(4) Extra-contractual claims.

(5) Claims for penalties, consequential, or incidental damages.

k. A contractual agreement that establishes a member insurer's obligations to provide a book value accounting guaranty for defined contribution benefit plan participants by reference to a portfolio of assets that is owned by the benefit plan or its trustee, which in each case is not an affiliate of the member insurer.

l. A portion of a covered policy to the extent it provides for interest or other change in value to be determined by the use of an index or other external reference stated in the covered policy, but which has not been credited to the covered policy, or as to which the covered policy owner's rights are subject to forfeiture, as of the date the member insurer becomes an impaired or insolvent insurer under this chapter, whichever is earlier. If a covered policy's interest or change in value is credited less frequently than annually, then for purposes of determining the values that have been credited and are not subject to forfeiture under the covered policy, the interest or change in value determined by using the procedures defined in the covered policy will be credited as if the contractual date of crediting interest or changing values was the date of impairment or insolvency, whichever is earlier, and will not be subject to forfeiture.

m. A policy or contract issued in this state by a member insurer at a time the insurer was not licensed or did not have a certificate of authority to issue the policy or contract in this state.

n. A portion of a policy or contract issued to a plan or program of an employer, association, or other person to provide life, health, or annuity benefits to employees, members, or others, to the extent that the plan or program is self-funded or uninsured, including but not limited to benefits payable by an employer, association, or other person under any of the following:

(1) A multiple employer welfare arrangement as defined in section 3 of the federal Employee Retirement Income Security Act of 1974, 29 U.S.C. §1002, paragraph 40.

(2) A minimum premium group insurance plan.

(3) A stop-loss group insurance plan.

(4) An administrative services-only contract.

o. A portion of a policy or contract to the extent that it provides for any of the following:

(1) Dividends or experience rating credits.

(2) Voting rights.

(3) Payment of any fees or allowances to any person, including the policy or contract owner, in connection with service to or administration of the policy or contract.

p. A portion of a policy or contract to the extent that the assessments authorized by section 508C.9 with respect to the policy or contract are preempted by federal or state law.

q. A policy or contract providing any hospital, medical, prescription drug, or other health care benefits pursuant to 42 U.S.C. ch. 7, subch. XVIII, Part C or Part D, commonly known

as Medicare Part C and D pursuant to Tit. XVIII of the federal Social Security Act, or any regulations issued pursuant thereto.

5. In performing its obligations to provide coverage under this chapter, the association shall not be required to guarantee, assume, reinsure, or perform, or cause to be guaranteed, assumed, reinsured, or performed, the contractual obligations of an insolvent or impaired insurer under a covered policy or contract that do not materially affect the economic values or economic benefits of the covered policy or contract.

87 Acts, ch 223, §3; 88 Acts, ch 1135, §1 – 3; 89 Acts, ch 83, §67; 92 Acts, ch 1162, §6, 7; 98 Acts, ch 1057, §6; 2000 Acts, ch 1023, §13; 2008 Acts, ch 1123, §14; 2010 Acts, ch 1063, §1 – 7; 2010 Acts, ch 1193, §60; 2014 Acts, ch 1092, §111 – 114

Referred to in §508C.2, 508C.5, 508C.8

508C.4 Construction.

This chapter shall be liberally construed to effect its purpose as provided under section 508C.2.

87 Acts, ch 223, §4

508C.5 Definitions.

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

1. *"Account"* means any of the four accounts created under section 508C.6.

2. *"Association"* means the Iowa life and health insurance guaranty association created in section 508C.6.

3. *"Authorized assessment"*, or the term *"authorized"* when used in the context of an assessment, means that a resolution has been passed by the board of directors of the association whereby an assessment will be called immediately or in the future from member insurers for a specified amount. An assessment is authorized when the resolution is passed.

4. *"Benefit plan"* means a specific employee, union, or association of natural persons benefit plan.

5. *"Called assessment"*, or the term *"called"* when used in the context of an assessment, means that a notice has been issued by the association to member insurers requiring that an authorized assessment be paid within the time frame set forth within the notice. An authorized assessment becomes a called assessment when notice is mailed by the association to member insurers.

6. *"Commissioner"* means the commissioner of insurance.

7. *"Contractual obligation"* means an obligation under a covered policy or contract or a certificate under a group policy or contract, or a portion thereof for which coverage is provided under section 508C.3.

8. *"Covered policy"* means a policy or contract or a portion of a policy or contract for which coverage is provided under section 508C.3.

9. *"Extra-contractual claim"* means, without limitation, a claim relating to bad faith in the payment of claims, punitive or exemplary damages, or attorney fees and costs.

10. *"Impaired insurer"* means a member insurer which, after July 1, 1987, is not an insolvent insurer but is placed under an order of rehabilitation or conservation by a court of competent jurisdiction.

11. *"Insolvent insurer"* means a member insurer which, after July 1, 1987, is placed under an order of liquidation with a finding of insolvency by a court of competent jurisdiction.

12. *"Member insurer"* means a person licensed or who holds a certificate of authority to transact in this state any kind of insurance for which coverage is provided under section 508C.3, including a person whose license or certificate of authority in this state has been suspended, revoked, not renewed, or voluntarily withdrawn but not including any of the following:

a. An entity which is a licensed company specified in section 508C.3, subsection 4, paragraph *"e"* or *"f"*.

b. A mandatory state pooling plan.

c. A mutual assessment company or other person which operates on an assessment basis.

d. An insurance exchange.

e. An entity which issues a charitable gift annuity under chapter 508F.

f. An entity similar to any of the entities enumerated in this subsection.

13. *"Moody's corporate bond yield average"* means the monthly average corporate bond yields published by Moody's investors service, inc., or any successor thereto.

14. *"Owner"* of a policy of contract, *"policy owner"*, or *"contract owner"* means the person who is identified as the legal owner of a policy or contract under the terms of the policy or contract or who is otherwise vested with legal title to the policy or contract through a valid assignment completed in accordance with the terms of the policy or contract and properly recorded as the owner on the books of the insurer. *"Owner"*, *"policy owner"*, or *"contract owner"* does not include a person with a mere beneficial interest in a policy or contract.

15. *"Person"* means an individual, corporation, limited liability company, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, or any other legal entity.

16. *"Plan sponsor"* means any of the following:

a. The employer in the case of a benefit plan established or maintained by a single employer.

b. The employee organization in the case of a benefit plan established or maintained by an employee organization.

c. In the case of a benefit plan established or maintained by two or more employers or jointly by one or more employers and one or more employee organizations, the association, committee, joint board of trustees, or other similar group of representatives of the parties who establish or maintain the benefit plan.

17. *"Premium"* means amounts or consideration, by whatever name called, received on covered policies or contracts less returned premiums, considerations, and deposits and less dividends and experience credits. *"Premium"* does not include amounts for consideration received for policies or contracts or for the portions of policies or contracts for which coverage is not provided under section 508C.3, subsection 4, except that assessable premium shall not be reduced on account of the provisions of section 508C.3, subsection 4, paragraph *"a"*, relating to interest limitations and section 508C.8, subsection 8, paragraph *"a"*, subparagraph (2), subparagraph division (a), relating to limitations with respect to one individual, one participant, and one owner. *"Premium"* also does not include any of the following:

a. Premiums in excess of five million dollars on an unallocated annuity contract not issued under a governmental retirement plan, or its trustee, established under section 401, 403(b), or 457 of the United States Internal Revenue Code.

b. With respect to multiple nongroup policies of life insurance owned by one owner, whether the policy owner is an individual, firm, corporation, or other person, and whether the persons insured are officers, managers, employees, or other persons, premiums in excess of five million dollars with respect to those polices or contracts, regardless of the number of policies or contracts held by the owner.

18. *"Principal place of business"* of a plan sponsor or a person other than a natural person means the single state in which the natural persons who establish policy for the direction, control, and coordination of the operations of the entity as a whole primarily exercise that function as determined pursuant to section 508C.8A.

19. *"Receivership court"* means a court in an insolvent or impaired insurer's state having jurisdiction over the conservation, rehabilitation, or liquidation of the insurer.

20. *"Resident"* means a person to whom a contractual obligation is owed and who resides in a state on the date of entry of a court order that determines a member insurer is an impaired insurer or a court order that determines a member insurer is an insolvent insurer. A person may be a resident of only one state, which in the case of a person other than a natural person shall be the state of that person's principal place of business. A citizen of the United States who is a resident of a foreign country, or is a resident of a United States possession, territory, or protectorate that does not have an association similar to the association created by this chapter, shall be deemed a resident of the state or domicile of the insurer that issued the policy or contract.

21. *"State"* means a state, the District of Columbia, Puerto Rico, or a United States possession, territory, or protectorate.

22. *"Structured settlement annuity"* means an annuity purchased in order to fund periodic payments for a plaintiff or other claimant in payment for or with respect to personal injuries suffered by the plaintiff or other claimant.

23. *"Supplemental contract"* means a written agreement entered into for the distribution of proceeds under a life, health, or annuity policy or contract.

24. *"Unallocated annuity contract"* means a guaranteed investment contract, deposit administration contract, or any other annuity contract which is not issued to and owned by an individual, except to the extent of any annuity benefits guaranteed to an individual by an insurer under such a contract or certificate.

87 Acts, ch 223, §5; 88 Acts, ch 1135, §4 – 6; 90 Acts, ch 1234, §19, 20; 98 Acts, ch 1057, §7; 2010 Acts, ch 1063, §8 – 15; 2011 Acts, ch 70, §8 – 11

Referred to in §507A.4

508C.6 Creation of the association.

1. A nonprofit legal entity is created to be known as the Iowa life and health insurance guaranty association. All member insurers shall be and shall remain members of the association as a condition of their authority to transact insurance business in this state. The association shall perform its functions under the plan of operation established and approved under section 508C.10 and shall exercise its powers through the board of directors established in section 508C.7. For purposes of administration and assessment, the association shall maintain all of the following accounts:

a. A health insurance account.

b. A life insurance account.

c. An annuity account. A plan established under section 401, 403(b), or 457 of the United States Internal Revenue Code shall be covered by the annuity account.

d. An unallocated annuity contract account, excluding plans established under section 401, 403(b), or 457 of the United States Internal Revenue Code.

2. The association is subject to the immediate supervision of the commissioner and the applicable provisions of the insurance laws of this state.

87 Acts, ch 223, §6; 88 Acts, ch 1135, §7, 8; 2008 Acts, ch 1123, §15

Referred to in §508C.5, 508C.9

508C.7 Board of directors.

1. The board of directors of the association shall consist of not less than five nor more than nine member insurers serving terms as established in the plan of operation. The members of the board shall be selected by member insurers, subject to the approval of the commissioner. Vacancies on the board shall be filled for the remaining period of the term by a majority vote of the remaining board members, subject to the approval of the commissioner. To select the initial board of directors, and initially organize the association, the commissioner shall give notice to all member insurers of the time and place of the organizational meeting. In determining voting rights at the organizational meeting each member insurer is entitled to one vote in person or by proxy. If the board of directors is not selected within sixty days after notice of the organizational meeting, the commissioner may appoint the initial members.

2. In approving selections or in appointing members to the board, the commissioner shall consider, among other factors, whether all member insurers are fairly represented.

3. At the option of the association, members of the board may be reimbursed from the assets of the association for expenses incurred by them as members of the board of directors. However, members of the board shall not otherwise be compensated by the association for their services.

87 Acts, ch 223, §7

Referred to in §508C.6, 508C.10

508C.8 Powers and duties of the association.

1. If a domestic, foreign, or alien insurer is an impaired insurer, the association, subject

to conditions imposed by the association and approved by the impaired insurer and the commissioner, may:

a. Guarantee, assume, reinsure, or cause to be guaranteed, assumed, or reinsured, any or all of the covered policies of the impaired insurer.

b. Provide moneys, pledges, notes, guarantees, or other means as proper to effectuate paragraph "*a*" and assure payment of the contractual obligations of the impaired insurer pending action under paragraph "*a*".

c. Loan money to the impaired insurer and guarantee borrowings by the impaired insurer, provided the association has concluded, based on reasonable assumptions, that there is a likelihood of repayment of the loan and a probability that unless a loan is made the association would incur substantial liabilities under subsection 2.

2. If a member insurer is an insolvent insurer, the association may in its discretion do any of the following:

a. The association may do either of the following:

(1) Guarantee, assume, or reinsure, or cause to be guaranteed, assumed, or reinsured the covered policies or contracts of an insolvent insurer.

(2) Assure payment of the contractual obligations of the insolvent insurer.

b. Provide moneys, pledges, notes, guarantees, or other means as reasonably necessary to discharge the duties described in this subsection.

c. Provide benefits and coverages in accordance with all of the following provisions:

(1) With respect to life and health insurance policies or contracts and annuity contracts, assure payment of benefits for premiums identical to the premiums and benefits, except for conversion and renewability, that would have been payable under the policies or contracts of the insolvent insurer for the following claims incurred as follows:

(a) With respect to group policies or contracts, not later than the earlier of the next renewal date under those policies or contracts or forty-five days, but in no event less than thirty days, after the date on which the association becomes obligated with respect to those policies or contracts.

(b) With respect to nongroup policies or contracts not later than the earlier of the next renewal date, if any, under those policies or contracts or one year, but in no event less than thirty days, from the date on which the association becomes obligated with respect to the policies or contracts.

(2) Make diligent efforts to provide all known insureds or annuitants, for nongroup policies or contracts, or group policy owners, with respect to group policies or contracts, thirty days' notice of the termination of the benefits provided pursuant to subparagraph (1).

(3) With respect to nongroup life and health insurance policies or contracts covered by the association, make available to each known insured or annuitant, or owner if other than the insured or annuitant, and with respect to an individual formerly insured or formerly an annuitant under a group policy or contract who is not eligible for replacement group coverage, substitute coverage on an individual basis in accordance with the provisions of subparagraph (4), if the insureds or annuitants had a right under law or under the terminated policy or contract to convert coverage to individual coverage or to continue an individual policy or contract in force until a specified age or for a specified time, during which the insurer had no right to unilaterally make changes in any provision of the policy or contract or had a right only to make changes in premium by class.

(4) In providing the substitute coverage required under subparagraph (3), the association may offer either to reissue the terminated coverage or to issue an alternative policy or contract.

(a) Reissued or alternative policies or contracts shall be offered without requiring evidence of insurability, and shall not provide for any waiting period or exclusion that would not have applied under the terminated policy or contract.

(b) The association may reinsure any reissued or alternative policy or contract.

(5) Alternative policies or contracts adopted by the association shall be subject to the approval of the domiciliary insurance commissioner and the receivership court. The association may adopt alternative policies or contracts of various types for future issuance without regard to any particular impairment or insolvency of an insurer.

(a) Alternative policies or contracts shall contain at least the minimum statutory provisions required in this state and shall provide benefits that are not unreasonable in relation to the premium charged. The association shall set the premium in accordance with a table of rates that the association shall adopt. The premium shall reflect the amount of insurance to be provided and the age and class of risk of each insured, but shall not reflect any changes in the health of the insured after the original policy or contract was last underwritten.

(b) Any alternative policy or contract issued by the association shall provide coverage of a type similar to that of the policy or contract issued by the impaired or insolvent insurer, as determined by the association.

(6) If the association elects to reissue terminated coverage at a premium rate different from that charged under the terminated policy or contract the premium shall be set by the association in accordance with the amount of insurance provided and the age and class of risk, subject to approval of the domiciliary insurance commissioner and the receivership court.

(7) The association's obligations with respect to coverage under any policy or contract of an impaired or insolvent insurer or under any reissued or alternative policy or contract, shall cease on the date the coverage, or policy or contract, is replaced by another similar policy or contract by the policy or contract owner, or the association.

(8) When proceeding under this paragraph *"c"* with respect to a policy or contract carrying guaranteed minimum interest rates, the association shall assure the payment or crediting of a rate of interest consistent with section 508C.3, subsection 4, paragraph *"a"*.

3. *a.* In carrying out its duties under subsection 2, permanent policy liens or contract liens may be imposed in connection with a guarantee, assumption, or reinsurance agreement, if the court does both of the following:

(1) Finds either that the amounts which can be assessed under this chapter are less than the amounts needed to assure full and prompt performance of the insolvent insurer's contractual obligations, or that the economic or financial conditions as they affect member insurers are sufficiently adverse to the public interest to justify the imposition of policy or contract liens.

(2) Approves the specific policy liens or contract liens to be used.

b. Before being obligated under subsection 2, the association may request the imposition of a temporary moratorium, not exceeding three years, or liens on payments of cash values, termination values, and policy loans in addition to any contractual provisions for deferral of cash values, termination values, or policy loans. The temporary moratoriums and liens may be imposed by the court as a condition of the association's liability with respect to the insolvent insurer.

c. The obligations of the association under subsection 2 regarding a covered policy shall be reduced to the extent that the person entitled to the obligations has received payment of all or any part of the contractual benefits payable under the covered policy from any other source.

d. The association may offer modifications to the owners of policies or contracts or classes of policies or contracts issued by the insolvent insurer, if the association finds that under the policies or contracts the benefits provided, provisions pertaining to renewal, or the premiums charged or which may be charged are not reasonable. If the owner of a policy or contract to be modified fails or refuses to accept the modification as approved by the court, the association may terminate the policy or contract as of a date not less than one hundred eighty days after the modification is sent to the owner. The association shall have no liability under the policy or contract for any claim incurred or continuing beyond the termination date. However, this paragraph does not apply to interest adjustments made pursuant to section 508C.3, subsection 4, paragraph *"a"*.

4. If the association fails to act within a reasonable period of time as provided in subsection 2, the commissioner shall have the powers and duties of the association under this chapter with respect to insolvent insurers.

5. Upon request the association may give assistance and advice to the commissioner concerning the rehabilitation, payment of claims, continuance of coverage, or the performance of other contractual obligations of an impaired or insolvent insurer.

6. *a.* The association shall have standing to appear or intervene before any court or agency in this state with jurisdiction over an impaired or insolvent insurer concerning which the association is or may become obligated under this chapter or with jurisdiction over any person or property against which the association may have rights through subrogation or otherwise. Standing shall extend to all matters germane to the powers and duties of the association including but not limited to proposals for reinsuring, modifying, or guaranteeing the covered policies or contracts of the impaired or insolvent insurer and the determination of the covered policies or contracts, and contractual obligations. The association shall also have the right to appear or intervene before any court or agency in another state with jurisdiction over an impaired or insolvent insurer for which the association is or may become obligated or with jurisdiction over any person or property against whom the association may have rights through subrogation or otherwise.

b. As a creditor of an impaired or insolvent insurer as provided under section 508C.13, subsection 3, and consistent with the provisions of section 507C.34, the association and other similar associations shall be entitled to receive a disbursement of assets out of the marshaled assets, from time to time as the assets become available to reimburse the association or similar associations, as a credit against contractual obligations under this chapter. If the liquidator has not, within one hundred twenty days of a final determination of insolvency of an insurer by the receivership court, made an application to the court for the approval of a proposal to disburse assets out of marshaled assets to guaranty associations having obligations because of the insolvency, the association or similar associations shall be entitled to make application to the receivership court for approval of its own proposal to disburse these assets.

7. *a.* A person receiving benefits under this chapter is deemed to have assigned the rights under any causes of action against any person for losses arising under, resulting from, or otherwise relating to the covered policy or contract to the association to the extent of the benefits received under this chapter, whether the benefits are payments of or on account of contractual obligations, a continuation of coverage, or the provision of substitute or alternative coverages. The association may require an assignment to the association of the rights and causes of action by any payee, policyholder or contract owner, beneficiary, insured, or annuitant as a condition precedent to the receipt of any rights or benefits conferred by this chapter upon the person. The association shall be subrogated to these rights against the assets of the impaired or insolvent insurer.

b. The subrogation rights of the association under this subsection have the same priority against the assets of the impaired or insolvent insurer as that possessed by the person entitled to receive benefits under this chapter.

c. In addition to the rights pursuant to subsection 3, paragraphs *"a"* and *"b"*, the association shall have all common law rights of subrogation and any other equitable or legal remedy which would have been available to the impaired or insolvent insurer or owner, beneficiary, or payee of a covered policy or contract with respect to the policy or contract, including without limitation, in the case of a structured settlement annuity, any rights of the owner, beneficiary, or payee of the annuity, to the extent of benefits received pursuant to this chapter, against the person originally or by succession responsible for the losses arising from the personal injury relating to the annuity or payment for the annuity, excepting any such person responsible solely by reason of serving as an assignee in respect of a qualified assignment under section 130 of the Internal Revenue Code.

d. If the provisions of paragraphs *"a"* through *"c"* are invalid or ineffective with respect to any person or claim for any reason, the amount payable by the association with respect to the related covered obligations shall be reduced by the amount realized by any other person with respect to the person or claim that is attributable to the policies or contracts, or portion thereof, covered by the association.

e. If the association has provided benefits with respect to a covered obligation and a person recovers amounts as to which the association has rights as described in paragraphs *"a"* through *"d"*, the person shall pay to the association the portion of the recovery attributable to the policies or contracts, or portion thereof, covered by the association.

8. *a.* The benefits that the association may become obligated to cover shall in no event exceed the lesser of either of the following:

(1) The contractual obligations for which the insurer is liable or would have been liable if it were not an impaired or insolvent insurer.

(2) Any of the following:

(a) With respect to one life, regardless of the number of policies or contracts:

(i) Three hundred thousand dollars in life insurance death benefits, but not more than one hundred thousand dollars in net cash surrender and net cash withdrawal values for life insurance.

(ii) Five hundred thousand dollars for health insurance benefits which are basic hospital expense coverage, basic medical-surgical expense coverage, or major medical expense coverage as defined by the commissioner by rule pursuant to section 514D.4; three hundred thousand dollars for health insurance benefits which are disability income protection as defined by the commissioner by rule pursuant to section 514D.4; three hundred thousand dollars for long-term care insurance as defined in section 514G.103; or one hundred thousand dollars for other health insurance benefits including any net cash surrender and net cash withdrawal values.

(iii) Two hundred fifty thousand dollars in the present value of annuity benefits, including net cash surrender and net cash withdrawal values.

(iv) With respect to each payee of a structured settlement annuity, or the beneficiary or beneficiaries of the payee if the payee is deceased, two hundred fifty thousand dollars in present value annuity benefits, in the aggregate, including net cash surrender and net cash withdrawal values.

(b) (i) With respect to each individual participating in a benefit plan established under section 401, 403(b), or 457 of the United States Internal Revenue Code, or each unallocated annuity contract account, excluding a plan established under section 401, 403(b), or 457 of the United States Internal Revenue Code, not more than two hundred fifty thousand dollars in the aggregate, in present value annuity benefits, including net cash surrender and net cash withdrawal values for the beneficiaries of the deceased individual.

(ii) However, the association shall not in any event be obligated to cover more than an aggregate of three hundred fifty thousand dollars in benefits with respect to any one life under subparagraph division (a) and this subparagraph division (b), except with respect to benefits for basic hospital expense coverage, basic medical-surgical expense coverage, or major medical expense coverage under subparagraph division (a), subparagraph subdivision (ii), in which case the aggregate liability of the association shall not exceed five hundred thousand dollars with respect to any one individual, or more than five million dollars in benefits to one owner of multiple nongroup policies of life insurance regardless of whether the policy owner is an individual, firm, corporation, or other person, and whether the persons insured are officers, managers, employees, or other persons, and regardless of the number of policies and contracts held by the owner.

(c) With respect to a plan sponsor whose plan owns, directly or in trust, one or more unallocated annuity contracts not included under subparagraph division (b), not more than five million dollars in benefits, regardless of the number of contracts held by the plan sponsor. However, where one or more such unallocated annuity contracts are covered contracts under this chapter and are owned by a trust or other entity for the benefit of two or more plan sponsors, the association shall provide coverage if the largest interest in the trust or entity owning the contract is held by a plan sponsor whose principal place of business is in the state but in no event shall the association be obligated to cover more than five million dollars in benefits in the aggregate with respect to all such unallocated contracts.

b. The limitations on the association's obligation to cover benefits that are set forth under this subsection do not take into account the association's subrogation and assignment rights or the extent to which such benefits could be provided out of the assets of the impaired or insolvent insurer that are attributable to covered policies. The association's obligations under this chapter may be met by the use of assets attributable to covered policies or reimbursed to the association pursuant to the association's subrogation and assignment rights.

9. The association has no obligation to issue a group conversion policy of any nature to a person or to continue a group coverage in force for more than sixty days following the date the member insurer was adjudicated to be insolvent.

10. The association may do any of the following:

a. Enter into contracts as necessary or proper to carry out this chapter.

b. Sue or be sued, including taking any legal actions necessary or proper for recovery of any unpaid assessments under section 508C.9.

c. Borrow money to effect the purposes of this chapter. Any notes or other evidence of indebtedness of the association held by domestic insurers and not in default qualify as investments eligible for deposit under section 511.8, subsection 16.

d. Employ or retain persons as necessary to handle the financial transactions of the association, and to perform other functions as necessary or proper under this chapter.

e. Negotiate and contract with a liquidator, rehabilitator, conservator, or ancillary receiver to carry out the powers and duties of the association.

f. Take legal action as necessary to avoid payment of improper claims.

g. For the purposes of this chapter and to the extent approved by the commissioner, exercise the powers of a domestic life or health insurer. However, the association shall not issue insurance policies or annuity contracts other than those issued to perform the contractual obligations of the impaired or insolvent insurer.

h. Join an organization of one or more other state associations of similar purposes to further the purposes and administer the powers and duties of the association.

11. *a.* (1) At any time within one hundred eighty days of the date of an order of liquidation, the association may elect to succeed to the rights and obligations of a ceding member insurer that relate to policies or contracts covered, in whole or in part, by the association in each case under any reinsurance contract entered into by the insolvent insurer and its reinsurers, selected by the association. Any such assumption of rights and obligations shall be effective as of the date of the order of liquidation. The election shall be effected by the association or by the national organization of life and health insurance guaranty associations on its behalf by sending written notices, return receipt requested, to the affected reinsurers. As used in this subsection, "*date of election*" means the date of the election of the association to succeed to the rights and obligations of the ceding member insurer as provided in this subparagraph.

(2) To facilitate the earliest practicable decision about whether to assume any of the contracts of reinsurance of the ceding member insurer, and in order to protect the financial position of the state, the receiver and each reinsurer of the ceding member insurer shall make available upon request to the association, or to the national organization of life and health insurance guaranty associations on its behalf, as soon as possible after commencement of formal delinquency proceedings all of the following:

(a) Copies of in-force contracts of reinsurance and all related files and records relevant to the determination of whether such contracts should be assumed.

(b) Notices of any defaults under the reinsurance contracts or any known event or condition which with the passage of time could become a default under the reinsurance contract.

(3) The following provisions shall apply to reinsurance contracts so assumed by the association:

(a) The association shall be responsible for all unpaid premiums due under the reinsurance contracts for periods both before and after the date of the order of liquidation and shall be responsible for the performance of all other obligations to be performed after the date of the order of liquidation, in each case which relate to policies or contracts covered, in whole or in part, by the association. The association may charge policies or contracts covered in part by the association, through reasonable allocation methods, the cost for reinsurance in excess of the obligations of the association and shall provide notice and an accounting of these charges to the liquidator.

(b) The association shall be entitled to any amounts payable by the reinsurer under the reinsurance contracts with respect to losses or events that occur in periods after the date of the order of liquidation and that relate to policies or contracts covered, in whole or in part, by the association, provided that, upon receipt of any such amounts, the association shall be obliged to pay to the beneficiary under the policy or contract on account of which the amounts were paid, a portion of the amount equal to the lesser of any of the following:

(i) The amount received by the association.

(ii) The excess of the amount received by the association over the amount equal to the benefits paid by the association on account of the policy or contract less the retention of the insurer applicable to the loss or event.

(c) Within thirty days following the date of election, the association and each reinsurer under reinsurance contracts assumed by the association shall calculate the net balance due to or from the association under each reinsurance contract as of the date of election with respect to policies or contracts covered, in whole or in part, by the association, which calculation shall give full credit to all items paid by either the insurer or its receiver or the reinsurer prior to the date of election. The reinsurer shall pay the receiver any amounts due for losses or events prior to the date of the order of liquidation, subject to any setoff for premiums unpaid for periods prior to the date, and the association or reinsurer shall pay any remaining balance due the other, in each case within five days of the completion of the aforementioned calculation. Any disputes over the amounts due to either the association or the reinsurer shall be resolved by arbitration pursuant to the terms of the affected reinsurance contracts or, if the contract contains no arbitration clause, as otherwise provided by law. If the receiver has received any amounts due the association pursuant to subparagraph division (b), the receiver shall remit the same to the association as promptly as practicable.

(d) If the association or receiver, on the association's behalf, within sixty days of the date of election, pays the unpaid premiums due for periods both before and after the date of election that relate to policies or contracts covered, in whole or in part, by the association, the reinsurer shall not be entitled to terminate the reinsurance contracts for failure to pay premiums insofar as the reinsurance contracts relate to policies or contracts covered, in whole or in part, by the association, and shall not be entitled to set off any unpaid amounts due under other policies or contracts, or unpaid amounts due from parties other than the association, against amounts due the association.

b. During the period from the date of the order of liquidation, until the date of election or, if the association does not elect to succeed to the rights and obligations of the ceding member insurer as provided in paragraph "*a*", subparagraph (1), until one hundred eighty days after the date of the order of liquidation all of the following provisions are applicable:

(1) The association and the reinsurer shall not have any rights or obligations under reinsurance contracts that the association has the right to assume under paragraph "*a*", whether for periods prior to or after the date of liquidation.

(2) The reinsurer, the receiver, and the association shall, to the extent practicable, provide each other with data and records reasonably requested.

(3) Once the association elects to assume a reinsurance contract, the parties' rights and obligations shall be governed by the provisions of paragraph "*a*".

c. If the association does not elect to assume the rights and obligations under a reinsurance contract, the association shall have no rights or obligations in each case for periods both before and after the date of the order of liquidation, with respect to the reinsurance contract.

d. When policies or contracts, or covered obligations with respect thereto, are transferred to an assuming insurer, reinsurance on the policies or contracts may also be transferred by the association, in the case of rights and obligations under reinsurance contracts assumed under paragraph "*a*", subject to the following provisions:

(1) Unless the reinsurer and the assuming insurer agree otherwise, the reinsurance contracts transferred shall not cover any new policies or contracts of insurance in addition to those transferred.

(2) The obligations described in paragraph "*a*" shall no longer apply with respect to matters arising after the effective date of the transfer.

(3) Notice shall be given in writing, return receipt requested, by the transferring party to the affected reinsurer not less than thirty days prior to the effective date of the transfer.

e. This subsection shall supersede the provisions of any state law or of any affected reinsurance contract that provides for or requires any payment of reinsurance proceeds, on account of losses or events that occur in periods after the date of the order of liquidation, to the receiver of the insolvent insurer or any other person. The receiver shall remain entitled

to any amounts payable by the reinsurer under the reinsurance contract with respect to losses or events that occur in periods prior to the date of the order of liquidation, subject to applicable setoff provisions.

f. Except as otherwise provided in this subsection, this subsection shall not be construed to do any of the following:

(1) Alter or modify the terms and conditions of any reinsurance contract.

(2) Abrogate or limit any rights of any reinsurer to claim that the reinsurer is entitled to rescind a reinsurance contract.

(3) Give a policyholder or beneficiary an independent cause of action against a reinsurer that is not otherwise set forth in the reinsurance contract.

(4) Limit or affect the association's rights as a creditor of the state against the assets of this state.

(5) Apply to reinsurance agreements covering property or casualty risks.

12. The board of directors of the association shall have discretion and may exercise reasonable business judgment to determine the means by which the association will provide the benefits of this chapter in an economical and efficient manner.

13. Where the association has arranged or offered to provide the benefits of this chapter to a covered person under a plan or arrangement that fulfills the association's obligations under this chapter, the person shall not be entitled to benefits from the association in addition to or other than those provided under the plan or arrangement.

14. Venue in a suit against the association arising under this chapter shall be in the district court of Polk county. The association shall not be required to give an appeal bond in an appeal that relates to a cause of action arising under this chapter.

15. In carrying out its duties in connection with guaranteeing, assuming, or reinsuring policies or contracts under subsections 2 and 3, the association may, subject to approval of the receivership court, issue substitute coverage for a policy or contract that provides an interest rate, crediting rate, or similar factor determined by the use of an index or other external reference stated in the policy or contract employed in calculating returns or changes in value by issuing an alternative policy or contract in accordance with the following provisions:

a. In lieu of the index or other external reference provided for in the original policy or contract the alternative policy or contract provides for one of the following:

(1) A fixed interest rate.

(2) Payment of dividends with minimum guarantees.

(3) A different method for calculating interest or changes in value.

b. There is no requirement for evidence of insurability, waiting period, or other exclusion that would not have applied under the replaced policy or contract.

c. The alternative policy or contract is substantially similar to the replaced policy or contract in all other material terms.

87 Acts, ch 223, §8; 88 Acts, ch 1135, §9; 90 Acts, ch 1234, §21, 22; 91 Acts, ch 26, §37; 92 Acts, ch 1162, §8; 2008 Acts, ch 1123, §16, 17; 2009 Acts, ch 41, §157, 158; 2010 Acts, ch 1063, §16 – 22

Referred to in §508C.5, 508C.9, 508C.10, 508C.13

508C.8A Principal place of business — determination.

1. The principal place of business of a plan sponsor or a person other than a natural person shall be determined by the association in its reasonable judgment by considering all of the following factors:

a. The state in which the primary executive and administrative headquarters of the entity is located.

b. The state in which the principal office of the chief executive officer of the entity is located.

c. The state in which the board of directors or similar governing person or persons of the entity conducts the majority of its meetings.

d. The state in which the executive or management committee of the board of directors or similar governing person or persons of the entity conducts the majority of its meetings.

e. The state from which the management of the overall operations of the entity is directed.

2. In the case of a benefit plan sponsored by affiliated companies comprising a consolidated corporation, the principal place of business of the entity shall be deemed to be the state in which the holding company or controlling affiliate has its principal place of business as determined by the association using the factors enumerated in subsection 1. However, if more than fifty percent of the participants in the benefit plan are employed in a single state, that state shall be determined to be the principal place of business of the entity.

3. In the case of a benefit plan established or maintained by two or more employers, or jointly by one or more employers and one or more employee organizations, the principal place of business of the entity shall be deemed to be the principal place of business of the association, committee, joint board of trustees, or other similar group of representatives of the parties who establish or maintain the benefit plan. In lieu of a specific or clear designation of the principal place of business of the entity under this subsection, the principal place of business of the entity shall be deemed to be the principal place of business of the employer or employee organization that has the largest investment in the benefit plan in question.

2011 Acts, ch 70, §12
Referred to in §508C.5

508C.9 Assessments.

1. For the purpose of providing the funds necessary to carry out the powers and duties of the association, the board of directors shall assess the member insurers, separately for each account established pursuant to section 508C.6, at the time and for the amounts the board finds necessary. An assessment is due not less than thirty days after prior written notice has been sent to the member insurers and accrues interest at ten percent per annum commencing on the due date.

2. There are two classes of assessments as follows:

a. Class A assessments shall be authorized and called for the purpose of meeting administrative and legal costs and other expenses. Class A assessments may be authorized and called whether or not related to a particular impaired or insolvent insurer.

b. Class B assessments shall be authorized and called to the extent necessary to carry out the powers and duties of the association under section 508C.8 with regard to an impaired or an insolvent insurer.

3. *a.* The amount of a class A assessment shall be determined by the board and may be authorized and called on a pro rata or non-pro rata basis. If pro rata, the board may provide that the assessment be credited against future class B assessments. The total of all non-pro rata assessments shall not exceed three hundred dollars per member insurer in any one calendar year. The amount of a class B assessment shall be allocated for assessment purposes among the accounts pursuant to an allocation formula which may be based on the premiums or reserves of the impaired or insolvent insurer or on any other standard deemed by the board in its sole discretion as being fair and reasonable under the circumstances.

b. Class B assessments against member insurers for each account shall be in the proportion that the average of the aggregate premiums received on business in this state by each assessed member insurer on policies or contracts covered by each account for the three most recent calendar years for which information is available, preceding the year in which the insurer became insolvent, or, in the case of an assessment with respect to an impaired insurer, the three most recent calendar years for which information is available preceding the year in which the insurer became impaired, bears to the premiums received on business in this state for those calendar years by all assessed member insurers.

c. Assessments for funds to meet the requirements of the association with respect to an impaired or insolvent insurer shall not be authorized or called until necessary to implement the purposes of this chapter. Classification of assessments under subsection 2 and computation of assessments under this subsection shall be made with a reasonable degree of accuracy, recognizing that exact determinations may not always be possible. The association shall notify each member insurer of its anticipated pro rata share of an authorized assessment not yet called within one hundred eighty days after the assessment is authorized.

4. The association may abate or defer, in whole or in part, the assessment of a member

insurer if, in the opinion of the board, payment of the assessment would endanger the ability of the member insurer to fulfill its contractual obligations. If an assessment against a member insurer is abated or deferred, in whole or in part, the amount by which the assessment is abated or deferred may be assessed against the other member insurers in a manner consistent with the basis for assessments set forth in this section. Once the conditions that caused an abatement or deferral have been removed or rectified, the member insurer shall pay all assessments that were abated or deferred pursuant to a repayment plan approved by the association.

5. *a.* (1) Subject to the provisions of subparagraph (2) of this paragraph *"a"*, the total of all assessments authorized by the association with respect to a member insurer for each of the accounts established pursuant to section 508C.6, and designated as the health insurance account, the life insurance account, the annuity account, and the unallocated annuity contract account, shall not in any one calendar year exceed two percent of that member insurer's average annual premiums received in this state on the policies and contracts covered by the account during the three calendar years preceding the year in which the insurer becomes impaired or insolvent.

(2) If two or more assessments are authorized in one calendar year with respect to insurers that become impaired or insolvent in different calendar years, the average annual premiums for purposes of the aggregate assessment percentage limitation referred to in subparagraph (1) of this paragraph *"a"* shall be equal and limited to the higher of the three-year average annual premiums for the applicable account as calculated pursuant to this section.

(3) If the maximum assessment, together with the other assets of the association in the account, does not provide in one year in either account an amount sufficient to carry out the responsibilities of the association, the necessary additional funds shall be assessed for the account in succeeding years as soon as permitted by this chapter.

b. The board may provide in its plan of operation a method of allocating funds among claims, whether relating to one or more impaired or insolvent insurers, when the maximum assessment will be insufficient to cover anticipated claims.

c. If the maximum assessment for either the life insurance account, the annuity account, or the unallocated annuity contract account in one year does not provide an amount sufficient to carry out the responsibilities of the association, the board, pursuant to subsection 3, paragraph *"b"*, shall access any of the other said accounts for the necessary additional amount, subject to the maximum assessments stated in paragraph *"a"* of this subsection.

6. By an equitable method as established in the plan of operation, the board may refund to member insurers, in proportion to the contribution of each insurer to that account, the amount by which the assets of the account, including assets accruing from assignment, subrogation, net realized gains, and income from investments, exceed the amount the board finds is necessary to carry out during the coming year the obligations of the association with regard to that account. A reasonable amount may be retained in any account to provide funds for the continuing expenses of the association and for future claims.

7. In determining its premium rates and policyowner dividends as to any kind of insurance within the scope of this chapter, it is proper for a member insurer to consider the amount reasonably necessary to meet its assessment obligations under this chapter.

8. The association shall issue to each insurer paying a class B assessment under this chapter, a certificate of contribution in a form prescribed by the commissioner for the amount of the assessment so paid. All outstanding certificates shall be of equal dignity and priority without reference to amounts or dates of issue. A certificate of contribution may be shown by the insurer in its financial statement as an asset in the form, for the amount and for a period of time as the commissioner may approve.

9. *a.* A member insurer that wishes to protest all or part of an assessment shall pay when due the full amount of the assessment as set forth in the notice provided by the association. The payment shall be made available to meet association obligations during the pendency of the protest or any subsequent appeal. The payment shall be accompanied by a statement in writing that the payment is made under protest and setting forth a brief statement of the grounds for the protest.

b. Within sixty days following the payment of an assessment under protest by a member

insurer, the association shall either notify the protesting member insurer in writing of its determination with respect to the protest or notify the protesting member insurer that additional time is required to resolve the issues raised by the protest.

c. Within thirty days after a final decision has been made, the association shall notify the protesting member insurer in writing of that final decision. Within sixty days of receipt of notice of the final decision, the protesting member insurer may appeal that final decision to the commissioner.

d. As an alternative to rendering a final decision with respect to a protest of an assessment, the association may refer the protest to the commissioner for a final decision, with or without a recommendation from the association.

e. If a protest or subsequent appeal of an assessment is upheld in favor of the protesting member insurer, the amount paid in error or the excess shall be refunded to the member insurer. Interest on a refund due a protesting member insurer shall be paid at the rate actually earned by the association during the pendency of the protest or any subsequent appeal.

10. The association may request information from member insurers in order to aid in the exercise of the association's power under this section, and the member insurers shall promptly comply with such a request.

87 Acts, ch 223, §9; 88 Acts, ch 1135, §10; 90 Acts, ch 1234, §23 – 25; 92 Acts, ch 1162, §9, 10; 2000 Acts, ch 1023, §14; 2011 Acts, ch 70, §13, 14

Referred to in §508C.3, 508C.8, 508C.10, 508C.19

508C.10 Plan of operation.

1. *a.* The association shall submit to the commissioner a plan of operation and any amendments to the plan of operation necessary or suitable to assure the fair, reasonable, and equitable administration of the association. The plan of operation and any amendments to the plan are effective upon the commissioner's written approval.

b. If the association fails to submit a suitable plan of operation within one hundred eighty days following July 1, 1987, or if at any time the association fails to submit suitable amendments to the plan, the commissioner shall, after notice and hearing, adopt rules pursuant to chapter 17A as necessary or advisable to effectuate this chapter. The rules shall continue in force until modified by the commissioner or superseded by a plan submitted by the association and approved by the commissioner.

2. All member insurers shall comply with the plan of operation.

3. In addition to other requirements established in this chapter the plan of operation shall establish all of the following:

a. Procedures for handling the assets of the association.

b. The amount and method of reimbursing members of the board of directors under section 508C.7.

c. Regular places and times for meetings of the board of directors.

d. Procedures for records to be kept of all financial transactions of the association, its agents, and the board of directors.

e. Procedures for selecting the board of directors and submitting the selections to the commissioner.

f. Any additional procedures for assessments under section 508C.9.

g. Additional provisions necessary or proper for the execution of the powers and duties of the association.

4. The plan of operation may provide that any powers and duties of the association, except those under section 508C.8, subsection 10, paragraph "*c*" and section 508C.9 are delegated to a corporation, association, or other organization which performs or will perform functions similar to those of this association, or its equivalent, in two or more states. Such a corporation, association, or organization shall be reimbursed for any payments made on behalf of the association and shall be paid for its performance of any function of the association. A delegation under this subsection shall take effect only with the approval of both the board of directors and the commissioner. The delegation shall be made only to a

corporation, association, or organization which extends protection at least as favorable and effective as that provided by this chapter.

87 Acts, ch 223, §10
Referred to in §508C.6

508C.11 Duties and powers of the commissioner.

1. The commissioner shall:

a. Upon request of the board of directors, provide the association with a statement of the premiums for each member insurer.

b. When an impairment is declared and the amount of the impairment is determined, serve a demand upon the impaired insurer to make good the impairment within a reasonable time. Notice to the impaired insurer constitutes notice to its shareholders, if any. The failure of the insurer to promptly comply with the demand shall not excuse the association from the performance of its powers and duties under this chapter.

2. After notice and hearing, the commissioner may suspend or revoke the certificate of authority to transact insurance in this state of a member insurer which fails to pay an assessment when due or fails to comply with the plan of operation. As an alternative, the commissioner may levy an administrative penalty on any member insurer which fails to pay an assessment when due. The administrative penalty shall not exceed five percent of the unpaid assessment per month. However, an administrative penalty shall not be less than one hundred dollars per month.

3. A final action of the board of directors or the association may be appealed to the commissioner by a member insurer if the appeal is taken within sixty days of the member insurer's receipt of notice of the final action being appealed. A final action or order of the commissioner is subject to judicial review pursuant to chapter 17A in a court of competent jurisdiction.

4. The liquidator, rehabilitator, or conservator of an impaired insurer may notify all interested persons of the effect of this chapter.

87 Acts, ch 223, §11; 88 Acts, ch 1112, §203; 2011 Acts, ch 70, §15, 16

508C.12 Prevention of insolvencies.

1. To aid in the detection and prevention of insurer insolvencies or impairments the commissioner shall:

a. (1) Notify the commissioners or insurance departments of other states or territories of the United States and the District of Columbia when any of the following actions against a member insurer is taken:

(a) A license is revoked.

(b) A license is suspended.

(c) A formal order is made that a company restrict its premium writing, obtain additional contributions to surplus, withdraw from the state, reinsure all or any part of its business, or increase capital, surplus, or any other account for the security of policyholders or creditors.

(2) Notice shall be mailed to the commissioners or departments within thirty days following the earlier of when the action was taken or the date on which the action occurs. This subparagraph does not supersede section 507C.9, subsection 5.

b. Report to the board of directors when the commissioner has taken any of the actions set forth in paragraph *"a"* or has received a report from any other commissioner indicating that such action has been taken in another state. Reports to the board of directors shall contain all significant details of the action taken or the report received from another commissioner.

c. Report to the board of directors when there is reasonable cause to believe from an examination, whether completed or in process, of a member insurer that the insurer may be an impaired or insolvent insurer.

d. Furnish to the board of directors the national association of insurance commissioners' insurance regulatory information system ratios, and listing of insurers not included in the ratios, developed by the national association of insurance commissioners, and the board may use the information in carrying out its duties and responsibilities under this section. The

report and the information contained in the report shall be kept confidential by the board of directors until such time as it is made public by the commissioner or other lawful authority.

2. The commissioner may seek the advice and recommendations of the board of directors concerning any matter affecting the commissioner's duties and responsibilities regarding the financial condition of member insurers and companies seeking admission to transact insurance business in this state.

3. The board of directors may upon majority vote make reports and recommendations to the commissioner upon any matter germane to the solvency, liquidation, rehabilitation or conservation of a member insurer or germane to the solvency of a company seeking to transact insurance business in this state. These reports and recommendations are not public records pursuant to chapter 22.

4. Upon majority vote, the board of directors shall notify the commissioner of any information indicating that a member insurer may be an impaired or insolvent insurer.

5. Upon majority vote, the board of directors may request that the commissioner order an examination of a member insurer which the board in good faith believes may be an impaired or insolvent insurer. The examination may be conducted as a national association of insurance commissioners examination or may be conducted by persons designated by the commissioner. The cost of the examination shall be paid by the association and the examination report shall be treated as are other examination reports. The examination report shall not be released to the board of directors prior to its release to the public, but this shall not preclude the commissioner from complying with subsection 1. The commissioner shall notify the board of directors when the examination is completed. The request for an examination shall be kept on file by the commissioner but it is not a public record pursuant to chapter 22 until the release of the examination report to the public.

6. Upon majority vote, the board of directors may make recommendations to the commissioner for the detection and prevention of insurer insolvencies.

87 Acts, ch 223, §12; 88 Acts, ch 1112, §204; 2011 Acts, ch 70, §17 – 19; 2012 Acts, ch 1023, §107

Referred to in §22.7(23)

508C.13 Miscellaneous provisions.

1. This chapter does not reduce the liability for unpaid assessments of the insureds on an impaired or insolvent insurer operating under a plan with assessment liability other than the plan of this chapter.

2. Records shall be kept of all negotiations and meetings in which the association or its representatives are involved to discuss the activities of the association in carrying out its powers and duties under section 508C.8. Records of the negotiations or meetings shall be made public pursuant to chapter 22 only upon the termination of a liquidation, rehabilitation, or conservation proceeding involving the impaired or insolvent insurer, upon the termination of the impairment or insolvency of the insurer, or upon the order of a court of competent jurisdiction. This subsection does not limit the duty of the association to render a report of its activities under section 508C.14.

3. For the purpose of carrying out its obligations under this chapter, the association shall be deemed to be a creditor of the impaired or insolvent insurer to the extent of assets attributable to covered policies reduced by any amounts to which the association is entitled pursuant to its subrogation rights under section 508C.8, subsection 7. Assets of the impaired or insolvent insurer attributable to covered policies shall be used to continue all covered policies and pay all contractual obligations of the impaired or insolvent insurer as required by this chapter. As used in this subsection, *"assets attributable to covered policies"* means that proportion of the assets which the reserves that should have been established for the policies bear to the reserves that should have been established for all policies of insurance written by the impaired or insolvent insurer.

4. *a.* Prior to the termination of a liquidation, rehabilitation, or conservation proceeding, the court may take into consideration the contributions of the respective parties, including the association, similar associations of other states, the shareholders and policyowners of the insolvent insurer, and any other party with a bona fide interest, in making an

equitable distribution of the ownership rights of the insolvent insurer. When considering the contributions, consideration shall be given to the welfare of the policyholders of the continuing or successor insurer.

b. A distribution to stockholders, if any, of an impaired or insolvent insurer shall not be made until the total amount of valid claims of the association and of similar associations of other states for funds expended in carrying out its powers and duties under section 508C.8 with respect to the insurer have been fully recovered by the association and the similar associations.

5. *a.* Subject to the limitations of paragraphs *"b"*, *"c"*, and *"d"*, if an order for liquidation or rehabilitation of an insurer domiciled in this state has been entered, the receiver appointed under the order may recover, on behalf of the insurer, from any affiliate that controlled it, the amount of distributions other than stock dividends paid by the insurer on its capital stock made at any time during the five years preceding the petition for liquidation or rehabilitation.

b. Distributions are not recoverable if the insurer shows that when paid the distributions were lawful and reasonable and that the insurer did not know and could not reasonably have known that the distributions might adversely affect the ability of the insurer to fulfill its contractual obligations.

c. A person who was an affiliate that controlled the insurer at the time the distributions were paid is liable up to the amount of distributions received. A person who was an affiliate that controlled the insurer at the time the distributions were declared is liable up to the amount of distributions that would have been received if they had been paid immediately. If two persons are liable with respect to the same distributions, they are jointly and severally liable.

d. The maximum amount recoverable under this subsection is the amount needed in excess of all other available assets of the insolvent insurer to pay the contractual obligations of the insolvent insurer.

e. If a person liable under paragraph *"c"* is insolvent, all its affiliates that controlled it at the time the dividend was paid are jointly and severally liable for a resulting deficiency in the amount recovered from the insolvent affiliate.

87 Acts, ch 223, §13; 90 Acts, ch 1234, §26
Referred to in §22.7(23), 508C.8

508C.14 Examination of the association — annual report.

The association is subject to examination and regulation by the commissioner. The board of directors shall submit to the commissioner by May 1 of each year, a financial report for the preceding calendar year and a report of its activities during the preceding calendar year. The financial report shall be in a form approved by the commissioner.

87 Acts, ch 223, §14
Referred to in §508C.13

508C.15 Tax exemptions.

The association is exempt from payment of all fees and all taxes levied by this state or any of its subdivisions except taxes levied on the association's real property.

87 Acts, ch 223, §15

508C.16 Immunity — indemnification.

1. A member insurer and its agents and employees, the association and its agents and employees, members of the board of directors, and the commissioner and the commissioner's representatives are not liable for any action taken by them or omission by them while acting within the scope of their employment and in the performance of their powers and duties under this chapter and such immunity granted under this section shall extend to their participation in any organization of one or more state associations of similar purposes and to that organization and its agents and employees.

2. Sections 490.850 through 490.859 apply to the association.

87 Acts, ch 223, §16; 88 Acts, ch 1170, §9; 91 Acts, ch 97, §55; 2002 Acts, ch 1154, §111, 125; 2011 Acts, ch 70, §20

508C.17 Stay of proceedings — reopening default judgments.

Proceedings in which the insolvent insurer is a party in a court in this state shall be stayed one hundred eighty days from the date an order of liquidation, rehabilitation, or conservation is final to permit proper legal action by the association on matters germane to its powers or duties. The association may apply to have a judgment under a decision, order, verdict, or finding based on default, set aside by the same court that entered the judgment, and shall be permitted to defend against the suit on the merits.

87 Acts, ch 223, §17; 2011 Acts, ch 70, §21

508C.18 Prohibited advertisements.

A person, including an insurer, agent or affiliate of an insurer, shall not make, publish, disseminate, circulate, or place before the public, or cause directly or indirectly, to be made, published, disseminated, circulated, or placed before the public in a newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over a radio station or television station, or in any other way, an advertisement, announcement, or statement, written or oral, which uses the existence of the insurance guaranty association of this state for the purpose of sales, solicitation, or inducement to purchase any form of insurance covered by this chapter. However, this section does not apply to the association or any other entity which does not sell or solicit insurance.

87 Acts, ch 223, §18; 2011 Acts, ch 70, §22

508C.18A Notice to policyholders — summary of chapter and disclosure.

1. *a.* On or after March 1, 2012, an insurer shall not deliver an insurance policy or contract in Iowa to the owner of the policy or contract unless a summary document describing the general purposes and current provisions of this chapter and containing a disclosure in compliance with subsection 2 is delivered to the policy or contract owner at the same time.

b. The summary document shall also be available upon request by an insurance policy or contract owner.

c. The distribution, delivery, contents, or interpretation of this summary document does not guarantee that either the insurance policy or contract or the owner of the policy or contract is covered in the event of the impairment or insolvency of a member insurer.

d. The summary document shall be revised by the association and approved by the commissioner as amendments to this chapter may require. Failure to receive a summary document does not give the insurance policy or contract owner, certificate holder, or insured any greater rights than those stated in this chapter.

2. The summary document prepared pursuant to this section shall contain a clear and conspicuous disclosure on its face. The commissioner shall establish the form and content of the disclosure which shall do all of the following:

a. State the name and address of the association and the Iowa insurance division.

b. Prominently warn the insurance policy or contract owner that the association may not cover the policy or contract or, if coverage is available, it will be subject to substantial limitations and exclusions and conditioned on continued residence in this state.

c. State the types of insurance policies and contracts for which the association will provide coverage.

d. State that the insurer and its agents are prohibited by law from using the existence of the association for the purpose of sales, solicitation, or inducement to purchase any form of insurance.

e. State that the insurance policy or contract owner should not rely on coverage from the association when selecting an insurer.

f. Explain rights available and procedures for filing a complaint to allege a violation of any provisions of this chapter.

g. Provide other information as directed by the commissioner, including but not limited to sources for information about the financial condition of an insurer provided that the information is not proprietary and is subject to disclosure under chapter 22.

3. A member insurer shall retain evidence of compliance with the provisions of this section for as long as the insurance policy or contract for which the notice is given remains in effect.

2011 Acts, ch 70, §23

508C.19 Credits for assessments paid.

1. An insurer may offset an assessment made pursuant to section 508C.9 against its premium tax liability pursuant to chapter 432 to the extent of twenty percent of the amount of the assessment for each of the five calendar years following the year in which the assessment was paid. If an insurer ceases doing business, all uncredited assessments may be credited against its premium tax liability for the year it ceases doing business.

2. Sums acquired by refund from the association which have been written off by contributing insurers and offset against premium taxes as provided in subsection 1 and are not then needed for purposes of this chapter shall be paid by the association to the commissioner. The commissioner shall remit the moneys to the treasurer of state to deposit in the state general fund.

87 Acts, ch 223, §19

CHAPTER 508D

MULTISTATE LIFE AND HEALTH INSURANCE RESOLUTION FACILITY

Referred to in §87.4, 296.7, 331.301, 364.4, 505.28, 505.29, 669.14, 670.7

508D.1	Title.	508D.6	Powers and duties of the facility.
508D.2	Purpose.	508D.7	Plan of operation.
508D.3	Definitions.	508D.8	Costs and assessments.
508D.4	Facility established.	508D.9	Miscellaneous provisions.
508D.5	Board of directors.		

508D.1 Title.

This chapter shall be cited as the "*Multistate Life and Health Insurance Resolution Facility Act*".

94 Acts, ch 1011, §1

508D.2 Purpose.

The purpose of this chapter is to authorize the formation of an entity by one or more state life and health insurance guaranty associations for the purpose of administering and disposing of the business of impaired or insolvent insurance companies assumed by or assigned to the entity by its member guaranty associations, or by impaired or insolvent insurers through the impaired or insolvent insurer's duly appointed receiver, liquidator, or rehabilitator, and to establish the conditions under which such an entity shall do business.

94 Acts, ch 1011, §2

Referred to in §508D.3, 508D.4

508D.3 Definitions.

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

1. "*Facility*" means the multistate life and health insurance resolution facility created pursuant to section 508D.4 as a legal entity domiciled in Iowa with its principal place of business and other business offices either within or without the state of Iowa as the board of directors may designate or as the business of the entity may require and established for the purpose set out in section 508D.2.

2. "*Member guaranty association*" means the Iowa life and health insurance guaranty association created pursuant to chapter 508C or any other state life and health insurance guaranty association which is or becomes a member of the facility pursuant to the plan of operation.

3. "*Oversight organization*" means the Iowa commissioner of insurance and the state

insurance commissioner, or other state official charged with the responsibility of regulating the insurance industry in the same or similar manner as the Iowa commissioner of insurance, from the state of domicile of each member guaranty association.

94 Acts, ch 1011, §3

508D.4 Facility established.

The facility may be created by one or more life and health insurance guaranty associations for the purpose set out in section 508D.2. The name of the facility shall be the multistate life and health insurance resolution facility. A life and health insurance guaranty association or other entity as approved by the board may elect to become a member of the association. The facility shall perform its functions under a plan of operation established and approved under section 508D.7 and shall exercise its powers through a board of directors established under section 508D.5. Only one facility shall be established pursuant to this chapter.

94 Acts, ch 1011, §4
Referred to in §508D.3

508D.5 Board of directors.

1. The members of the board of directors shall be selected by the member guaranty associations. The number of members of the board and their terms shall be established in the plan of operation. Vacancies on the board shall be filled for the remaining period of the term by a majority vote of the remaining board members. In determining voting rights, each member guaranty association shall be entitled to one vote in person or by proxy.

2. The initial board of directors of the facility shall be established by the Iowa life and health insurance guaranty association and shall consist of not less than five nor more than nine members. The initial board of directors shall adopt a plan of operation for the facility as provided in section 508D.7.

3. Members of the board of directors are entitled to reasonable compensation for expenses incurred in attending meetings of the board or while on business conducted on behalf of the facility. Members of the board may also be compensated by the facility for their services provided as members of the board as provided in the plan of operation.

94 Acts, ch 1011, §5
Referred to in §508D.4

508D.6 Powers and duties of the facility.

1. The facility shall perform those duties of the member guaranty associations which are delegated to the facility as permitted under the enabling legislation of each member guaranty association and which are consistent with the plan of operation.

2. Except as otherwise provided in this chapter, the facility is granted specific authority to exercise the powers of a domestic life or health insurer.

3. The facility is not authorized to solicit, advertise, market, sell, underwrite, issue, insure, administer, or reinsure new insurance business or insurance business of insurance companies which are not impaired or insolvent according to the laws of their state of domicile.

4. The board of directors of the facility may enter into agreements with any interstate compact organization established for the purpose of administering impaired or insolvent insurance companies in this or any other state.

5. An activity involving the authority of the facility derived from chapter 507C or other law related to insurer supervision, rehabilitation, and liquidation shall be performed in compliance with the requirements of such law.

6. The facility established under this chapter is not subject to any insurance licensing requirements and an employee of the facility is not subject to any insurance licensing requirements for activities performed within the employee's scope of duties. All regulatory oversight of the facility shall be conducted by the oversight organization.

94 Acts, ch 1011, §6
Referred to in §508D.9

508D.7 Plan of operation.

1. The facility shall submit to the oversight organization a plan of operation and any

amendments to the plan of operation necessary or suitable to assure the fair, reasonable, and equitable administration of the facility's business. The plan of operation and any amendments to the plan are effective upon the oversight organization's written approval.

2. The plan of operation, in addition to other requirements established in this chapter, shall establish all of the following:

a. Procedures for administering the assets under the control of the facility.

b. Regular places and times for meetings of the board of directors.

c. Procedures for records to be kept of all financial transactions engaged in by the facility, the agents of the facility, and the board of directors.

d. Procedures for selecting the board of directors and submitting the selections to the oversight organization.

e. Procedures for permitting life and health insurance guaranty associations to become members of the facility.

f. Procedures for the assumption of the insurance business or the assignment of the insurance business to the facility by member guaranty associations.

g. Procedures for determining and making assessments against member guaranty associations by the board of directors.

h. Additional provisions necessary and proper for the execution of the powers and duties of the facility.

i. A description of staffing requirements and qualifications for positions within the facility.

3. The plan of operation may provide that any powers and duties of the facility, except the power to borrow money and the power to make assessments, may be delegated to a corporation, association, or other organization or individual which performs or will perform those functions. Such corporation, association, or other organization or individual shall be reimbursed for any payments made on behalf of the facility and shall be compensated for the performance of any permissible function, as directed by the facility. A delegation of any power or duty pursuant to this subsection takes effect only with the approval of the board of directors.

94 Acts, ch 1011, §7
Referred to in §508D.4, 508D.5

508D.8 Costs and assessments.

1. Costs of administration shall be recorded separately for each impaired or insolvent company and those costs shall be reimbursed from the assets of such company.

2. The board of directors of the facility shall assess the member guaranty associations at the time and for the amounts the board finds necessary to reimburse the facility for any additional costs not reimbursed from assets managed by the facility. Assessments made pursuant to this subsection shall be allocated among member guaranty associations pursuant to a formula adopted by the board and consistent with each individual guaranty association's liability for the facility's insurance business which is the subject of the assessment. An assessment is due not less than ninety days after prior written notice has been sent to the member guaranty association and accrues interest at ten percent per annum commencing on the due date.

3. The total of all assessments upon a member guaranty association shall not exceed in any one calendar year the limit set by the enabling legislation of the member guaranty association's state of domicile for assessments against insurance companies. If a maximum assessment in any one year does not provide an amount sufficient to carry out the responsibilities of the facility, the necessary additional funds shall be assessed in succeeding years as soon as permitted by this chapter and by the enabling legislation of the member guaranty association's state of domicile.

4. Notwithstanding subsection 3, the Iowa life and health insurance guaranty association shall levy additional assessments not to exceed one hundred dollars per company per year if necessary to fund organizational expenses of the facility.

94 Acts, ch 1011, §8

508D.9 Miscellaneous provisions.

1. Records shall be kept of all negotiations and meetings in which the facility or the facility's representatives are involved to discuss the activities of the facility in carrying out the powers and duties set out under section 508D.6. Records of negotiations or meetings shall be made public pursuant to chapter 22 only upon the termination of a liquidation, rehabilitation, or conservation proceeding involving the impaired or insolvent insurance company whose business was assumed by or assigned to the facility, upon the termination of the impairment or insolvency of the insurance company, or upon the order of a court of competent jurisdiction. This subsection does not limit the duty of the association to render a report of its activities under subsection 2.

2. The facility is subject to examination and regulation by the oversight organization. The board of directors shall submit to the oversight organization by June 1 of each year a financial report for the preceding calendar year and a report of its activities during the preceding calendar year. The financial report shall be in a form approved by the oversight organization.

3. The facility is exempt from payment of all fees and taxes levied by this state or any of its subdivisions on insurance companies, except taxes levied on the real property of the facility.

4. A member guaranty association and its agents and employees, the facility and its agents and employees, members of the board of directors, and the oversight organization and its representatives are not liable for any acts or omissions while acting within the scope of their employment and in the performance of their powers and duties under this chapter, except for acts or omissions not in good faith which involve intentional misconduct or which involve a knowing violation of law.

94 Acts, ch 1011, §9

CHAPTER 508E

VIATICAL SETTLEMENT CONTRACTS

Referred to in §87.4, 296.7, 331.301, 364.4, 502.201, 505.28, 505.29, 507B.3, 669.14, 670.7

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508E.1 Short title.

This Act may be cited as the "*Viatical Settlements Act*".

2008 Acts, ch 1155, §1, 21

508E.1A Authority of the commissioner.

The commissioner shall regulate, but not prohibit, the sale of viatical settlements as provided in this chapter.

2000 Acts, ch 1147, §35

C2001, §508E.1

2008 Acts, ch 1155, §21
C2009, §508E.1A

508E.2 Definitions.

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

1. *"Advertising"* means any written, electronic, or printed communication or any communication by means of recorded telephone messages or transmitted on radio, television, the internet, or similar communications media, including film strips, motion pictures, and videos, published, disseminated, circulated, or placed directly before the public in this state, for the purpose of creating an interest in or inducing a person to sell, assign, devise, bequest, or transfer the death benefit or ownership of a life insurance policy pursuant to a viatical settlement contract.

2. *"Business of viatical settlements"* means an activity involved in but not limited to the offering, soliciting, negotiating, procuring, effectuating, purchasing, investing, financing, monitoring, tracking, underwriting, selling, transferring, assigning, pledging, hypothecating, or in any other manner acquiring an interest in a life insurance policy by means of a viatical settlement contract.

3. *"Chronically ill"* means any of the following:

a. Being unable to perform or maintain at least two activities of daily living, including but not limited to eating, toileting, transferring, bathing, dressing, or continence.

b. Requiring substantial supervision to protect the individual from threats to health and safety due to severe cognitive impairment.

c. Having a level of disability similar to that described in paragraph *"a"* as determined by the United States secretary of health and human services.

4. *"Commissioner"* means the commissioner of insurance.

5. *a. "Financing entity"* means an underwriter, placement agent, lender, purchaser of securities, purchaser of a policy or certificate from a viatical settlement provider, credit enhancer, or any entity that has a direct ownership in a policy or certificate that is the subject of a viatical settlement contract, but subject to all of the following:

(1) Whose principal activity related to the transaction is providing funds to effect the viatical settlement or purchase of one or more viaticated policies.

(2) Who has an agreement in writing with one or more licensed viatical settlement providers to finance the acquisition of viatical settlement contracts.

b. "*Financing entity*" does not include a nonaccredited investor or a viatical settlement purchaser.

6. *"Fraudulent viatical settlement act"* includes any of the following:

a. An act or omission committed by any person who, knowingly or with intent to defraud, for the purpose of depriving another of property or for pecuniary gain, commits or permits its employees or its agents to engage in acts including any of the following:

(1) Presenting, causing to be presented, or preparing with knowledge or belief that it will be presented to or by a viatical settlement provider, viatical settlement broker, viatical settlement purchaser, financing entity, insurer, insurance producer, or any other person, false material information, or concealing material information, as part of, in support of, or concerning a fact material to one or more of the following:

(a) An application for the issuance of a viatical settlement contract or insurance policy.

(b) The underwriting of a viatical settlement contract or insurance policy.

(c) A claim for payment or benefit pursuant to a viatical settlement contract or insurance policy.

(d) Premiums paid on an insurance policy.

(e) Payments and changes in ownership or beneficiary made in accordance with the terms of a viatical settlement contract or insurance policy.

(f) The reinstatement or conversion of an insurance policy.

(g) In the solicitation, offer, effectuation, or sale of a viatical settlement contract or insurance policy.

(h) The issuance of written evidence of viatical settlement contract or insurance policy.

(i) A financing transaction.

(2) Employing any plan, financial structure, device, scheme, or artifice to defraud related to viaticated policies.

(3) Entering into any practice or plan which involves stranger-originated life insurance.

(4) Failing to disclose to the insurer when requested by the insurer that the prospective insured has undergone a life expectancy evaluation by any person or entity other than the insurer or its authorized representative in connection with the issuance of the policy.

b. In the furtherance of a fraud or to prevent the detection of a fraud to do, or permit an employee or agent to do, any of the following:

(1) Remove, conceal, alter, destroy, or sequester from the commissioner the assets or records of a licensee or other person engaged in the business of viatical settlements.

(2) Misrepresent or conceal the financial condition of a licensee, financing entity, insurer, or other person.

(3) Transact the business of viatical settlements in violation of laws requiring a license, certificate of authority, or other legal authority for the transaction of the business of viatical settlements.

(4) File with the commissioner or the equivalent chief insurance regulatory official of another jurisdiction a document containing false information or otherwise conceal information about a material fact from the commissioner.

c. Embezzlement, theft, misappropriation, or conversion of moneys, funds, premiums, credits, or other property of a viatical settlement provider, insurer, insured, viator, insurance policyowner, or any other person engaged in the business of viatical settlements or insurance.

d. Recklessly entering into, negotiating, brokering, or otherwise dealing in a viatical settlement contract, the subject of which is a life insurance policy that was obtained by presenting false information concerning any fact material to the policy or by concealing, for the purpose of misleading another, information concerning any fact material to the policy, where the person or the persons intended to defraud the policy's issuer, the viatical settlement provider, or the viator. As used in this paragraph, *"recklessly"* means engaging in the conduct in conscious and clearly unjustifiable disregard of a substantial likelihood of the existence of the relevant facts or risks, such disregard involving a gross deviation from acceptable standards of conduct.

e. Facilitating the change of state of ownership of a policy or certificate or the state of residency of a viator to a state or jurisdiction that does not have a law similar to this chapter for the express purposes of evading or avoiding the provisions of this chapter.

f. Attempting to commit, assisting, aiding or abetting in the commission of, or conspiracy to commit the acts or omissions specified in this subsection.

7. *"Life insurance producer"* means any person licensed in this state as a resident or nonresident insurance producer who has received qualification or authority for life insurance coverage or a life line of coverage pursuant to chapter 522B.

8. *"Person"* means a natural person or a legal entity, including, without limitation, an individual, partnership, limited liability company, association, trust, or corporation.

9. *"Policy"* means an individual or group policy, group certificate, contract, or arrangement of life insurance owned by a resident of this state, regardless of whether delivered or issued for delivery in this state.

10. *"Related provider trust"* means a titling trust or other trust established by a licensed viatical settlement provider or a financing entity for the sole purpose of holding the ownership or beneficial interest in purchased policies in connection with a financing transaction. The trust shall have a written agreement with the licensed viatical settlement provider under which the licensed viatical settlement provider is responsible for ensuring compliance with all statutory and regulatory requirements and under which the trust agrees to make all records and files related to viatical settlement transactions available to the commissioner as if those records and files were maintained directly by the licensed viatical settlement provider.

11. *"Special purpose entity"* means a corporation, partnership, trust, limited liability company, or other similar entity formed solely to provide either directly or indirectly access to institutional capital markets for or in connection with any of the following:

a. For a financing entity or licensed viatical settlement provider.

b. (1) In connection with a transaction in which the securities in the special purpose entity

are acquired by the viator or by qualified institutional buyers as defined in 17 C.F.R. §230.144 promulgated by the United States securities and exchange commission under the federal Securities Act of 1933, as amended, 15 U.S.C. §77a et seq.

(2) In connection with a transaction in which the securities pay a fixed rate of return commensurate with established asset-backed institutional capital markets.

12. *"Stranger-originated life insurance"* means a practice or an act to initiate a life insurance policy for the benefit of a third-party investor who, at the time of policy origination, has no insurable interest in the insured.

a. Stranger-originated life insurance practices include cases in which life insurance is purchased with resources or guarantees from or through a person or entity who, at the time of the policy inception, could not lawfully initiate the policy by the person or entity, and where, at the time of the policy's inception, there is an arrangement or agreement, whether verbal or written, to directly or indirectly transfer the ownership of the policy or the policy benefits to a third party. Trusts that are created to give the appearance of an insurable interest, and are used to initiate policies for investors, violate insurable interest laws and the prohibition against wagering on life.

b. Stranger-originated life insurance arrangements do not include those practices set forth in subsection 15, paragraph *"d"*.

13. *"Terminally ill"* means having an illness or sickness that can reasonably be expected to result in death in twenty-four months or less.

14. *"Viatical settlement broker"* means a person, including a life insurance producer as provided for in section 508E.3, who, working exclusively on behalf of a viator and for a fee, commission, or other valuable consideration, offers or attempts to negotiate viatical settlement contracts between a viator and one or more viatical settlement providers or one or more viatical settlement brokers. Notwithstanding the manner in which the viatical settlement broker is compensated, a viatical settlement broker is deemed to represent only the viator, and not the insurer or the viatical settlement provider, and owes a fiduciary duty to the viator to act according to the viator's instructions and in the best interest of the viator. *"Viatical settlement broker"* does not include an attorney, certified public accountant, or a financial planner accredited by a nationally recognized accreditation agency who is retained to represent the viator and whose compensation is not paid directly or indirectly by the viatical settlement provider or purchaser.

15. *a.* *"Viatical settlement contract"* means a written agreement entered into between a viator and a viatical settlement provider or any affiliate of the viatical settlement provider establishing the terms under which compensation or anything of value is or will be paid, which compensation or value is less than the expected death benefits of the policy in return for the viator's present or future assignment, transfer, sale, devise, or bequest of the death benefit or ownership of any portion of the insurance policy or certificate of insurance.

b. *"Viatical settlement contract"* includes a premium finance loan made for a life insurance policy by a lender to a viator on, before, or after the date of issuance of the policy where any of the following applies:

(1) The viator or the insured receives on the date of the premium finance loan a guarantee of a future viatical settlement value of the policy.

(2) The viator or the insured agrees on the date of the premium finance loan to sell the policy or any portion of its death benefit on any date following the issuance of the policy.

c. *"Viatical settlement contract"* also includes the transfer for compensation or value of ownership or beneficial interest in a trust or other entity that owns a life insurance policy if the trust or other entity was formed or availed of for the principal purpose of acquiring one or more life insurance policies, which life insurance policy insures the life of a person residing in this state.

d. *"Viatical settlement contract"* does not include any of the following:

(1) A policy loan or accelerated death benefit made by the insurer pursuant to the policy's terms.

(2) Loan proceeds that are used solely to pay any of the following:

(a) Premiums for the policy.

(b) The costs of the loan, including, without limitation, interest, arrangement fees,

utilization fees and similar fees, closing costs, legal fees and expenses, trustee fees and expenses, and third-party collateral provider fees and expenses, including fees payable to letter of credit issuers.

(3) A loan made by a bank or other licensed financial institution in which the lender takes an interest in a life insurance policy solely to secure repayment of a loan or, if there is a default on the loan and the policy is transferred, the transfer of such a policy by the lender, provided that neither the default itself nor the transfer of the policy in connection with such default is pursuant to an agreement or understanding with any other person for the purpose of evading regulation under this chapter.

(4) A loan made by a lender that does not violate insurance premium finance law, provided that the premium finance loan is not described in paragraph *"b"*.

(5) An agreement where all the parties are closely related to the insured by blood or law; have a lawful substantial economic interest in the continued life, health, and bodily safety of the person insured; or are trusts established primarily for the benefit of such parties.

(6) Any designation, consent, or agreement by an insured who is an employee of an employer in connection with the purchase by the employer, or trust established by the employer, of life insurance on the life of the employee.

(7) A bona fide business succession planning arrangement between one or more of the following:

(a) Shareholders in a corporation or between a corporation and one or more of its shareholders or one or more trusts established by its shareholders.

(b) Partners in a partnership or between a partnership and one or more of its partners or one or more trusts established by its partners.

(c) Members in a limited liability company or between a limited liability company and one or more of its members or one or more trusts established by its members.

(8) An agreement entered into by a service recipient, or a trust established by the service recipient, and a service provider, or a trust established by the service provider, who performs significant services for the service recipient's trade or business.

(9) Any other contract, transaction, or arrangement exempted from the definition of viatical settlement contract by the commissioner based on a determination that the contract, transaction, or arrangement is not of the type intended to be regulated by this chapter.

16. *a.* *"Viatical settlement provider"* means a person, other than a viator, that enters into or effectuates a viatical settlement contract with a viator resident in this state.

b. *"Viatical settlement provider"* does not include any of the following:

(1) A bank, savings bank, savings and loan association, credit union, or other licensed lending institution that takes an assignment of a life insurance policy solely as collateral for a loan.

(2) The issuer of the life insurance policy.

(3) An authorized or eligible insurer that provides stop-loss coverage or financial guaranty insurance to a viatical settlement provider, purchaser, financing entity, special purpose entity, or related provider trust.

(4) A natural person who enters into or effectuates no more than one agreement in a calendar year for the transfer of life insurance policies for any value less than the expected death benefit.

(5) A financing entity.

(6) A special purpose entity.

(7) A related provider trust.

(8) A viatical settlement purchaser.

(9) Any other person that the commissioner determines is not the type of person intended to be covered by the definition of viatical settlement provider.

17. *a.* *"Viatical settlement purchaser"* means a person who provides a sum of money as consideration for a life insurance policy or an interest in the death benefits of a life insurance policy, or a person who owns or acquires or is entitled to a beneficial interest in a trust that owns a viatical settlement contract or is the beneficiary of a life insurance policy that has been or will be the subject of a viatical settlement contract, for the purpose of deriving an economic benefit.

b. *"Viatical settlement purchaser"* does not include any of the following:

(1) A licensee under this chapter.

(2) An accredited investor or qualified institutional buyer as defined, respectively, in 17 C.F.R. §230.501(a) or 17 C.F.R. §230.144A as promulgated by the United States securities and exchange commission under the federal Securities Act of 1933, as amended, 15 U.S.C. §77a et seq.

(3) A financing entity.

(4) A special purpose entity.

(5) A related provider trust.

18. *"Viaticated policy"* means a life insurance policy or certificate that has been acquired by a viatical settlement provider pursuant to a viatical settlement contract.

19. *a.* *"Viator"* means the owner of a life insurance policy or a certificate holder under a group policy who resides in this state and enters or seeks to enter into a viatical settlement contract. *"Viator"* includes but is not limited to an owner of a life insurance policy or a certificate holder under a group policy insuring the life of an individual with a terminal or chronic illness or condition except where specifically addressed. If there is more than one viator on a single policy and the viators are residents of different states, the transaction shall be governed by the law of the state in which the viator having the largest percentage ownership resides or, if the viators hold equal ownership, the state of residence of one viator agreed upon in writing by all the viators.

b. *"Viator"* does not include any of the following:

(1) A licensee under this chapter, including a life insurance producer acting as a viatical settlement broker pursuant to this chapter.

(2) A qualified institutional buyer as defined in 17 C.F.R. §230.144-144A as promulgated by the United States securities and exchange commission under the federal Securities Act of 1933, as amended, 15 U.S.C. §77a et seq.

(3) A financing entity.

(4) A special purpose entity.

(5) A related provider trust.

2000 Acts, ch 1147, §36; 2008 Acts, ch 1155, §2

Referred to in §508E.12

508E.3 License requirements.

1. *a.* A person shall not operate as a viatical settlement provider or viatical settlement broker without first obtaining a license from the commissioner of the state of residence of the viator.

b. (1) A life insurance producer who has been duly licensed as a resident insurance producer with a life line of authority in this state or the life insurance producer's home state for at least one year immediately prior to operating as a viatical settlement broker and is licensed as a nonresident producer in this state shall be deemed to meet the licensing requirements of this section and shall be permitted to operate as a viatical settlement broker.

(2) Not later than thirty days from the first day of operating as a viatical settlement broker, the life insurance producer shall notify the commissioner that the life insurance producer is acting as a viatical settlement broker on a form prescribed by the commissioner, and shall pay any applicable fee of up to one hundred dollars as provided by rules adopted by the commissioner. The notification shall include an acknowledgment by the life insurance producer that the life insurance producer will operate as a viatical settlement broker in accordance with this chapter. The notification shall also include proof that the life insurance producer is covered by an errors and omissions policy for an amount of not less than one hundred thousand dollars per occurrence and not less than one hundred thousand dollars total annual aggregate for all claims during the policy period.

(3) The insurer that issued the policy being viaticated shall not be responsible for any act or omission of a viatical settlement broker or viatical settlement provider arising out of or in connection with the viatical settlement transaction, unless the insurer receives compensation for the placement of a viatical settlement contract from the viatical settlement provider or viatical settlement broker in connection with the viatical settlement contract.

c. A person licensed as an attorney, certified public accountant, or financial planner accredited by a nationally recognized accreditation agency who is retained to represent the viator, whose compensation is not paid directly or indirectly by the viatical settlement provider, may negotiate viatical settlement contracts on behalf of the viator without having to obtain a license as a viatical settlement broker.

2. An application for a viatical settlement provider or viatical settlement broker license shall be made to the commissioner by the applicant on a form prescribed by the commissioner, and the application shall be accompanied by a fee of not more than one hundred dollars as provided by rules adopted by the commissioner.

3. The license term shall be three years and the license may be renewed upon payment of the renewal fee of not more than one hundred dollars as provided by rules adopted by the commissioner. A failure to pay the fee by the renewal date results in expiration of the license.

4. An applicant shall provide information on forms required by the commissioner. The commissioner shall have authority, at any time, to require the applicant to fully disclose the identity of all stockholders, partners, officers, members, and employees, and the commissioner may, in the exercise of the commissioner's discretion, refuse to issue a license in the name of a legal entity if not satisfied that any officer, employee, stockholder, partner, or member thereof who may materially influence the applicant's conduct meets the standards of this chapter.

5. A license issued to a legal entity authorizes all partners, officers, members, and designated employees to act as viatical settlement providers or viatical settlement brokers, as applicable, under the license, and all those persons shall be named in the application and any supplements to the application.

6. Upon the filing of an application and the payment of the license fee, the commissioner shall make an investigation of each applicant and issue a license if the commissioner finds that the applicant complies with all of the following:

a. If a viatical settlement provider, has provided a detailed plan of operation.

b. Is competent and trustworthy and intends to act in good faith in the capacity involved by the license applied for.

c. Has a good business reputation and has had experience, training, or education so as to be qualified in the business for which the license is applied for.

d. If a legal entity, provides a certificate of good standing from the state of its domicile.

e. If a viatical settlement provider or viatical settlement broker, has provided an antifraud plan that meets the requirements of section 508E.15, subsection 7.

7. The commissioner shall not issue a license to a nonresident applicant unless a written designation of an agent for service of process is filed and maintained with the commissioner or the applicant has filed with the commissioner the applicant's written irrevocable consent that any action against the applicant may be commenced against the applicant by service of process on the commissioner. If an applicant files such consent, service of process made on the commissioner as the agent for service of process shall be made as provided in section 505.30.

8. A viatical settlement provider or viatical settlement broker shall provide to the commissioner new or revised information about officers, ten-percent-or-more stockholders, partners, directors, members, or designated employees within thirty days of the change.

9. An individual licensed as a viatical settlement broker shall complete on a triennial basis running concurrent with the license term twenty credits of training related to viatical settlements and viatical settlement transactions, as required by the commissioner; provided, however, that a life insurance producer who is operating as a viatical settlement broker pursuant to subsection 1, paragraph *"b"*, shall not be subject to the requirements of this subsection. Any person failing to meet the requirements of this subsection shall be subject to the penalties imposed by the commissioner.

10. Fees collected pursuant to this section shall be deposited as provided in section 505.7.

2000 Acts, ch 1147, §37; 2008 Acts, ch 1155, §3; 2009 Acts, ch 145, §6, 7; 2009 Acts, ch 181, §69; 2018 Acts, ch 1018, §4

Referred to in §508E.2, 508E.7, 508E.10, 508E.18

Subsection 7 amended

508E.3A Immunity from liability. Repealed by 2008 Acts, ch 1155, §22. See §508E.15.

508E.4 License revocation and denial.

1. The commissioner may refuse to issue, suspend, revoke, or refuse to renew the license of a viatical settlement provider or viatical settlement broker if the commissioner finds that any of the following applies:

a. There was any material misrepresentation in the application for the license.

b. The licensee or any officer, partner, member, or key management personnel has been convicted of fraudulent or dishonest practices, is subject to a final administrative action, or is otherwise shown to be untrustworthy or incompetent.

c. The viatical settlement provider demonstrates a pattern of unreasonable payments to viators.

d. The licensee or any officer, partner, member, or key management personnel has been found guilty of, or has pleaded guilty or nolo contendere to, any felony, or to a misdemeanor involving fraud or moral turpitude, regardless of whether a judgment of conviction has been entered by the court.

e. The viatical settlement provider has entered into any viatical settlement contract form that has not been approved pursuant to this chapter.

f. The viatical settlement provider has failed to honor contractual obligations set out in a viatical settlement contract.

g. The licensee no longer meets the requirements for initial licensure.

h. The viatical settlement provider has assigned, transferred, or pledged a viaticated policy to a person other than a viatical settlement provider licensed in this state, viatical settlement purchaser, an accredited investor, or qualified institutional buyer as defined respectively in 17 C.F.R. §230.501(a) or 17 C.F.R. §230.144A as promulgated by the United States securities and exchange commission under the federal Securities Act of 1933, as amended, 15 U.S.C. §77a et seq., a financing entity, special purpose entity, or related provider trust.

i. The licensee or any officer, partner, member, or key management personnel has violated any provision of this chapter.

2. The commissioner may suspend, revoke, or refuse to renew the license of a viatical settlement broker or a life insurance producer operating as a viatical settlement broker pursuant to this chapter if the commissioner finds that the viatical settlement broker or life insurance producer has violated the provisions of this chapter or has otherwise engaged in bad faith conduct with one or more viators.

3. If the commissioner denies a license application or suspends, revokes, or refuses to renew the license of a viatical settlement provider or viatical settlement broker, or suspends, revokes, or refuses to renew a license of a life insurance producer operating as a viatical settlement broker pursuant to this chapter, the commissioner shall conduct a hearing in accordance with chapter 17A.

2000 Acts, ch 1147, §38; 2008 Acts, ch 1155, §4

508E.5 Approval of viatical settlement contracts and disclosure statements.

A person shall not use a viatical settlement contract form or provide to a viator a disclosure statement form in this state unless first filed with and approved by the commissioner. The commissioner shall disapprove a viatical settlement contract form or disclosure statement form if, in the commissioner's opinion, the contract or provisions contained therein fail to meet the requirements of sections 508E.8, 508E.10, 508E.14, and 508E.15, subsection 2, or are unreasonable, contrary to the interests of the public, or otherwise misleading or unfair to the viator. At the commissioner's discretion, the commissioner may require the submission of advertising material. The commissioner's approval of any of the materials shall not be a defense or otherwise preclude a civil action for fraud.

2008 Acts, ch 1155, §5

508E.6 Reporting requirements and privacy.

1. For any policy settled within five years of policy issuance, each viatical settlement

provider shall file with the commissioner on or before March 1 of each year an annual statement containing such information as the commissioner may adopt by rule. In addition to any other requirements, the annual statement shall specify the total number, aggregate face amount, and life settlement proceeds of policies settled during the immediately preceding calendar year, together with a breakdown of the information by policy issue year. The annual statement shall also include the names of the insurance companies whose policies have been settled and the viatical settlement brokers that have settled said policies. Such information shall be limited to only those transactions where the viator is a resident of this state. Notwithstanding chapter 22, individual transaction data regarding the business of viatical settlements or data that could compromise the privacy of personal, financial, and health information of the viator or insured shall be filed with the commissioner on a confidential basis.

2. Except as otherwise allowed or required by law, a viatical settlement provider, viatical settlement broker, insurance company, insurance producer, information bureau, rating agency or company, or any other person with actual knowledge of an insured's identity shall not disclose that identity as an insured, or the insured's financial or medical information to any other person unless the disclosure is any of the following:

a. Necessary to effect a viatical settlement between the viator and a viatical settlement provider and the viator and insured have provided prior written consent to the disclosure.

b. Provided in response to an investigation or examination by the commissioner or any other governmental officer or agency or pursuant to the requirements of section 508E.15, subsection 3.

c. A term of or condition to the transfer of a policy by one viatical settlement provider to another viatical settlement provider.

d. Necessary to permit a financing entity, related provider trust, or special purpose entity to finance the purchase of policies by a viatical settlement provider and the viator and insured have provided prior written consent to the disclosure.

e. Necessary to allow the viatical settlement provider, viatical settlement broker, or their authorized representatives to make contacts for the purpose of determining health status.

f. Required to purchase stop-loss coverage or financial guaranty insurance.

2008 Acts, ch 1155, §6

508E.7 Examination or investigations.

1. *Authority, scope, and scheduling of examinations.*

a. (1) The commissioner may conduct an examination under this chapter of a licensee as often as the commissioner in the commissioner's discretion deems appropriate after considering the factors set forth in this paragraph *"a"*.

(2) In scheduling and determining the nature, scope, and frequency of the examinations, the commissioner shall consider such matters as the consumer complaints, results of financial statement analyses and ratios, changes in management or ownership, actuarial opinions, reports of independent certified public accountants, and other relevant criteria as determined by the commissioner.

b. For purposes of completing an examination of a licensee under this chapter, the commissioner may examine or investigate any person, or the business of any person, insofar as the examination or investigation is, in the sole discretion of the commissioner, necessary or material to the examination of the licensee.

c. In lieu of an examination under this chapter of any foreign or alien licensee licensed in this state, the commissioner may, at the commissioner's discretion, accept an examination report on the licensee as prepared by the commissioner for the licensee's state of domicile or port-of-entry state.

d. As far as practical, the examination of a foreign or alien licensee shall be made in cooperation with the insurance supervisory officials of other states in which the licensee transacts business.

2. *Record retention requirements.*

a. A person required to be licensed pursuant to section 508E.3 shall for five years retain copies of all of the following:

(1) Proposed, offered, or executed contracts, purchase agreements, underwriting documents, policy forms, and applications from the date of the proposal, offer, or execution of the contract or purchase agreement, whichever is later.

(2) All checks, drafts, or other evidence and documentation related to the payment, transfer, deposit, or release of funds from the date of the transaction.

(3) All other records and documents related to the requirements of this chapter.

b. This section does not relieve a person of the obligation to produce documents described in paragraph *"a"* to the commissioner after the retention period has expired if the person has retained the documents.

c. Records required to be retained by paragraph *"a"* must be legible and complete and may be retained in paper, photograph, microprocess, magnetic, mechanical, or electronic media, or by any process that accurately reproduces or forms a durable medium for the reproduction of a record.

3. *Conduct of examinations.*

a. Upon determining that an examination should be conducted, the commissioner shall issue an examination warrant appointing one or more examiners to perform the examination and instructing them as to the scope of the examination. In conducting the examination, the examiner shall observe those guidelines and procedures set forth in the examiners handbook adopted by the national association of insurance commissioners. The commissioner may also adopt rules for such other guidelines or procedures as the commissioner may deem appropriate.

b. Every licensee or person from whom information is sought, its officers, directors, and agents shall provide to the examiners timely, convenient, and free access at all reasonable hours at its offices to all books, records, accounts, papers, documents, assets, and computer or other recordings relating to the property, assets, business, and affairs of the licensee being examined. The officers, directors, employees, and agents of the licensee or person shall facilitate the examination and aid in the examination so far as it is in their power to do so. The refusal of a licensee, by its officers, directors, employees, or agents, to submit to examination or to comply with any reasonable written request of the commissioner shall be grounds for suspension or refusal of, or nonrenewal of, any license or authority held by the licensee to engage in the viatical settlement business or other business subject to the commissioner's jurisdiction. Any proceedings for suspension, revocation, or refusal of any license or authority shall be conducted pursuant to section 507B.6A.

c. The commissioner shall have the power to issue subpoenas, to administer oaths, and to examine under oath any person as to any matter pertinent to the examination. Upon the failure or refusal of a person to obey a subpoena, the commissioner may petition a court of competent jurisdiction, and upon proper showing, the court may enter an order compelling the witness to appear and testify or produce documentary evidence. A failure to obey the court order shall be punishable as contempt of court.

d. When making an examination under this chapter, the commissioner may retain attorneys, appraisers, independent actuaries, independent certified public accountants, or other professionals and specialists as examiners, the reasonable cost of which shall be borne by the licensee that is the subject of the examination.

e. Nothing contained in this chapter shall be construed to limit the commissioner's authority to terminate or suspend an examination in order to pursue other legal or regulatory action pursuant to the insurance laws of this state. Findings of fact and conclusions made pursuant to any examination shall be prima facie evidence in any legal or regulatory action.

f. The commissioner's authority to use and, if appropriate, to make public any final or preliminary examination report, any examiner or licensee workpapers, or other documents, or any other information discovered or developed during the course of any examination in the furtherance of any legal or regulatory action shall be permitted consistent with section 507.14.

4. *Examination reports.*

a. Examination reports shall be comprised of only facts appearing upon the books, records, or other documents of the licensee, its agents, or other persons examined, or as ascertained from the testimony of its officers, agents, or other persons examined concerning

its affairs, and such conclusions and recommendations as the examiners find reasonably warranted from the facts.

b. Not later than sixty days following completion of the examination, the examiner in charge shall file with the commissioner a verified written report of examination under oath. Upon receipt of the verified report, the commissioner shall transmit the report to the licensee examined, together with a notice that shall afford the licensee examined a reasonable opportunity of not more than thirty days to make a written submission or rebuttal with respect to any matters contained in the examination report.

c. In the event the commissioner determines that regulatory action is appropriate as a result of an examination, the commissioner may initiate any proceedings or actions provided by law.

5. *Confidentiality of examination information.*

a. Notwithstanding chapter 22, the names and individual identification data for all viators shall be considered private and confidential information and shall not be disclosed by the commissioner, unless required by law.

b. Except as otherwise provided in this chapter, all examination reports, working papers, recorded information, documents, and copies thereof produced by, obtained by, or disclosed to the commissioner or any other person in the course of an examination made under this chapter, or in the course of an analysis or investigation by the commissioner of the financial condition or market conduct of a licensee, shall be confidential by law and privileged, shall not be subject to chapter 22, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action. The commissioner is authorized to use the documents, materials, or other information in the furtherance of any regulatory or legal action brought as part of the commissioner's official duties. All examination reports, working papers, recorded information, documents, and their copies produced by, obtained by, or disclosed to the commissioner or any other person in the course of an examination made under this chapter, or in the course of an analysis or investigation by the commissioner of the financial condition or market conduct of a licensee shall be privileged and confidential in any judicial or administrative proceeding except for any of the following:

(1) An administrative proceeding brought by the insurance division under chapter 17A.

(2) A judicial review proceeding under chapter 17A brought by an insurer to whom the records relate.

(3) An action or proceeding which arises out of the criminal provisions of the laws of this state or the United States.

c. Documents, materials, or other information, including but not limited to all working papers and copies, in the possession or control of the national association of insurance commissioners and its affiliates and subsidiaries shall be confidential by law and privileged, shall not be subject to chapter 22, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action if they are any of the following:

(1) Created, produced, or obtained by or disclosed to the national association of insurance commissioners and its affiliates and subsidiaries in the course of assisting an examination made under this chapter, or assisting the commissioner in the analysis or investigation of the financial condition or market conduct of a licensee.

(2) Disclosed to the national association of insurance commissioners and its affiliates and subsidiaries under paragraph *"d"* by the commissioner.

(3) For the purposes of paragraph *"b"*, *"chapter"* includes the law of another state or jurisdiction that is substantially similar to this chapter.

d. In order to assist in the performance of the commissioner's duties, the commissioner may do all of the following:

(1) Share documents, materials, or other information, including the confidential and privileged documents, materials, or information subject to paragraph *"a"*, with other state, federal, and international regulatory agencies, with the national association of insurance commissioners and its affiliates and subsidiaries, and with state, federal, and international law enforcement authorities, provided that the recipient agrees to maintain the confidentiality and privileged status of the documents, materials, communications, or other information.

(2) Receive documents, materials, communications, or information, including otherwise confidential and privileged documents, materials, or information, from the national association of insurance commissioners and its affiliates and subsidiaries, notwithstanding chapter 22, and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any documents, materials, or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the documents, materials, or information.

(3) Enter into agreements governing sharing and use of information consistent with section 507.14, subsection 4.

e. No waiver of any applicable privilege or claim of confidentiality in the documents, materials, or information shall occur as a result of disclosure to the commissioner under this section or as a result of sharing as authorized in paragraph *"c"*.

f. A privilege established under the law of any state or jurisdiction that is substantially similar to the privilege established under this subsection shall be available and enforced in any proceeding in, and in any court of, this state.

g. Nothing contained in this chapter shall prevent or be construed as prohibiting the commissioner from disclosing the content of an examination report, preliminary examination report or results, or any matter relating thereto, to the commissioner of any other state or country, or to law enforcement officials of this or any other state or agency of the federal government at any time or to the national association of insurance commissioners, so long as such agency or office receiving the report or matters relating thereto agrees in writing to hold it confidential and in a manner consistent with this chapter.

6. *Conflict of interest.*

a. An examiner may not be appointed by the commissioner if the examiner, either directly or indirectly, has a conflict of interest or is affiliated with the management of or owns a pecuniary interest in any person subject to examination under this chapter. This section shall not be construed to automatically preclude an examiner from being any of the following:

(1) A viator.

(2) An insured in a viaticated insurance policy.

(3) A beneficiary in an insurance policy that is proposed to be viaticated.

b. Notwithstanding the requirements of paragraph *"a"*, the commissioner may retain from time to time, on an individual basis, qualified actuaries, certified public accountants, or other similar individuals who are independently practicing their professions, even though these persons may from time to time be similarly employed or retained by persons subject to examination under this chapter.

7. *Cost of examinations.*

a. The commissioner may appoint insurance examiners who, while conducting examinations, shall possess all the powers conferred upon the commissioner for such purposes. The entire time of the examiners shall be under the control of the commissioner, and shall be employed as the commissioner may direct.

b. The commissioner may, when in the commissioner's judgment it is advisable, appoint assistants to aid in making examinations. The examiners shall be compensated on the basis of the normal workweek of the insurance division at a salary to be fixed by the commissioner subject, however, to the provisions of section 505.14. The compensation shall be paid from appropriations for such purposes upon certification of the commissioner, which shall be reimbursed as provided in sections 507.8 and 507.9.

c. When making an examination under this chapter, the commissioner may retain attorneys, appraisers, independent actuaries, independent certified public accountants, or other professionals and specialists as examiners, the reasonable cost of which shall be borne by the company which is the subject of the examination.

d. The commissioner shall, upon the completion of an examination, or at such regular intervals prior to completion as the commissioner determines, prepare an account of the costs incurred in performing and preparing the report of such examinations which shall be charged to and paid by the company examined, and upon failure or refusal of a company examined to pay such costs, the same may be recovered by the commissioner or the attorney general in an

action brought in the name of the state, and the commissioner may also revoke the certificate of authority of such company to transact business within this state.

8. *Immunity from liability.*

a. No cause of action shall arise, nor shall any liability be imposed, against the commissioner, the commissioner's authorized representatives, or any examiner appointed by the commissioner for any statements made or conduct performed reasonably and in good faith while carrying out the provisions of this chapter.

b. No cause of action shall arise, nor shall any liability be imposed, against any person for the act of communicating or delivering information or data to the commissioner or the commissioner's authorized representative or examiner pursuant to an examination made under this chapter, if the act of communication or delivery was performed reasonably and in good faith and without fraudulent intent or the intent to deceive. This paragraph does not abrogate or modify in any way any common law or statutory privilege or immunity heretofore enjoyed by any person identified in paragraph *"a"*.

9. *Investigative authority of the commissioner.* The commissioner may investigate suspected fraudulent viatical settlement acts and persons engaged in the business of viatical settlements.

2008 Acts, ch 1155, §7

508E.8 Disclosure to viator.

1. With each application for a viatical settlement, a viatical settlement provider or viatical settlement broker shall provide the viator with at least the following disclosures no later than the time the application for the viatical settlement contract is signed by all parties. The disclosures shall be provided in a separate document that is signed by the viator and the viatical settlement provider or viatical settlement broker, and shall provide all of the following information:

a. There are possible alternatives to viatical settlement contracts including any accelerated death benefits or policy loans offered under the viator's life insurance policy.

b. That a viatical settlement broker represents exclusively the viator, and not the insurer or the viatical settlement provider, and owes a fiduciary duty to the viator, including a duty to act according to the viator's instructions and in the best interest of the viator.

c. Some or all of the proceeds of the viatical settlement may be taxable under federal income tax and state franchise and income taxes, and assistance should be sought from a professional tax advisor.

d. Proceeds of the viatical settlement could be subject to the claims of creditors.

e. Receipt of the proceeds of a viatical settlement may adversely affect the viator's eligibility for Medicaid or other government benefits or entitlements, and advice should be obtained from the appropriate government agencies.

f. The viator has the right to rescind a viatical settlement contract before the earlier of thirty days after the date upon which the viatical settlement contract is executed by all parties or fifteen days after the viatical settlement proceeds have been paid to the viator, as provided in section 508E.10, subsection 3. Rescission, if exercised by the viator, is effective only if both notice of the rescission is given, and the viator repays all proceeds and any premiums, loans, and loan interest paid on account of the viatical settlement within the rescission period. If the insured dies during the rescission period, the viatical settlement contract shall be deemed to have been rescinded, subject to repayment by the viator or the viator's estate of all viatical settlement proceeds and any premiums, loans, and loan interest that have been paid by the viatical settlement provider or purchaser within sixty days of the insured's death.

g. Funds will be sent to the viator within three business days after the viatical settlement provider has received the insurer's or group administrator's written acknowledgment that ownership of the policy or interest in the certificate has been transferred and the beneficiary has been designated.

h. Entering into a viatical settlement contract may cause other rights or benefits, including conversion rights and waiver of premium benefits, that may exist under the policy or certificate, to be forfeited by the viator. Assistance should be sought from a financial adviser.

i. Disclosure to a viator shall include distribution of a brochure describing the process of viatical settlements. The national association of insurance commissioners form for the brochure shall be used unless another form is developed and approved by the commissioner.

j. The disclosure document shall contain the following language:

> All medical, financial, or personal information solicited or obtained by a viatical settlement provider or viatical settlement broker about an insured, including the insured's identity or the identity of family members, a spouse, or a significant other may be disclosed as necessary to effect the viatical settlement between the viator and the viatical settlement provider. If you are asked to provide this information, you will be asked to consent to the disclosure. The information may be provided to someone who buys the policy or provides funds for the purchase. You may be asked to renew your permission to share information every two years.

k. Following execution of a viatical contract, the insured may be contacted for the purpose of determining the insured's health status and to confirm the insured's residential or business street address and telephone number, or as otherwise provided in this chapter. This contact shall be limited to once every three months if the insured has a life expectancy of more than one year, and no more than once per month if the insured has a life expectancy of one year or less. All such contacts shall be made only by a duly licensed viatical settlement provider or by the authorized representative of a duly licensed viatical settlement provider.

2. A viatical settlement provider shall provide the viator with at least the following disclosures no later than the date the viatical settlement contract is signed by all parties. The disclosures shall be conspicuously displayed in the viatical settlement contract or in a separate document signed by the viator and provide all of the following information:

a. The affiliation, if any, between the viatical settlement provider and the issuer of the insurance policy to be viaticated.

b. The name, business address, and telephone number of the viatical settlement provider.

c. If an insurance policy to be viaticated has been issued as a joint policy or involves family riders or any coverage of a life other than the insured under the policy to be viaticated, a notice of the viator's possible loss of coverage on the other lives under the policy and to consult with the viator's insurance producer or the insurer issuing the policy for advice on the proposed viatical settlement.

d. The dollar amount of the current death benefit payable to the viatical settlement provider under the policy or certificate. If known, the viatical settlement provider shall also disclose the availability of any additional guaranteed insurance benefits, the dollar amount of any accidental death and dismemberment benefits under the policy or certificate, and the extent to which the viator's interest in those benefits will be transferred as a result of the viatical settlement contract.

e. Whether the funds will be escrowed with an independent third party during the transfer process, and if so, provide the name, business address, and telephone number of the independent third-party escrow agent, and the fact that the viator or owner may inspect or receive copies of the relevant escrow or trust agreements or documents.

3. A viatical settlement broker shall provide the viator with at least the following disclosures no later than the date the viatical settlement contract is signed by all parties. The disclosures shall be conspicuously displayed in the viatical settlement contract or in a separate document signed by the viator and provide all of the following information:

a. The name, business address, and telephone number of the viatical settlement broker.

b. A full, complete, and accurate description of all offers, counteroffers, acceptances, and rejections relating to the proposed viatical settlement contract.

c. Any affiliations or contractual arrangements between the viatical settlement broker and any person making an offer in connection with the proposed viatical settlement contracts.

d. The amount and method of calculating the broker's compensation. As used in this paragraph, "*compensation*" includes anything of value paid or given to a viatical settlement broker for the placement of a policy.

e. Where any portion of the viatical settlement broker's compensation, as defined in paragraph *"d"*, is taken from a proposed viatical settlement offer, the broker shall disclose the total amount of the viatical settlement offer and the percentage of the viatical settlement offer comprised by the viatical settlement broker's compensation.

4. If the viatical settlement provider transfers ownership or changes the beneficiary of the insurance policy, the viatical settlement provider shall communicate in writing the change in ownership or beneficiary to the insured within twenty days after the change.

5. A viatical settlement provider shall provide the viatical settlement purchaser with at least the following disclosures prior to the date the viatical settlement purchase agreement is signed by all parties. The disclosures shall be conspicuously displayed in any viatical purchase contract or in a separate document signed by the viatical settlement purchaser and viatical settlement provider or viatical settlement investment agent, and shall make the following disclosure to the viatical settlement purchaser:

a. The viatical settlement purchaser will receive no returns including dividends and interest, until the insured dies and a death claim payment is made.

b. The actual annual rate of return on a viatical settlement contract is dependent upon an accurate projection of the insured's life expectancy, and the actual date of the insured's death. An annual "guaranteed" rate of return is not determinable.

c. The viaticated life insurance contract should not be considered a liquid purchase since it is impossible to predict the exact timing of its maturity and the funds probably are not available until the death of the insured. There is no established secondary market for resale of these products by the viatical settlement purchaser.

d. The viatical settlement purchaser may lose all benefits or may receive substantially reduced benefits if the insurer goes out of business during the term of the viatical investment.

e. The viatical settlement purchaser is responsible for payment of the insurance premium or other costs related to the policy, if required by the terms of the viatical purchase agreement. These payments may reduce the viatical settlement purchaser's return. If a party other than the viatical settlement purchaser is responsible for the payment, the name and address of that party also shall be disclosed.

f. The viatical settlement purchaser is responsible for payment of the insurance premiums or other costs related to the policy if the insured returns to health. The viatical settlement provider shall disclose the amount of such premiums, if applicable.

g. The name, business address, and telephone number of the independent third party providing escrow services and the relationship to the viatical settlement broker.

h. The amount of any trust fees or other expenses to be charged to the viatical settlement purchaser shall be disclosed.

i. Whether the viatical settlement purchaser is entitled to a refund of all or part of the viatical settlement purchaser's investment under the viatical settlement contract if the policy is later determined to be null and void.

j. That group policies may contain limitations or caps in the conversion rights, that additional premiums may have to be paid if the policy is converted, the name of the party responsible for the payment of the additional premiums, and, if a group policy is terminated and replaced by another group policy, that there may be no right to convert the original coverage.

k. The risks associated with policy contestability including but not limited to the risk that the viatical settlement purchaser will have no claim or only a partial claim to death benefits should the insurer rescind the policy within the contestability period.

l. Whether the viatical settlement purchaser will be the owner of the policy in addition to being the beneficiary, and if the viatical settlement purchaser is the beneficiary only and not also the owner, the special risks associated with that status, including but not limited to the risk that the beneficiary may be changed or the premium may not be paid.

m. The experience and qualifications of the person who determines the life expectancy of the insured, including in-house staff, independent physicians, and specialty firms that weigh medical and actuarial data; the information this projection is based on; and the relationship of the projection maker to the viatical settlement provider, if any.

n. A brochure describing the process of investment in viatical settlements. The national

association of insurance commissioners form for the brochure shall be used unless another form is developed and approved by the commissioner.

6. A viatical settlement provider shall provide the viatical settlement purchaser with at least the following disclosures no later than at the time of the assignment, transfer, or sale of all or a portion of an insurance policy. The disclosures shall be contained in a document signed by the viatical settlement purchaser and viatical settlement provider, and shall make all of the following disclosures to the viatical settlement purchaser:

a. All the life expectancy certifications obtained by the provider in the process of determining the price paid to the viator.

b. Whether premium payments or other costs related to the policy have been escrowed. If escrowed, state the date upon which the escrowed funds will be depleted and whether the viatical settlement purchaser will be responsible for payment of premiums thereafter and, if so, the amount of the premiums.

c. Whether premium payments or other costs related to the policy have been waived. If waived, disclose whether the viatical settlement purchaser will be responsible for payment of the premiums if the insurer that wrote the policy terminates the waiver after purchase and the amount of those premiums.

d. The type of policy offered or sold, i.e., whole life, term life, universal life, or a group policy certificate, any additional benefits contained in the policy, and the current status of the policy.

e. If the policy is term insurance, the special risks associated with term insurance including but not limited to the viatical settlement purchaser's responsibility for additional premiums if the viator continues the term policy at the end of the current term.

f. Whether the policy is contestable.

g. Whether the insurer that wrote the policy has any additional rights that could negatively affect or extinguish the viatical settlement purchaser's rights under the viatical settlement contract, what these rights are, and under what conditions these rights are activated.

h. The name and address of the person responsible for monitoring the insured's condition. The viatical settlement provider shall describe how often the monitoring of the insured's condition is done, how the date of death is determined, and how and when this information will be transmitted to the viatical settlement purchaser.

2008 Acts, ch 1155, §8; 2008 Acts, ch 1191, §130; 2018 Acts, ch 1041, §127
Referred to in §508E.5, 508E.10
Code editor directive applied

508E.9 Disclosure to insurer.

A viatical settlement broker, or viatical settlement provider, shall fully disclose to an insurer a transaction or series of transactions to which the viatical settlement broker or viatical settlement provider is a party to originate, renew, continue, or finance a life insurance policy with the insurer for the purpose of engaging in the business of viatical settlements at any time prior to, or during the first five years after, issuance of the policy.

2008 Acts, ch 1155, §9

508E.10 General rules.

1. *a.* A viatical settlement provider entering into a viatical settlement contract shall first obtain all of the following:

(1) If the viator is the insured, a written statement from a licensed attending physician that the viator is of sound mind and under no constraint or undue influence to enter into a viatical settlement contract.

(2) A document in which the insured consents to the release of the insured's medical records to a licensed viatical settlement provider, viatical settlement broker, and, if the policy was issued less than two years from the date of application for a viatical settlement contract, the insurance company that issued the life insurance policy covering the life of the insured.

b. Within twenty days after a viator executes documents necessary to transfer any rights under an insurance policy or within twenty days of entering any agreement, option, promise, or any other form of understanding, expressed or implied, to viaticate the policy, the viatical

settlement provider shall give written notice to the insurer that issued that insurance policy that the policy has or will become a viaticated policy. The notice shall be accompanied by the documents required by paragraph *"c"*.

c. The viatical provider shall deliver a copy of the medical release required under paragraph *"a"*, subparagraph (2), a copy of the viator's application for the viatical settlement contract, the notice required under paragraph *"b"*, and a request for verification of coverage to the insurer that issued the life policy that is the subject of the viatical transaction. The national association of insurance commissioners form for verification of coverage shall be used unless another form is developed and approved by the commissioner.

d. The insurer shall respond to a request for verification of coverage submitted on an approved form by a viatical settlement provider or viatical settlement broker within thirty days of the date the request is received and shall indicate whether, based on the medical evidence and documents provided, the insurer intends to pursue an investigation at this time regarding the validity of the insurance contract or possible fraud. The insurer shall accept a request for verification of coverage made on a national association of insurance commissioners form or any other form developed and approved by the commissioner. The insurer shall accept an original, facsimile, or electronic copy of such request and any accompanying authorization signed by the viator. A failure by the insurer to meet its obligations under this subsection shall be a violation of sections 508E.11 and 508E.17.

e. Prior to or at the time of execution of the viatical settlement contract, the viatical settlement provider shall obtain a witnessed document in which the viator consents to the viatical settlement contract, represents that the viator has a full and complete understanding of the viatical settlement contract, that the viator has a full and complete understanding of the benefits of the life insurance policy, acknowledges that the viator is entering into the viatical settlement contract freely and voluntarily, and, for persons with a terminal or chronic illness or condition, acknowledges that the insured has a terminal or chronic illness or condition and that the terminal or chronic illness or condition was diagnosed after the life insurance policy was issued.

f. If a viatical settlement broker performs any of these activities required of the viatical settlement provider, the viatical settlement provider is deemed to have fulfilled the requirements of this section.

2. All medical information solicited or obtained by any licensee shall be subject to the applicable provisions of state law relating to confidentiality of medical information, including section 505.8.

3. All viatical settlement contracts entered into in this state shall provide the viator with an absolute right to rescind the contract before the earlier of thirty days after the date upon which the viatical settlement contract is executed by all parties or fifteen days after the viatical settlement proceeds have been sent to the viator as provided in subsection 4. Rescission by the viator may be conditioned upon the viator both giving notice and repaying to the viatical settlement provider within the rescission period all viatical settlement proceeds, and any premiums, loans, and loan interest paid by or on behalf of the viatical settlement provider in connection with or as a consequence of the viatical settlement. If the insured dies during the rescission period, the viatical settlement contract shall be deemed to have been rescinded, subject to repayment to the viatical settlement provider or purchaser of all viatical settlement proceeds, and any premiums, loans, and loan interest that have been paid by the viatical settlement provider or purchaser, which shall be paid within sixty days of the death of the insured. In the event of any rescission, if the viatical settlement provider has paid commissions or other compensation to a viatical settlement broker in connection with the rescinded transaction, the viatical settlement broker shall refund all such commissions and compensation to the viatical settlement provider within five business days following receipt of written demand from the viatical settlement provider, which demand shall be accompanied by either the viator's notice of rescission if rescinded at the election of the viator, or a notice of the death of the insured if rescinded by reason of the death of the insured within the applicable rescission period.

4. The viatical settlement provider shall instruct the viator to send the executed documents required to effect the change in ownership, assignment, or change in beneficiary

directly to the independent escrow agent. Within three business days after the date the escrow agent receives the document, or from the date the viatical settlement provider receives the documents, if the viator erroneously provides the documents directly to the viatical settlement provider, the viatical settlement provider shall pay or transfer the viatical settlement proceeds into an escrow or trust account maintained in a state or federally chartered financial institution whose deposits are insured by the federal deposit insurance corporation. Upon payment of the viatical settlement proceeds into the escrow account, the escrow agent shall deliver the original change in ownership, assignment, or change in beneficiary forms to the viatical settlement provider or related provider trust, or other designated representative of the viatical settlement provider. Upon the escrow agent's receipt of the acknowledgment of the properly completed transfer of ownership, assignment, or designation of beneficiary from the insurance company, the escrow agent shall pay the viatical settlement proceeds to the viator.

5. A failure to tender consideration to the viator for the viatical settlement contract within the time set forth in the disclosure pursuant to section 508E.8, subsection 1, paragraph "*g*", renders the viatical settlement contract voidable by the viator for lack of consideration until the time consideration is tendered to and accepted by the viator. Funds shall be deemed sent by a viatical settlement provider to a viator as of the date that the escrow agent either releases funds for wire transfer to the viator or places a check for delivery to the viator via the United States postal service or other nationally recognized delivery service.

6. A contact with the insured for the purpose of determining the health status of the insured by the viatical settlement provider or viatical settlement broker after the viatical settlement has occurred shall only be made by the viatical settlement provider or viatical settlement broker licensed pursuant to section 508E.3 or its authorized representatives and shall be limited to once every three months for insureds with a life expectancy of more than one year, and to no more than once per month for insureds with a life expectancy of one year or less. The viatical settlement provider or viatical settlement broker shall explain the procedure for these contacts at the time the viatical settlement contract is entered into. The limitations set forth in this subsection shall not apply to any contact with an insured for reasons other than determining the insured's health status. A viatical settlement provider and a viatical settlement broker shall be responsible for the actions of their authorized representatives.

2008 Acts, ch 1155, §10; 2017 Acts, ch 54, §76
Referred to in §508E.5, 508E.8, 508E.12

508E.11 Prohibited practices.

1. Except as provided in section 508E.12, it is a violation of this chapter for any person to enter into a viatical settlement contract at any time prior to the application or issuance of a policy which is the subject of a viatical settlement contract or within a five-year period commencing with the date of issuance of the insurance policy or certificate.

2. An insurer shall not, as a condition of responding to a request for verification of coverage or effecting the transfer of a policy pursuant to a viatical settlement contract, require that the viator, insured, viatical settlement provider, or viatical settlement broker sign any form, disclosure, consent, or waiver form that has not been expressly approved by the commissioner for use in connection with viatical settlement contracts in this state.

3. Upon receipt of a properly completed request for change of ownership or beneficiary of a policy, the insurer shall respond in writing within twenty days, with written acknowledgment confirming that the change has been effected or specifying the reasons why the requested change cannot be processed. The insurer shall not unreasonably delay effecting a change of ownership or beneficiary and shall not otherwise seek to interfere with any viatical settlement contract lawfully entered into in this state.

2008 Acts, ch 1155, §11
Referred to in §508E.10, 508E.12

508E.12 Permitted practices.

1. Notwithstanding section 508E.11, at any time subsequent to the issuance of the policy,

a person may enter into a viatical settlement contract if the viator certifies to the viatical settlement provider that one or more of the following conditions have been met within the five-year period:

a. The policy was issued upon the viator's exercise of conversion rights arising out of a group or individual policy, provided the total of the time covered under the conversion policy plus the time covered under the prior policy is at least sixty months. The time covered under a group policy shall be calculated without regard to any change in insurance carriers, provided the coverage has been continuous and under the same group sponsorship.

b. The viator submits an affidavit to the viatical settlement provider that one or more of the following conditions exists:

(1) The viator or insured is terminally or chronically ill.

(2) The viator's spouse or child dies.

(3) The viator divorces the viator's spouse.

(4) The viator retires from full-time employment.

(5) The viator becomes physically or mentally disabled and a physician determines that the disability prevents the viator from maintaining full-time employment.

(6) The viator has filed for bankruptcy or sought reorganization in a court of competent jurisdiction, or a court of competent jurisdiction has appointed a receiver, trustee, or liquidator to all or a substantial part of the viator's assets.

(7) Other circumstances as established as eligible exemptions by the commissioner by rule, including but not limited to substantial adverse financial circumstances or other factors substantially affecting the viator.

2. Notwithstanding section 508E.11, a person may enter into a viatical settlement contract if at all times prior to the date that is two years after policy issuance, all of the following conditions are met with respect to the policy:

a. Policy premiums have been funded exclusively with any of the following:

(1) Unencumbered assets, including an interest in the life insurance policy being financed only to the extent of its net cash surrender value, provided by a person described in section 508E.2, subsection 15, paragraph *"d"*, subparagraph (5).

(2) Fully recourse liability incurred by the insured or a person described in section 508E.2, subsection 15, paragraph *"d"*, subparagraph (5).

b. There is no agreement or understanding with any other person to guarantee any such liability or to purchase, or stand ready to purchase, the policy, including through an assumption or forgiveness of the loan.

c. Neither the insured nor the policy has been evaluated for settlement.

3. Copies of the affidavits described in this section and documents required by section 508E.10, subsection 1, shall be submitted to the insurer when the viatical settlement provider or viatical settlement broker submits a request to the insurer for verification of coverage. The copies shall be accompanied by a letter of attestation from the viatical settlement provider that the copies are true and correct copies of the documents received by the viatical settlement provider.

4. If the viatical settlement provider submits to the insurer a copy of the owner's or insured's or insurer's affidavit described in this section when the provider submits a request to the insurer to effect the transfer of the policy or certificate to the viatical settlement provider, the copy shall be deemed to conclusively establish that the viatical settlement contract satisfies the requirement of this section and the insurer shall timely respond to the request.

2008 Acts, ch 1155, §12; 2010 Acts, ch 1069, §62
Referred to in §508E.11

508E.13 Prohibited practices and conflicts of interest.

1. With respect to any viatical settlement contract or insurance policy, a viatical settlement broker shall not knowingly solicit an offer from, effectuate a viatical settlement with, or make a sale to any viatical settlement provider, viatical settlement purchaser, financing entity, or related provider trust that is controlling, controlled by, or under common control with such viatical settlement broker unless such relationship is disclosed to the viator.

2. With respect to any viatical settlement contract or insurance policy, a viatical settlement provider shall not knowingly enter into a viatical settlement contract with a viator, if, in connection with such viatical settlement contract, anything of value will be paid to a viatical settlement broker that is controlling, controlled by, or under common control with such viatical settlement provider or the viatical settlement purchaser, financing entity, or related provider trust that is involved in such viatical settlement contract unless such relationship is disclosed to the viator.

3. A viatical settlement provider shall not enter into a premium finance agreement with any person or agency, or any person affiliated with such person or agency, pursuant to which such person or agency shall receive any proceeds, fees, or other consideration, directly or indirectly, from the policy or owner of the policy or any other person with respect to the premium finance agreement or any viatical settlement contract or other transaction related to such policy that are in addition to the amounts required to pay the principal, interest, and service charges related to policy premiums pursuant to the premium finance agreement or subsequent sale of such agreement. Any payments, charges, fees, normal insurance commissions, or other amounts in addition to the amounts required to pay the principal, interest, and service charges related to policy premiums paid under the premium finance agreement shall be remitted to the original owner of the policy or to the original owner's estate if the original owner is not living at the time of the determination of the overpayment.

4. A violation of subsection 1, 2, or 3 shall be deemed a fraudulent viatical settlement act.

5. A person shall not issue, solicit, market, or otherwise promote the purchase of an insurance policy for the sole purpose of or with a primary emphasis on settling the policy.

6. A person providing premium financing shall not receive any proceeds, fees, or other consideration from the policy or owner of the policy that are in addition to the amounts required to pay principal, interest, and any costs or expenses incurred by the lender or borrower in connection with the premium finance agreement, except for the event of a default, unless either the default on such loan or transfer of the policy occurs pursuant to an agreement or understanding with any other person for the purpose of evading regulation under this chapter. Any payments, charges, fees, or other amounts received by a person providing premium financing in violation of this subsection shall be remitted to the original owner of the policy or to the original owner's estate if the original owner is not living at the time of the determination of overpayment.

7. In the solicitation, application for, or issuance of a life insurance policy, a person shall not employ any device, scheme, or artifice to create an insurable interest in the life of a person except as provided in sections 511.39 and 511.40.

8. No viatical settlement provider shall enter into a viatical settlement contract unless the viatical settlement promotional, advertising, and marketing materials, as may be prescribed by rules adopted by the commissioner, have been filed with the commissioner. In no event shall any marketing materials expressly reference that the insurance is free for any period of time. The inclusion of any reference in the marketing materials that would cause a viator to reasonably believe that the insurance is free for any period of time shall be considered a violation of this chapter.

9. No life insurance producer, insurance company, viatical settlement broker, or viatical settlement provider shall make any statement or representation to the applicant or policyholder in connection with the sale or financing of a life insurance policy to the effect that the insurance is free or without cost to the policyholder for any period of time unless provided in the policy.

2008 Acts, ch 1155, §13

508E.14 Advertising for viatical settlements.

The purpose of this section is to provide prospective viators with clear and unambiguous statements in the advertisement of viatical settlements and to assure the clear, truthful, and adequate disclosure of the benefits, risks, limitations, and exclusions of any viatical settlement contract. This purpose is intended to be accomplished by rules adopted by the commissioner for the establishment of guidelines and standards of permissible and impermissible conduct in the advertising of viatical settlements to assure that product

descriptions are presented in a manner that prevents unfair, deceptive, or misleading advertising, and is conducive to accurate presentation and description of viatical settlements through the advertising media and materials used by viatical settlement licensees.

1. This section shall apply to any advertising of viatical settlement contracts or related products or services intended for dissemination in this state, including internet advertising viewed by persons located in this state. Where disclosure requirements are established pursuant to federal regulation, this section shall be interpreted so as to minimize or eliminate conflict with federal regulation wherever possible.

2. Every viatical settlement licensee shall establish and at all times maintain a system of control over the content, form, and method of dissemination of all advertisements of its contracts, products, and services. All advertisements, regardless of by whom written, created, designed, or presented, shall be the responsibility of the viatical settlement licensees, as well as the individual who created or presented the advertisement. A system of control shall include regular, routine notification, at least once a year, to agents and others authorized by the viatical settlement licensee who disseminate advertisements of the requirements and procedures for approval prior to the use of any advertisements not furnished by the viatical settlement licensee.

3. An advertisement shall be truthful and not misleading in fact or by implication. The form and content of an advertisement of a viatical settlement contract shall be sufficiently complete and clear so as to avoid deception. It shall not have the capacity or tendency to mislead or deceive. Whether an advertisement has the capacity or tendency to mislead or deceive shall be determined by the commissioner from the overall impression that the advertisement may be reasonably expected to create upon a person of average education or intelligence within the segment of the public to which it is directed.

4. The information required to be disclosed under this section shall not be minimized, rendered obscure, or presented in an ambiguous fashion or intermingled with the text of the advertisement so as to be confusing or misleading.

a. An advertisement shall not omit material information or use words, phrases, statements, references, or illustrations if the omission or use has the capacity, tendency, or effect of misleading or deceiving viators as to the nature or extent of any benefit, loss covered, premium payable, or state or federal tax consequence. The fact that the viatical settlement contract offered is made available for inspection prior to consummation of the sale, or an offer is made to refund the payment if the viator is not satisfied or that the viatical settlement contract includes a free-look period that satisfies or exceeds legal requirements, does not remedy a misleading statement.

b. An advertisement shall not use the name or title of a life insurance company or a life insurance policy unless the advertisement has been approved by the insurer.

c. An advertisement shall not state or imply that interest charged on an accelerated death benefit or a policy loan is unfair, inequitable, or in any manner an incorrect or improper practice.

d. The words “free”, “no cost”, “without cost”, “no additional cost”, “at no extra cost”, or words of similar import shall not be used with respect to any benefit or service unless true. An advertisement may specify the charge for a benefit or a service or may state that a charge is included in the payment or use other appropriate language.

e. Testimonials, appraisals, analyses, or endorsements used in advertisements must be genuine; represent the current opinion of the author; be applicable to the viatical settlement contract product or service advertised, if any; and be accurately reproduced with sufficient completeness to avoid misleading or deceiving prospective viators as to the nature or scope of the testimonials, appraisal, analysis, or endorsement. In using a testimonial, appraisal, analysis, or endorsement, a licensee under this chapter makes as its own all the statements contained therein, and the statements are subject to all of the provisions of this section.

(1) If the individual making a testimonial, appraisal, analysis, or an endorsement has a financial interest in the party making use of the testimonial, appraisal, analysis, or endorsement, either directly or through a related entity as a stockholder, director, officer, employee, or otherwise, or receives any benefit directly or indirectly other than required union scale wages, that fact shall be prominently disclosed in the advertisement.

(2) An advertisement shall not state or imply that a viatical settlement contract benefit or product or service has been approved or endorsed by a group of individuals, society, association, or other organization unless that is the fact and unless any relationship between an organization and the viatical settlement licensee is disclosed. If the entity making the endorsement or testimonial is owned, controlled, or managed by the viatical settlement licensee, or receives any payment or other consideration from the viatical settlement licensee for making an endorsement or testimonial, that fact shall be disclosed in the advertisement.

(3) When an endorsement refers to benefits received under a viatical settlement contract, all pertinent information shall be retained by the viatical settlement licensee for a period of five years after its use.

5. An advertisement shall not contain statistical information unless it accurately reflects recent and relevant facts. The source of all statistics used in an advertisement shall be identified.

6. An advertisement shall not disparage an insurer, viatical settlement provider, viatical settlement broker, insurance producer, policy, services, or methods of marketing.

7. The name of the viatical settlement licensee shall be clearly identified in all advertisements about the viatical settlement licensee or its viatical settlement contract, products, or services, and if any specific viatical settlement contract is advertised, the viatical settlement contract shall be identified either by form number or some other appropriate description. If an application is part of the advertisement, the name of the viatical settlement provider shall be shown on the application.

8. An advertisement shall not use a trade name, group designation, name of the parent company of a viatical settlement licensee, name of a particular division of the viatical settlement licensee, service mark, slogan, symbol or other device, or reference without disclosing the name of the viatical settlement licensee, if the advertisement would have the capacity or tendency to mislead or deceive as to the true identity of the viatical settlement licensee, or to create the impression that a company other than the viatical settlement licensee would have any responsibility for the financial obligation under a viatical settlement contract.

9. An advertisement shall not use any combination of words, symbols, or physical materials that by their content, phraseology, shape, color, or other characteristics are so similar to a combination of words, symbols, or physical materials used by a government program or agency or otherwise appear to be of such a nature that they tend to mislead prospective viators into believing that the solicitation is in some manner connected with a government program or agency.

10. An advertisement may state that a viatical settlement licensee is licensed in the state where the advertisement appears, provided it does not exaggerate that fact or suggest or imply that a competing viatical settlement licensee may not be so licensed. The advertisement may ask the audience to consult the viatical settlement licensee's internet site or contact the commissioner to find out if the state requires licensing and, if so, whether the viatical settlement provider or viatical settlement broker is licensed.

11. An advertisement shall not create the impression that the viatical settlement provider, its financial condition or status, the payment of its claims or the merits, desirability, or advisability of its viatical settlement contracts are recommended or endorsed by any government entity.

12. The name of the actual viatical settlement licensee shall be stated in each of its advertisements. An advertisement shall not use a trade name, any group designation, name of any affiliate, or controlling entity of the viatical settlement licensee, service mark, slogan, symbol, or other device in a manner that would have the capacity or tendency to mislead or deceive as to the true identity of the actual viatical settlement licensee or create the false impression that an affiliate or controlling entity would have any responsibility for the financial obligation of the viatical settlement licensee.

13. An advertisement shall not directly or indirectly create the impression that any division or agency of the state or of the United States government endorses, approves, or favors any of the following:

a. A viatical settlement licensee or its business practices or methods of operation.

b. The merits, desirability, or advisability of any viatical settlement contract.

c. Any viatical settlement contract.

d. Any life insurance policy or life insurance company.

14. If the advertiser emphasizes the speed with which the viatication will occur, the advertising must disclose the average time frame from completed application to the date of offer and from acceptance of the offer to receipt of the funds by the viator.

15. If the advertising emphasizes the dollar amounts available to viators, the advertising shall disclose the average purchase price as a percent of face value obtained by viators contracting with the licensee during the past six months.

2008 Acts, ch 1155, §14
Referred to in §508E.5

508E.15 Fraud prevention and control.

1. *Fraudulent viatical settlement acts — interference, and participation of convicted felons prohibited.*

a. A person shall not commit a fraudulent viatical settlement act.

b. A person shall not knowingly or intentionally interfere with the enforcement of the provisions of this chapter or investigations of suspected or actual violations of this chapter.

c. A person in the business of viatical settlements shall not knowingly or intentionally permit any person convicted of a felony involving dishonesty or breach of trust to participate in the business of viatical settlements.

2. *Fraud warning required.*

a. A viatical settlement contract and application for a viatical settlement, regardless of the form of transmission, shall contain the following statement or a substantially similar statement:

> Any person who knowingly presents false information in an application for insurance or viatical settlement contract is guilty of a crime and may be subject to fines and confinement in prison.

b. The lack of a statement as required in paragraph *"a"* does not constitute a defense in any prosecution for a fraudulent viatical settlement act.

3. *Mandatory reporting of fraudulent viatical settlement acts.*

a. Any person engaged in the business of viatical settlements having knowledge or a reasonable suspicion that a fraudulent viatical settlement act is being, will be, or has been committed shall provide to the commissioner such information as required by and in a manner prescribed by rules adopted by the commissioner.

b. Any other person having knowledge or a reasonable belief that a fraudulent viatical settlement act is being, will be, or has been committed may provide to the commissioner the information required by and in a manner prescribed by rules adopted by the commissioner.

4. *Immunity from liability.*

a. No civil liability shall be imposed on and no cause of action shall arise from a person who, acting reasonably and in good faith, furnishes information concerning suspected, anticipated, or completed fraudulent viatical settlement acts or suspected or completed fraudulent insurance acts, if the information is provided to or received from any of the following:

(1) The commissioner or the commissioner's employees, agents, or representatives.

(2) A federal, state, or local law enforcement or regulatory official or the official's employees, agents, or representatives.

(3) A person involved in the prevention and detection of fraudulent viatical settlement acts or that person's agents, employees, or representatives.

(4) The national association of insurance commissioners; the financial industry regulatory authority, inc.; the North American securities administrators association; their employees, agents, or representatives; or other regulatory body overseeing life insurance, viatical settlements, securities, or investment fraud.

(5) A life insurer that issued the life insurance policy covering the life of the insured.

b. Paragraph *"a"* does not apply to a statement made in bad faith or with actual malice.

In an action brought against a person for filing a report or furnishing other information concerning a fraudulent viatical settlement act, the party bringing the action shall plead specifically any allegation that paragraph *"a"* does not apply because the person filing the report or furnishing the information did so in bad faith or with actual malice.

c. A person furnishing information as identified in paragraph *"a"* shall be entitled to an award of attorney fees and costs if the person is the prevailing party in a civil cause of action for libel, slander, or any other relevant tort arising out of an activity in carrying out the provisions of this chapter and the party bringing the action was not substantially justified in doing so. For purposes of this paragraph, a proceeding is substantially justified if it had a reasonable basis in law or fact at the time that it was initiated. However, such an award does not apply to any person furnishing information concerning the person's own fraudulent viatical settlement act.

d. This section does not abrogate or modify a common law or statutory privilege or immunity enjoyed by a person described in paragraph *"a"*.

5. *Confidentiality.*

a. A document or evidence provided pursuant to subsection 4 or obtained by the commissioner in an investigation of a suspected or actual fraudulent viatical settlement act shall be privileged and confidential, notwithstanding chapter 22, shall not be a public record, and shall not be subject to discovery or subpoena in a civil or criminal action.

b. Paragraph *"a"* does not prohibit the release by the commissioner of a document or evidence obtained in an investigation of a suspected or actual fraudulent viatical settlement act if any of the following applies:

(1) In an administrative or judicial proceeding to enforce laws administered by the commissioner.

(2) To a federal, state, or local law enforcement or regulatory agency, to an organization established for the purpose of detecting and preventing fraudulent viatical settlement acts, or to the national association of insurance commissioners.

(3) At the discretion of the commissioner, to a person in the business of viatical settlements that is aggrieved by a fraudulent viatical settlement act.

c. Release of a document or evidence under paragraph *"b"* does not abrogate or modify the privilege granted in paragraph *"a"*.

6. *Other law enforcement or regulatory authority.* This chapter shall not do any of the following:

a. Preempt the authority or relieve the duty of other law enforcement or regulatory agencies to investigate, examine, and prosecute suspected violations of law.

b. Prevent or prohibit a person from disclosing voluntarily information concerning viatical settlement fraud to a law enforcement or regulatory agency other than the commissioner.

c. Limit the powers granted elsewhere by the laws of this state to the commissioner or an insurance fraud unit to investigate and examine possible violations of law and to take appropriate action against wrongdoers.

7. *Viatical settlement antifraud initiatives.*

a. A viatical settlement provider or viatical settlement broker shall have in place antifraud initiatives reasonably calculated to detect, prosecute, and prevent fraudulent viatical settlement acts. At the discretion of the commissioner, the commissioner may order, or a licensee may request and the commissioner may grant, such modifications of the following required initiatives as necessary to ensure an effective antifraud program. The modifications may be more or less restrictive than the required initiatives so long as the modifications may reasonably be expected to accomplish the purpose of this section.

b. Antifraud initiatives shall include all of the following:

(1) A fraud investigator, who may be a viatical settlement provider, viatical settlement broker, a viatical settlement provider's or viatical settlement broker's employee, or an independent contractor.

(2) An antifraud plan, which shall be submitted to the commissioner. The antifraud plan shall include, but is not limited to all of the following:

(a) A description of the procedures for detecting and investigating possible fraudulent

viatical settlement acts and procedures for resolving material inconsistencies between medical records and insurance applications.

(b) A description of the procedures for reporting possible fraudulent viatical settlement acts to the commissioner.

(c) A description of the plan for antifraud education and training of underwriters and other personnel.

(d) A description or chart outlining the organizational arrangement of the antifraud personnel who are responsible for the investigation and reporting of possible fraudulent viatical settlement acts and investigating unresolved material inconsistencies between medical records and insurance applications.

c. An antifraud plan submitted to the commissioner shall be privileged and confidential, notwithstanding chapter 22, shall not be a public record, and shall not be subject to discovery or subpoena in a civil or criminal action.

2008 Acts, ch 1155, §15; 2018 Acts, ch 1074, §6
Referred to in §508E.3, 508E.5, 508E.6
Subsection 4, paragraph a, subparagraph (4) amended

508E.16 Injunctions — civil remedies — cease and desist orders — civil penalty.

1. In addition to the penalties and other enforcement provisions of this chapter, if any person violates this chapter or any rule implementing this chapter, the commissioner may seek an injunction in a court of competent jurisdiction and may apply for a temporary or permanent order that the commissioner determines is necessary to restrain the person from committing the violation.

2. A person damaged by the act of a person in violation of this chapter may bring a civil action against the person committing the violation in a court of competent jurisdiction.

3. The commissioner may issue, in accordance with chapter 17A, a cease and desist order upon a person that violates any provision of this chapter, any rule or order adopted by the commissioner, or any written agreement entered into with the commissioner.

4. When the commissioner finds that an activity in violation of this chapter presents an immediate danger to the health, safety, or welfare of the public requiring immediate agency action, the commissioner may proceed under section 17A.18A.

5. In addition to the penalties and other enforcement provisions of this chapter, any person who violates this chapter is subject to a civil penalty of up to five thousand dollars for each violation of this chapter. The civil penalty shall be deposited as provided in section 505.7. If a person has not been ordered to pay restitution by a court, the commissioner's order may require a person found to be in violation of this chapter to make restitution to a person aggrieved by a violation of this chapter.

6. Except for a fraudulent viatical settlement act committed by a viator, the enforcement provisions and penalties of this section shall not apply to a viator.

2008 Acts, ch 1155, §16; 2009 Acts, ch 181, §70

508E.17 Unfair trade practices.

A violation of this chapter, including the commission of a fraudulent viatical settlement act, is an unfair trade practice under chapter 507B and a person convicted of the violation is subject to the penalties contained in that chapter.

2008 Acts, ch 1155, §17
Referred to in §508E.10

508E.18 Criminal penalties.

1. *a.* A person acting in this state as a viatical settlement provider or viatical settlement broker, without being licensed pursuant to section 508E.3, who willfully violates any provision of this chapter or any rule adopted or order issued under this chapter, is guilty of a class "D" felony.

b. A person acting in this state as a viatical settlement provider or viatical settlement broker, without proper licensure, who willfully violates any provision of this chapter, or any rule adopted or order issued under this chapter, and when such violation results in a loss of more than ten thousand dollars, is guilty of a class "C" felony.

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

2008 Acts, ch 1155, §18

508E.19 Authority to promulgate rules.

The commissioner shall have the authority to do all of the following:

1. Adopt rules implementing and administering this chapter.

2. Establish standards for evaluating reasonableness of payments under viatical settlement contracts for persons who are terminally or chronically ill. This authority includes but is not limited to regulation of discount rates used to determine the amount paid in exchange for assignment, transfer, sale, devise, or bequest of a benefit under a life insurance policy insuring the life of a person who is chronically or terminally ill.

3. Establish appropriate licensing requirements, fees, and standards for continued licensure for viatical settlement providers and brokers.

4. Require a bond or other mechanism for financial accountability for viatical settlement providers and viatical settlement brokers.

5. Adopt rules governing the relationship and responsibilities of both insurers and viatical settlement providers and viatical settlement brokers during the viatication of a life insurance policy or certificate.

2008 Acts, ch 1155, §19

508E.20 Public records.

All information filed with the commissioner pursuant to the requirements of this chapter and its implementing rules shall constitute a public record that is open for public inspection except as otherwise provided in this chapter.

2008 Acts, ch 1123, §18; 2008 Acts, ch 1191, §135

CHAPTER 508F

CHARITABLE GIFT ANNUITIES

Referred to in §87.4, 296.7, 331.301, 364.4, 505.28, 505.29, 507B.3, 508C.3, 508C.5, 669.14, 670.7

508F.1 Definitions.
508F.2 Qualified charitable gift annuity is not insurance.
508F.3 Annuity agreement — notice to donor.
508F.4 Notice filed with the commissioner.
508F.5 Failure to comply with requirements.
508F.6 Penalties.
508F.7 Not unfair or deceptive trade practice.
508F.8 Rules.

508F.1 Definitions.

As used in this chapter, unless the context clearly indicates otherwise:

1. *"Charitable gift annuity"* means a transfer of property by a donor to a charitable organization in return for an annuity payable over one or two lives, if the actuarial value of the annuity is less than the value of the property transferred and the difference in value constitutes a charitable deduction for federal tax purposes.

2. *"Charitable organization"* means an entity described by any of the following:

a. Section 501(c)(3) of the Internal Revenue Code.

b. Section 170(c) of the Internal Revenue Code.

3. *"Commissioner"* means the commissioner of insurance.

4. *"Internal Revenue Code"* means the Internal Revenue Code of 1986 as designated

by the Tax Reform Act of 1986, as amended to a date designated by rules adopted by the commissioner.

5. *"Property"* means anything of value that is subject to ownership, and includes but is not limited to property classified as real, personal, mixed, tangible or intangible, or any present or future interest in such property.

6. *"Qualified charitable gift annuity"* means a charitable gift annuity that is described by section 501(m)(5) or 514(c)(5) of the Internal Revenue Code, if all of the following apply:

a. The annuity agreement is issued by a charitable organization.

b. On the date that the annuity agreement is issued, the charitable organization has a minimum value of the lesser of three hundred thousand dollars or five times the face amount of total outstanding annuities in unrestricted cash, cash equivalents, or publicly traded securities. However, the total outstanding annuities as provided in this paragraph do not include assets funding the annuity agreement.

c. The charitable organization has been in continuous operation for at least three years or is a successor or affiliate of a charitable organization that has been in continuous operation for at least three years.

2001 Acts, ch 28, §2

508F.2 Qualified charitable gift annuity is not insurance.

1. The issuance of a qualified charitable gift annuity does not constitute engaging in the business of insurance in this state.

2. A charitable gift annuity that meets the requirements of a qualified charitable gift annuity shall be deemed to be a qualified charitable gift annuity for purposes of this chapter, regardless of whether the charitable gift annuity was issued prior to July 1, 2001. The issuance of that charitable gift annuity shall not be construed as engaging in the business of insurance in this state.

2001 Acts, ch 28, §3

508F.3 Annuity agreement — notice to donor.

An agreement for a qualified charitable gift annuity executed by a charitable organization and a donor shall be in writing. The annuity agreement shall include a notice stating that a qualified charitable gift annuity is not insurance under the laws of this state and is not subject to regulation by the commissioner or protected by an insurance guaranty fund or an insurance guaranty association. The notice required by this section shall be in a separate paragraph and in a type size no smaller than that generally used in the annuity agreement.

2001 Acts, ch 28, §4

Referred to in §508F.5

508F.4 Notice filed with the commissioner.

1. A charitable organization that issues qualified charitable gift annuities in this state on and after July 1, 2001, shall file a notice with the commissioner in writing not later than the date on which it executes the organization's first qualified charitable annuity agreement. All of the following shall apply:

a. The notice must be signed by an officer or director of the charitable organization.

b. The notice must identify the name and address of the charitable organization.

c. The notice must include a copy of the determination letter issued by the internal revenue service.

d. The notice must certify that the charitable organization is a bona fide charitable organization and that the annuities issued by the charitable organization are qualified charitable gift annuities.

2. The charitable organization is not required to submit additional information, unless the information is to be used to determine appropriate penalties that may be applicable under section 508F.5.

2001 Acts, ch 28, §5

Referred to in §508F.5

508F.5 Failure to comply with requirements.

1. The failure of a charitable organization to comply with the requirements of sections 508F.3 and 508F.4 does not prevent a charitable gift annuity that otherwise meets the requirements of this chapter from constituting a qualified charitable gift annuity.

2. The commissioner shall enforce performance of the requirements of sections 508F.3 and 508F.4. The commissioner may do any of the following:

a. Send a letter by restricted certified mail to the charitable organization demanding that the charitable organization comply with this chapter.

b. Establish and impose civil penalties on the charitable organization in an amount not to exceed one thousand dollars for each qualified charitable gift annuity issued until the charitable organization complies with the requirements of this chapter.

2001 Acts, ch 28, §6
Referred to in §508F.4

508F.6 Penalties.

The commissioner may determine, after hearing, that the issuance of an annuity is not in compliance with this chapter and that the entity issuing the annuity is subject to the provisions and penalties of chapters 507A and 507B.

2001 Acts, ch 28, §7

508F.7 Not unfair or deceptive trade practice.

The issuance of a qualified charitable gift annuity does not constitute a violation of chapter 507B.

2001 Acts, ch 28, §8

508F.8 Rules.

The commissioner may adopt rules pursuant to chapter 17A necessary to administer and enforce this chapter.

2001 Acts, ch 28, §9

CHAPTER 509

GROUP INSURANCE

Referred to in §87.4, 296.7, 331.301, 364.4, 505.28, 505.29, 507B.4A, 508A.5, 509B.1, 510.11, 513C.10, 514C.1, 514C.2, 514C.3A, 514C.4, 514C.6, 514C.10, 514C.11, 514C.12, 514C.18, 514C.19, 514C.20, 514C.21, 514C.23, 514C.24, 514C.25, 514C.26, 514C.29, 514C.30, 514C.32, 514C.33, 514C.34, 514E.1, 514E.2, 514F.4, 514L.1, 669.14, 670.7

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509.3 Provisions as part of accident or health policy.
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509.1 Form of policy.

No policy of group life, accident or health insurance shall be delivered in this state unless it conforms to one of the following descriptions:

1. A policy issued to an employer, or to the trustees of a fund established by an employer, which employer or trustee shall be deemed the policyholder, to insure employees of the

employer for the benefit of persons other than the employer, subject to the following requirements:

a. The employees eligible for insurance under the policy shall be all of the employees of the employer, or all of any class or classes thereof determined by conditions pertaining to their employment. The policy may provide that the term *"employees"* shall include the employees of one or more subsidiary corporations, and the employees, individual proprietors, and partners of one or more affiliated corporations, proprietors or partnerships if the business of the employer and of such affiliated corporations, proprietors or partnerships is under common control through stock ownership, contract, or otherwise. The policy may provide that the term *"employees"* shall include the individual proprietor or partners if the employer is an individual proprietor or a partnership. The policy may provide that the term *"employees"* shall include retired employees. The policy may also provide that the term *"employees"* shall include the board of directors if the employer is a corporation.

b. The premium for the group policy shall be paid by the policyholder, either from the employer's funds or funds contributed by the insured employees, or from both. A policy of group accident and health insurance on which part of the premium is to be derived from funds contributed by the insured employees may be placed in force only if at least seventy-five percent of the then eligible employees, excluding any as to whom evidence of individual insurability is not satisfactory to the insurer, elect to make the required contributions. A policy on which no part of the premium is to be derived from funds contributed by the insured employees must insure all eligible employees, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer. As used in this paragraph, *"accident and health insurance"* does not include disability income insurance.

c. The amounts of insurance under the policy must be based upon some plan precluding individual selection either by the employees or by the employer or trustees.

d. Group policies may include dependents of the employee, including the spouse.

e. The policy shall not exclude from coverage an employee or an employee's spouse or dependents on the basis of the eligibility of the employee or the employee's spouse or dependents for medical assistance under chapter 249A.

2. *a.* A policy issued to any one of the following to be considered the policyholder:

(1) An advisory, supervisory, or governing body or bodies of a regularly organized religious denomination to insure its clergy, priests, or ministers of the gospel.

(2) A teachers' association, to insure its members.

(3) A lawyers' association, to insure its members.

(4) A volunteer fire company, to insure all of its members.

(5) A fraternal society or association, or any subordinate lodge or branch thereof, to insure its members.

(6) A common principal of any group of persons similarly engaged between whom there exists a contractual relationship, to insure the members of such group.

(7) An association, the members of which are students, teachers, administrators or officials of any elementary or secondary school or of any college, to insure the members thereof. For the purpose of this subparagraph, the students, teachers, administrators or officials of or for any such school or college shall constitute an association.

b. The provisions and requirements of subsection 1 shall apply to the policy and the policyholder and insured in the same manner as subsection 1 applies to employers and employees, except that if a policy is issued to a volunteer fire company or an association, the members of which are students, teachers, administrators or officials of any elementary or secondary school or of any college, the requirement for twenty-five members shall not apply, and, if issued to a teachers' association or lawyers' association, not less than sixty-five percent of the members thereof may be insured.

3. A policy issued to a creditor, who shall be deemed the policyholder, to insure debtors of the creditor, subject to the following requirements:

a. The debtors eligible for insurance under the policy shall be all of the debtors of the creditor, or all of any class or classes thereof determined by conditions pertaining to the indebtedness or to the purchase giving rise to the indebtedness. The policy may provide that the term *"debtors"* shall include the debtors of one or more subsidiary corporations, and the

debtors of one or more affiliated corporations, proprietors or partnerships if the business of the policyholder and of such affiliated corporations, proprietors or partnerships is under common control through stock ownership, contract, or otherwise.

b. The premium for the policy shall be paid by the policyholder, either from the creditor's funds, or from charges collected from the insured debtors, or from both. A policy on which part or all of the premium is to be derived from the collection from the insured debtors of identifiable charges not required of uninsured debtors shall not include, in the class or classes of debtors eligible for insurance, debtors under obligations outstanding at its date of issue without evidence of individual insurability unless at least seventy-five percent of the then eligible debtors elect to pay the required charges. A policy on which no part of the premium is to be derived from the collection of such identifiable charges must insure all eligible debtors, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.

c. The policy may be issued only if the group of eligible debtors is then receiving new entrants at the rate of at least one hundred persons yearly, or may reasonably be expected to receive at least one hundred new entrants during the first policy year, and only if the policy reserves to the insurer the right to require evidence of individual insurability if less than seventy-five percent of the new entrants become insured.

d. The amount of insurance on the life of a debtor shall not exceed the amount owed by the debtor to the creditor, or the face amount of a totally or partially executed loan or loan commitment creating personal liability and made in good faith for general agricultural or horticultural purposes to a debtor with seasonal income. However, in no event shall the amount of insurance exceed two hundred thousand dollars.

e. The insurance shall be payable to the policyholder. Such payment shall reduce or extinguish the unpaid indebtedness of the debtor to the extent of such payment. Provided that in the case of a debtor for agricultural or horticultural purposes of the type described in paragraph *"d"*, the insurance in excess of indebtedness to the creditor, if any, shall be payable to a named beneficiary, to the estate of the debtor or under the provision of a facility of payment clause.

4. A policy issued to a labor union, which shall be deemed the policyholder, to insure members of such union for the benefit of persons other than the union or any of its officials, representatives, or agents, subject to the following requirements:

a. The members eligible for insurance under the policy shall be all of the members of the union or all of any class or classes thereof determined by conditions pertaining to their employment, or to membership in the union, or both.

b. The premium for the group life policy shall be paid by the policyholder, either wholly from the union's funds, or partly from such funds and partly from funds contributed by the insured members specifically for their insurance. No policy, except accident and health, may be issued on which the entire premium is to be derived from funds contributed by the insured members specifically for their insurance. A policy on which part of the premium is to be derived from funds contributed by the insured members specifically for their insurance may be placed in force only if at least sixty-five percent of the then eligible members, excluding any as to whom evidence of individual insurability is not satisfactory to the insurer, elect to make the required contributions. A policy on which no part of the premium is to be derived from funds contributed by the insured members specifically for their insurance must insure all eligible members, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.

c. The policy must cover at least ten members at date of issue.

d. The amounts of insurance under the policy must be based upon some plan precluding individual selection either by the members or by the union.

e. Policies may include dependents of the insured, including the spouse.

f. The policy shall not exclude from coverage a member or a member's spouse or dependents on the basis of the eligibility of the member or the member's spouse or dependents for medical assistance under chapter 249A.

5. A policy issued to the trustees of a fund established by two or more employers in the same industry or by two or more labor unions or by one or more employers and by one or

more labor unions which trustees shall be deemed the policyholder, to insure employees of the employers or members of the unions for the benefit of persons other than the employers or the unions, subject to the following requirements:

a. The persons eligible for insurance shall be all of the employees of the employers or all of the members of the unions, or all of any class or classes thereof determined by conditions pertaining to their employment, or to membership in the unions, or both. The policy may provide that the term *"employees"* shall include the individual proprietor or partners if an employer is an individual proprietor or a partnership. The policy may provide that the term *"employees"* shall include the trustees or their employees, or both, if their duties are principally connected with such trusteeship. The policy may provide that the term *"employees"* shall include retired employees. The policy may also provide that the term *"employees"* shall include the board of directors if the employer is a corporation.

b. The premium for the policy shall be paid by the trustees wholly from funds established by the employers of the insured persons. The policy must insure all eligible persons, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer, if the funds are contributed wholly by the employer or unions.

c. The policy must cover at least one hundred persons at date of issue.

d. The amounts of insurance under the policy must be based upon some plan precluding individual selection either by the insured persons or by the policyholder, employers, or unions.

e. Policies may include dependents of the insured, including the spouse.

f. The policy shall not exclude from coverage an employee or member or an employee's or member's spouse or dependents on the basis of the eligibility of the employee or member or employee's or member's spouse or dependents for medical assistance under chapter 249A.

6. A policy issued to any nonprofit industrial association, which shall be deemed the policyholder, incorporated for a period of at least ten years and organized for purposes other than obtaining insurance, subject to the following requirements:

a. If two or more members of the association, or any class or classes of members thereof determined by conditions pertaining to insurance, elect to insure their employees or any class or classes of employees determined by conditions pertaining to employment; and

b. The total number of insured employees must not be less than one thousand, and of these not less than seventy-five percent must be employees of members with at least twenty insured employees each, and further, not more than ten percent may be employees of members with less than ten insured employees each; and

c. The insurance premiums are paid by such members to the association; each member, insofar as applicable to the member's own employees, may collect part of the premium from insured employees, and the method of apportionment of the premium payment between the member and the member's employees may be varied as among individual members; and

d. Not less than seventy-five percent of the eligible employees of each participating member may be insured where the employees pay a part of the premium. The word "employees" as used in this subsection shall also include the individual members and employees of such association.

e. Policies may include dependents of the employees, including the spouse.

f. The policy shall not exclude from coverage an employee or an employee's spouse or dependents on the basis of the eligibility of the employee or the employee's spouse or dependents for medical assistance under chapter 249A. This paragraph shall also apply to corporations operating within the state who provide insurance coverage for their employees directly, and the commissioner shall have the authority to enforce the provisions of this paragraph.

7. A policy issued to the department of human services, which shall be deemed the policyholder, to insure eligible persons for medical assistance, or for both mandatory medical assistance and optional medical assistance, as defined by chapter 249A as hereafter amended.

8. A policy of group health insurance coverage, as defined in section 513B.2, issued by a small employer carrier, as defined in section 513B.2, to a bona fide association, subject to the following requirements:

a. The policy provides group health insurance coverage to eligible employees of members of a bona fide association that are small employers as defined in section 513B.2, and to the spouses and dependents of such employees.

b. The policy is issued to a bona fide association. For the purposes of this subsection, a bona fide association is an association which meets all of the following requirements:

(1) The association is a trade, industry, or professional association which is organized in good faith as a nonprofit corporation under chapter 504 for purposes other than obtaining insurance and has been in existence and actively maintained for at least five continuous years at the time the policy is issued.

(2) The association does not condition membership in the association on the health status of employees of its members or the health status of the spouses and dependents of such employees.

(3) Group health insurance coverage offered by the association is available to all eligible employees of its members that are small employers as defined in section 513B.2 who choose to participate in the health insurance coverage offered, and to the spouses and dependents of such employees, regardless of the health status of such employees or their spouses and dependents.

(4) Group health insurance coverage offered by the association is available only to persons who are eligible employees of a small employer as defined in section 513B.2 that is a member of the association, or to the spouses or dependents of such employees.

9. A policy of group health insurance coverage issued to an associated health plan pursuant to section 513D.1 that is subject to regulation by the commissioner.

10. A policy issued to a resident of this state under a group life, accident, or health insurance policy issued to a group other than one described in subsections 1 through 9, subject to the following requirements:

a. The commissioner determines that all of the following apply:

(1) The issuance of the group policy is not contrary to the best interest of the public.

(2) The issuance of the group policy will result in economies of acquisition or administration.

(3) The benefits under the group policy are reasonable in relation to the premium charged.

b. The commissioner need not make a determination under paragraph *"a"* if the commissioner determines that the group insurance coverage offered in this state by an insurer or other person is offered under a policy issued in another state and that state or another state in which the policy is offered, having requirements substantially similar to those in paragraph *"a"*, has determined that the policy meets those requirements.

c. The premium for the policy shall be paid either from the policyholder's funds, or from funds contributed by the covered person, or both.

d. The insurer may exclude or limit the coverage on any person as to whom evidence of individual insurability is not satisfactory to the insurer.

e. If compensation of any kind will or may be paid to the policyholder in connection with the group policy, the insurer shall provide to the prospective insured written notice that compensation will or may be paid. Notice shall be provided whether the compensation is direct or indirect, and whether the compensation is paid to or retained by the policyholder, or paid to or retained by a third party at the direction of the policyholder or any entity affiliated with the policyholder by ownership, contract, or employment. The notice shall be placed on or accompany any document designed for the enrollment of prospective insureds.

[C24, 27, 31, §8675, 8676; C35, §8684-e1 – 8684-e3; C39, §**8684.01 – 8684.03;** C46, §509.1 – 509.3; C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §509.1]

83 Acts, ch 96, §157, 159; 85 Acts, ch 69, §1; 87 Acts, ch 63, §1; 91 Acts, ch 244, §25; 92 Acts, ch 1162, §11; 2006 Acts, ch 1117, §33; 2007 Acts, ch 57, §1, 2, 8; 2012 Acts, ch 1023, §108; 2013 Acts, ch 138, §75; 2017 Acts, ch 29, §145; 2018 Acts, ch 1063, §3, 4

Referred to in §513B.2
NEW subsection 9 and former subsection 9 renumbered as 10
Subsection 10, unnumbered paragraph 1 amended

509.2 Provisions as part of group life policy.

No policy of group life insurance shall be delivered in this state unless it contains in substance the following provisions, or provisions which in the opinion of the commissioner are more favorable to the persons insured or at least as favorable to the persons insured, and more favorable to the policyholder, provided, however, that provisions of subsections 6 to 10, inclusive, of this section shall not apply to policies issued to a creditor to insure debtors of such creditor; that the standard provisions required for individual life insurance policies shall not apply to group life insurance policies; and that if the group life insurance policy is on a plan of insurance other than the term plan, it shall contain a nonforfeiture provision or provisions which in the opinion of the commissioner is or are equitable to the insured persons and to the policyholder, but nothing herein shall be construed to require that group life insurance policies contain the same nonforfeiture provisions as are required for individual life insurance policies:

1. A provision that the policyholder is entitled to a grace period of thirty-one days for the payment of any premium due except that first, during which grace period the death benefit coverage shall continue in force, unless the policyholder shall have given the insurer written notice of discontinuance in advance of the date of discontinuance and in accordance with the terms of the policy. The policy may provide that the policyholder shall be liable to the insurer for the payment of a pro rata premium for the time the policy was in force during such grace period.

2. A provision that the validity of the policy shall not be contested, except for nonpayment of premiums, after it has been in force for two years from its date of issue; and that no statement made by any person insured under the policy relating to the person's insurability shall be used in contesting the validity of the insurance with respect to which such statement was made after such insurance has been in force prior to the contest for a period of two years during such person's lifetime, nor unless it is contained in a written instrument signed by the person.

3. A provision that a copy of the application, if any, of the policyholder shall be attached to the policy when issued, that all statements made by the policyholder or by the persons insured shall be deemed representations and not warranties, and that no statement made by any person insured shall be used in any contest unless a copy of the instrument containing the statement is or has been furnished to such person or to the person's beneficiary.

4. A provision setting forth the conditions, if any, under which the insurer reserves the right to require a person eligible for insurance to furnish evidence of individual insurability satisfactory to the insurer as a condition to part or all of the person's coverage.

5. A provision specifying an equitable adjustment of premiums or benefits or of both to be made in the event the age of a person insured has been misstated, such provision to contain a clear statement of the method of adjustment to be used.

6. A provision that any sum becoming due by reason of the death of the person insured shall be payable to the beneficiary designated by the person insured, subject to the provisions of the policy in the event there is no designated beneficiary, as to all or any part of such sum, living at the death of the person insured, and subject to any right reserved by the insurer in the policy and set forth in the certificate to pay at its option a part of such sum, not exceeding five hundred dollars, to any person appearing to the insurer to be equitably entitled thereto by reason of having incurred funeral or other expenses incident to the last illness or death of the person insured.

7. A provision that the insurer will issue to the policyholder for delivery to each person insured an individual certificate setting forth a statement as to the insurance protection to which the person is entitled, to whom the insurance benefits are payable, and the rights and conditions set forth in subsections 8 to 10, inclusive, following if applicable.

8. A provision that if the insurance, or any portion of it, on a person covered under the policy ceases because of termination of employment or of membership in the class or classes eligible for coverage under the policy, such person shall be entitled to have issued to the person by the insurer, without evidence of insurability, an individual policy of life insurance without disability or other supplementary benefits, provided application for the individual

policy shall be made, and the first premium paid to the insurer, within thirty-one days after such termination, and provided further that,

a. The individual policy shall, at the option of such person, be on any one of the forms, except term insurance, then customarily issued by the insurer at the age and for the amount applied for;

b. The individual policy shall be in an amount not in excess of the amount of life insurance which ceases because of such termination, provided that any amount of insurance which matures on the date of such termination, or has matured prior thereto as an endowment payable to the person insured, whether in one sum or in installments or in the form of an annuity, shall not, for the purposes of this provision, be included in the amount which is considered to cease because of such termination, and

c. The premium on the individual policy shall be at the insurer's then customary rate applicable to the form and amount of the individual policy, to the class of risk to which such person then belongs, and to the person's age attained on the effective date of the individual policy.

9. A provision that if the group policy terminates or is amended so as to terminate the insurance of any class of insured persons, every person insured thereunder at the date of such termination whose insurance terminates and who has been so insured for at least five years prior to such termination date shall be entitled to have issued to the person by the insurer an individual policy of life insurance, subject to the same conditions and limitations as are provided by subsection 8 above, except that the group policy may provide that the amount of such individual policy shall not exceed the smaller of the amount of the person's life insurance protection ceasing because of the termination or amendment of the group policy, less the amount of any life insurance for which the person is or becomes eligible under any group policy issued or reinstated by the same or another insurer within thirty-one days after such termination, and two thousand dollars.

10. A provision that if a person insured under the group policy dies during the period within which the person would have been entitled to have an individual policy issued to the person in accordance with subsection 8 or 9 above and before such an individual policy shall have become effective, the amount of life insurance which the person would have been entitled to have issued to the person under such individual policy shall be payable as a claim under the group policy, whether or not application for the individual policy or the payment of the first premium therefor has been made.

[C24, 27, 31, §8677, 8678; C35, §8684-e4, -e5; C39, §**8684.04, 8684.05;** C46, §509.4, 509.5; C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §509.2]

Referred to in §508A.5, 509.4, 509.10, 509.14

509.3 Provisions as part of accident or health policy.

1. All policies of group accident or health insurance or combination thereof issued in this state shall contain in substance the following provisions:

a. The policy shall have a provision that a copy of the application, if any, of the policyholder shall be attached to the policy when issued or shall be furnished to the policyholder within thirty days after the policy is issued, that all statements made by the policyholder or by the persons insured shall be deemed representations and not warranties, and that no statement made by any person insured shall be used in any contest unless a copy of the instrument containing the statement is or has been furnished to such person.

b. A provision that the company will issue to the policyholder for delivery to each person insured under such policy an individual certificate setting forth a statement as to the insurance protection to which the person is entitled, to whom the insurance benefits are payable, and such provisions of the policy as are, in the opinion of the commissioner of insurance, necessary to inform the holder thereof as to the holder's rights under the policy.

c. A provision that to the group or class thereof originally insured shall be added, from time to time, all new persons eligible to insurance in such group or class.

d. A provision that if the insurance on a person or insurance on a person and the person's dependents covered by the policy ceases because of termination of employment

or of membership in the class, the person and the person's dependents may continue their accident or health insurance under the group policy.

e. A provision shall be made available to policyholders, under group policies covering vision care services or procedures, for payment of necessary medical or surgical care and treatment provided by an optometrist licensed under chapter 154 if the care and treatment are provided within the scope of the optometrist's license and if the policy would pay for the care and treatment if the care and treatment were provided by a person engaged in the practice of medicine or surgery or osteopathic medicine and surgery as licensed under chapter 148. The policy shall provide that the policyholder may reject the coverage or provision if the coverage or provision for services which may be provided by an optometrist is rejected for all providers of similar vision care services as licensed under chapter 148 or 154. This paragraph applies to group policies delivered or issued for delivery after July 1, 1983, and to existing group policies on their next anniversary or renewal date, or upon expiration of the applicable collective bargaining contract, if any, whichever is later. This paragraph does not apply to blanket, short-term travel, accident-only, limited or specified disease, or individual or group conversion policies, or policies designed only for issuance to persons for coverage under Tit. XVIII of the Social Security Act, or any other similar coverage under a state or federal government plan.

f. A provision shall be made available to policyholders under group policies covering diagnosis and treatment of human ailments for payment or reimbursement for necessary diagnosis or treatment provided by a chiropractor licensed under chapter 151, if the diagnosis or treatment is provided within the scope of the chiropractor's license and if the policy would pay or reimburse for the diagnosis or treatment by a person licensed under chapter 148 of the human ailment, irrespective of and disregarding variances in terminology employed by the various licensed professions in describing the human ailment or its diagnosis or its treatment. The policy shall provide that the policyholder may reject the coverage or provision if the coverage or provision for diagnosis or treatment of a human ailment by a chiropractor is rejected for all providers of diagnosis or treatment for similar human ailments licensed under chapter 148 or 151. A policy of group health insurance may limit or make optional the payment or reimbursement for lawful diagnostic or treatment service by all licensees under chapters 148 and 151 on any rational basis which is not solely related to the license under or the practices authorized by chapter 151 or is not dependent upon a method of classification, categorization, or description based directly or indirectly upon differences in terminology used by different licensees in describing human ailments or their diagnosis or treatment. This paragraph applies to group policies delivered or issued for delivery after July 1, 1986, and to existing group policies on their next anniversary or renewal date, or upon expiration of the applicable collective bargaining contract, if any, whichever is later. This paragraph does not apply to blanket, short-term travel, accident-only, limited or specified disease, or individual or group conversion policies, or policies under Tit. XVIII of the Social Security Act, or any other similar coverage under a state or federal government plan.

g. A provision shall be made available to policyholders, under group policies covering hospital, medical, or surgical expenses, for payment of covered services determined to be medically necessary provided by registered nurses certified by a national certifying organization, which organization shall be identified by the Iowa board of nursing pursuant to rules adopted by the board, if the services are within the practice of the profession of a registered nurse as that practice is defined in section 152.1, under terms and conditions agreed upon between the insurer and the policyholder, subject to utilization controls. This paragraph shall not require payment for nursing services provided by a certified nurse practicing in a hospital, nursing facility, health care institution, physician's office, or other noninstitutional setting if the certified nurse is an employee of the hospital, nursing facility, health care institution, physician, or other health care facility or health care provider. This paragraph applies to group policies delivered or issued for delivery in this state on or after July 1, 1989, and to existing group policies on their next anniversary or renewal dates, or upon expiration of the applicable collective bargaining contract, if any, whichever is later. This paragraph does not apply to blanket, short-term travel, accident-only, limited or

specified disease, or individual or group conversion policies, policies rated on a community basis, or policies designed only for issuance to persons for eligible coverage under Tit. XVIII of the federal Social Security Act, or any other similar coverage under a state or federal government plan.

h. A provision that the insurer will permit continuation of existing coverage or reenrollment in previously existing coverage for an individual who meets the requirements of section 513B.2, subsection 14, paragraph *"a"*, *"b"*, *"c"*, *"d"*, or *"e"*, and who is an unmarried child of an insured or enrollee who so elects, at least through the policy anniversary date on or after the date the child marries, ceases to be a resident of this state, or attains the age of twenty-five years old, whichever occurs first, or so long as the unmarried child maintains full-time status as a student in an accredited institution of postsecondary education.

2. In addition to the provisions required in subsection 1, paragraphs *"a"* through *"h"*, the commissioner shall require provisions through the adoption of rules implementing the federal Health Insurance Portability and Accountability Act, Pub. L. No. 104-191.

[C24, 27, 31, §8677, 8678; C35, §8684-e4, -e6; C39, §**8684.04, 8684.06;** C46, §509.4, 509.6; C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §509.3]

83 Acts, ch 166, §1; 84 Acts, ch 1290, §1; 86 Acts, ch 1124, §8; 86 Acts, ch 1180, §2; 89 Acts, ch 164, §2; 97 Acts, ch 103, §1; 99 Acts, ch 75, §2; 2005 Acts, ch 70, §7; 2008 Acts, ch 1088, §125; 2008 Acts, ch 1188, §38, 43; 2009 Acts, ch 118, §7, 11; 2012 Acts, ch 1021, §98

Referred to in §509.10, 509.14, 514.21, 514.23

509.3A Creditable coverage.

For the purposes of any policies of group accident or health insurance or combination of such policies issued in this state, *"creditable coverage"* means health benefits or coverage provided to an individual under any of the following:

1. A group health plan.
2. Health insurance coverage.
3. Part A or Part B Medicare pursuant to Tit. XVIII of the federal Social Security Act.
4. Medicaid pursuant to Tit. XIX of the federal Social Security Act, other than coverage consisting solely of benefits under section 1928 of that Act.
5. 10 U.S.C. ch. 55.
6. A health or medical care program provided through the Indian health service or a tribal organization.
7. A state health benefits risk pool.
8. A health plan offered under 5 U.S.C. ch. 89.
9. A public health plan as defined under federal regulations.
10. A health benefit plan under section 5(e) of the federal Peace Corps Act, 22 U.S.C. §2504(e).
11. A short-term limited duration policy.
12. The hawk-i program authorized by chapter 514I.

2009 Acts, ch 118, §19; 2017 Acts, ch 148, §34

509.4 Employees of common employer — rates.

An insurer may issue policies of individual life, accident, health, hospital, medical, or surgical insurance or any combination thereof at reduced rates to employees of a common employer including the state, a county, school district, city, or institution supported in whole or in part by public funds, but the number of employees to be insured must be more than one. The premium for such policies may be paid wholly or in part by the employer. If such policies shall provide term life insurance renewable only during the continuance of employment with the employer they shall also provide for conversion to a level premium life policy substantially in accordance with the provisions of section 509.2, subsection 8.

[C24, 27, 31, §8675, 8678; C35, §8684-e1, -e5; C39, §**8684.01, 8684.05;** C46, §509.1, 509.5; C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §509.4]

2015 Acts, ch 29, §72

509.5 Authorized companies.

1. Any level premium life insurance company, organized on the stock or mutual plan and authorized to transact business under the provisions of chapter 508 may, upon complying with the provisions of said chapter and of this chapter, issue contracts providing for group life, or health, or accident insurance, or combinations thereof as defined in this chapter.

2. A casualty company organized on the stock or mutual plan, or accident and health association authorized to transact business under chapter 515, or a reciprocal or interinsurance exchange organized under chapter 520, may, by complying with those chapters and this chapter, issue contracts providing for health or accident insurance, or combinations of health and accident insurance, as defined in this chapter.

[C24, 27, 31, §8677; C35, §8684-e4; C39, §**8684.04;** C46, §509.4; C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §509.5]

89 Acts, ch 83, §68

509.6 Approval of commissioner.

No policy or certificate of group insurance shall be issued in this state until the form thereof has been filed with the commissioner of insurance and approved by the commissioner.

[C24, 27, 31, §8678; C35, §8684-e7; C39, §**8684.07;** C46, §509.7; C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §509.6]

Referred to in §509.7, 509.8

509.7 Grounds for revocation of authority.

Failure to comply with section 509.6 shall be deemed sufficient grounds for revocation of the certificate of authority of any company so violating.

[C35, §8684-e8; C39, §**8684.08;** C46, §509.8; C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §509.7]

509.8 Foreign policies.

Policies of group insurance issued in other states or countries by companies organized in this state may contain any provision required by the laws of the state, territory, district, or country in which the same are issued, anything in section 509.6 to the contrary notwithstanding.

[C24, 27, 31, §8679; C35, §8684-e9; C39, §**8684.09;** C46, §509.9; C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §509.8]

509.9 Foreign companies.

Policies of group insurance, when issued in this state by any company not organized under the laws of this state, may contain when issued any provision required by the law of the state, territory, or district of the United States under which the company is organized.

[C24, 27, 31, §8680; C35, §8684-e10; C39, §**8684.10;** C46, §509.10; C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §509.9]

509.10 Other provisions in policies.

Any group policy may contain any other provisions which meet the approval of the commissioner of insurance, provided such provisions are not in conflict with the standard provisions of section 509.2 or 509.3.

[C24, 27, 31, §8681; C35, §8684-e11; C39, §**8684.11;** C46, §509.11; C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §509.10]

509.11 Voting by policyholders.

If policyholders are entitled to vote at meetings of a domestic insurance company, each policyholder of a group policy shall be entitled to one vote.

[C24, 27, 31, §8682; C35, §8684-e12; C39, §**8684.12;** C46, §509.12; C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §509.11]

509.12 Proceeds exempt from execution.

A policy of group insurance and the proceeds of the policy are exempt from execution and attachment to the same extent as provided in chapter 627.

[C24, 27, 31, §8683; C35, §8684-e13; C39, §**8684.13;** C46, §509.13; C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §509.12]

88 Acts, ch 1255, §1

509.13 Rules.

The commissioner of insurance shall issue rules establishing minimum standards for group Medicare supplement policies and minimum standards for benefits under coverages contained in group Medicare supplement policies. These rules shall be consistent with those rules established for individual Medicare supplement policies pursuant to chapter 514D. The commissioner also shall establish by rule reasonable and creditable anticipated minimum loss ratios for group Medicare supplement policies. Rules issued by the commissioner shall give issuers of group Medicare supplement policies a reasonable time to achieve compliance.

[81 Acts, ch 167, §1]

509.14 Group insurance on franchise plan.

It shall be lawful for an authorized insurer to issue life, accident and sickness insurance policies on a franchise plan at reduced rates, covering the members of an association, subject to the following:

1. An "*association*" as referred to herein shall consist of a labor union, trade association, association of employees, industrial association or professional association, which has been organized and operating more than two years for purposes other than procuring insurance.

2. A "*franchise plan*" as referred to herein shall consist of an insurance policy or policies covering the insurable members of an association, but in no case less than ten. Such policies may be written in the name of the association or may be written individually for the insured members, subject to the following:

a. A life insurance policy written in the name of the association, shall conform to the provisions of section 509.2.

b. An individual policy on the life of a member of an association, providing for term insurance renewable only during the continuation of membership, shall also provide in the event of termination of membership the same provision for conversion as set out in section 509.2, subsection 8.

c. An individual life policy written on any basis other than term shall provide that the policyholder may elect to continue it in force upon the policyholder's termination of membership in the association by giving the insurer a notice in writing of such election within thirty days thereafter and paying therefor the renewal premium, which the insurer may increase to reflect the normal individual rate for the policyholder as determined by the policyholder's age and class at the date of issue of the policy.

d. If an accident and sickness policy is written in the name of the association, it shall conform to the provisions of section 509.3.

e. An individual accident and sickness policy shall be subject to the provisions of chapter 514A.

f. Premiums for such policies may be paid entirely from the funds of the association, entirely from the funds of the members or partly from the funds of each.

g. Accident and sickness policies may include the spouse and dependents of the insured.

[C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §509.14]

Referred to in §509.19, 514D.3, 514D.4

509.15 Assignment of policy.

Any person insured under a group life insurance policy may assign the rights, benefits and all other incidents of ownership conferred on the person by any provision of such policy or by law, including specifically and not by way of limitation the right, if any, to have issued to the person an individual policy and the right to name a beneficiary. Subject to the terms of the policy or agreement between the insured, the group policyholder and the insurer, any such

assignment, whether made before or after July 1, 1971, is valid for the purpose of vesting in the assignee, in accordance with any provisions included therein as to the time at which it is to be effective, all rights, benefits and incidents of ownership conferred upon the insured under the policy and shall entitle the insurer to deal with the assignee as the owner of such rights, benefits and incidents of ownership, provided the insurer shall not be affected by any assignment until the insurer has received written notice thereof. This section shall be construed as declaring the law as it existed prior to July 1, 1971 and not modifying it.

[C73, 75, 77, 79, 81, §509.15]

509.16 Premium rates approved.

1. An individual policy of credit life or credit accident and health insurance or certificate under a policy of group credit life or credit accident and health insurance shall not be issued for delivery or delivered in this state unless the premium rates charged for the insurance are approved by the commissioner of insurance.

2. The commissioner of insurance, after notice and hearing, may adopt rules as are necessary to identify specific methods of competition or acts or practices within the business of credit life and credit accident and health insurance which are unfair or deceptive.

[C75, 77, 79, 81, §509.16]

90 Acts, ch 1234, §27

509.17 Guidelines for rates.

Rates shall be made in accordance with the following provisions:

1. Rates shall not be excessive, inadequate or unfairly discriminatory.

2. Due consideration shall be given to past and prospective loss experience within and outside this state, to a reasonable margin for underwriting profit and contingencies, to past and prospective expenses both countrywide and those especially applicable to this state, and to all other relevant factors within and outside this state.

3. The commissioner shall, after a public hearing, approve a reasonable charge or premium for credit accident and health insurance and for credit life insurance as the commissioner deems appropriate and necessary for the implementation of this section.

[C71, 73, §535.2; C75, 77, 79, 81, §509.17]

90 Acts, ch 1234, §28, 29

509.18 Prohibited deposit in financial institution.

A company or its agent licensed to sell a policy of credit life or credit accident and health insurance or certificate under a policy of group credit life or credit accident and health insurance shall not deposit or offer to deposit funds in a financial institution of this state in exchange for the privilege of selling such insurance to or on behalf of the financial institution.

[C75, 77, 79, 81, §509.18]

2004 Acts, ch 1110, §27

509.19 Claims and premium disclosure.

1. *a.* A person issuing a policy or contract providing group health benefit coverages to a group of fifty-one or more eligible employees as defined in chapter 513B shall provide to the policyholder, contract holder, or sponsor of the group health benefit plan, upon request, annually, but not more than three months prior to the policy renewal date, the total amount of actual claims identified as paid or incurred and paid, and the total amount of premiums by line of coverage. If premiums are not billed for each line of coverage, it is not necessary to artificially separate premiums for each line of coverage and will be acceptable to supply total premiums for the period.

b. For purposes of this section, *"line of coverage"* includes medical, prescription drug card program, dental, vision, long-term disability, and short-term disability.

c. The information required by paragraph *"a"* shall be provided by the carrier for two separate years, either policy years or rolling twelve-month periods.

d. The information required by paragraph *"a"* shall not disclose any confidential

information or otherwise disclose the identity of an individual insured, subscriber, or enrollee, who has submitted a claim within the time frame of the report.

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

a. A person issuing a group policy of accident or health insurance pursuant to this chapter.

b. A person issuing a group contract of a nonprofit health service corporation pursuant to chapter 514.

c. A person issuing a group contract of a health maintenance organization pursuant to chapter 514B.

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

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

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

90 Acts, ch 1159, §1; 2002 Acts, ch 1111, §12; 2003 Acts, ch 91, §11; 2016 Acts, ch 1011, §93; 2017 Acts, ch 148, §35

CHAPTER 509A

GROUP INSURANCE FOR PUBLIC EMPLOYEES

Referred to in §2.40, 87.4, 99G.4, 173.1, 296.7, 331.301, 364.4, 505.28, 505.29, 507B.4, 508C.3, 509.19, 510.11, 514C.12, 514C.14, 514C.15, 514C.16, 514C.17, 514C.18, 514C.19, 514C.20, 514C.22, 514C.23, 514C.24, 514C.25, 514C.26, 514C.27, 514C.28, 514C.29, 514C.30, 514C.31, 514C.34, 514F.4, 514F.5, 514F.7, 514J.102, 514L.1, 669.14, 670.7

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509A.1 Authority of governing body.

The governing body of the state, school district, or any institution supported in whole or in part by public funds may establish plans for and procure group insurance, health or medical service, or health flexible spending accounts as described in section 125 of the Internal Revenue Code of 1986 for the employees of the state, school district, or tax-supported institution.

[C50, 54, 58, 62, §365A.1; C66, §509.15; C71, 73, 75, 77, 79, 81, S81, §509A.1; 81 Acts, ch 117, §1085]

99 Acts, ch 200, §20

509A.2 Sources of funds.

The funds for such plans shall be created solely from the contributions of employees, or from contributions wholly or in part by the governing body.

[C50, 54, 58, 62, §365A.2; C66, §509.16; C71, 73, 75, 77, 79, 81, §509A.2]

Referred to in §509A.3

509A.3 Assessment of employees.

All employees participating in any such plan the fund of which is created under the provisions of section 509A.2 shall be assessed and required to pay an amount to be fixed by the governing body not to exceed the two percent which shall be contributed by the public body according to the plan adopted, and the amount so assessed shall be deducted and retained out of the wages or salaries of such employees.

Any employee may authorize deductions from the employee's wages or salary in payment for plans authorized in this chapter in the manner provided in section 514.16.

[C50, 54, 58, 62, §365A.3; C66, §509.17; C71, 73, 75, 77, 79, 81, §509A.3]

509A.4 Participation optional.

Participation in any such plan shall be optional with all employees eligible to the benefits thereof as provided by the rules adopted by the governing body pursuant thereto. Election to participate therein shall be in writing signed by the employee and filed with the governing body.

[C50, 54, 58, 62, §365A.4; C66, §509.18; C71, 73, 75, 77, 79, 81, §509A.4]

509A.5 Fund under control of governing body — interest earnings of certain funds.

The fund for each plan shall be under the control and shall be expended under the directions of the governing body and shall be used solely for the purpose of administering and carrying out the provisions of the plan adopted by the governing body.

Any interest earnings from investments or time deposits of the funds under the control of the state executive council shall be deposited to the credit of these funds.

[C50, 54, 58, 62, §365A.5; C66, §509.19; C71, 73, 75, 77, 79, 81, §509A.5]

84 Acts, ch 1071, §1; 85 Acts, ch 266, §2

Referred to in §8A.454

509A.6 Contract with insurance carrier or health maintenance organization.

The governing body may contract with a nonprofit corporation operating under the provisions of this chapter or chapter 514 or with any insurance company having a certificate of authority to transact an insurance business in this state with respect of a group insurance plan, which may include life, accident, health, hospitalization and disability insurance during period of active service of such employees, with the right of any employee to continue such life insurance in force after termination of active service at such employee's sole expense; may contract with a nonprofit corporation operating under and governed by the provisions of this chapter or chapter 514 with respect of any hospital or medical service plan; and may contract with a health maintenance organization authorized to operate in this state with respect to health maintenance organization activities.

[C50, 54, 58, 62, §365A.6; C66, §509.20; C71, 73, 75, 77, 79, 81, §509A.6]

95 Acts, ch 162, §10; 2017 Acts, ch 148, §36

509A.7 Employee defined.

The word "*employee*" as used in this chapter does not include temporary or retired employees except as otherwise provided in this chapter. However, this section does not prevent a retired employee sixty-five years of age or older from voluntarily continuing in force, at the employee's own expense, an existing contract.

[C50, 54, 58, 62, §365A.7; C66, §509.21; C71, 73, 75, 77, 79, 81, §509A.7; 82 Acts, ch 1101, §2]

84 Acts, ch 1285, §24

509A.8 Rules.

The governing body of public bodies establishing any such plan under this chapter shall administer such plan and formulate and establish rules for the operation thereof, not inconsistent with the provisions of this chapter.

[C50, 54, 58, 62, §365A.8; C66, §509.22; C71, 73, 75, 77, 79, 81, §509A.8]

509A.9 Exemption from debts.

All amounts payable to employees under and pursuant to the plan of group insurance established as herein provided shall be exempt from liability for debts of the person to or on account of whom the same is payable and shall not be subject to seizure upon execution or other process.

[C50, 54, 58, 62, §365A.9; C66, §509.23; C71, 73, 75, 77, 79, 81, §509A.9]

509A.10 Decisions of governing body final.

The decisions of the governing body upon all matters upon which the said governing body is empowered to act, under and pursuant to the provisions hereof, shall be final and conclusive, in the absence of fraud, and no appeal shall be allowed therefrom nor shall such decisions of the governing body, in the absence of fraud, be reviewed, enjoined or set aside by any court.

[C50, 54, 58, 62, §365A.10; C66, §509.24; C71, 73, 75, 77, 79, 81, §509A.10]

509A.11 Definitions.

For purposes of this chapter:

1. *"Governing body"* means the executive council of the state, the school boards of school districts, and the superintendent or other person in charge of an institution supported in whole or in part by public funds.
2. *"Public body"* means the state, a school district or an institution supported in whole or in part by public funds.

[C58, 62, §365A.11; C66, §509.25; C71, 73, 75, 77, 79, 81, S81, §509A.11; 81 Acts, ch 117, §1086]

509A.12 Deferred compensation program for governmental employees.

A governing body, county board of supervisors, or other public entity, to the extent allowed by law, may establish a deferred compensation program under this section. The contributions made on behalf of an employee who chooses to participate in the program shall be invested at the direction of the employee in a life insurance contract, annuity contract, mutual fund, security, or any other deferred payment contract offered as an investment option under the program. The contract acquired for an employee shall be in accordance with the plan document and shall be acquired from a company, or a salesperson for that company, that is authorized to do business in this state. When the state of Iowa acquires an investment product pursuant to the plan document the state does not become a shareholder, stockholder, or owner of a corporation in violation of Article VIII, section 3, of the Constitution of the State of Iowa or any other provision of law.

This section is in addition to any benefit program provided by law for employees of the state or its political subdivisions.

[C73, 75, 77, 79, 81, S81, §509A.12; 81 Acts, ch 117, §1087]
94 Acts, ch 1183, §80; 95 Acts, ch 162, §11; 97 Acts, ch 185, §10
Referred to in §8A.433, 8A.434, 8A.435, 8F.2, 12B.10, 12B.10A, 12B.10B, 12B.10C, 12C.1, 331.324

509A.13 Continuation of group insurance.

If a governing body, a county board of supervisors, or a city council has procured for its employees accident, health, or hospitalization insurance, or a medical service plan, or has contracted with a health maintenance organization authorized to do business in this state, the governing body, county board of supervisors, or city council shall allow its employees who retired before attaining sixty-five years of age to continue participation in the group plan or under the group contract at the employee's own expense until the employee attains sixty-five years of age.

This section applies to employees who retired on or after January 1, 1981.

84 Acts, ch 1285, §25; 86 Acts, ch 1243, §32

509A.13A Continuation of group insurance covering spouses.

1. As used in this section, unless the context otherwise requires:

a. "Eligible retired state employee" means a former employee of the government of the

state of Iowa, including but not limited to any departments, agencies, boards, bureaus, or commissions of the state of Iowa, who is receiving the minimum level of retirement benefits for eligibility under this section and who is participating in a state health or medical group insurance plan which covers the former employee and the former employee's spouse at the time of the death of the former employee.

b. "Minimum level of retirement benefits for eligibility under this section" means any of the following:

(1) The eligible retired state employee has received retirement benefits under the retirement system established in chapter 97A based upon the completion of at least twenty-two years of membership service.

(2) The eligible retired state employee has received retirement benefits under the retirement system established in chapter 97B.

(3) The eligible retired state employee has received retirement benefits under the retirement system established in chapter 602, article 9.

c. "State health or medical group insurance plan" means a health or medical group insurance plan for employees of the state.

2. Notwithstanding any provision of law to the contrary, in the event of the death of an eligible retired state employee, the surviving spouse of the eligible retired state employee whose insurance would otherwise terminate because of the death of the eligible retired state employee may elect to continue to be a member of the state health or medical group insurance plan by requesting continuation in writing to the department of administrative services within thirty-one days after the death of the eligible retired state employee. The surviving spouse shall pay the total premium for the state health or medical group insurance plan and shall have the same rights to change programs or coverage as state employees.

94 Acts, ch 1183, §81; 98 Acts, ch 1183, §71, 79; 99 Acts, ch 200, §21; 2003 Acts, ch 145, §286

509A.13B Coverage of children — continuation or reenrollment.

If a governing body, a county board of supervisors, or a city council has procured accident or health care coverage for its employees under this chapter, such coverage shall permit continuation of existing coverage or reenrollment in previously existing coverage for an individual who meets the requirements of section 513B.2, subsection 14, paragraph *"a"*, *"b"*, *"c"*, *"d"*, or *"e"*, and who is an unmarried child of an insured or enrollee who so elects, at least through the policy anniversary date on or after the date the child marries, ceases to be a resident of this state, or attains the age of twenty-five years old, whichever occurs first, or so long as the unmarried child maintains full-time status as a student in an accredited institution of postsecondary education.

2008 Acts, ch 1188, §39, 43; 2009 Acts, ch 118, §8, 11

509A.13C Health care coverage for surviving spouse and children of fire fighters and peace officers killed in the line of duty.

1. For the purposes of this section, *"eligible peace officer or fire fighter"* means a peace officer as defined in section 801.4, or a fire fighter, to which a line of duty death benefit is payable pursuant to section 97A.6, subsection 16, section 97B.52, subsection 2, or section 411.6, subsection 15.

2. *a.* If a governing body, a county board of supervisors, or a city council has procured accident or health care coverage for its employees under this chapter, such coverage shall permit continuation of existing coverage or reenrollment in previously existing coverage for the surviving spouse and each surviving child of an eligible peace officer or fire fighter.

b. A governing body, a county board of supervisors, or a city council shall also permit continuation of existing coverage for the surviving spouse and each surviving child of a peace officer as defined in section 801.4, or a fire fighter who dies and to which a line of duty death benefit is reasonably expected to be payable pursuant to section 97A.6, subsection 16, section 97B.52, subsection 2, or section 411.6, subsection 15, until such time as the determination of whether to provide a line of duty death benefit is made.

3. A governing body, a county board of supervisors, or a city council providing accident or health care coverage under this section shall not be required to pay for the cost of the

coverage. However, a governing body, a county board of supervisors, or a city council may pay the full cost or a portion of the cost of the coverage. If the full cost of the coverage is not paid, a surviving spouse and each surviving child eligible for coverage under this section may elect to continue accident or health care coverage by paying that portion of the cost of the coverage not paid by the governing body, county board of supervisors, or city council.

4. A governing body, a county board of supervisors, or a city council shall notify the provider of accident or health care coverage for its employees of a surviving spouse and each surviving child to be provided coverage pursuant to the requirements of this section.

5. This section shall not require continuation of coverage if the surviving spouse or surviving child who would otherwise be entitled to continuation of coverage under this section was, through the surviving spouse's or surviving child's actions, a substantial contributing factor to the death of the eligible peace officer or fire fighter.

2018 Acts, ch 1172, §76, 78, 79
Section applies retroactively to a death occurring on or after January 1, 1985; 2018 Acts, ch 1172, §78, 79
NEW section

509A.14 Approval of self-insurance plans.

The commissioner of insurance shall adopt rules for self-insurance plans for life insurance and accident and health insurance for a political subdivision of the state or a school corporation. The rules adopted shall include, but are not limited to, the following:

1. A requirement that the plan shall include all coverages and provisions that are required by law in insurance policies for the type of risk that the self-insurance plan is intended to cover.

2. A requirement that if the resources of the plan are inadequate to fully cover a claim under the plan, then the public body is liable for any portion of the claim that is left unpaid.

85 Acts, ch 251, §2; 92 Acts, ch 1162, §12; 93 Acts, ch 88, §9
Referred to in §296.7, 331.301, 364.4

509A.15 Certification of self-insurance plans — exemption.

1. *a.* Within ninety days following the end of a fiscal year, the governing body of a self-insurance plan of a political subdivision or a school corporation shall file with the commissioner of insurance a certificate of compliance, actuarial opinion, and an annual financial report. The filing shall be accompanied by a fee of one hundred dollars. A penalty of fifteen dollars per day shall be assessed for failure to comply with the ninety-day filing requirement, except that the commissioner may waive the penalty upon a showing that special circumstances exist which justify the waiver. The certificate shall be signed and dated by the appropriate public official representing the governing body, and shall certify the following:

(1) That the plan meets the requirements of this chapter and the applicable provisions of the Iowa administrative code.

(2) That an actuarial opinion has been attached to the certificate which attests to the adequacy of reserves, rates, and financial condition of the plan.

(3) That a written complaint procedure has been implemented. The certificate shall also list the number of complaints filed by participants under the written complaint procedure, and the percentage of participants filing written complaints, in the prior fiscal year.

(4) That the governing body has contracted or otherwise arranged with a third-party administrator who holds a current certificate of registration issued by the commissioner pursuant to section 510.21, or with a person not required to obtain the certificate as a third-party administrator as defined in section 510.11, subsection 2.

b. The actuarial opinion must include but is not limited to a brief commentary about the adequacy of the reserves, rates, and the financial condition of the plan, a test of the prior year claim reserve, a brief description of how the reserves were calculated, and whether or not the plan is able to cover all reasonably anticipated expenses. The actuarial opinion shall be prepared, signed, and dated by a person who is a member of the American academy of actuaries.

c. If necessary, the actuary should assist the public body in preparing the annual financial report. The annual financial report shall be in a format as prescribed by the commissioner.

2. The commissioner shall by rule require the maintenance of confidentiality of information held by the plan administrator.

3. The failure of the governing body to provide the certificate of compliance required by subsection 1, or the failure of the governing body or plan administrator to abide by a requirement of the plan, this chapter, or applicable rule, is grounds for action against the plan, including cause for disapproval or discontinuance of the plan.

4. *a.* One or more political subdivisions of the state or one or more school corporations maintaining self-insured plans with yearly claims that do not exceed two percent of each entity's general fund budget shall be exempt from the requirements of this section where the plan insures employees for all or part of a deductible, coinsurance payments, drug costs, short-term disability benefits, vision benefits, or dental benefits.

b. The yearly claim amount shall be determined annually on the policy renewal date, or an alternative date established by rule, by a plan administrator or political subdivision or school corporation employee to be designated by the plan administrator. The exemption shall not apply for the year following a year in which yearly claims are determined to exceed two percent of the political subdivision's or school corporation's general fund budget.

88 Acts, ch 1112, §104; 92 Acts, ch 1162, §14; 93 Acts, ch 88, §10; 2000 Acts, ch 1200, §1; 2003 Acts, ch 91, §12; 2006 Acts, ch 1117, §34, 35; 2012 Acts, ch 1023, §109

CHAPTER 509B

CONTINUATION OF GROUP HEALTH INSURANCE

Referred to in §87.4, 296.7, 331.301, 364.4, 505.28, 505.29, 669.14, 670.7

509B.1 Definitions.
509B.2 Persons included in this chapter.
509B.3 Continuation of benefits.
509B.4 Conversion of group policies. Repealed by 2006 Acts, ch 1117, §127.
509B.5 Notice of termination of membership or modification of coverage.

509B.1 Definitions.

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

1. *"Accident or health insurance"* means hospital, surgical, or major medical insurance, or a combination of these.

2. *"Commissioner"* means the state commissioner of insurance.

3. *"Group policy"* means a group accident or health insurance policy issued by an insurance company under chapter 509, a group accident or health contract issued by a health service corporation under chapter 514, or a plan for health care services provided by a health maintenance organization under chapter 514B, or issued or provided by any similar corporation or organization.

4. *"Insurance"*, *"insures"*, and *"insured"* refer to coverage under a group policy, individual policy, or converted policy on a premium-paying basis, and do not include coverage provided solely as an accrued liability or by reason of a disability extension.

5. *"Insurer"* means the entity issuing a group policy or an individual or converted policy.

6. *"Medicare"* means Tit. XVIII of the United States Social Security Act.

7. *"Premium"* includes any premium or payment or other consideration payable for coverage under a group or individual policy.

86 Acts, ch 1124, §1; 2006 Acts, ch 1117, §36; 2012 Acts, ch 1023, §78
Referred to in §514C.3

509B.2 Persons included in this chapter.

1. As used in this chapter, *"termination of employment or membership"* includes but is not limited to termination because of permanent or temporary layoff or approved leave of absence. A provision in this chapter which relates to termination of insurance under a group

policy of an employee or member and the employee's or member's covered dependents includes termination of insurance with respect to the surviving or former spouse or children of an employee or member whose insurance would terminate because of dissolution or annulment of the marriage of the employee or member, or would terminate because of death of the employee or member.

2. A provision in this chapter which relates to an employee or member includes the surviving or former spouse or children if termination occurs because of dissolution or annulment of a marriage or death of an employee or member.

86 Acts, ch 1124, §2

509B.3 Continuation of benefits.

A group policy delivered or issued for delivery in this state which insures employees or members for accident or health insurance on an expense-incurred or service basis, other than for specific diseases or for accidental injuries only, shall provide that employees or members whose coverage under the group policy would otherwise terminate because of termination of employment or membership may continue their accident or health insurance under that group policy, for themselves and their eligible dependents, subject to all of the group policy's terms and conditions applicable to those forms of insurance and subject to all of the following conditions:

1. Continuation shall only be available to an employee or member if the employee or member was continuously insured under the group policy, and for similar benefits under any group policy which it replaced, during the entire three months' period immediately preceding the termination.

2. Continuation shall not be available for a person who is or could be covered by Medicare. Continuation shall not be available for a person who is or is eligible to be covered by another group insured or uninsured arrangement which provides accident or health coverage, unless the person was covered by that other group policy immediately prior to the termination.

3. Continuation may exclude dental care, vision care, or prescription drug benefits or other benefits provided under the group policy which benefits are in addition to accident or health benefits.

4. *a.* An employee or member who wishes continuation of coverage must request continuation in writing to the employer or group policyholder within the ten-day period following the later of either of the following:

(1) The date of the termination.

(2) The date the employee is given notice of the right of continuation as provided in section 509B.5 by either the employer or the group policyholder.

b. If proper notice is given, the employee or member is not eligible to elect continuation more than thirty-one days after the date of termination.

5. An employee or member electing continuation shall pay monthly to the employer or group policyholder, in advance, the amount of contribution required by the employer or group policyholder, but not more than the group rate otherwise due for the insurance being continued under the group policy. If proper notice is given, the election of continuation by the employee or member together with the first contribution required to establish contributions on a monthly basis in advance, shall be given to the employer or group policyholder within thirty-one days of the date the group insurance would otherwise terminate.

6. Continuation of insurance under the group policy for any person shall terminate when the person becomes eligible for Medicare or another group insured or uninsured accident or health arrangement, or earlier, when any of the following first occurs:

a. Nine months after the date the employee's or member's insurance under the policy would otherwise have terminated because of termination of employment or membership.

b. At the end of the period for which contributions were made if the employee or member fails to make timely payment of a required contribution and if proper notice is given as provided in section 509B.5, subsection 2.

c. If the person covered is a former spouse, upon the former spouse's remarriage.

d. The date on which the group policy is terminated or, in the case of an employee, the date the employer terminates participation under the group policy. However, if this paragraph

applies and the coverage which would cease because of the employer's termination is replaced by similar coverage under a different group policy, all of the following apply:

(1) The employee, member, spouse, or eligible dependent may become covered under the different group policy, for the balance of the period that the employee or member would have remained covered under the prior group policy had a termination of the group policy as specified in paragraph *"d"* not occurred.

(2) The minimum level of benefits to be provided by the different group policy shall be the applicable level of benefits of the prior group policy, reduced by any benefits payable under the prior group policy.

(3) The prior group policy shall continue to provide benefits to the extent of its accrued liabilities and extensions of benefits as if the prior group policy had not been replaced by the different group policy.

7. A notification of the continuation privilege shall be included with or in each certificate of coverage and as otherwise provided in section 509B.5 and shall contain the time limits for requesting the continued coverage.

8. The spouse of an employee or member, and any covered dependent children of the employee or member, whose coverage under the group policy would otherwise terminate because of dissolution or annulment of marriage or death of the employee or member shall have the same contribution and notice responsibilities and privileges as provided under this chapter to the employee or member upon termination of employment or membership.

86 Acts, ch 1124, §3; 87 Acts, ch 115, §62; 2012 Acts, ch 1023, §157

509B.4 Conversion of group policies. Repealed by 2006 Acts, ch 1117, §127.

509B.5 Notice of termination of membership or modification of coverage.

1. Employers or group policyholders shall notify all employees or members of their continuation rights within ten days of termination of employment or membership. The notice shall be in writing and delivered in person or mailed to the person's last known address. However, continuation rights shall not be denied because of failure to provide proper notice. After receiving proper notice the employee or member may request and shall receive continuation coverage in accordance with this chapter within ten days of the request, notwithstanding any other time limitation provided by this chapter. Notification as provided in this section supersedes section 515.125 as that section relates to accident and health insurance.

2. If an employer or group policyholder terminates or substantially modifies an agreement to provide accident or health insurance for employees or members or if accident or health insurance for employees or members is terminated for failure to pay premiums or for another reason, the employer or group policyholder shall notify the employees or members, including persons being continued under the policy's continuation provisions, of the termination or substantial modification of their coverage. The notice shall be in writing and delivered in person to the entitled persons or mailed to their last known addresses at least ten days prior to the termination or substantial modification of the accident or health insurance coverage. The employer or group policyholder is solely liable for benefits, including extended benefits, other than extended benefits for which the insurer is liable in accordance with the provisions of the group policy, which would have been payable had the accident or health insurance remained in force or not been terminated or substantially modified during the period of time following the termination or substantial modification until the person entitled to notice is given notice by the employer or group policyholder as required by this subsection.

3. The employer or group policyholder is also solely liable for benefits, including extended benefits, which would have been payable had the accident or health insurance been in force and the employees or members been covered during the period of time the employer or group policyholder failed to implement the plan for accident or health insurance which the employer or group policyholder had agreed to provide, until the employer or group policyholder gives notice of its failure or inability to provide the agreed plan. The notice shall be in writing and delivered in person to the employees or members or mailed to their last known addresses.

4. The employer or group policyholder is also solely liable for benefits, including

extended benefits, which would have been payable had the accident or health insurance been in force and the employees or members been covered by the accident or health insurance during a period of time for which the employer or group policyholder has collected contributions through payroll, withholding, or otherwise, but has failed to enroll the employees or members, unless the employer or group policyholder has given actual notice that enrollment in the plan will not become effective until a later date or until the employee's or member's application for enrollment has been approved.

86 Acts, ch 1124, §5; 2006 Acts, ch 1117, §37; 2007 Acts, ch 152, §55
Referred to in §509B.3, 514B.17

CHAPTER 510

MANAGING GENERAL AGENTS AND THIRD-PARTY ADMINISTRATORS

Referred to in §87.4, 296.7, 331.301, 364.4, 505.20, 505.28, 505.29, 508.15A, 510B.2, 510B.3, 515.144, 669.14, 670.7

MANAGING GENERAL AGENTS

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MANAGING GENERAL AGENTS

510.1 Repealed by 91 Acts, ch 26, §61.

510.1A Short title.

This chapter may be cited as the *"Managing General Agents Act."*

91 Acts, ch 26, §1
Referred to in §510.10

510.1B Definitions.

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

1. *"Actuary"* means a person who is a member in good standing of the American academy of actuaries.

2. *"Commissioner"* means the commissioner of insurance.

3. *"Insurer"* means a person duly licensed in this state as an insurance company pursuant to this subtitle.

4. *a. "Managing general agent"* means any person who engages in all of the following:

(1) Negotiates and binds ceding reinsurance contracts on behalf of an insurer or manages all or part of the insurance business of an insurer, including the management of a separate

division, department, or underwriting office, and who acts as an agent for such insurer whether known as a managing general agent, manager, or other similar term or title.

(2) With or without authority and either separately or together with affiliates, directly or indirectly produces, and underwrites, an amount of gross direct written premium equal to or greater than five percent of the policyholder surplus in any one quarter or year as reported in the last annual statement of the insurer.

(3) Engages in either or both of the following:

(a) Adjusts or pays claims in excess of an amount determined by the commissioner.

(b) Negotiates reinsurance on behalf of the insurer.

b. Managing general agent does not include any of the following:

(1) An employee of the insurer.

(2) A manager of a United States branch of an alien insurer who resides in this country.

(3) An underwriting manager who, pursuant to contract, manages all insurance operations of the insurer, who is under common control with the insurer, subject to chapter 521A relating to the regulation of insurance holding company systems, and who is not compensated based upon the volume of premiums written.

(4) An insurance company, in connection with the acceptance or rejection of reinsurance on a block of business.

(5) The attorney-in-fact authorized by or acting for the subscribers of a reciprocal insurer or interinsurance exchange under power of attorney.

5. *"Underwrite"* means the authority to accept or reject risk on behalf of the insurer.

91 Acts, ch 26, §2
Referred to in §510.6, 510.10

510.2 Contracts with managing general agents.

1. A domestic insurer shall not enter into a contract with a managing general agent unless the domestic insurer notifies the commissioner in writing of its intention to enter into the contract at least thirty days prior to entering into the contract or within a shorter time permitted by the commissioner and the commissioner has not disapproved of the contracts within the time period. The commissioner shall not approve the contracts if the commissioner finds any of the following:

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

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

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

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

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

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

89 Acts, ch 227, §2; 2012 Acts, ch 1023, §157
Referred to in §510.10
Contracts; see also §510.5

510.3 Liability of managing general agents.

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

89 Acts, ch 227, §3

Referred to in §510.10

510.4 Licensure required — bond.

1. A person shall not act in the capacity of a managing general agent with respect to risks located in this state for an insurer licensed in this state unless the person is a licensed producer in this state.

2. A person shall not act in the capacity of a managing general agent representing an insurer domiciled in this state with respect to risks located outside this state unless the person is licensed as a resident or nonresident producer in this state pursuant to the provisions of this chapter.

3. The commissioner may require a bond for each company represented by a managing general agent in an amount acceptable to the commissioner for the protection of the insurer.

4. The commissioner may require a managing general agent to maintain an errors and omissions policy.

91 Acts, ch 26, §3

Referred to in §510.10

510.5 Required contract provisions — limitations.

1. A person acting in the capacity of a managing general agent shall not place business with an insurer unless a written contract is in force between the parties which sets forth the responsibilities of each party. If both parties share responsibility for a particular function, the contract must specify the division of such responsibilities, and must contain, at a minimum, all of the following provisions:

a. The insurer may terminate the contract for cause upon written notice to the managing general agent. The insurer may suspend the underwriting authority of a managing general agent during the pendency of any dispute regarding the cause for termination. The insurer shall advise the commissioner of a termination or a suspension pursuant to this paragraph.

b. A managing general agent shall render accounts to the insurer detailing all transactions and remit all funds due under the contract to the insurer on not less than a monthly basis.

c. All funds collected for the account of an insurer shall be held by a managing general agent in a fiduciary capacity in a bank which is a member of the federal reserve system. This account shall be used for all payments on behalf of the insurer. A managing general agent may retain no more than three months' estimated claims payments and allocated loss adjustment expenses.

d. Separate records of business written by a managing general agent shall be maintained. An insurer shall have access and a right to copy all accounts and records related to the insurer's business in a form usable by the insurer and the commissioner shall have access to all books, bank accounts, and records of a managing general agent in a form usable by the commissioner. Such records shall be retained at least until after completion by the insurance division of the next examination of the insurer.

e. Appropriate underwriting guidelines including but not limited to the following:

(1) The maximum annual premium volume.
(2) The basis of the rates to be charged.
(3) The types of risks which may be written.
(4) Maximum limits of liability.
(5) Applicable exclusions.

(6) Territorial limitations.

(7) Policy cancellation provisions.

(8) The maximum length or duration of the policy period.

f. The insurer may cancel or refuse to renew any policy of insurance produced or underwritten by a managing general agent, subject to the applicable laws and rules concerning the cancellation and nonrenewal of insurance policies.

2. Permissible provisions in a contract and their requirements include the following:

a. If the contract permits a managing general agent to settle claims on behalf of the insurer all of the following requirements apply:

(1) All claims reported must be reported by the managing general agent to the insurer in a timely manner.

(2) A copy of the claim file must be sent to the insurer at its request or as soon as the managing general agent knows that the claim meets one or more of the following conditions:

(a) The claim has the potential to exceed an amount determined by the commissioner or exceeds the limit set by the insurer, whichever is less.

(b) The claim involves a coverage dispute.

(c) The claim may exceed the claims settlement authority of the managing general agent.

(d) The claim is open for more than six months.

(e) The claim is closed by payment of an amount set by the commissioner or an amount set by the insurer, whichever is less.

(3) All claim files shall be the joint property of the insurer and the managing general agent. However, upon an order of liquidation of the insurer the files become the sole property of the insurer or its estate. The managing general agent shall have reasonable access to and the right to copy the files on a timely basis.

(4) Any settlement authority granted to the managing general agent may be terminated for cause upon the insurer's written notice to the managing general agent or upon the termination of the contract. The insurer may suspend the settlement authority during the pendency of any dispute regarding the cause for termination.

b. If electronic claims files are in existence, the contract must address the timely transmission or transfer of the data contained in the files.

c. If the contract provides for a sharing of interim profits by the managing general agent, and the managing general agent has the authority to determine the amount of interim profits by establishing loss reserves, by controlling claim payments, or by determining the amount of interim profits in any other manner, interim profits shall not be paid to the managing general agent until one year after they are earned for property insurance business and five years after they are earned for casualty insurance business, and not until the interim profits have been verified pursuant to section 510.6.

3. A managing general agent shall not do any of the following:

a. Bind reinsurance or retrocessions on behalf of the insurer, except that a managing general agent may bind facultative reinsurance contracts pursuant to obligatory facultative agreements if the contract with the insurer contains reinsurance underwriting guidelines including, for both reinsurance assumed and ceded, a list of reinsurers with which such automatic agreements are in effect, the coverages and amounts or percentages that may be reinsured, and commission schedules.

b. Commit the insurer to participate in insurance or reinsurance syndicates.

c. Appoint any producer without assuring that the producer is lawfully licensed to transact the type of insurance for which the producer is appointed.

d. Without prior approval of the insurer, pay or commit the insurer to pay a claim over a specified amount, net of reinsurance, which exceeds one percent of the policyholder's surplus of the insurer as of December 31 of the previous calendar year.

e. Collect any payment from a reinsurer or commit the insurer to any claim settlement with a reinsurer without prior approval of the insurer. If prior approval is given, a report must be promptly forwarded by the managing general agent to the insurer.

f. Permit its subproducer to serve on the insurer's board of directors.

g. Jointly employ an individual who is employed by the insurer.

h. Appoint a submanaging general agent.

91 Acts, ch 26, §4; 2008 Acts, ch 1123, §19; 2013 Acts, ch 30, §124
Referred to in §510.10
Contracts; see also §510.2

510.5A Unfair competition or unfair and deceptive acts or practices prohibited.

A managing general agent is subject to chapter 507B relating to unfair insurance trade practices.

93 Acts, ch 88, §11
Referred to in §510.10

510.6 Duties of insurers.

1. An insurer shall have on file an independent financial examination, in a form acceptable to the commissioner, of each managing general agent with which the insurer does or has done business.

2. If a managing general agent establishes loss reserves, the insurer shall annually obtain the opinion of an actuary attesting to the adequacy of loss reserves established for losses incurred and outstanding on business produced by a managing general agent. This is in addition to any other required loss reserve certification.

3. An insurer shall periodically, but at least semiannually, conduct an on-site review of the underwriting and claims processing operations of each managing general agent with which the insurer is currently doing business.

4. Binding authority for all reinsurance contracts or participation in insurance or reinsurance syndicates shall rest with an officer of the insurer, who is not affiliated with the managing general agent.

5. Within thirty days of entering into or termination of a contract with a managing general agent, the insurer shall provide written notification of the appointment or termination to the commissioner. A notice of appointment of a managing general agent must include a statement of duties which the applicant is expected to perform on behalf of the insurer, the lines of insurance for which the applicant is to be authorized to act, and any other information the commissioner may request.

6. An insurer shall review its books and records each quarter and determine if any insurance producer, as defined by section 510A.2, has become, by operation of section 510.1B, subsection 4, a managing general agent as defined in that section. If the insurer determines that an insurance producer has become a managing general agent by operation of section 510.1B, subsection 4, the insurer shall promptly notify the insurance producer and the commissioner of such determination and the insurer and insurance producer shall fully comply with the provisions of this chapter within thirty days.

7. An insurer shall not appoint to its board of directors an officer, director, employee, insurance producer, or controlling shareholder of a managing general agent of the insurer. This subsection shall not apply to relationships governed by chapter 521A relating to the regulation of insurance company holding systems, or, if applicable, by chapter 510A relating to the regulation of insurance producer controlled property and casualty insurers.

91 Acts, ch 26, §5; 91 Acts, ch 258, §56; 2004 Acts, ch 1101, §71
Referred to in §510.5, 510.10

510.7 Examination authority.

The acts of a managing general agent are considered to be the acts of the insurer on whose behalf a managing general agent is acting. A managing general agent may be examined as if it were the insurer.

91 Acts, ch 26, §6
Referred to in §510.10

510.8 Penalties and liabilities.

1. If the commissioner finds, after a hearing conducted in accordance with chapter 17A, that any person has violated one or more provisions of this chapter, the commissioner may do one or more of the following:

a. For each separate violation, order the imposition of an administrative penalty of not more than ten thousand dollars.

b. Order the revocation or suspension of the producer's license.

c. Bring a civil suit seeking reimbursement by the managing general agent of the insurer, the rehabilitator, or the liquidator of the insurer for any losses incurred by the insurer caused by a violation of this chapter committed by the managing general agent.

2. The decision, determination, or order of the commissioner pursuant to subsection 1 is subject to judicial review pursuant to chapter 17A.

3. This section does not affect the right of the commissioner to impose any other penalties provided for under this subtitle.

4. This chapter is not intended to and shall not in any manner limit or restrict the rights of policyholders, claimants, and auditors.

91 Acts, ch 26, §7; 91 Acts, ch 213, §8
Referred to in §510.10

510.9 Rules.

The commissioner may adopt rules, pursuant to chapter 17A, as necessary or convenient for the implementation and administration of this chapter.

91 Acts, ch 26, §8
Referred to in §510.10

510.10 Exemption.

A managing general agent who complies with sections 510.1A through 510.9 for a block of business, shall not also be required to comply with sections 510.20 and 510.21 with regard to the same block of business.

91 Acts, ch 26, §9; 91 Acts, ch 258, §57

THIRD-PARTY ADMINISTRATORS

510.11 Definitions.

1. *"Life or health insurance"* includes but is not limited to the following:

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

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

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

d. An individual or group Medicare supplemental policy.

e. A long-term care policy.

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

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

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

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

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

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

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

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

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

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

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

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

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

89 Acts, ch 227, §4; 2006 Acts, ch 1117, §38
Referred to in §509A.15, 510.12, 729.6

510.12 Written agreement necessary.

A person shall not act as a third-party administrator without a written agreement between the third-party administrator and the insurer, and the written agreement shall be retained as part of the official records of both the insurer and the third-party administrator for the duration of the agreement plus five years. The written agreement shall contain provisions which include the requirements of sections 510.11 through 510.16, except insofar as those requirements do not apply to the functions performed by the third-party administrator.

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

89 Acts, ch 227, §5; 2006 Acts, ch 1117, §39
Referred to in §510.13, 510.14, 510.21

510.13 Payment to third-party administrator.

If an insurer uses the services of a third-party administrator under the terms of a written contract as required in section 510.12, payment to the third-party administrator of any premiums or charges for insurance by or on behalf of the insured shall be deemed to have been received by the insurer, and the payment of return premiums or claims by the insurer to the third-party administrator shall not be deemed payment to the insured or claimant until the payments are received by the insured or claimant. This section does not limit any right of the insurer against the third-party administrator resulting from the third-party administrator's failure to make payments to the insurer, insureds, or claimants.

89 Acts, ch 227, §6; 2006 Acts, ch 1117, §40
Referred to in §510.12, 510.21

510.14 Maintenance of information.

A third-party administrator shall maintain at its principal administrative office for the duration of the written agreement referred to in section 510.12 plus five years, adequate books and records of all transactions between it, insurers, and insured persons. The third-party administrator's books and records shall be maintained in accordance with prudent standards of insurance recordkeeping. The commissioner shall have access to such books and records for the purpose of examination, audit, and inspection. Trade secrets contained in a third-party administrator's books and records, including but not limited to the identity and addresses of policyholders and certificate holders, shall be confidential, except the commissioner may use trade secret information in any proceeding instituted against the third-party administrator. The insurer retains the right to continuing access to the third-party administrator's books and records sufficient to permit the insurer to fulfill all of its contractual obligations to insured persons, subject to any restrictions in the written

agreement between the insurer and third-party administrator on the proprietary rights of the parties in the third-party administrator's books and records.

89 Acts, ch 227, §7; 2006 Acts, ch 1117, §41
Referred to in §510.12, 510.21

510.15 Approval of advertising.

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

89 Acts, ch 227, §8; 2006 Acts, ch 1117, §42
Referred to in §510.12, 510.21

510.16 Underwriting provision.

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

89 Acts, ch 227, §9
Referred to in §510.12, 510.21

510.17 Premium collection.

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

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

a. Remittance to an insurer entitled thereto.

b. Deposit in an account maintained in the name of the insurer.

c. Transfer to and deposit in a claims-paying account, with claims to be paid as provided in section 510.18.

d. Payment to a group policyholder for remittance to the insurer entitled thereto.

e. Payment to the third-party administrator of its commission, fees, or charges.

f. Remittance of return premiums to the persons entitled thereto.

89 Acts, ch 227, §10; 2006 Acts, ch 1117, §43
Referred to in §510.21

510.18 Payment of claims.

A claim paid by the third-party administrator from funds collected on behalf of the insurer shall be paid only on a draft, check, or by electronic funds transfer as authorized by the insurer.

89 Acts, ch 227, §11; 96 Acts, ch 1122, §1; 2006 Acts, ch 1117, §44
Referred to in §510.17, 510.21

510.19 Claim adjustment and settlement.

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

89 Acts, ch 227, §12; 2006 Acts, ch 1117, §45
Referred to in §510.21

510.20 Notification required.

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

89 Acts, ch 227, §13; 2006 Acts, ch 1117, §46

Referred to in §510.10, 510.21

510.21 Certificate of registration required.

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

An application for registration shall be accompanied by a filing fee of one hundred dollars. After notice and hearing, the commissioner may impose any or all of the sanctions set out in section 507B.7, upon finding that either the third-party administrator violated any of the requirements of sections 510.12 through 510.20 and this section, or the third-party administrator is not competent, trustworthy, financially responsible, or of good personal and business reputation.

89 Acts, ch 227, §14; 2006 Acts, ch 1117, §47; 2007 Acts, ch 152, §56; 2008 Acts, ch 1074, §2

Referred to in §509A.15, 510.10, 510.22

510.22 Waiving of requirements.

The commissioner may waive the requirements of section 510.21 for any person or class of persons. The factors taken into account in granting a waiver shall include, but are not limited to whether:

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

89 Acts, ch 227, §15; 2006 Acts, ch 1117, §48

510.23 Unfair competition or unfair and deceptive acts or practices prohibited.

A third-party administrator is subject to chapter 507B relating to unfair insurance trade practices.

93 Acts, ch 88, §12; 2006 Acts, ch 1117, §49

CHAPTER 510A

BUSINESS PRODUCER CONTROLLED PROPERTY AND CASUALTY INSURERS

Referred to in §87.4, 296.7, 331.301, 364.4, 505.28, 505.29, 510.6, 521C.9, 669.14, 670.7

510A.1 Short title.
510A.2 Definitions.
510A.3 Applicability.
510A.4 Minimum standards.
510A.5 Disclosure.
510A.6 Penalties.

510A.1 Short title.

This chapter shall be known and may be cited as the *"Business Producer Controlled Property and Casualty Insurer Act."*

91 Acts, ch 26, §10; 92 Acts, ch 1117, §35

510A.2 Definitions.

As used in this chapter unless the context otherwise requires:

1. *"Accredited state"* means a state in which the insurance department or regulatory agency has qualified as meeting the minimum financial regulatory standards promulgated and established by the national association of insurance commissioners.
2. *"Control"* or *"controlled"* has the meaning ascribed in section 521A.1, subsection 3.
3. *"Controlled insurer"* means a licensed insurer that is controlled, directly or indirectly, by an insurance producer.
4. *"Controlling producer"* means an insurance producer who, directly or indirectly, controls an insurer.
5. *"Independent casualty actuary"* means a casualty actuary who is a member of the American academy of actuaries and who is not an employee, principal, the direct or indirect owner of, affiliated with, or in any way controlled by the insurer or insurance producer.
6. *"Insurance producer"* means a person required to be licensed under the laws of this state to sell, solicit, or negotiate insurance.
7. *"Licensed insurer"* or *"insurer"* means any person duly licensed to transact a property and casualty insurance business in this state. The following are not licensed property and casualty insurers for the purposes of this chapter:

a. All risk retention groups as defined in the Superfund Amendments Reauthorization Act of 1986, Pub. L. No. 99-499, 100 Stat. 1613 (1986) and the Risk Retention Act, 15 U.S.C. §3901 et seq. (1982 & Supp. 1986), or chapter 515E.

b. All residual market pools and joint underwriting authorities or associations.

c. All captive insurers. For the purposes of this chapter, captive insurers are insurance companies owned by another organization whose exclusive purpose is to insure risks of the parent organization and affiliated companies or, in the case of groups and associations, insurance organizations owned by the insureds whose exclusive purpose is to insure risks of any group and association members and any affiliates.

91 Acts, ch 26, §11; 92 Acts, ch 1117, §36; 2003 Acts, ch 91, §13 – 15
Referred to in §510.6, 510A.3

510A.3 Applicability.

This chapter applies to licensed insurers as defined in section 510A.2, either domiciled in this state or domiciled in a state that is not an accredited state and having a substantially similar law. All provisions of the insurance holding company Act, to the extent those provisions are not superseded by this chapter, continue to apply to all persons associated with holding companies subject to this chapter.

91 Acts, ch 26, §12; 92 Acts, ch 1117, §37

510A.4 Minimum standards.

1. *Applicability of section.*

a. This section applies if, in any calendar year, the aggregate amount of gross written premium on business placed with a controlled insurer by a controlling producer is equal to

or greater than five percent of the admitted assets of the controlled insurer, as reported in the controlled insurer's quarterly statement filed as of September 30 of the preceding year.

b. Notwithstanding paragraph *"a"*, this section does not apply if both of the following apply:

(1) The controlling producer does all of the following:

(a) Places insurance only with the controlled insurer, or only with the controlled insurer and members of the controlled insurer's holding company system, or the controlled insurer's parent, affiliate, or subsidiary, and receives no compensation based upon the amount of premiums written in connection with such insurance.

(b) Accepts insurance placements only from nonaffiliated subproducers and not directly from insureds.

(2) The controlled insurer, except for insurance business written through a residual market facility, accepts insurance business only from the controlling producer, an insurance producer controlled by the controlled insurer, or an insurance producer that is a subsidiary of the controlled insurer.

2. *Required contract provisions.* A controlled insurer shall not accept business from a controlling producer and a controlling producer shall not place business with a controlled insurer unless there is a written contract between the controlling producer and the controlled insurer specifying the responsibilities of each party which has been approved by the board of directors of the controlled insurer and filed with the commissioner. The contract must contain, at a minimum, the following provisions:

a. The controlled insurer may terminate the contract for cause, upon written notice to the controlling producer. The controlled insurer shall suspend the authority of the controlling producer to write business during the pendency of any dispute regarding the cause for the termination.

b. The controlling producer shall render accounts to the controlled insurer detailing all material transactions, including information necessary to support all commissions, charges, and other fees received by, or owing to, the controlling producer.

c. The controlling producer shall remit all funds due under the terms of the contract to the controlled insurer on at least a monthly basis. The due date shall be fixed so that premiums or installments of premiums collected shall be remitted no later than ninety days after the effective date of any policy placed with the controlled insurer under this contract.

d. All funds collected for the controlled insurer's account shall be held by the controlling producer in a fiduciary capacity, in one or more appropriately identified bank accounts in banks that are members of the federal reserve system, in accordance with the provisions of the insurance law as applicable. However, funds of a controlling producer not required to be licensed in this state shall be maintained in compliance with the requirements of the controlling producer's domiciliary jurisdiction.

e. The controlling producer shall maintain separately identifiable records of business written for the controlled insurer.

f. The contract shall not be assigned in whole or in part by the controlling producer.

g. The controlled insurer shall provide the controlling producer with its underwriting standards, rules, and procedures manuals setting forth the rates to be charged, and the conditions for the acceptance or rejection of risks. The controlling producer shall adhere to the standards, rules, procedures, rates, and conditions. The standards, rules, procedures, rates, and conditions shall be the same as those applicable to comparable business placed with the controlled insurer by an insurance producer other than the controlling producer.

h. The rates and terms of the controlling producer's commissions, charges, or other fees and the purposes for those charges or fees. The rates of the commissions, charges, and other fees shall be no greater than those applicable to comparable business placed with the controlled insurer by producers other than controlling producers. For purposes of this paragraph and paragraph *"g"* of this subsection, *"comparable business"* includes the same lines of insurance, same kinds of insurance, same kinds of risks, similar policy limits, and similar quality of business.

i. If the contract provides that the controlling producer, on insurance business placed with the controlled insurer, is to be compensated contingent upon the insurer's profits on that

business, then such compensation shall not be determined and paid until at least five years after the premiums on liability insurance are earned and at least one year after the premiums are earned on any other insurance. In no event shall the commissions be paid until the adequacy of the controlled insurer's reserves on remaining claims has been independently verified pursuant to subsection 4, paragraph *"a"*.

j. A limit on the controlling producer's writings in relation to the controlled insurer's surplus and total writings. The insurer may establish a different limit for each line or subline of business. The controlled insurer shall notify the controlling producer when the applicable limit is approached and shall not accept business from the controlling producer which would exceed the limit. The controlling producer shall not place business with the controlled insurer if it has been notified by the controlled insurer that the limit has been reached.

k. The controlling producer may negotiate but shall not bind reinsurance on behalf of the controlled insurer on business the controlling producer places with the controlled insurer, except that the controlling producer may bind facultative reinsurance contracts pursuant to obligatory facultative agreements if the contract with the controlled insurer contains underwriting guidelines including, for both reinsurance assumed and ceded, a list of reinsurers with which such automatic agreements are in effect, the coverages and amounts or percentages that may be reinsured, and commission schedules.

3. *Audit committee.* A controlled insurer must establish an audit committee of the board of directors composed of independent directors. Prior to approval of the annual financial statement, the audit committee shall meet with management, the insurer's independent certified public accountants, and an independent casualty actuary or other independent loss reserve specialist acceptable to the commissioner, to review the adequacy of the insurer's loss reserves.

4. *Reporting requirements.*

a. In addition to any other required loss reserve certification, the controlled insurer shall annually, on April 1 of each year, file with the commissioner an opinion of an independent casualty actuary, or another independent loss reserve specialist acceptable to the commissioner, reporting loss ratios for each line of business written and attesting to the adequacy of loss reserves established for losses incurred and outstanding as of year-end on business placed by the insurance producer, including incurred but not reported losses.

b. The controlled insurer shall annually report to the commissioner the amount of commissions paid to the insurance producer, the percentage such amount represents of the net premiums written, and comparable amounts and percentage paid to noncontrolling producers for placements of the same kinds of insurance.

91 Acts, ch 26, §13; 91 Acts, ch 213, §9; 92 Acts, ch 1117, §38; 2003 Acts, ch 91, §16 – 18; 2004 Acts, ch 1101, §72

510A.5 Disclosure.

The insurance producer, prior to the effective date of the policy, shall deliver written notice to the prospective insured disclosing the relationship between the insurance producer and the controlled insurer; except that, if the business is placed through a subproducer who is not a controlling producer, the controlling producer shall retain in the producer's records a signed commitment from the subproducer that the subproducer is aware of the relationship between the insurer and the insurance producer and that the subproducer has notified or will notify the insured.

92 Acts, ch 1117, §39; 2003 Acts, ch 91, §19

510A.6 Penalties.

1. If the commissioner believes that a controlling producer or any other person subject to this chapter has not materially complied with this chapter, or any rule adopted or order issued pursuant to this chapter, after notice and opportunity to be heard, the commissioner may order the controlling producer to cease placing business with the controlled insurer. Additionally, if the commissioner finds that because of such noncompliance the controlled insurer or any policyholder of the controlled insurer has suffered any loss or damage, the commissioner may maintain a civil action or intervene in an action brought by or on behalf

of the insurer or policyholder for recovery of compensatory damages for the benefit of the insurer or policyholder, or for other appropriate relief.

2. If an order for liquidation or rehabilitation of the controlled insurer has been entered pursuant to chapter 507C, and the receiver appointed under that order believes that the controlling producer or any other person has not materially complied with this chapter, or any rule adopted or order issued pursuant to this chapter, and that the insurer suffered any loss or damage as a result of the noncompliance, the receiver may maintain a civil action for recovery of damages or other appropriate sanctions for the benefit of the insurer.

3. This section shall not be construed to affect or limit the right of the commissioner to impose any other penalties, as appropriate, which the commissioner is authorized to impose.

4. This section shall not be construed to affect or limit the rights of policyholders, claimants, creditors, or other third parties.

93 Acts, ch 88, §13

CHAPTER 510B

REGULATION OF PHARMACY BENEFITS MANAGERS

Referred to in §87.4, 296.7, 331.301, 364.4, 505.28, 505.29, 669.14, 670.7

510B.1 Definitions.
510B.2 Certification as a third-party administrator required.
510B.3 Enforcement — rules.
510B.4 Performance of duties — good faith — conflict of interest.
510B.5 Contacting covered individual — requirements.
510B.6 Dispensing of substitute prescription drug for prescribed drug.
510B.7 Duties to pharmacy network providers.
510B.8 Pricing methodology for maximum reimbursement amount.
510B.9 Submission, approval, and use of prior authorization form.
510B.10 Rights related to covered individuals.

510B.1 Definitions.

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

1. *"Commissioner"* means the commissioner of insurance.

2. *"Covered entity"* means a nonprofit hospital or medical services corporation, health insurer, health benefit plan, or health maintenance organization; a health program administered by a department or the state in the capacity of provider of health coverage; or an employer, labor union, or other group of persons organized in the state that provides health coverage. *"Covered entity"* does not include a self-funded health coverage plan that is exempt from state regulation pursuant to the federal Employee Retirement Income Security Act of 1974 (ERISA), as codified at 29 U.S.C. §1001 et seq.; a plan issued for health coverage for federal employees; or a health plan that provides coverage only for accidental injury, specified disease, hospital indemnity, Medicare supplemental, disability income, or long-term care, or other limited benefit health insurance policy or contract.

3. *"Covered individual"* means a member, participant, enrollee, contract holder, policyholder, or beneficiary of a covered entity who is provided health coverage by the covered entity, and includes a dependent or other person provided health coverage through a policy, contract, or plan for a covered individual.

4. *"Generic drug"* means a chemically equivalent copy of a brand-name drug with an expired patent.

5. *"Labeler"* means a person that receives prescription drugs from a manufacturer or wholesaler and repackages those drugs for later retail sale and that has a labeler code from the federal food and drug administration pursuant to 21 C.F.R. §207.20.

6. *"Maximum reimbursement amount"* means the maximum reimbursement amount for a therapeutically and pharmaceutically equivalent multiple-source prescription drug that

is listed in the most recent edition of the publication entitled "Approved Drug Products with Therapeutic Equivalence Evaluations", published by the United States food and drug administration, otherwise known as the orange book.

7. *"Pharmacy"* means pharmacy as defined in section 155A.3.

8. *"Pharmacy benefits management"* means the administration or management of prescription drug benefits provided by a covered entity under the terms and conditions of the contract between the pharmacy benefits manager and the covered entity.

9. *"Pharmacy benefits manager"* means a person who performs pharmacy benefits management services. *"Pharmacy benefits manager"* includes a person acting on behalf of a pharmacy benefits manager in a contractual or employment relationship in the performance of pharmacy benefits management services for a covered entity. *"Pharmacy benefits manager"* does not include a health insurer licensed in the state if the health insurer or its subsidiary is providing pharmacy benefits management services exclusively to its own insureds, or a public self-funded pool or a private single employer self-funded plan that provides such benefits or services directly to its beneficiaries.

10. *"Prescription drug"* means prescription drug as defined in section 155A.3.

11. *"Prescription drug order"* means prescription drug order as defined in section 155A.3.

2007 Acts, ch 193, §1, 9; 2014 Acts, ch 1016, §1
Referred to in §505.26

510B.2 Certification as a third-party administrator required.

A pharmacy benefits manager doing business in this state shall obtain a certificate as a third-party administrator under chapter 510, and the provisions relating to a third-party administrator pursuant to chapter 510 shall apply to a pharmacy benefits manager.

2007 Acts, ch 193, §2, 9

510B.3 Enforcement — rules.

1. The commissioner shall enforce the provisions of this chapter. After notice and hearing, the commissioner may impose any or all of the sanctions set out in section 507B.7 and may suspend or revoke a pharmacy benefits manager's certificate of registration as a third-party administrator pursuant to chapter 510, upon finding that the pharmacy benefits manager violated any of the requirements of this chapter or of chapter 510 pertaining to third-party administrators.

2. A pharmacy benefits manager, as an agent or vendor of an insurance company, is subject to the commissioner's authority to conduct an examination pursuant to chapter 507. The procedures set forth in chapter 507 regarding examination reports shall apply to an examination of a pharmacy benefits manager under this chapter.

3. A pharmacy benefits manager is subject to the commissioner's authority to conduct an investigation pursuant to chapter 507B. The procedures set forth in chapter 507B regarding investigations shall apply to an investigation of a pharmacy benefits manager under this chapter.

4. A pharmacy benefits manager is subject to the commissioner's authority to conduct an examination, audit, or inspection pursuant to chapter 510 for third-party administrators. The procedures set forth in chapter 510 for third-party administrators shall apply to an examination, audit, or inspection of a pharmacy benefits manager under this chapter.

5. When the commissioner conducts an examination of a pharmacy benefits manager under chapter 507; an investigation under chapter 507B; or an examination, audit, or inspection under chapter 510, all information received from the pharmacy benefits manager, and all notes, work papers, or other documents related to the examination, investigation, audit, or inspection of the pharmacy benefits manager are confidential records under chapter 22 and shall be accorded the same confidentiality as notes, work papers, investigatory materials, or other documents related to the examination of an insurer as provided in chapter 507.

6. The commissioner shall adopt rules pursuant to chapter 17A to administer this chapter including rules relating to all of the following:

a. Timely payment of pharmacy claims.

b. A process for adjudication of complaints and settlement of disputes between a pharmacy benefits manager and a licensed pharmacy related to pharmacy auditing practices, termination of pharmacy agreements, and timely payment of pharmacy claims.

c. A process for the submission of forms.

2007 Acts, ch 193, §3, 9; 2014 Acts, ch 1140, §99, 101; 2015 Acts, ch 24, §1 – 3

510B.4 Performance of duties — good faith — conflict of interest.

1. A pharmacy benefits manager shall perform the pharmacy benefits manager's duties exercising good faith and fair dealing in the performance of its contractual obligations toward the covered entity.

2. A pharmacy benefits manager shall notify the covered entity in writing of any activity, policy, practice ownership interest, or affiliation of the pharmacy benefits manager that presents any conflict of interest.

2007 Acts, ch 193, §4, 9

510B.5 Contacting covered individual — requirements.

A pharmacy benefits manager, unless authorized pursuant to the terms of its contract with a covered entity, shall not contact any covered individual without the express written permission of the covered entity.

2007 Acts, ch 193, §5, 9

510B.6 Dispensing of substitute prescription drug for prescribed drug.

1. The following provisions shall apply when a pharmacy benefits manager requests the dispensing of a substitute prescription drug for a prescribed drug to a covered individual:

a. The pharmacy benefits manager may request the substitution of a lower priced generic and therapeutically equivalent drug for a higher priced prescribed drug.

b. If the substitute drug's net cost to the covered individual or covered entity exceeds the cost of the prescribed drug, the substitution shall be made only for medical reasons that benefit the covered individual.

2. A pharmacy benefits manager shall obtain the approval of the prescribing practitioner prior to requesting any substitution under this section.

3. A pharmacy benefits manager shall not substitute an equivalent prescription drug contrary to a prescription drug order that prohibits a substitution.

2007 Acts, ch 193, §6, 9

510B.7 Duties to pharmacy network providers.

1. A pharmacy benefits manager shall not mandate basic recordkeeping that is more stringent than that required by state or federal law or regulation.

2. If a pharmacy benefits manager receives notice from a covered entity of termination of the covered entity's contract, the pharmacy benefits manager shall notify, within ten working days of the notice, all pharmacy network providers of the effective date of the termination.

3. Within three business days of a price increase notification by a manufacturer or supplier, a pharmacy benefits manager shall adjust its payment to the pharmacy network provider consistent with the price increase.

2007 Acts, ch 193, §7, 9

510B.8 Pricing methodology for maximum reimbursement amount.

1. The commissioner may require a pharmacy benefits manager to submit information to the commissioner related to the pharmacy benefits manager's pricing methodology for maximum reimbursement amount.

2. For purposes of the disclosure of pricing methodology, maximum reimbursement amounts shall be implemented as follows:

a. Established for multiple-source prescription drugs prescribed after the expiration of any generic exclusivity period.

b. Established for any prescription drug with at least two or more A-rated therapeutically equivalent, multiple-source prescription drugs with a significant cost difference.

c. Determined using comparable prescription drug prices obtained from multiple nationally recognized comprehensive data sources including wholesalers, prescription drug file vendors, and pharmaceutical manufacturers for prescription drugs that are nationally available and available for purchase locally by multiple pharmacies in the state.

3. For those prescription drugs to which maximum reimbursement amount pricing applies, a pharmacy benefits manager shall include in a contract with a pharmacy information regarding which of the national compendia is used to obtain pricing data used in the calculation of the maximum reimbursement amount pricing and shall provide a process to allow a pharmacy to comment on, contest, or appeal the maximum reimbursement amount rates or maximum reimbursement amount list. The right to comment on, contest, or appeal the maximum reimbursement amount rates or maximum reimbursement amount list shall be limited in duration and allow for retroactive payment in the event that it is determined that maximum reimbursement amount pricing has been applied incorrectly.

2014 Acts, ch 1016, §2

510B.9 Submission, approval, and use of prior authorization form.

A pharmacy benefits manager shall file with and have approved by the commissioner a single prior authorization form as provided in section 505.26. A pharmacy benefits manager shall use the single prior authorization form as provided in section 505.26.

2014 Acts, ch 1140, §100, 101

510B.10 Rights related to covered individuals.

1. A pharmacy or pharmacist, as defined in section 155A.3, has the right to provide a covered individual information regarding the amount of the covered individual's cost share for a prescription drug. A pharmacy benefits manager shall not prohibit a pharmacy or pharmacist from discussing any such information or from selling a more affordable alternative to the covered individual, if one is available.

2. A health benefit plan, as defined in section 514J.102, issued or renewed on or after July 1, 2018, that provides coverage for pharmacy benefits shall not require a covered individual to pay a copayment for pharmacy benefits that exceeds the pharmacy's or pharmacist's submitted charges.

3. Any amount paid by a covered individual for a covered prescription drug pursuant to this section shall be applied toward any deductible imposed by the covered individual's health benefit plan in accordance with the covered individual's health benefit plan coverage documents.

4. To the extent that any provision of this section is inconsistent or conflicts with applicable federal law, rule, or regulation, such federal law, rule, or regulation shall prevail to the extent necessary to eliminate the inconsistency or conflict.

2018 Acts, ch 1165, §140
NEW section

CHAPTER 511

PROVISIONS APPLICABLE TO LIFE INSURANCE COMPANIES AND ASSOCIATIONS

Referred to in §87.4, 296.7, 331.301, 364.4, 505.28, 505.29, 507.1, 508A.5, 521A.2, 669.14, 670.7

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511.1 Annual statement of foreign companies.

Every company or association organized under the laws of any other state or country and doing business in this state shall annually, by the first day of March, file with the commissioner of insurance a statement of its affairs for the year terminating on the thirty-first day of December preceding, in the same manner and form provided for similar companies or associations organized in this state.

[C73, §1166; C97, §1799; C24, 27, 31, 35, 39, §**8728;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §511.1]

511.2 Amended forms of statement.

The commissioner may amend the form of the annual statement required to be made by companies or associations doing business in this state, and propose and require such additional matter to be covered therein as the commissioner may think necessary to elicit a full exhibit of the standing of any such company or association.

[C73, §1168; C97, §1799; C24, 27, 31, 35, 39, §**8729;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §511.2]

511.3 Reserved.

511.4 Advertisements — who deemed agent.

The provisions of section 515.105 shall apply to life insurance companies and associations.

[C97, §1815; C24, 27, 31, 35, 39, §**8731;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §511.4]

2001 Acts, ch 16, §8, 37; 2001 Acts, ch 69, §12; 2007 Acts, ch 152, §57

511.5 and 511.6 Reserved.

511.7 Recovery of penalties.

Actions brought to recover any of the penalties provided for in this chapter shall be instituted in the name of the state by the county attorney of the county, under the direction and authority of the commissioner of insurance, and may be brought in the district court of any county in which the company or association proceeded against is engaged in the transaction of business, or in which the offending person resides, if it is against the person. The penalties, when recovered, shall be paid to the treasurer of state for deposit in the general fund of the state.

[C73, §1178; C97, §1802; C24, 27, 31, 35, 39, §**8734;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §511.7]

83 Acts, ch 185, §49, 62; 83 Acts, ch 186, §10106, 10201, 10204

Referred to in §331.756(70)

511.8 Investment of funds.

A company organized under chapter 508 shall, at all times, have invested in the securities provided in this section, funds equivalent to its legal reserve. Legal reserve is the net present value of all outstanding policies and contracts involving life contingencies. This section does not prohibit a company or association from holding a portion of its legal reserve in cash. The investment programs developed by companies shall take into account the safety of the company's principal, investment yield and return, stability in the value of the investment, and liquidity necessary to meet the company's expected business needs and investment diversification.

1. *United States government obligations.*

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

b. Bonds or other evidences of indebtedness issued, assumed, or guaranteed by the United States of America, or by any agency or instrumentality of the United States of America include investments in an open-end management investment company registered with the federal securities and exchange commission under the federal Investment Company Act of 1940, 15 U.S.C. §80a-1 et seq., and operated in accordance with 17 C.F.R. §270.2a-7, the portfolio of which is limited to the United States government obligations described in paragraph "*a*", and which are included in the national association of insurance commissioners' securities valuation office's United States direct obligations – full faith and credit exempt list.

2. *State, District of Columbia, territorial and municipal obligations.* Bonds or other evidences of indebtedness issued, assumed, or guaranteed by the District of Columbia, or by any state, insular or territorial possession of the United States of America, or by any county, city, town, school, road, drainage, or other district located within any state, or insular or territorial possession of the United States of America, or by any civil subdivision or governmental authority of any such state, or insular or territorial possession, or by any instrumentality of any such state, or insular or territorial possession, civil subdivision, or governmental authority; provided that the obligations are valid, legally authorized and issued.

3. *Canadian government, provincial and municipal obligations.* Bonds or other evidences of indebtedness issued, assumed, or guaranteed by the Dominion of Canada, or by any province thereof, or by any municipality or district therein, provided that the obligations are valid, legally authorized and issued.

4. *International Bank bonds.* Bonds or other evidence of indebtedness issued, assumed or guaranteed by the International Bank for reconstruction and development, in an amount not to exceed two percent of its total assets as shown by the last annual report, or by the Inter-American Development Bank in an amount not to exceed two percent of its total assets as shown by the last annual report, by the Asian Development Bank in an amount not to exceed two percent of its total assets as shown by the last annual report or by the African Development Bank in an amount not to exceed two percent of its total assets as shown by the last annual report. However, the combined investment in bonds or evidences of indebtedness permitted by this subsection shall not exceed four percent of its total assets as shown by the last annual report.

5. *Corporate obligations.* Subject to the restrictions contained in subsection 8, bonds or other evidences of indebtedness issued, assumed, or guaranteed by a corporation incorporated under the laws of the United States of America, or of any state, district, or insular or territorial possession thereof; or of the Dominion of Canada, or any province thereof; and which meet the following qualifications:

a. (1) If fixed interest-bearing obligations, the net earnings of the issuing, assuming, or guaranteeing corporation available for its fixed charges for a period of five fiscal years next preceding the date of acquisition of the obligations by such insurance company shall have averaged per year not less than one and one-half times such average annual fixed charges of the issuing, assuming, or guaranteeing corporation applicable to such period, and, during at least one of the last two years of such period, its net earnings shall have been not less than one and one-half times its fixed charges for such year; or if, at the date of acquisition, the obligations are investment grade as defined by the commissioner by rule.

(2) However, with respect to fixed interest-bearing obligations which are issued, assumed, or guaranteed by a financial company, the net earnings by the financial company available for its fixed charges for the period of five fiscal years preceding the date of acquisition of the obligations by the insurance company shall have averaged per year not less than one and one-fourth times such average annual fixed charges of the issuing, assuming, or guaranteeing financial company applicable to such period, and, during at least one of the last two years of the period, its net earnings shall have been not less than one and one-fourth times its fixed charges for such year; or if, at the date of acquisition, the obligations are investment grade as defined by the commissioner by rule. As used in this subparagraph (2), "*financial company*" means a corporation which on the average over its last five fiscal years preceding the date of acquisition of its obligations by the insurer, has had at least fifty percent of its net income, including income derived from subsidiaries, derived from the business of wholesale, retail, installment, mortgage, commercial, industrial or consumer financing, or from banking or factoring, or from similar or related lines of business.

b. If adjustment, income, or other contingent interest obligations, the net earnings of the issuing, assuming, or guaranteeing corporation available for its fixed charges for a period of five fiscal years next preceding the date of acquisition of the obligations by such insurance company shall have averaged per year not less than one and one-half times such average annual fixed charges of the issuing, assuming, or guaranteeing corporation and its average annual maximum contingent interest applicable to such period and, during at least one of the last two years of such period, its net earnings shall have been not less than one and one-half times the sum of its fixed charges and maximum contingent interest for such year, or if, at the date of acquisition, the obligations are investment grade as defined by the commissioner by rule.

c. Are securities that at the date of acquisition are rated three by the securities valuation office of the national association of insurance commissioners or have the equivalent rating by a rating organization that is approved by the national association of insurance commissioners as an acceptable rating organization and are listed or admitted to trading on a securities exchange in the United States or are publicly held and actively traded in the over-the-counter market and market quotations are readily available. If a security acquired under this paragraph is subsequently downgraded from a three rating by the securities valuation office of the national association of insurance commissioners or from the equivalent rating by a national association of insurance commissioners' acceptable rating organization, the security no longer qualifies as a legal reserve investment.

d. The term "*net earnings available for fixed charges*" as used in this section means the net income after deducting all operating and maintenance expenses, taxes other than any income taxes, depreciation, and depletion, but nonrecurring items of income or expense may be excluded.

e. The term "*fixed charges*" as used in this section includes interest on unfunded debt and funded debt on a parity with or having a priority to the obligation under consideration.

f. The term "*corporation*" as used in this chapter includes a joint stock association, a limited liability company, a partnership, or a trust.

g. The securities, real estate, and mortgages described in this section include participations, which means instruments evidencing partial or undivided collective interests in such securities, real estate, and mortgages.

6. *Preferred and guaranteed stocks.*

a. Subject to the restrictions contained in subsection 8 hereof, preferred stocks of, or stocks guaranteed by, a corporation incorporated under the laws of the United States of America, or of any state, district, insular or territorial possession thereof; or of the Dominion of Canada, or any province thereof; and which meet the following qualifications:

(1) Preferred stocks.

(a) All of the obligations and preferred stocks of the issuing corporation, if any, prior to the preferred stock acquired must be eligible as investments under this section as of the date of acquisition; and

(b) The net earnings available for fixed charges and preferred dividends of the issuing corporation shall have been, for each of the five fiscal years immediately preceding the date

of acquisition, not less than one and one-half times the sum of the annual fixed charges and contingent interest, if any, and the annual preferred dividend requirements as of the date of acquisition; or at the date of acquisition the preferred stock is investment grade as defined by the commissioner by rule.

(i) The term *"preferred dividend requirements"* shall mean cumulative or noncumulative dividends whether paid or not.

(ii) The term *"fixed charges"* shall be construed in accordance with subsection 5.

(iii) The term *"net earnings available for fixed charges and preferred dividends"* as used herein shall mean the net income after deducting all operating and maintenance expenses, taxes, including any income taxes, depreciation and depletion, but nonrecurring items may be excluded.

(2) Guaranteed stocks.

(a) All of the fixed interest-bearing obligations of the guaranteeing corporation, if any, must be eligible under this section as of the date of acquisition; and

(b) The net earnings available for fixed charges of the guaranteeing corporation shall meet the requirements outlined in paragraph *"a"* of subsection 5, except that all guaranteed dividends shall be included in *"fixed charges"*.

b. Any investments in preferred stocks or guaranteed stocks made under the provisions of this subsection shall be considered as moneys and credits for purposes of taxation and their assessment shall be subject to deductions for indebtedness as provided by law in the case of assessment of moneys and credits in general. This provision shall be effective as to assessments made during the year 1947 and thereafter.

7. *Equipment trust obligations.* Subject to the restrictions contained in subsection 8, bonds, certificates, or other evidences of indebtedness secured by any transportation equipment used wholly or in part in the United States of America or Canada, that provide a right to receive determined rental, purchase or other fixed obligatory payments adequate to retire the obligations within twenty years from date of issue, and also provide:

a. For vesting of title to such equipment free from encumbrance in a corporate trustee, or

b. For creation of a first lien on such equipment.

8. *Further restrictions.* Securities included under subsections 5, 6, and 7, and subsection 9, paragraph *"h"*, shall not be eligible:

a. If the corporation is in default on fixed obligations as of the date of acquisition. Securities provided in subsection 6, paragraph *"a"*, subparagraph (1), shall not be eligible if the issuing corporation is in arrears with respect to the payment of any preferred dividends as of the date of acquisition.

b. The investments of any company or association in the securities of a corporation shall not exceed the following percentages of the legal reserve of such company or association:

(1) For any one corporation other than a public utility company, two percent of the legal reserve. For any one public utility company, five percent of the legal reserve.

(2) For securities described in subsection 5 issued by public utility companies, fifty percent of the legal reserve.

(3) Ten percent of the legal reserve in the securities described in subsection 6.

(4) Ten percent of the legal reserve in the securities described in subsection 7.

c. Statements adjusted to show the actual condition at the time of acquisition or the effect of new financing, known commercially as pro forma statements, may be used in determining whether investments under subsections 5 and 6 are in compliance with requirements. Statements so adjusted or consolidated statements may be used in order to include the earnings of all predecessor, merged, consolidated, or purchased companies.

d. In addition to the restrictions contained in paragraphs *"a"* and *"b"*, the investments of any company or association in securities included under subsection 5, paragraph *"c"*, are not eligible in excess of three percent of the legal reserve, but not more than one-half of one percent of the legal reserve shall be invested in the securities of any one corporation.

9. *Real estate bonds and mortgages.*

a. (1) Bonds, notes, obligations, or other evidences of indebtedness secured by mortgages or deeds of trust which are a first or second lien upon otherwise unencumbered real property and appurtenances thereto within the United States of America, or any insular or territorial

possession of the United States, or the Dominion of Canada, and upon leasehold estates in real property where fifty years or more of the term including renewals is unexpired, provided that at the date of acquisition the total indebtedness secured by the first or second lien shall not exceed ninety percent of the value of the property upon which it is a lien. However, a company or organization shall not acquire an indebtedness secured by a first or second lien upon a single parcel of real property, or upon a leasehold interest in a single parcel of real property, in excess of two percent of its legal reserve. These limitations do not apply to obligations described in paragraphs *"b"*, *"c"*, *"d"*, *"e"*, *"f"*, and *"g"* of this subsection.

(2) Improvements and appurtenances to real property shall not be considered in estimating the value of the property unless the owner contracts to keep the property adequately insured during the life of the loan in some reliable fire insurance companies, or associations, the insurance to be made payable in case of loss to the mortgagee, trustee, or assignee as its interest appears at the time of the loss.

(3) For the purpose of this subsection a mortgage or deed of trust is not other than a first or second lien upon property by reason of the existence of taxes or assessments that are not delinquent, instruments creating or reserving mineral, oil, or timber rights, rights-of-way, joint driveways, sewer rights, rights in walls or by reason of building restrictions or other like restrictive covenants, or when the real estate is subject to lease in whole or in part whereby rents or profits are reserved to the owner.

b. Bonds, notes, or other evidences of indebtedness representing loans and advances of credit that have been issued, guaranteed, or insured, in accordance with the terms and provisions of an Act of Congress of the United States of America approved June 27, 1934, entitled the "National Housing Act", 48 Stat. 1246, 12 U.S.C. §1701 et seq., as amended to and including January 1, 2008, or of an Act of Congress of the United States of America approved July 24, 1970, entitled the "Federal Home Loan Mortgage Corporation Act", 84 Stat. 451, 12 U.S.C. §1451 et seq., as amended to and including January 1, 2008.

c. Bonds, notes, or other evidences of indebtedness representing loans and advances of credit that have been issued or guaranteed, in whole or in part, in accordance with the terms and provisions of Tit. III of an Act of Congress of the United States of America approved June 22, 1944, known as Public Law 346, Pub. L. No. 78-268, cited as the "Servicemen's Readjustment Act of 1944", 58 Stat. 284, recodified at 72 Stat. 1105, 1273, 38 U.S.C. §3701 et seq., as amended to and including January 1, 2008.

d. Contracts of sale, purchase money mortgages or deeds of trust secured by property obtained through foreclosure, or in settlement or satisfaction of any indebtedness, or in the acquisition or disposition of real property acquired pursuant to subsection 14.

e. Bonds, notes, or other evidences of indebtedness representing loans and advances of credit that have been issued or guaranteed, in whole or in part, in accordance with Tit. I of the Bankhead-Jones Farm Tenant Act, an Act of the Congress of the United States, cited as the "Farmers Home Administration Act of 1946", 60 Stat. 1062, as amended to and including the effective date or dates of its repeal as set forth in 76 Stat. 318, or with Tit. III of an Act of Congress of the United States of America approved August 8, 1961, entitled the "Consolidated Farm and Rural Development Act", 75 Stat. 307, 7 U.S.C. §1921 et seq., as amended to and including January 1, 2008.

f. Bonds, notes, obligations or other evidences of indebtedness secured by mortgages or deeds of trust which are a first lien upon unencumbered personal or real property or both personal and real property, including a leasehold of real estate, within the United States of America, or any insular or territorial possession of the United States of America, or the Dominion of Canada, under lease, purchase contract, or lease purchase contract to any governmental body or instrumentality whose obligations qualify under subsection 1, 2 or 3 of this section, or to a corporation whose obligations qualify under paragraph *"a"* of subsection 5 of this section, if the terms of the bond, note or other evidence of indebtedness provide for the amortization during the initial, fixed period of the lease or contract of one hundred percent of the indebtedness and there is pledged or assigned, as additional security for the loan, sufficient of the rentals payable under the lease, or of contract payments, to provide the required payments on the loan necessary to permit such amortization, including but not limited to payments of principal, interest, ground rents and taxes other than the

income taxes of the borrower; provided, however, that where the security consists of a first mortgage or deed of trust lien on a fee interest in real property only, the bond, note or other evidence of indebtedness may provide for the amortization during the initial, fixed period of the lease or contract of less than one hundred percent of the indebtedness if there is to be left unamortized at the end of such period an amount not greater than the appraised value of the land only, exclusive of all improvements, and if there is pledged or assigned, as additional security for the loan, sufficient of the rentals payable under the lease, or of contract payments, to provide the required payments on the loan necessary to permit such amortization, including but not limited to payments of principal, interest, and taxes other than the income taxes of the borrower. Investments made in accordance with the provisions of this paragraph shall not be eligible in excess of twenty-five percent of the legal reserve, nor shall any one such investment in excess of five percent of the legal reserve be eligible.

g. Bonds, notes or other evidences of indebtedness representing loans and advances of credit that have been issued, guaranteed, or insured, in accordance with the terms and provisions of an Act of the federal Parliament of the Dominion of Canada, cited as the "National Housing Act", R.S.C. 1985, c. N-11 as amended to and including January 1, 2008.

h. Mezzanine real estate loans subject to the following conditions:

(1) The terms of the mezzanine real estate loan agreement shall do all of the following:

(a) Require that each pledgor abstain from granting additional security interests in the equity interest pledged.

(b) Set forth techniques to minimize the likelihood or impact of a bankruptcy filing on the part of the real estate owner or the mezzanine real estate loan borrower consistent with the national association of insurance commissioners' accounting practices and procedures manual.

(c) Require the real estate owner or mezzanine real estate loan borrower to do all of the following:

(i) Hold no assets other than, in the case of the real estate owner, the real property, and in the case of the mezzanine real estate loan borrower, the equity interest of the real estate owner.

(ii) Not engage in any business other than, in the case of the real estate owner, the ownership and operation of the real estate, and in the case of the mezzanine real estate loan borrower, holding an ownership interest in the real estate owner.

(iii) Not incur additional debt, other than limited trade payables, a first mortgage loan, or mezzanine real estate loans.

(2) At the time of purchase, the sum of the first mortgage and the mezzanine real estate loans shall not exceed ninety percent of the value of the real estate evidenced by a current appraisal and the mezzanine real estate loan shall be classified as CM4 or better in accordance with the national association of insurance commissioners' rating methodology, or an equivalent or successor rating.

(3) The value of a company's or association's total investments qualified under this paragraph *"h"* shall not exceed three percent of the legal reserve subject to the following conditions:

(a) The value of a company's or association's total investments qualified under this paragraph *"h"* in mezzanine real estate loans classified as CM3 in accordance with the national association of insurance commissioners' rating methodology or an equivalent or successor rating at the time of purchase shall not exceed three percent of the legal reserve.

(b) The value of a company's or association's total investments qualified under this paragraph *"h"* in mezzanine real estate loans classified as CM4 in accordance with the national association of insurance commissioners' rating methodology or an equivalent or successor rating at the time of purchase shall not exceed one percent of the legal reserve.

(4) For purposes of this paragraph *"h"*, *"mezzanine real estate loan"* means a loan secured by a pledge of a direct or indirect equity interest in an entity that owns real estate.

10. *Real estate.*

a. Real estate in this state which is necessary for the accommodation of the company or association as a home office or in the transaction of its business. In the erection of buildings for such purposes, there may be added rooms for rent. Before the company or association

invests any of its funds in accordance with this paragraph it shall first obtain the consent of the commissioner. The maximum amount which a company or association shall be permitted to invest in accordance with these provisions shall not exceed ten percent of the legal reserve. However, a stock company may invest such portion of its paid-up capital, in addition to ten percent of the legal reserve, as is not held to constitute a part of its legal reserve, under section 508.36, and the total legal reserve of the company shall be equal to or exceed the amount of its paid-up capital stock.

b. Any real estate acquired through foreclosure, or in settlement or satisfaction of any indebtedness. Any company or association may improve real estate so acquired or remodel existing improvements and exchange such real estate for other real estate or securities, and real estate acquired by such exchange may be improved or the improvements remodeled.

11. *Certificates of sale.* Certificates of sale obtained through foreclosure of liens on real estate.

12. *Policy loans.* Loans upon the security of the policies of the company or association and constituting a lien thereon in an amount not exceeding the legal reserve thereon.

13. *Collateral loans.* Loans secured by collateral consisting of any assets or investments qualified under this section, provided the amount of the loan is not in excess of ninety percent of the value of the assets or investments. Provided further that subsection 8 shall apply to the collateral assets or investments pledged to the payment of loans qualified under this subsection.

14. *Urban real estate and personal property.*

a. Personal or real property or both located within the United States or the Dominion of Canada, other than real property used or to be used primarily for agricultural, horticultural, ranching or mining purposes, which produces income or which by suitable improvement will produce income. However, personal property acquired under this subsection shall be acquired for the purpose of entering into a contract for the sale or for a use under which the contractual payments may reasonably be expected to result in the recovery of the investment and an investment return within the anticipated useful life of the property. Legal title to the real property may be acquired subject to a contract of sale.

b. *"Real property"* as used in this subsection includes all of the following:

(1) A leasehold of real estate.

(2) An undivided interest in a leasehold of real estate.

(3) An undivided interest in the fee title of real estate.

(4) A controlling membership, partnership, shareholder, or trust interest in any entity created solely for the purpose of owning and operating any of the interests described in subparagraph (1), (2), or (3), if the entity is expressly limited to that purpose within its organizational documents.

c. Investments under this subsection are not eligible in excess of ten percent of the legal reserve.

15. *Railroad obligations.*

a. Bonds or other evidences of indebtedness which carry a fixed rate of interest and are issued, assumed or guaranteed by any railroad company incorporated under the laws of the United States of America, or of any state, district, insular or territorial possessions thereof, not in reorganization or receivership at the time of such investment, provided that the railroad company:

(1) Shall have had for the three-year period immediately preceding investment, for which the necessary data for the railroad company shall have been published, a balance of income available for fixed charges which shall have averaged per year not less than one and one-quarter times the fixed charges for the latest year of the period; and

(2) Shall have had for the three-year period immediately preceding investment, for which the necessary data for both the railroad company and all class I railroads shall have been published:

(a) A balance of income available for the payment of fixed charges at least as many times greater than the fixed charges for the latest year of the period as the balance of income available for the payment of fixed charges of all class I railroads for the same three-year

period is times greater than the amount of all fixed charges for such class I railroads for the latest year of the period; and

(b) An amount of railway operating revenues remaining after deduction of three times the fixed charges for the latest year of the period from the balance of income available for the payment of fixed charges for the three-year period, which amount is as great a proportion of its railway operating revenues for the same three-year period as is the proportion of railway operating revenues remaining for all class I railroads, determined in the same manner and for the same period as for the railroad.

b. The terms *"class I railroads"*, *"balance of income available for the payment of fixed charges"*, *"fixed charges"* and *"railway operating revenues"* when used in this subsection, are to be given the same meaning as in the accounting reports filed by a railroad company in accordance with the regulations for common carriers by rail of the Interstate Commerce Act, 24 Stat. 379, codified at 49 U.S.C. §1 – 40, 1001 – 1100, provided that the *"balance of income available for the payment of fixed charges"* and *"railway operating revenues remaining"*, as the terms are used in this subsection, shall be computed before deduction of federal income or excess profits taxes; and that in computing *"fixed charges"* there shall be excluded interest and amortization charges applicable to debt called for redemption or which will otherwise mature within six months from the time of investment and for the payment of which funds have been or currently are being specifically set aside.

c. The eligibility of railroad obligations described in paragraph *"a"*, unnumbered paragraph 1, shall be determined exclusively as provided herein, without regard to the provisions for qualification contained in subsections 5 and 8. Provisions for qualification contained in this section shall not be construed as applying to equipment trust obligations, guaranteed stocks, or contingent interest bonds of railroad companies. Investments made in accordance with the provisions of this subsection shall not be eligible in excess of ten percent of the legal reserve.

16. *Deposit of securities.*

a. Securities in an amount not less than the legal reserve as defined in this section shall be deposited and the deposit maintained with the commissioner of insurance or at such places as the commissioner may designate as will properly safeguard them. There may be included in the deposit an amount of cash on hand not in excess of five percent of the deposit required, that deposit to be evidenced by a certified check, certificate of deposit, or other evidence satisfactory to the commissioner of insurance. Deposits of securities may be made in excess of the amounts required by this section. A stock company organized under the laws of this state shall not be required to make a deposit until the legal reserve, as ascertained by the commissioner, exceeds the amount deposited by it as capital. Real estate may be made a part of the deposit by furnishing evidence of ownership satisfactory to the commissioner and by conveying the real estate to the commissioner or the commissioner's successors in office by warranty deed. The commissioner and the successors in office shall hold the real estate in trust for the benefit of the policyholders of the company or members of the association. Real estate mortgage loans and policy loans may be made a part of the deposit by filing a verified statement of the loans with the commissioner, which statement is subject to check at the discretion of the commissioner.

b. The securities comprising the deposit of a company or association against which proceedings are pending under section 508.18 shall vest in the state for the benefit of all policyholders of the company or association.

c. Securities or title to real estate on deposit may be withdrawn at any time and other eligible securities may be substituted, provided the amount maintained on deposit is equal to the sum of the legal reserve and twenty-five thousand dollars. In the case of real estate the commissioner shall execute and deliver to the company or association a quitclaim deed to the real estate. Any company or association shall, if requested by the commissioner, at the time of withdrawing any securities on deposit, designate for what purpose the securities are being withdrawn.

d. Companies or associations having securities or title to real estate on deposit with the commissioner of insurance shall have the right to collect all dividends, interest, rent, or other income from the deposit unless proceedings against the company or association are pending

under section 508.18, in which event the commissioner shall collect such interest, dividends, rent, or other income and add the same to the deposit.

e. Any company or association receiving payments or partial payments of principal on any securities deposited with the commissioner of insurance shall notify the commissioner of such fact at such times and in such manner as the commissioner may prescribe, giving the amount and date of payment.

f. The commissioner of insurance may receive on deposit securities or title to real estate of alien companies authorized to do business in the state of Iowa, for the purpose of securing its policyholders in the state of Iowa and the United States. The provisions of this subsection not inconsistent with the deposit agreement shall apply to the deposits of such alien companies.

g. Common stocks or shares issued by any federal home loan bank eligible for inclusion in the legal reserve under subsection 18, paragraph "*c*", may be made a part of a deposit by filing a verified statement of the common stocks or shares issued by a federal home loan bank that are held in the legal reserve. Attached to the statement shall be the annual capital stock statement of the respective federal home loan bank showing membership stock balance and activity-based stock balance.

h. Financial instruments used in hedging transactions and securities pledged as collateral for financial instruments used in highly effective hedging transactions eligible for inclusion in the legal reserve under subsection 22 may be made a part of the deposit by filing a verified statement of the financial instruments used or securities pledged pursuant to the terms and conditions of the applicable hedging transaction agreement or the applicable collateral or other credit support agreement.

17. *Rules of valuation.*

a. (1) All bonds or other evidences of debt having a fixed term and rate of interest, if amply secured and not in default as to principal or interest, may be valued as follows:

(a) If purchased at par, at the par value.

(b) If purchased above or below par, on the basis of the purchase price adjusted so as to bring the value to par at maturity and so as to yield in the meantime the effective rate of interest at which the purchase was made.

(2) In applying the rule contained in subparagraph (1), the purchase price shall in no case be taken at a higher figure than the actual market value at the time of purchase.

b. Certificates of sale obtained by foreclosure of liens on real estate shall be valued in an amount not greater than the unpaid principal of the defaulted indebtedness plus any amounts actually expended for taxes and acquisition costs.

c. (1) All investments, except those for which a specific rule is provided in this subsection, shall be valued at their market value, or at their appraised value, or at prices determined by the commissioner of insurance as representing their fair market value, or at a value as determined under rules adopted by the national association of insurance commissioners.

(2) The commissioner of insurance shall have full discretion in determining the method of calculating values according to the foregoing rules, but no company or association shall be prevented from valuing any asset at an amount less than that provided by this subsection.

18. *Common stocks or shares.*

a. (1) Common stocks, shares, or equity interests issued by solvent corporations or institutions are eligible if the total investment in the common stocks, shares, or equity interests of the corporations or institutions does not exceed ten percent of legal reserve, provided not more than one-half percent of the legal reserve is invested in common stocks, shares, or equity interests of any one corporation or institution. However, not more than four percent of legal reserve shall be invested in common stocks, shares, or equity interests which do not meet one of the following requirements:

(a) Are listed or admitted to trading on an established foreign securities exchange or a securities exchange in the United States.

(b) Are publicly held and traded in the "over-the-counter market", provided that market quotations shall be readily available.

(2) An investment in common stocks, shares, or equity interests shall not create a conflict of interest for an officer or director of the company between the insurance company and the corporation whose common stocks, shares, or equity interests are purchased.

b. Common stocks or shares in a subsidiary corporation, the acquisition or purchase of which is authorized by section 508.33 are eligible if the total investment in these stocks or shares does not exceed five percent of the legal reserve; provided, however, that common stocks or shares of stock in a direct or indirect subsidiary insurance company which is domiciled in the United States are eligible up to an additional two percent of the legal reserve upon application by the insurer to and upon approval by the commissioner. Stocks or shares of the insurer's subsidiary corporations are not eligible in total in excess of seven percent of the legal reserve and the stock or shares of any one subsidiary corporation are not eligible in excess of five percent of the legal reserve. These stocks or shares are eligible even if the stocks or shares are not listed or admitted to trading on a securities exchange in the United States and are not publicly held and have not been traded in the "over-the-counter market". The stocks or shares shall be valued at their book value; provided, however, that stocks or shares of a direct or indirect subsidiary insurance company held in the legal reserve of up to an additional two percent of the legal reserve shall be valued at their statutory book value, excluding approved permitted practices.

c. Common stocks or shares issued by any federal home loan bank under the Federal Home Loan Bank Act, 12 U.S.C. §1421 et seq., and the Acts amendatory thereof, are eligible if the total investment in those stocks or shares does not exceed one-half of one percent of the legal reserve.

19. *Other foreign government or corporate obligations.*

a. Bonds or other evidences of indebtedness, not to include currency, issued, assumed, or guaranteed by a foreign government other than Canada, or by a corporation incorporated under the laws of a foreign government other than Canada. Such governmental obligations must be valid, legally authorized and issued, and on the date of acquisition have predominantly investment qualities and characteristics as provided by rule. Such corporate obligations must meet the qualifications established in subsection 5 for bonds and other evidences of indebtedness issued, assumed, or guaranteed by a corporation incorporated under the laws of the United States or Canada. Foreign investments authorized by this subsection are not eligible in excess of twenty-five percent of the legal reserve of the life insurance company or association. Investments in obligations of a foreign government, other than Canada, the United Kingdom, and foreign governments rated AAA by Standard and Poor's division of McGraw-Hill companies, inc., or Aaa by Moody's investors services, inc., are not eligible in excess of two percent of the legal reserve in the securities of foreign governments of any one foreign nation. Investments in obligations of the United Kingdom are not eligible in excess of four percent of the legal reserve. Investments in obligations of foreign governments rated either AAA by Standard and Poor's division of McGraw-Hill companies, inc., or Aaa by Moody's investors services, inc., are not eligible in excess of five percent of the legal reserve. Investments in a corporation incorporated under the laws of a foreign government other than Canada are not eligible in excess of two percent of the legal reserve in the securities of any one foreign corporation.

b. Eligible investments in foreign obligations under this subsection are limited to the types of obligations specifically referred to in this subsection. This subsection in no way limits or restricts investments in Canadian obligations and securities specifically authorized in other subsections of this section.

c. This subsection shall not authorize investment in evidences of indebtedness issued, assumed, or guaranteed by a foreign government which engages in a consistent pattern of gross violations of human rights.

20. *Venture capital funds.*

a. Shares or equity interests in venture capital funds which agree to invest an amount equal to at least fifty percent of the funds in small businesses having their principal offices within this state and having either more than one half of their assets within this state or more than one half of their employees employed within this state. A company shall not invest more than five percent of its legal reserve under this subsection.

b. For purposes of this subsection, "*venture capital fund*" means a corporation, partnership, proprietorship, or other entity formed under the laws of the United States, or a state, district, or territory of the United States, whose principal business is or will be

the making of investments in, and the provision of significant managerial assistance to, small businesses which meet the small business administration definition of small business. *"Equity interests"* means limited partnership interests and other equity interests in which liability is limited to the amount of the investment, but does not mean general partnership interests or other interests involving general liability. *"Venture capital fund"* includes an equity interest in the Iowa fund of funds as defined in section 15E.62 and an equity interest in an innovation fund as defined in section 15E.52.

21. *Use of custodian banks, clearing corporations, and the federal reserve book-entry system.*

a. As used in this subsection:

(1) *"Clearing corporation"* means a corporation as defined in section 554.8102.

(2) *"Custodian bank"* means a federal or state bank or trust company regulated under the Iowa banking laws or the federal reserve system, which maintains an account in its name in a clearing corporation and acts as custodian of securities owned by a domestic insurer.

(3) *"Federal reserve book-entry system"* means the computerized system sponsored by the United States department of the treasury and certain agencies and instrumentalities of the United States for holding and transferring securities of the United States government and its agencies and instrumentalities, in the federal reserve banks through national banks, state banks, or trust companies, which either are members of the federal reserve system or otherwise have access to the computerized systems.

b. Securities deposited by a domestic insurance company with a custodian bank, or redeposited by a custodian bank with a clearing corporation, or held in the federal reserve book-entry system may be used to meet the deposit requirements of subsection 16. The commissioner shall adopt rules necessary to implement this section which:

(1) Establish guidelines on which the commissioner determines whether a custodian bank qualifies as a bank in which securities owned by an insurer may be deposited for the purpose of satisfying the requirements of subsection 16.

(2) Designate those clearing corporations in which securities owned by insurers may be deposited.

(3) Set forth provisions that custodian agreements executed between custodian banks and insurers shall contain. These shall include provisions stating that minimum deposit levels shall be maintained and that the parties agree securities in deposits with custodian banks shall vest in the state in accordance with section 508.18 whenever proceedings under that section are instituted.

(4) Establish other safeguards applicable to the use of custodian banks and clearing corporations by insurers which the commissioner believes necessary to protect the policyholders of the insurers.

c. A security owned by a domestic insurer and deposited in a custodian bank or clearing corporation does not qualify for purposes of its legal reserve deposit unless the custodian bank and clearing corporation are approved by the commissioner for that purpose.

22. *Financial instruments used in hedging transactions.*

a. As used in this subsection, unless the context otherwise requires:

(1) *"Financial instrument"* means an agreement, option, instrument, or any series or combination agreement, option, or instrument that provides for either of the following:

(a) To make or take delivery of, or assume or relinquish, a specified amount of one or more underlying interests, or to make a cash settlement in lieu of such delivery or relinquishment.

(b) Which has a price, performance, value, or cash flow based primarily upon the actual or expected price, level, performance, value, or cash flow of one or more underlying interests.

(2) *"Financial instrument transaction"* means a transaction involving the use of one or more financial instruments.

(3) *"Hedging transaction"* means a financial instrument transaction which is entered into and maintained to reduce either of the following:

(a) The risk of a change in the value, yield, price, cash flow, or quality of assets or liabilities which the domestic insurer has acquired and maintains as qualified assets in its legal reserve deposit or which liabilities the domestic insurer has incurred and form the basis for calculation of its legal reserve.

(b) The currency exchange-rate risk or the degree of exposure as to assets or liabilities which the domestic insurer has acquired or incurred.

(4) *"United States government-sponsored enterprise"* means the federal national mortgage corporation under 12 U.S.C. §1716 – 1723i of the National Housing Act and the federal home loan marketing association under the Federal Home Loan Mortgage Act, 12 U.S.C. §1451 – 1459.

b. To be eligible as investments, financial instruments used in hedging transactions shall be either of the following:

(1) Be between an insurer and a counterparty that meets the qualifications established in subsection 5 for an issuer, obligor, or guarantor of bonds or other evidences of indebtedness issued, assumed, or guaranteed by a corporation incorporated under the laws of the United States or of any state, district, or insular or territorial possession thereof, or Canada, or that meets the qualifications established in subsection 19 for an issuer, obligor, or guarantor of bonds or other evidences of indebtedness issued, assumed, or guaranteed by a corporation incorporated under the laws of a foreign government other than Canada.

(2) Be between an insurer and a conduit and be collateralized by cash or obligations which are eligible under subsection 1, 2, 3, 5, 19, or 24, are deposited with a custodian bank as defined in subsection 21, and are held under a written agreement with the custodian bank that complies with subsection 21 and provides for the proceeds of the collateral, subject to the terms and conditions of the applicable collateral or other credit support agreement, to be remitted to the legal reserve deposit of the company or association and to vest in the state in accordance with section 508.18 whenever proceedings under that section are instituted. Paragraphs *"c"*, *"d"*, and *"e"* of this subsection are not applicable to investments in financial instruments used in hedging transactions eligible pursuant to this subparagraph. As used in this subparagraph, *"conduit"* means a person within an insurer's insurance holding company system, as defined in section 521A.1, subsection 7, which aggregates hedging transactions by other persons within the insurance holding company system and replicates them with counterparties.

(a) Financial instruments used in hedging transactions between an insurer and a conduit which are collateralized by obligations eligible under subsection 5, 19, or 24 are eligible only to the extent that such securities deposited as collateral are not in excess of two percent of the legal reserve in the securities of any one corporation, less any securities of that corporation owned by the insurer or which are the subject of hedging transactions by the insurer, that are included in the insurer's legal reserve.

(b) Financial instruments used in hedging transactions between an insurer and a conduit which are collateralized by obligations eligible under subsection 5 or by cash equivalents eligible under subsection 24, other than a rule 2a-7 money market fund, are eligible only to the extent that such securities deposited as collateral are not in excess of ten percent of the legal reserve, less any obligations eligible under subsection 5 or cash equivalents eligible under subsection 24, other than a rule 2a-7 money market fund, owned by the insurer or which are the subject of hedging transactions by the insurer, that are included in the insurer's legal reserve.

(c) Financial instruments used in hedging transactions between an insurer and a conduit which are collateralized by obligations eligible under subsection 19 are eligible only to the extent that such securities deposited as collateral are not in excess of twenty percent of the legal reserve, less any securities eligible under subsection 19 owned by the insurer or which are the subject of hedging transactions by the insurer, that are included in the insurer's legal reserve.

(3) Financial instruments used in hedging transactions shall be eligible only as provided by this paragraph *"b"* and rules adopted by the commission pursuant to chapter 17A setting standards for hedging transactions between an insurer and a conduit as authorized under section 521A.5, subsection 1, paragraph *"b"*.

c. Investments in financial instruments used in hedging transactions are not eligible in excess of two percent of the legal reserve in the financial instruments of any one corporation, less any securities of that corporation owned by the company or association and in which its legal reserve is invested, except insofar as the financial instruments are collateralized by

cash, United States government obligations as authorized by subsection 1, or obligations of or guaranteed by a United States government-sponsored enterprise which on the date they are pledged as collateral are investment grade as defined by the commissioner by rule, which are deposited with a custodian bank as defined in subsection 21, and held under a written agreement with the custodian bank that complies with subsection 21 and provides for the proceeds of the collateral, subject to the terms and conditions of the applicable collateral or other credit support agreement, to be remitted to the legal reserve deposit of the company or association and to vest in the state in accordance with section 508.18 whenever proceedings under that section are instituted.

d. Investments in financial instruments used in hedging transactions are not eligible in excess of ten percent of the legal reserve, except insofar as the financial instruments are collateralized by cash, United States government obligations as authorized by subsection 1, or obligations of or guaranteed by a United States government-sponsored enterprise which on the date they are pledged as collateral are investment grade as defined by the commissioner by rule, which are deposited with a custodian bank as defined in subsection 21, and held under a written agreement with the custodian bank that complies with subsection 21 and provides for the proceeds of the collateral, subject to the terms and conditions of the applicable collateral or other credit support agreement, to be remitted to the legal reserve deposit of the company or association and to vest in the state in accordance with section 508.18 whenever proceedings under that section are instituted.

e. (1) Investments in financial instruments of foreign governments or foreign corporate obligations, other than Canada, used in hedging transactions shall be included in the limitation contained in subsection 19 that allows only twenty percent of the legal reserve of the company or association to be invested in such foreign investments, except insofar as the financial instruments are collateralized by cash, United States government obligations as authorized by subsection 1, or obligations of or guaranteed by a United States government-sponsored enterprise which on the date they are pledged as collateral are investment grade as defined by the commissioner by rule, which are deposited with a custodian bank as defined in subsection 21, and held under a written agreement with the custodian bank that complies with subsection 21 and provides for the proceeds of the collateral, subject to the terms and conditions of the applicable collateral or other credit support agreement, to be remitted to the legal reserve deposit of the company or association and to vest in the state in accordance with section 508.18 whenever proceedings under that section are instituted.

(2) This paragraph *"e"* does not authorize the inclusion of financial instruments used in hedging transactions in an insurer's legal reserve that are in excess of the eligibility limitation provided in paragraph *"d"* unless the financial instruments are collateralized as provided in this paragraph *"e"*.

f. Prior to engaging in hedging transactions under this subsection, a domestic insurer shall develop and adequately document policies and procedures regarding hedging transaction strategies and objectives. Such policies and procedures shall address authorized hedging transactions, limitations, internal controls, documentation, and authorization and approval procedures. Such policies and procedures shall also provide for review of hedging transactions by the domestic insurer's board of directors or the board of directors' designee.

g. A domestic insurer shall be able to demonstrate to the commissioner the intended hedging characteristics of hedging transactions under this subsection and the ongoing effectiveness of each hedging transaction or combination of hedging transactions.

h. Financial instruments used in hedging transactions shall only be eligible in accordance with this subsection after the commissioner has adopted rules pursuant to chapter 17A regulating hedging transactions under this subsection.

i. Securities held in the legal reserve of a life insurance company or association and pledged as collateral for financial instruments used in hedging transactions shall continue to be eligible for inclusion in the legal reserve of the life insurance company or association subject to all of the following:

(1) The life insurance company or association does not include the financial instruments used in hedging transactions for which the securities are pledged as collateral in the

legal reserve of the life insurance company or association, provided, however, that this subparagraph shall not exclude securities pledged to a counterparty, clearing organization, or clearinghouse on an upfront basis in the form of initial margin, independent amount, or other securities pledged as a precondition of entering into financial instruments used in hedging transactions from inclusion in the legal reserve of the life insurance company or association.

(2) Securities pledged as collateral for financial instruments used in highly effective hedging transactions as defined in the national association of insurance commissioners' statement of statutory accounting principles no. 86, together with securities pledged to a counterparty, clearing organization, or clearinghouse on an upfront basis in the form of initial margin, independent amount, or other securities pledged as a precondition of entering into highly effective hedging transactions pursuant to subparagraph (1), are not eligible in excess of ten percent of the legal reserve of the life insurance company or association, less any financial instruments used in hedging transactions held in the legal reserve under this subsection and less any securities included under subparagraph (3).

(3) Securities pledged as collateral for financial instruments used in hedging transactions that the life insurance company or association does not report as highly effective hedging transactions, together with securities pledged to a counterparty, clearing organization, or clearinghouse on an upfront basis in the form of initial margin, independent amount, or other securities pledged as a precondition of entering into hedging transactions pursuant to subparagraph (1) that the life insurance company or association does not report as highly effective hedging transactions, are not eligible in excess of three percent of the legal reserve of the life insurance company or association, less any financial instruments used in hedging transactions held in the legal reserve under this subsection.

23. *Security loans.*

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

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

c. If the loan is collateralized by cash or cash equivalents, the cash or cash equivalent collateral may be reinvested by the life insurance company or association in rule 2a-7 money market funds as defined in subsection 24, individual securities which are eligible for inclusion in the legal reserve of the life insurance company or association, or in repurchase agreements fully collateralized by such securities if the life insurance company or association takes delivery of the collateral either directly or through an authorized custodian or pooled fund comprised of individual securities which are eligible for inclusion in the legal reserve of the life insurance company or association. If such reinvestment is made in individual securities or in repurchase agreements, the individual securities or the securities which collateralize the repurchase agreements shall mature in less than two hundred seventy days. If such reinvestment is made in a pooled fund, the average maturity of the securities comprising such pooled fund must be one hundred eighty days or less and the individual maturities of the securities comprising such pooled fund must be three hundred ninety-seven days or less. Individual securities and securities comprising the pooled fund shall be investment grade. As used in this paragraph, *"maturity"* means the earlier of the fixed date on which the holder of the security is unconditionally entitled to receive principal and interest in full or the date on which the holder of the security is unconditionally entitled upon demand to receive principal and interest in full.

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

(1) That the loan will be fully collateralized at all times during the term of the loan, and that the collateral will be adjusted as necessary each business day during the term of the loan

to maintain the required collateralization in the event of market value changes in the loaned securities or collateral.

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

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

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

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

f. A life insurance company or association may continue to hold in the legal reserve of the life insurance company or association securities which are the subject of a reverse repurchase agreement. If such securities are held in the legal reserve of a life insurance company or association, the securities shall be subject to the limitations of paragraph *"e"* as if they were securities loaned pursuant to this subsection.

g. For securities loaned pursuant to this subsection that are included in the legal reserve of the life insurance company or association, the collateral received for the loaned securities shall not be eligible for inclusion in the legal reserve.

24. *Cash equivalents.*

a. As used in this subsection, unless the context otherwise requires:

(1) *"Cash equivalents"* means highly liquid investments with an original term to maturity of ninety days or less that are all of the following:

(a) Readily convertible to a known amount of cash without penalty.

(b) So near maturity that the investment presents an insignificant risk of change in value.

(c) Rated any of the following:

(i) "P-1" by Moody's investors services, inc.

(ii) "A-1" by Standard and Poor's division of McGraw-Hill companies, inc., or by the national association of insurance commissioners' securities valuation office.

(iii) Equivalent by a nationally recognized statistical rating organization that is recognized by the national association of insurance commissioners' securities valuation office.

(2) *"Rule 2a-7 money market fund"* means investments in an open-end management investment company registered with the federal securities and exchange commission under the federal Investment Company Act of 1940, 15 U.S.C. §80a-1 et seq., and operated in accordance with 17 C.F.R. §270.2a-7.

b. Cash equivalents include a rule 2a-7 money market fund.

c. Cash equivalents, other than a rule 2a-7 money market fund, are not eligible in excess of two percent of the legal reserve in the obligations of any one corporation, and are not eligible in excess of ten percent of the legal reserve.

[C73, §1179 – 1181; C97, §1791 – 1793, 1803, 1804, 1806, 1807; SS15, §1806; C24, 27, 31, 35, 39, §**8698 – 8701, 8735 – 8739, 8741, 8742, 8744, 8747;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §511.8; 81 Acts, ch 168, §1; 82 Acts, ch 1095, §2 – 5]

84 Acts, ch 1067, §40; 85 Acts, ch 136, §1; 85 Acts, ch 228, §4; 85 Acts, ch 252, §31; 87 Acts, ch 64, §1 – 4; 88 Acts, ch 1112, §205; 89 Acts, ch 83, §69; 89 Acts, ch 311, §29; 91 Acts, ch 26, §38, 59, 60; 96 Acts, ch 1013, §1; 96 Acts, ch 1138, §1, 84; 98 Acts, ch 1014, §1; 2000 Acts, ch 1023, §15 – 18, 60; 2002 Acts, ch 1119, §179; 2003 Acts, ch 91, §20; 2004 Acts, ch 1110, §28 – 31; 2006 Acts, ch 1010, §136, 137; 2006 Acts, ch 1117, §50 – 54; 2008 Acts, ch 1123, §20 – 23; 2009 Acts, ch 145, §8; 2010 Acts, ch 1121, §10 – 14; 2011 Acts, ch 70, §24, 25; 2011 Acts, ch 131, §70, 158; 2012 Acts, ch 1023, §110, 111; 2012 Acts, ch 1138, §35; 2013 Acts, ch 30, §125;

2013 Acts, ch 90, §152; 2013 Acts, ch 124, §11 – 14; 2014 Acts, ch 1007, §3, 4; 2015 Acts, ch 30, §163, 164; 2015 Acts, ch 128, §10 – 20, 50, 51; 2017 Acts, ch 7, §1 – 4; 2018 Acts, ch 1003, §1
Referred to in §508.13, 508.14, 508.29, 508.33A, 508C.8, 511.8A, 511.9, 512B.21, 514B.15, 521A.2, 521G.6
Subsection 9, paragraph h, subparagraph (3), subparagraph division (a) amended

511.8A Agricultural land.

Agricultural land, as defined in section 9H.1, acquired as provided in section 511.8, subsection 10, paragraph *"b"*, by a life insurance company or association incorporated by or organized under the laws of this or any other state, shall be sold or otherwise disposed of by the company or association within five years after title is vested in the company or association. A life insurance company or association is a corporation for purposes of chapter 9H.

89 Acts, ch 311, §30

511.9 Violations.

The commissioner shall have authority to suspend or revoke the certificate of authority of any company or association failing to comply with any of the provisions of section 511.8, or for violating the same.

[SS15, §1806; C24, 27, 31, 35, 39, §**8745;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §511.9]

511.10 Rule of valuation.

1. All bonds or other evidences of debt having a fixed term and rate, held by any fraternal beneficiary association authorized to do business in this state may, if amply secured and not in default as to principal and interest, be valued as follows:

a. If purchased at par, at the par value.

b. If purchased above or below par, on the basis of the purchase price adjusted so as to bring the value to par at maturity and so as to yield in the meantime the effective rate of interest at which the purchase was made.

2. Provided that the purchase price shall in no case be taken at a higher figure than the actual market value at the time of purchase.

3. The commissioner of insurance shall have full discretion in determining the method of calculating values according to the foregoing rule.

[C24, 27, 31, 35, 39, §**8746;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §511.10]

2012 Acts, ch 1023, §157

511.11 Prohibited loans.

No insurance company or association organized under the statutes of this state to transact an insurance business, shall invest its capital, surplus funds, or other assets, in or loan the same on property owned by any officer or director of such company or by any of the immediate members of the family of any such officer or director.

[C24, 27, 31, 35, 39, §**8748;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §511.11]

511.12 Officers not to profit by investments.

No such officer or director shall gain through the investment of funds of any such company.

[C24, 27, 31, 35, 39, §**8749;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §511.12]

511.13 Disbursements — vouchers — affidavit.

No domestic life insurance company shall make any disbursement of one hundred dollars or more unless the same be evidenced by a voucher signed by or on behalf of the person, firm, or corporation receiving the money and correctly describing the consideration for the payment. If the expenditure be for both services and disbursements the voucher shall set forth the services rendered and an itemized statement of the disbursements made. When such voucher cannot be obtained the expenditure shall be evidenced by an affidavit of some officer or agent of said company describing the character and object of the expenditure and stating the reason for not obtaining such voucher.

[S13, §1820-a; C24, 27, 31, 35, 39, §**8750;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §511.13]

511.14 Taxes — from what funds payable.

In case this or any other state shall impose or levy any tax on any company or association, the same may be paid from any surplus or emergency fund of such company or association.

[C97, §1821; C24, 27, 31, 35, 39, §**8751;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §511.14]

511.15 Reserved.

511.16 Illegal business.

It shall be unlawful for any officer, manager, or agent of any life insurance company or association, with knowledge that it is doing business in an unlawful manner or is insolvent, to solicit or receive applications for insurance with the company or association, or to do any other act or thing toward procuring or receiving any new business for the company or association.

[C97, §1814; C24, 27, 31, 35, 39, §**8755;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §511.16]
2004 Acts, ch 1110, §32

511.17 Contracts void — recovery — damages — attorney fees.

All contracts, promises, and agreements made by any person to or with any such company or association concerning any premium, policy, or certificate of new business, after the revocation of its certificates or denial of authority to do business, shall be null and void, and all payments of premium or assessments advanced or made by any person on account of any such policy, certificate of new business, or upon any arrangement therefor, may be recovered from such company or association, or its agent to whom payment was advanced or made, or from both of them, and in addition thereto plaintiff may recover an equal amount as liquidated damages, together with a reasonable fee to plaintiff's attorney for services in the case.

[C97, §1814; C24, 27, 31, 35, 39, §**8756;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §511.17]
Referred to in §507.16

511.18 Fraud in procuring insurance. Repealed by 2004 Acts, ch 1110, §71.

511.19 through 511.21 Reserved.

511.22 May not advertise authorized capital.

No insurance company shall be permitted to advertise or publish an authorized capital, or to represent in any manner itself as possessed of any greater capital than that actually paid up and invested.

[S13, §1783-g; C24, 27, 31, 35, 39, §**8761;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §511.22]
Referred to in §511.23

511.23 Penalties.

Any person, firm, or corporation violating any of the provisions of section 511.22, or sections 515.8 to 515.10 and section 515.23 or failing to comply with any of the provisions therein, shall be subjected to the penalties provided in sections 507.10 and 507.12.

[S13, §1783-h; C24, 27, 31, 35, 39, §**8762;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §511.23]

511.24 Fees from domestic and foreign companies.

When not otherwise provided, a foreign or domestic life insurance company doing business in this state shall pay to the commissioner of insurance the following fees:

1. For filing an application to do business, or an application to renew a certificate of authority, fifty dollars.
2. For issuing a certificate of authority to do business in this state, or for renewing a certificate, fifty dollars.
3. For filing amended articles of incorporation, fifty dollars.
4. For issuing an amended certificate of authority, twenty-five dollars.

5. For affixing the official seal to any paper filed with the division, ten dollars.

[C73, §1183; C97, §1818; C24, 27, 31, 35, 39, §**8763, 8764;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §511.24, 511.25; 82 Acts, ch 1003, §5]

88 Acts, ch 1112, §206, 303

Referred to in §507A.4, 511.26, 514B.22, 514B.33

511.25 Reserved.

511.26 Fee statute — applicability.

The provisions of the chapter on insurance other than life apply as to fees under this chapter and chapter 508 except as modified by section 511.24.

[C97, §1818; C24, 27, 31, 35, 39, §**8765;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §511.26]

83 Acts, ch 101, §107; 89 Acts, ch 83, §70

Insurance other than life, chapter 515

511.27 Commissioner as process agent.

Every life insurance company and association shall, before receiving a certificate to do business in this state or any renewal of a certificate to do business in this state, file in the office of the commissioner of insurance a power of attorney and an agreement in writing that service of notice or process of any kind may be made on the commissioner that shall be as valid, binding, and effective for all purposes as if served upon the company according to the laws of this or any other state, and waiving all claim or right of error due to the filing of the power of attorney and the agreement regarding service of notice or process.

[C73, §1165; C97, §1808; C24, 27, 31, 35, 39, §**8766;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §511.27]

2003 Acts, ch 91, §21

Referred to in §511.29

511.28 Service of process.

Service of process made on the commissioner as the agent for service of process shall be made as provided in section 505.30.

[C73, §1165; C97, §1808; C24, 27, 31, 35, 39, §**8767;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §511.28]

92 Acts, ch 1162, §15; 99 Acts, ch 165, §7; 2018 Acts, ch 1018, §5

Referred to in §511.29

Section amended

511.29 Interpretation.

The provisions of sections 511.27 and 511.28 are merely additions to the general provisions of law on the subjects therein referred to, and are not to be construed to be exclusive.

[C97, §1809; C24, 27, 31, 35, 39, §**8768;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §511.29]

Service generally, chapter 617

511.30 Intoxication as defense. Repealed by 2003 Acts, ch 91, §51.

511.31 Physician's certificate — estoppel.

In any case where the medical examiner, or physician acting as such, of any life insurance company or association doing business in the state shall issue a certificate of health or declare the applicant a fit subject for insurance, or so report to the company or association or its agent under the rules and regulations of the company or association, the company or association shall be estopped from setting up in defense of the action on the policy or certificate that the assured was not in the condition of health required by the policy at the time of the issuance or delivery of the policy or certificate, unless the policy or certificate was procured by or through the fraud or deceit of the assured.

[C97, §1812; C24, 27, 31, 35, 39, §**8770;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §511.31]

2016 Acts, ch 1073, §147

511.32 Misrepresentation of age.

In all cases where it shall appear that the age of the person insured has been understated in the proposal, declaration or other instrument upon which a policy of life insurance has been founded or issued, then the amount payable under the policy shall be such as the premium paid would have purchased at the correct age; provided, however, that one who, by misstating one's age, obtains life insurance not otherwise obtainable shall be entitled to recover from the insurer on account of such policy only the aggregate premiums paid.

[C97, §1813; C24, 27, 31, 35, 39, §**8771;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §511.32]

511.33 Application for insurance — duty to attach to policy.

All life insurance companies or associations organized or doing business in this state under the provisions of the preceding chapters shall, upon the issue of any policy, attach to such policy, or endorse thereon, a true copy of any application or representation of the assured which by the terms of such policy are made a part thereof, or of the contract of insurance, or referred to therein, or which may in any manner affect the validity of such policy, or, upon reinstatement of a lapsed policy, shall attach to the renewal receipt a true copy of all representations made by the assured upon which the renewal or reinstatement is made.

[C97, §1819; C24, 27, 31, 35, 39, §**8772;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §511.33]

Referred to in §511.34

Similar provisions, §515.133

511.34 Failure to attach — defenses — estoppel.

The omission so to do shall not render the policy invalid, but if any company or association neglects to comply with the requirements of section 511.33, the company or association shall forever be precluded from pleading, alleging, or proving such application or representations, or any part thereof, or the falsity thereof, or any part thereof, in any action upon the policy, and the plaintiff in any such action shall not be required, in order to recover against the company or association, either to plead or prove such application or representation, but may do so at the plaintiff's option.

[C97, §1819; C24, 27, 31, 35, 39, §**8773;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §511.34]

2016 Acts, ch 1011, §94

Similar provisions, §515.134

511.35 Limitation on proofs of loss.

No stipulation or condition in any policy or contract of insurance or beneficiary certificate issued by any company or association mentioned or referred to in this chapter, limiting the time to a period of less than one year after knowledge by the beneficiary within which notice or proofs of death or the occurrence of other contingency insured against must be given, shall be valid.

[C97, §1820; S13, §1820; C24, 27, 31, 35, 39, §**8774;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §511.35]

511.36 Interest rates on policy loans.

1. Life insurance policies issued after July 1, 1984 may provide interest rates on policy loans in accordance with either of the following:

a. A maximum interest rate of not more than eight percent per annum.

b. An adjustable maximum interest rate established as permitted under this section.

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

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

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

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

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

3. If the maximum rate of interest is determined under subsection 1, paragraph *"b"*, the policy shall state the frequency at which the rate is to be determined for that policy.

4. The maximum rate for the policy shall be determined at established intervals at least once every twelve months, but not more frequently than once every three months. At the intervals established in the policy the rate:

a. May be increased when an increase as determined under subsection 2 would increase the charged rate by one-half percent or more per annum.

b. Shall be reduced when a reduction as determined under subsection 2 would decrease the charged rate by one-half percent or more per annum.

5. When a cash loan is made, the insurer shall notify the policyholder of the initial interest rate on the loan. With respect to premium loans, the insurer shall notify the policyholder of the initial interest rate as soon as the insurer can reasonably do so after making the loan. An insurer need not inform the policyholder of the interest rate when an additional premium loan is made unless the interest rate increases. However, policyholders with either cash or premium loans shall receive reasonable advance notice of any increase in the interest rate. Notices required under this subsection shall also contain the following information:

a. The maximum interest rate on the loan if the loan is a fixed rate loan.

b. The fact that the interest rate is adjustable if the loan is an adjustable rate loan.

c. The frequency at which the rate is to be determined for that policy or if an adjustable interest rate, the established intervals at which the rate may be adjusted.

6. A policy shall not terminate in a policy year solely as the result of change in the interest rate during that year. The life insurer shall maintain coverage during that policy year until the time at which it would otherwise have terminated if there had been no change during that policy year.

7. Policies of insurance upon which a loan can be made shall state the following:

a. Whether fixed rate loans or adjustable rate loans are permitted.

b. If fixed rate loans are permitted, the maximum rate of interest on those loans.

c. If adjustable rate loans are permitted, the established intervals at which the rate may be adjusted.

8. Unless the context otherwise requires, for purposes of this section:

a. The rate of interest on policy loans includes the interest rate charged on reinstatement of policy loans for the period during and after a lapse of the policy.

b. *"Policy loan"* includes a premium loan made under a policy to pay a premium that was not paid to the insurer when due.

c. *"Policyholder"* includes the owner of the policy or the person designated, on the records of the insurer, to pay premiums.

d. *"Policy"* includes certificates issued by a fraternal benefit society and annuity contracts which provide for policy loans.

9. Other provisions of law do not apply to policy loan interest rates unless made specifically applicable to the rates.

84 Acts, ch 1017, §1; 97 Acts, ch 186, §8
Referred to in §511.38

511.37 Reserved.

511.38 Interest on delayed claims payments.

1. When an insurance policy provides for the payment of its proceeds to a beneficiary upon the death of an individual and, without the written consent of the beneficiary, the company fails or refuses to pay the proceeds within thirty days after receipt of satisfactory proof of death, the company shall pay interest on the proceeds or any amount of the proceeds not paid within the thirty days, provided, however, if the policy requires a beneficiary to survive for a designated period after the death of the insured, the company shall pay interest on the proceeds or any amount of the proceeds not paid within thirty days after the designated period.

2. The interest owed on any amount of the proceeds of a policy under this section shall be computed from the date of receipt of the proof of death. The rate of interest shall be the higher of the following:

a. The effective rate of interest charged by the company on policy loans under section 511.36 on the date of receipt of proof of death.

b. The effective rate of interest paid by the company on death proceeds left on deposit with the company.

3. A payment of interest shall not be required under this section in any case in which the beneficiary elects to receive the proceeds under the policy by any means other than a lump sum payment.

89 Acts, ch 321, §35
Referred to in §507B.4

511.39 Charitable organizations — insurable interest.

A charitable organization described in section 501(c)(3) of the Internal Revenue Code, as defined in section 422.3, has an insurable interest in the life of a person who, when purchasing a life insurance policy, makes a donation to the charitable organization or makes the charitable organization the beneficiary of all or a part of the proceeds of the policy or joins with a charitable organization in applying for an insurance policy which when issued will insure that person's life and name the organization as owner or beneficiary of all or any portion of the benefits of the life insurance policy.

92 Acts, ch 1162, §16
Referred to in §508E.13

511.40 Employer — insurable interest in employees.

1. As used in this section, *"employees"* includes officers, managers, and directors of an employer, and the shareholders, partners, members, proprietors, or other owners of the employer.

2. An employer and a trust established by the employer for the benefit of the employer or for the benefit of the employer's active or retired employees has an insurable interest in each of the lives of the employer's active or retired employees and may insure their lives on an individual or group basis.

3. The amount of coverage on the lives of nonmanagement or nonkey employees shall be reasonably related to the benefit provided to the employees.

4. On and after July 1, 2003, an employer or trust shall obtain the written consent of each employee being insured by an employer and trust pursuant to this section before insuring the employee's life. The consent shall include an acknowledgment by the employee that the employer or trust may maintain the life insurance after the employee is no longer employed by the employer. An employer shall not retaliate in any manner against an employee who refuses to consent.

5. *a.* The gross amount of premiums received by a life insurance company or association for an employer-owned life insurance contract which has not been allocated to another state shall be allocated to this state for purposes of section 432.1, subsection 1, if either of the following is applicable:

(1) The contract is issued or delivered in this state.

(2) The company or association is domiciled in this state.

b. To the extent that premiums are allocated to this state pursuant to paragraph *"a"*, the provisions of section 505.14 are not applicable to those premiums.

c. As used in this subsection, *"employer-owned life insurance contract"* means a policy which provides coverage on a life for which the employer has an insurable interest under this section or a similar provision of the laws of another state and the policy is owned by either the employer or a trust established by the employer for the benefit of the employer or the employer's active or retired employees.

2003 Acts, ch 91, §22; 2013 Acts, ch 124, §15
Referred to in §508E.13

CHAPTER 512

RESERVED

CHAPTER 512A

BENEVOLENT ASSOCIATIONS

Referred to in §87.4, 296.7, 331.301, 364.4, 505.28, 505.29, 507.1, 507B.2, 507C.3, 508C.3, 669.14, 670.7

Benevolent associations not to be incorporated on or after July 1, 1988; §512A.9

512A.1 Definitions.
512A.2 Rules promulgated.
512A.3 Incorporation mandatory.
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512A.7 Certificate of membership.
512A.8 Violation.
512A.9 Incorporation of benevolent associations prohibited.
512A.10 Articles, amendments to articles, and bylaws.

512A.1 Definitions.

When used in this chapter:

1. A *"benevolent association"* shall mean any person, firm, company, partnership, association or corporation, organized to enroll persons as members of a group for the purpose of providing an agency by which persons so enrolled may in the event of the death of any other member of the group make voluntary contributions to be distributed in whole or in part by the benevolent association to the beneficiary of the deceased member, or to members as contribution towards expense incurred by accident or sickness.

2. A *"member"* shall be any person who participates in a plan or agreement to make voluntary contribution through a benevolent association.

3. *"Commissioner"* when used in this chapter shall mean the commissioner of insurance.

[C71, 73, 75, 77, 79, 81, §512A.1]

512A.2 Rules promulgated.

The commissioner shall promulgate such reasonable rules as the commissioner deems necessary to assure the proper operation of benevolent associations.

[C71, 73, 75, 77, 79, 81, §512A.2]

512A.3 Incorporation mandatory.

Before a benevolent association shall operate in this state it shall first incorporate in accordance with the laws of this state, and the articles of incorporation and bylaws shall be submitted to the commissioner. If the commissioner finds they conform to the requirements of the law and all rules and regulations promulgated under this chapter, the commissioner shall approve the articles of incorporation and file them with the secretary of state. Every benevolent association at the time of its incorporation shall submit its general plan of operation to the commissioner and if the commissioner finds it conforms to the requirements of the law and all reasonable rules and regulations promulgated under this chapter, the commissioner shall issue a license to expire on the first day of June after issuance. The license shall be renewed from year to year upon application of the association, if the commissioner finds from examination that it has conformed to the requirements of all laws and regulations applicable thereto.

[C71, 73, 75, 77, 79, 81, §512A.3]

88 Acts, ch 1112, §106

512A.4 Records of transactions.

The association shall keep a record of all its transactions and shall file an annual report thereof for the preceding calendar year on or before the first day of March on a form

prescribed by the commissioner. The commissioner shall also prescribe the method of keeping books and accounts of benevolent associations.

[C71, 73, 75, 77, 79, 81, §512A.4]

512A.5 Fees to commissioner.

The following fees shall be paid to the commissioner for services required under this chapter, which shall be accounted for by the commissioner in the same manner as other fees received in the discharge of the duties of the office:

1. For filing and examination of amendments to the articles of incorporation in this state and the accompanying general plan of operation of any benevolent association, and the issuing of the permission to do business, twenty dollars.

2. For filing an annual statement of a benevolent association, and issuing the renewal of the permission required by law to authorize continuance in business, twenty-five dollars per existing unit, not to exceed three hundred dollars in the aggregate.

[C71, 73, 75, 77, 79, 81, §512A.5]

91 Acts, ch 213, §10

512A.6 Contributions for expenses.

Such associations may operate without the establishment of reserves or surplus except for current expenses. Contributions for expenses shall be added as a separate item to contributions for membership benefits. A reasonable membership fee to cover initial expenses may be charged.

[C71, 73, 75, 77, 79, 81, §512A.6]

512A.7 Certificate of membership.

Within thirty days after acceptance to membership a certificate, the form of which has been approved by the commissioner, shall be delivered to each member. The certificate shall set forth the name of the association, the name of the member, a statement as to the benefits of membership, to whom such benefits are payable, and such other provisions as are, in the opinion of the commissioner, necessary to inform the member of the member's rights in the association. The commissioner before approving any certificate shall be satisfied that any benefits to be paid a member or the beneficiary of a member are reasonable in relationship to any and all charges made or assessed against the membership. The certificate shall not indicate therein that the plan or benefits constitute an insurance policy.

[C71, 73, 75, 77, 79, 81, §512A.7]

512A.8 Violation.

Except as otherwise provided by law, it shall be unlawful for any person or corporation to operate a benevolent association in this state except as provided for in this chapter.

[C71, 73, 75, 77, 79, 81, §512A.8]

2004 Acts, ch 1110, §33

512A.9 Incorporation of benevolent associations prohibited.

Notwithstanding any provision of this chapter to the contrary, a benevolent association shall not be incorporated or reincorporated in this state on or after July 1, 1988. A benevolent association incorporated before July 1, 1988, continues to be subject to the provisions of this chapter.

88 Acts, ch 1111, §1

512A.10 Articles, amendments to articles, and bylaws.

1. The articles of incorporation, and any subsequent amendments, of an organization shall be filed with and approved by the commissioner of insurance before filing with the secretary of state. An organization shall file bylaws and subsequent amendments to bylaws with the commissioner within thirty days of adoption of the bylaws and amendments.

2. The directors of a benevolent association shall have the authority to enact such bylaws and regulations not inconsistent with law as they consider necessary for the regulation

and conduct of the business. A change in the bylaws shall not limit coverage under existing certificates. A benevolent association shall file with the commissioner bylaws and amendments to the bylaws within thirty days of adoption of such bylaws or amendments.

2000 Acts, ch 1023, §19; 2006 Acts, ch 1010, §138; 2009 Acts, ch 145, §9

See §512A.3

CHAPTER 512B

FRATERNAL BENEFIT SOCIETIES

Referred to in §87.4, 296.7, 331.301, 364.4, 505.28, 505.29, 507.1, 507C.3, 508C.3, 513C.10, 514A.1, 514G.103, 515.1, 515B.2, 521A.1, 521E.1, 522B.1, 669.14, 670.7

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512B.36 Exemption of certain societies.

SUBCHAPTER I

STRUCTURE AND PURPOSE

512B.1 Scope of chapter.

Except as otherwise provided in this chapter, societies are governed by this chapter and are exempt from all other insurance laws of this state unless expressly included in this chapter, or unless specifically made applicable by this chapter.

90 Acts, ch 1148, §1

512B.2 Definitions.

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

1. *"Alien society"* means an association organized under the laws of another country.
2. *"Benefit contract"* means the agreement for provision of benefits authorized by section 512B.16, as that agreement is described in section 512B.19, subsection 1.
3. *"Benefit member"* means an adult member who is designated by the laws or rules of the society to be a benefit member under a benefit contract.
4. *"Certificate"* means the document issued as written evidence of the benefit contract.
5. *"Commissioner"* means the commissioner of insurance or the commissioner's designee.
6. *"Domestic society"* means an association organized under the laws of this state.
7. *"Foreign society"* means an association organized under the laws of another state or territory of the United States.
8. *"Laws"* means the society's articles of incorporation, constitution, and bylaws, however designated.
9. *"Lodge"* means a subordinate member unit of the society, whether known as a camp, court, council, branch, or by any other designation.
10. *"Premium"* means a premium, rate, dues, or other required contribution by whatever name known, which is payable under the certificate.
11. *"Regulations"* means all regulations, or resolutions adopted by the supreme governing body or board of directors which are intended to have general application to the members of the society.
12. *"Society"* means a fraternal benefit society, unless otherwise indicated.

90 Acts, ch 1148, §2

512B.3 Fraternal benefit societies — defined.

An incorporated society, order, or supreme lodge, without capital stock, including one exempted under section 512B.36, subsection 1, paragraph *"b"*, whether incorporated or not, conducted solely for the benefit of its members and their beneficiaries and not for profit, operated on a lodge system with a ritualistic form of work, having a representative form of government, and which provides benefits in accordance with this chapter, is a fraternal benefit society.

90 Acts, ch 1148, §3

Referred to in §100.19

512B.4 Lodge system.

1. A society is operating on the lodge system if it has a supreme governing body and subordinate lodges into which members are elected, initiated, or admitted in accordance with its laws, regulations, and ritual. Subordinate lodges shall be required by the laws of the society to hold regular meetings at least once in each month in furtherance of the purposes of the society.
2. A society may organize and operate lodges for children under the minimum age for adult membership. Membership and initiation in local lodges shall not be required of children, nor shall children have a voice or vote in the management of the society.

90 Acts, ch 1148, §4

512B.5 Representative form of government.

A society has a representative form of government if all of the following apply:

1. It has a supreme governing body constituted in one of the following ways:

a. Assembly. The supreme governing body is an assembly composed of delegates elected directly by the members or at intermediate assemblies or conventions of members or their representatives, together with other delegates as prescribed in the society's laws. A society may provide for election of delegates by mail. The elected delegates must constitute a majority of the delegates in number and have not less than two-thirds of the votes and not less than the number of votes required to amend the society's laws. The assembly must be elected and meet at least once every four years and must elect a board of directors to conduct the business of the society between meetings of the assembly. Vacancies on the board of directors between elections may be filled in the manner prescribed by the society's laws. The board of directors may appoint the officers of the society if authorized to do so by the articles or bylaws of the society. A board of directors elected by an assembly shall have such powers authorized the board by the articles or bylaws of the society, and may or may not be a supreme governing body as described in paragraph *"b"*, depending upon the powers authorized by the articles or bylaws.

b. Direct election. The supreme governing body is a board of directors composed of persons elected by the members, either directly or by their representatives in intermediate assemblies, and any other persons prescribed in the society's laws. A society may provide for election of the board by mail. Each term of a board member must not exceed four years. Vacancies on the board between elections may be filled in the manner prescribed by the society's laws. The elected board members must constitute a majority of the board members in number and have not less than the number of votes required to amend the society's laws. A person filling the unexpired term of an elected board member shall be considered to be an elected member. The board must meet at least quarterly to conduct the business of the society.

2. The officers of the society are elected by the supreme governing body or board of directors.

3. Only benefit members are eligible for election to the supreme governing body, board of directors, or any intermediate assembly.

4. Each voting member has one vote.

5. A voting member is not entitled to cast a vote by proxy.

90 Acts, ch 1148, §5

512B.6 Purposes and powers.

1. *a.* A society shall operate for the benefit of members and their beneficiaries by fulfilling both of the following purposes:

(1) Providing benefits as specified in section 512B.16.

(2) Operating for one or more social, intellectual, educational, charitable, benevolent, moral, fraternal, patriotic, or religious purposes for the benefit of its members, which may also be extended to others.

b. The purposes listed in this subsection may be carried out directly by the society, or indirectly through subsidiary corporations or affiliated organizations.

2. A society may adopt laws and regulations for the government of the society, the admission of its members, and the management of its affairs. A society may amend its laws and regulations, and has other powers as necessary and incidental to carrying into effect the objects and purposes of the society.

90 Acts, ch 1148, §6; 2012 Acts, ch 1023, §112

Referred to in §512B.13

SUBCHAPTER II

MEMBERSHIP

512B.7 Qualifications for membership.

1. In its laws or regulations, a society shall at minimum specify all of the following:

a. Eligibility standards for each membership class. If benefits are provided on the lives of children, the minimum age for adult membership shall be set at not less than age fifteen and not greater than age twenty-one.

b. The process for admission to membership for each membership class.

c. The rights and privileges of each membership class. Only benefit members shall have the right to vote on the management of the insurance affairs of the society.

2. A society may also admit social members. A social member shall have no voice or vote in the management of the insurance affairs of the society.

3. Membership rights in a society are personal to the member and are not assignable.

90 Acts, ch 1148, §7

512B.8 Location of office, meetings, communications to members, grievance procedures.

1. The principal office of a domestic society shall be located in this state. The meetings of its supreme governing body may be held anywhere the society has at least one subordinate lodge, or in another location as determined by the supreme governing body, and all business transacted at a meeting held out of state shall be as valid in all respects as if the meeting were held in this state. The minutes of the proceedings of the supreme governing body and of the board of directors shall be in the English language.

2. *a.* A society may provide in its laws for an official publication in which any notice, report, or statement required by law to be given to members, including notice of election, may be published. Such required reports, notices, and statements shall be printed conspicuously in the publication. If the records of a society show that two or more members have the same mailing address, an official publication mailed to one member is deemed to be mailed to all members at the same address unless a member requests a separate copy.

b. Not later than June 1 of each year, a synopsis of the society's annual statement providing an explanation of the facts concerning the condition of the society disclosed in the annual statement shall be printed and mailed to each benefit member of the society or, in lieu of mailing, the synopsis may be published in the society's official publication.

3. A society may provide in its laws or regulations for grievance or complaint procedures for members.

90 Acts, ch 1148, §8

512B.9 Personal liability.

1. The officers and members of the supreme governing body or any subordinate body of a society are not personally liable for any benefits provided by a society.

2. *a.* A person may be indemnified and reimbursed by a society for expenses reasonably incurred by, and liabilities imposed upon, the person in connection with or arising out of a proceeding, whether civil, criminal, administrative, or investigative, or a threat of action in which the person is or may be involved by reason of the person being a director, officer, employee, or agent of the society or of any other legal entity or position which the person served in any capacity at the request of the society.

b. However, a person shall not be so indemnified or reimbursed for either of the following:

(1) In relation to any matter to which the person is finally adjudged to be or have been guilty of breach of a duty as a director, officer, employee, or agent of the society.

(2) In relation to any matter which has been made the subject of a compromise settlement.

c. However, if the person acted in good faith for a purpose the person reasonably believed to be in or not opposed to the best interests of the society and, in addition, in a criminal proceeding, had no reasonable cause to believe that the conduct was unlawful, paragraph "*b*", subparagraphs (1) and (2), do not apply. The determination whether the conduct of the

person met the standard required in order to justify indemnification and reimbursement in relation to any matter described in paragraph *"b"*, subparagraph (1) or (2), may only be made by the supreme governing body by a majority vote of a quorum consisting of persons who were not parties to the proceeding or by a court of competent jurisdiction. The termination of a proceeding by judgment, order, settlement, conviction, or upon a plea of no contest, as to a person, does not in itself create a conclusive presumption that the person met or did not meet the standard of conduct required in order to justify indemnification and reimbursement. The right of indemnification and reimbursement is not exclusive of other rights to which a person may be entitled as a matter of law and shall inure to the benefit of the person's heirs, executors, and administrators.

3. A society may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee, or agent of the society, or who is or was serving at the request of the society as a director, officer, employee, or agent of any other legal entity affiliated with the society against any liability asserted against the person and incurred by the person in any such capacity or arising out of the person's status in relation to the society, whether or not the society would have the power to indemnify the person against such liability under this section.

4. A volunteer serving without compensation, a director, officer, employee, or member of a society, is not liable, and no cause of action may be brought, for damages resulting from the exercise of judgment or discretion in connection with the duties or responsibilities of that person for the society unless the act or omission alleged to be an exercise of judgment or discretion involved willful or wanton misconduct.

90 Acts, ch 1148, §9; 2008 Acts, ch 1032, §66

512B.10 Waiver.

The laws of the society may provide that a subordinate body, or any of its subordinate officers or members, do not have the power or authority to waive any of the provisions of the laws of the society. A waiver prohibition provision is binding on the society and every member and beneficiary of a member.

90 Acts, ch 1148, §10

SUBCHAPTER III

GOVERNANCE

512B.11 Organization.

A domestic society organized on or after January 1, 1991, shall be formed as follows:

1. Seven or more citizens of the United States, a majority of whom are citizens of this state, who desire to form a fraternal benefit society, may sign and file with the secretary of state and commissioner of insurance an original or copy of a document containing, at minimum, the following:

a. The proposed corporate name of the society, which shall not so closely resemble the name of any other society or insurance company as to be misleading or confusing.

b. The purposes for which the society is being formed and the mode in which its corporate powers are to be exercised. The purposes shall not include more liberal powers than are granted by this chapter.

c. The names and residences of the incorporators.

d. The names, residences, and official titles of all the officers, trustees, directors, or other persons who are to have and exercise the general control of the management of the affairs and funds of the society for the first year or until the ensuing election at which officers shall be elected by the supreme governing body, or board of directors, which election shall be held not later than one year from the date of issuance of the permanent certificate of authority.

2. The articles of incorporation, duly certified copies of the society's regulations and laws, copies of all proposed forms of certificates, applications, and circulars to be issued by the society, and a bond conditioned upon the return to applicants of the advance premiums

if the organization is not completed within one year shall be filed with the commissioner of insurance, who may require further information as the commissioner deems necessary. The bond with sureties approved by the commissioner shall be in an amount, not less than three hundred thousand dollars nor more than one million five hundred thousand dollars, as required by the commissioner. All documents filed are to be in the English language. If the purposes of the society conform to the requirements of this chapter and all provisions of the law have been complied with, the commissioner shall so certify, retain and file the articles of incorporation, and furnish the incorporators a preliminary certificate of authority authorizing the society to solicit members as provided in this chapter.

3. A preliminary certificate of authority granted under this section is not valid after one year from its date or after a further period, not exceeding one year, as may be authorized by the commissioner upon cause shown, unless the five hundred applicants required in this section have been secured and the organization has been completed as provided in this chapter. The articles of incorporation and all other proceedings become void in one year from the date of the preliminary certificate of authority, or at the expiration of the extended period, unless the society has completed its organization and received a certificate of authority to do business as provided in this chapter.

4. Upon receipt of a preliminary certificate of authority from the commissioner, the society may solicit members for the purpose of completing its organization, shall collect from each applicant the amount of not less than one regular monthly premium in accordance with its table of rates, and shall issue to each applicant a receipt for the amount so collected. A society shall not incur a liability other than for the return of advance premiums, shall not issue a certificate, nor pay, allow, offer, or promise to pay or allow, a benefit to any person until all of the following conditions are satisfied:

a. Actual bona fide applications for benefits have been secured on not less than five hundred applicants, and any necessary evidence of insurability has been furnished to and approved by the society.

b. At least ten subordinate lodges have been established into which the five hundred applicants have been admitted.

c. A list of the applicants has been submitted to the commissioner, under oath of the president or secretary, or corresponding officer of the society, giving the applicants' names and addresses, the date each applicant was admitted, the name and number of the subordinate lodge of which each applicant is a member, the amount of benefits to be granted, and the premiums for the benefits.

d. It has been shown to the commissioner, by sworn statement of the treasurer, or corresponding officer of the society, that at least one thousand applicants have each paid in cash at least one regular monthly premium, which premiums in the aggregate shall amount to at least three hundred thousand dollars. Advance premiums shall be held in trust during the period of organization and if the society has not qualified for a certificate of authority within the time permitted by this section, each premium shall be returned to the respective applicant.

5. The commissioner may make an examination and require further information as the commissioner deems advisable. Upon presentation of satisfactory evidence that the society has complied with all applicable provisions of law, the commissioner shall issue to the society a certificate of authority and the society is then authorized to transact business pursuant to this chapter. A certificate of authority is prima facie evidence of the existence of the society at the date of the certificate. The commissioner shall cause a record of each certificate of authority to be made. A certified copy of the record shall be accepted in evidence with like effect as the original certificate of authority.

6. An incorporated society authorized to transact business in this state on January 1, 1991, is not required to reincorporate. A certified copy of the current articles of incorporation of an existing society shall be filed with the commissioner and the commissioner may request additional records as the commissioner deems necessary before issuing a certificate of authority to an existing society.

90 Acts, ch 1148, §11; 2013 Acts, ch 90, §153

512B.12 Amendments to laws.

1. A domestic society may amend its laws in accordance with the provisions of its laws by action of its supreme governing body at any regular or special meeting or, if its laws so provide, by referendum. A referendum may be held in accordance with the provisions of the society's laws by the vote of the voting members of the society, by the vote of delegates or representatives of voting members, or by the vote of local lodges. A society may provide for voting by mail. An amendment submitted for adoption by referendum shall not be adopted unless, within six months from the date of submission of the referendum, a majority of the members voting have signified their consent to the amendment by one of the methods specified in this subsection.

2. An amendment to the laws of a domestic society shall not take effect unless approved by the commissioner. The commissioner shall approve an amendment if the commissioner finds that it has been duly adopted and is not inconsistent with the laws of this state or with the character, objects, and purposes of the society. An amendment shall be considered approved, unless the commissioner disapproves the amendment in writing, within thirty days after the filing of the amendment. The disapproval of the commissioner shall be in writing and mailed to the secretary or corresponding officer of the society at its principal office. If the commissioner disapproves an amendment, the reasons for disapproval shall be stated in the written notice.

3. Within ninety days from the approval of an amendment by the commissioner, the amendment, or a synopsis of it, shall be furnished to all members of the society either by mail or by publication in full in the official publication of the society. The affidavit of an officer of the society or of anyone authorized by the society to mail an amendment or synopsis of an amendment, stating facts which demonstrate compliance with this subsection, is prima facie evidence that the amendment or synopsis has been furnished to the addressees.

4. A foreign or alien society authorized to do business in this state shall file with the commissioner a duly certified copy of all amendments of its laws within ninety days after their enactment.

5. Printed copies of the laws as amended, certified by the secretary, or corresponding officer of the society, are prima facie evidence of the legal adoption of the laws and amendments.

90 Acts, ch 1148, §12

512B.13 Institutions.

A society may create, maintain, and operate, or may establish organizations to operate, not-for-profit institutions to further the purposes permitted by section 512B.6, subsection 1, paragraph *"a"*, subparagraph (2). The institutions may furnish services free or at a reasonable charge. Any real or personal property owned, held, or leased by the society for this purpose shall be reported in every annual statement. A not-for-profit institution so established is a charitable institution with all the rights, benefits, and privileges given to charitable institutions under the Constitution and laws of the State of Iowa. The commissioner may adopt appropriate rules and reporting requirements.

90 Acts, ch 1148, §13; 2006 Acts, ch 1010, §139; 2012 Acts, ch 1023, §153

512B.14 Reinsurance.

1. A domestic society may, by a reinsurance agreement, cede any individual risk or risks in whole or in part to an insurer, other than another fraternal benefit society, having the power to make such reinsurance agreements and authorized to do business in this state, or if not so authorized, one which is approved by the commissioner; but a society shall not reinsure substantially all of its insurance in force without the written permission of the commissioner. It may take credit for the reserves on ceded risks to the extent reinsured, but credit shall not be allowed as an admitted asset or as a deduction from liability, to a ceding society for reinsurance made, ceded, renewed, or otherwise becoming effective after January 1, 1991, unless the reinsurance is payable by the assuming insurer on the basis of the liability of the ceding society under the contract or contracts reinsured without diminution because of the insolvency of the ceding society.

2. Notwithstanding the limitation in subsection 1, a society may reinsure the risks of another society in a consolidation or merger approved by the commissioner under section 512B.15.

90 Acts, ch 1148, §14

512B.15 Consolidations and mergers.

1. A domestic society may consolidate or merge with a domestic society, foreign society, or society chartered under the laws of Canada or a Canadian province or territory, by complying with this section. The society shall file with the commissioner all of the following:

a. A certified copy of the written contract containing in full the terms and conditions of the consolidation or merger.

b. A sworn statement by the president and secretary, or corresponding officers of each society, showing the financial condition of the society on a date fixed by the commissioner.

c. A certificate of each officer submitting a sworn statement pursuant to paragraph *"b"*, duly verified, that the consolidation or merger contract has been approved by a two-thirds vote of the supreme governing body of each society, the vote having been conducted at a regular or special meeting of each such body, or, if the society's laws so permit, by mail.

d. Evidence that at least sixty days prior to the action of the supreme governing body of each society to approve the consolidation or merger contract, the text of the contract has been furnished to all members of each society either by mail or by publication in full in the official publication of each society.

2. If the commissioner finds that the contract is in conformity with this section, that the financial statements are correct, and that the consolidation or merger is just and equitable to the members of each society, the commissioner shall approve the contract and issue a certificate to that effect. Upon the commissioner's approval, the contract shall be in full force and effect unless a society which is a party to the contract is incorporated under the laws of another state. In that event the consolidation or merger shall not become effective unless and until it has been approved as provided by the laws of the other state and a certificate of approval has been filed with the commissioner of this state or, if the laws of the other state contain no equivalent provision for issuing a certificate of consolidation or merger, then the consolidation or merger shall not become effective unless and until it has been approved by the commissioner of the other state and a certificate conforming with the laws of this state has been filed with the commissioner. If the contract is not approved it shall be inoperative, and the fact of submission and its contents shall not be disclosed by the commissioner. For the purposes of this subsection, *"state"* includes Canada and Canadian provinces and territories.

3. Upon the consolidation or merger becoming effective, all the rights, franchises, and interests of the consolidated or merged societies in and to every kind of property, real, personal, or mixed, belonging to the societies shall be vested in the successor society without any other instrument, except that conveyances of real property may be evidenced by proper deeds. The title to real property or an interest in real property, vested under the laws of this state in any of the societies consolidated or merged, shall not revert or be in any way impaired by reason of the consolidation or merger, but shall vest absolutely in the successor society.

4. The affidavit of an officer of the society or of a person authorized by the society to mail a notice or document, stating that the notice or document has been duly addressed and mailed, is prima facie evidence that the notice or document has been furnished the addressees.

90 Acts, ch 1148, §15; 91 Acts, ch 97, §56

Referred to in §512B.14

512B.15A Conversion of fraternal benefit society into a mutual life insurance company.

A domestic fraternal benefit society may be converted and licensed as a mutual life insurance company by compliance with all the requirements of the general insurance laws for mutual life insurance companies. A plan of conversion shall be prepared in writing by the board of directors setting forth in full the terms and conditions of conversion. The affirmative vote of two-thirds of all members of the supreme governing body at a regular or special meeting is necessary for the approval of the plan of conversion. A conversion

shall not take effect unless and until approved by the commissioner. The commissioner may give approval for the conversion if the commissioner finds that the proposed change is in conformity with the requirements of law and not prejudicial to the certificate holders of the society.

90 Acts, ch 1148, §16

SUBCHAPTER IV

CONTRACTUAL BENEFITS

512B.16 Benefits.

1. A society may provide any or all of the following contractual benefits in any form:

a. Death benefits.

b. Endowment benefits.

c. Annuity benefits.

d. Temporary or permanent disability benefits.

e. Hospital, medical, or nursing benefits.

f. Monument or tombstone benefits to the memory of deceased members.

g. Other benefits authorized for life insurers and which are not inconsistent with this chapter.

2. A society shall specify in its regulations those persons who may be issued, or covered by, the contractual benefits in subsection 1, consistent with providing benefits to members and their dependents. A society may provide benefits on the lives of children under the minimum age for adult membership upon application of an adult person.

90 Acts, ch 1148, §17

Referred to in §512B.2, 512B.6

512B.17 Beneficiaries.

1. The owner of a benefit contract may change the beneficiary or beneficiaries in accordance with the laws or regulations of the society unless the owner waives this right by specifically requesting in writing that the beneficiary designation be irrevocable. A society may, through its laws or regulations, limit the scope of beneficiary designations and shall provide that a revocable beneficiary shall not have or obtain a vested interest in the proceeds of a certificate until the certificate has become due and payable in conformity with the benefit contract.

2. A society may make provision for the payment of funeral benefits to the extent of the portion of a payment under a certificate which reasonably appears to be due to a person equitably entitled to the benefit by reason of having incurred expense occasioned by the burial of the member. However, the portion so paid shall not exceed the sum of one thousand dollars.

3. If, at the death of a person insured under a benefit contract, there is no lawful beneficiary to whom the proceeds are payable, the amount of the benefit, except to the extent that funeral benefits may be paid pursuant to subsection 2, shall be payable to the estate of the deceased insured the same as other property not exempt. However, if the owner of the certificate is other than the insured, the proceeds are payable to the owner.

90 Acts, ch 1148, §18

512B.18 Benefits not attachable.

Money or other benefit, charity, relief, or aid to be paid, provided, or rendered by a society, is not liable to attachment, garnishment, or other process, or to be seized, taken, appropriated, or applied by any legal or equitable process or operation of law to pay a debt or liability of a member or beneficiary, or any other person who may have a derivative right, either before or after payment by the society, except as provided in sections 627.11 and 627.12.

90 Acts, ch 1148, §19

512B.19 The benefit contract.

1. A society authorized to do business in this state shall issue to each owner of a benefit

contract a certificate specifying the amount of benefits provided pursuant to the benefit contract. The certificate, together with any riders or endorsements attached to the certificate, the laws of the society, the application for membership, the application for insurance and declaration of insurability, if any, signed by the applicant, and all amendments, constitute the benefit contract, as of the date of issuance, between the society and the owner, and the certificate shall so state. A copy of the application for insurance and declaration of insurability, if any, shall be endorsed upon or attached to the certificate. Statements on the application are representations and not warranties. A waiver of this provision is void.

2. Additions or amendments to the laws of a society duly made or enacted subsequent to the issuance of the certificate, bind the owner and the beneficiaries, and govern and control the benefit contract in all respects the same as though the additions or amendments had been made before and were in force at the time of the application for insurance, except that an addition or amendment shall not destroy or diminish benefits which the society contracted to give the owner as of the date of issuance.

3. A person upon whose life a benefit contract is issued before the person attains the age of majority is bound by the terms of the application and certificate and by all the laws and regulations of the society to the same extent as though the person had attained the age of majority at the time of application.

4. *a.* A society shall provide in its laws that if its reserves as to all or any class of certificates become impaired, its supreme governing body or board of directors may require that there be paid by the owners to the society the amount of the owners' equitable proportion of the deficiency as ascertained by its governing body or board, and that if the payment is not made either of the following will apply:

(1) The required payment or assessment shall stand as an indebtedness against the certificate and draw interest not to exceed the rate specified for certificate loans under the certificates.

(2) In lieu of or in combination with subparagraph (1), the owner may accept a proportionate reduction in benefits under the certificate.

b. The society may specify the manner of the election and which alternative is to be presumed if no election is made.

5. Copies of any of the documents mentioned in this section, certified by the secretary or corresponding officer of the society, shall be received in evidence of the terms and conditions of the documents.

6. A certificate shall not be delivered or issued for delivery in this state unless a copy of the form has been filed with the commissioner in the manner provided for like policies issued by life insurers in this state. A life, accident, health, or disability insurance certificate and an annuity certificate issued on or after one year from January 1, 1991, shall meet the standard contract provision requirements not inconsistent with this chapter for like policies issued by life insurers in this state, except that a society may provide for a grace period for payment of premiums of one full month in its certificates. The certificate shall also contain a provision stating the amount of premiums which are payable under the certificate and a provision reciting or setting forth the substance of any sections of the society's laws or regulations in force at the time of issuance of the certificate which, if violated, will result in the termination or reduction of benefits payable under the certificate. If the laws of the society provide for expulsion or suspension of a member, the certificate shall also contain a provision that any member expelled or suspended, except for nonpayment of a premium or within the contestable period for material misrepresentation in the application for membership or insurance, may maintain the certificate in force by continuing payment of the required premium.

7. A benefit contract issued on the life of a person below the society's minimum age for adult membership may provide for transfer of control of ownership to the insured at an age specified in the certificate. A society may require approval of an application for membership in order to effect this transfer, and may provide in all other respects for the regulation, government, and control of such certificates and the rights, obligations, and liabilities incident to, or connected with, the benefit contract. Ownership rights prior to a transfer shall be specified in the certificate.

8. A society may specify the terms and conditions on which benefit contracts may be assigned.

90 Acts, ch 1148, §20; 2012 Acts, ch 1023, §113
Referred to in §512B.2, 512B.22

512B.20 Nonforfeiture benefits, cash surrender values, certificate loans, and other options.

1. For certificates issued before January 1, 1991, the value of every paid-up nonforfeiture benefit and the amount of any cash surrendered value, loan, or other option granted shall comply with chapter 512, Code 1989.

2. For certificates issued on or after January 1, 1991, for which reserves are computed on the commissioner's 1980 standard mortality table, or any more recent table made applicable to life insurers, every paid-up nonforfeiture benefit and the amount of any cash surrender value, loan, or other option granted shall not be less than the corresponding amount ascertained in accordance with the laws of this state applicable to life insurers issuing policies containing like benefits based upon the same tables.

90 Acts, ch 1148, §21

SUBCHAPTER V

FINANCIAL REQUIREMENTS

512B.21 Investments.

A society shall invest its funds only as authorized by the laws of this state for the investment of assets of life insurers and subject to the same limitations. A foreign or alien society permitted or seeking to do business in this state which invests its funds in accordance with the laws of the state or nation in which it is incorporated, shall be held to meet the requirements of this section for the investment of funds. A society organized under the laws of this state shall deposit securities as required of life insurance companies pursuant to section 511.8, subsection 16.

90 Acts, ch 1148, §22
Referred to in §512B.21A

512B.21A Required reserves.

A society incorporated on or after July 1, 1993, shall have in cash, or in securities which are authorized for investment purposes for insurance companies pursuant to section 512B.21, surplus in an amount not less than five million dollars.

93 Acts, ch 88, §14

512B.22 Funds.

1. All assets shall be held, invested, and disbursed for the use and benefit of the society and a member or beneficiary shall not have or acquire individual rights in the society's assets or become entitled to an apportionment on the surrender of any part of the society's assets, except as provided in the benefit contract.

2. A society may create, maintain, invest, disburse, and apply any special fund or funds necessary to carry out any purpose permitted by the laws of the society.

3. A society may, pursuant to resolution of its supreme governing body, establish and operate one or more separate accounts and issue contracts on a variable basis, subject to the law regulating life insurers establishing equivalent accounts and issuing equivalent contracts. To the extent the society deems it necessary in order to comply with any applicable federal or state laws, regulations, or rules, the society may adopt special procedures for the conduct of the business and affairs of a separate account; may, for persons having beneficial interests in the account, provide special voting and other rights, including without limitation, special rights and procedures relating to investment policy, investment advisory services, selection of certified public accountants, and selection of a committee to manage the business and

affairs of the account; and may issue contracts on a variable basis to which section 512B.19, subsections 2 and 4 shall not apply.

90 Acts, ch 1148, §23

SUBCHAPTER VI

REGULATION

512B.23 Valuation.

1. Standards of valuation for certificates issued before January 1, 1991, are those provided by chapter 512, Code 1989.

2. *a.* The minimum standards of valuation for certificates issued on or after January 1, 1991, shall be based on the following tables:

(1) For certificates of life insurance, the commissioner's 1980 standard ordinary mortality table or any more recent table made applicable to life insurers.

(2) For annuity and pure endowment certificates, for total and permanent disability benefits, for accidental death benefits and for noncancelable accident and health benefits, the tables authorized for use by life insurers in this state.

b. Paragraph "*a*", subparagraphs (1) and (2) are under valuation methods and standards, including interest assumptions, in accordance with the laws of this state applicable to life insurers issuing policies containing like benefits.

3. The commissioner may, in the commissioner's discretion, accept another standard for valuation if the commissioner finds that the reserves produced by the other standard will not be less in the aggregate than reserves computed in accordance with the minimum valuation standards prescribed by subsection 2. The commissioner may, in the commissioner's discretion, vary the standards of mortality applicable to all benefit contracts on substandard lives or other extra hazardous lives by any society authorized to do business in this state.

4. A society, with the consent of the commissioner of insurance of the state of domicile of the society and under conditions which the commissioner may impose, may establish and maintain reserves on its certificates in excess of the reserves otherwise required, but the contractual rights of a benefit member shall not be affected by the excess reserves.

90 Acts, ch 1148, §24; 2012 Acts, ch 1023, §114

Referred to in §512B.24

512B.24 Reports.

Reports shall be filed in accordance with this section.

1. A society transacting business in this state, on or before March 1 annually, unless for cause shown the time has been extended by the commissioner, shall file with the commissioner a true statement of its financial condition, transactions, and affairs for the preceding calendar year and shall pay a fee of fifty dollars. The statement may be in general form and content as approved by the national association of insurance commissioners for fraternal benefit societies and shall be supplemented by additional information as adopted by rule of the commissioner.

2. As part of the annual statement, a society shall, on or before March 1, file with the commissioner of insurance a valuation of its certificates in force on the last preceding December 31. However, the commissioner may, for cause shown, extend the time for filing the valuation for not more than two calendar months. The valuation shall be done in accordance with the standards specified in section 512B.23. The valuation and underlying data shall be certified by a qualified actuary or, at the expense of the society, verified by the actuary of the department of insurance of the state of domicile of the society.

3. A society failing to file the annual statement in the form and within the time provided by this section shall forfeit one hundred dollars for each day during which the default continues, and, upon notice by the commissioner to that effect, the society's authority to do business in this state shall cease while the default continues.

90 Acts, ch 1148, §25; 92 Acts, ch 1162, §17

512B.25 Annual license — renewal.

The authority of a society to transact business in this state may be renewed annually. A license terminates on the first day of June following issuance or renewal. A society shall submit annually on or before March 1 a completed application for renewal of its license. For each license or renewal the society shall pay the commissioner a fee of fifty dollars. A society that fails to timely file an application for renewal shall pay an administrative penalty of five hundred dollars to the treasurer of state for deposit as provided in section 505.7. A duly certified copy or duplicate of the license is prima facie evidence that the licensee is a fraternal benefit society within the meaning of this chapter.

90 Acts, ch 1148, §26; 92 Acts, ch 1162, §18; 2006 Acts, ch 1117, §55; 2007 Acts, ch 126, §90; 2009 Acts, ch 181, §71

512B.26 Examination of societies — no adverse publications.

1. The commissioner, or the commissioner's designee, may examine a domestic, foreign, or alien society transacting or applying for admission to transact business in this state in the same manner as authorized for examination of a domestic, foreign, or alien insurer. Requirements of notice and an opportunity to respond before findings are made public as provided in the laws regulating insurers are also applicable to the examination of a society.

2. The expense of each examination and of each valuation, including compensation and actual expense of examiners, shall be paid by the society examined or whose certificates are valued, upon statements furnished by the commissioner.

90 Acts, ch 1148, §27

512B.27 Foreign or alien society — admission.

A foreign or alien society shall not transact business in this state without a license issued by the commissioner. A society desiring admission to this state shall substantially comply with the requirements and limitations of this chapter applicable to domestic societies. A society may be licensed to transact business in this state upon filing with the commissioner all of the following:

1. A duly certified copy of its articles of incorporation.
2. A copy of its bylaws, certified by its secretary or a corresponding officer.
3. A power of attorney to the commissioner of insurance as prescribed in section 512B.33.
4. A statement of its business under oath of its president and secretary or corresponding officers in a form prescribed by the commissioner, duly verified by an examination made by the supervising insurance official of its state of domicile, satisfactory to the commissioner.
5. Certification from the proper official of its state of domicile that the society is legally incorporated and licensed to transact business in that state.
6. Copies of its certificate forms.
7. Other information the commissioner requires.
8. A showing that its assets are invested in accordance with this chapter.

90 Acts, ch 1148, §28

512B.28 Injunction — liquidation — receivership of domestic society.

1. When the commissioner upon investigation finds that a domestic society has exceeded its powers; failed to comply with a provision of this chapter; failed to fulfill a contract in good faith; failed to maintain a membership of not less than four hundred after an existence of one year or more; or conducted business fraudulently or in a manner hazardous to its members, creditors, the public, or the business, the commissioner shall notify the society of the deficiency or deficiencies and state in writing the reasons for the commissioner's dissatisfaction. The commissioner shall at once issue a written notice to the society requiring that the deficiency or deficiencies which exist be corrected. After the notice of deficiency the society has a thirty-day period in which to comply with the commissioner's request for correction, and if the society fails to comply the commissioner shall notify the society of a finding of noncompliance and require the society to show cause on or before a date named why it should not be enjoined from carrying on any business until the violation complained

of has been corrected, or why an action seeking other legal or equitable relief should not be commenced against the society.

2. If by the date named to show cause the society does not present good and sufficient reasons why it should not be so enjoined or why an action should not be commenced, the commissioner may present the facts relating to the society to the attorney general who shall commence an action to enjoin the society from transacting business or other action requested by the commissioner.

3. The court in which an action is commenced pursuant to subsection 2 shall notify the officers of the society of a hearing. If after a full hearing it appears that the society should be enjoined or liquidated or a receiver appointed, or other legal or equitable relief awarded, the court shall enter the necessary order. A society so enjoined does not have the authority to do business unless and until all of the following conditions are satisfied:

a. The commissioner finds that the violation complained of has been corrected.

b. The costs of the action, including reasonable attorney fees for the state's attorneys and expenses related to the case in which the injunction was entered, have been paid by the society if the court finds that the society was in default as alleged.

c. The court has dissolved its injunction.

d. The commissioner has reinstated the certificate of authority of the society.

4. If the court orders the society liquidated, it shall be enjoined from carrying on any further business, and the receiver of the society shall proceed at once to take possession of the books, papers, money, and other assets of the society and, under the direction of the court, proceed to close the affairs of the society and to distribute its funds to those entitled to them.

5. If a receiver is to be appointed for a domestic society, the court shall appoint the commissioner of insurance as the receiver.

6. The provisions of this section relating to hearing by the commissioner, action by the attorney general at the request of the commissioner, hearing by the court, injunction, and receivership are applicable to a society which voluntarily determines to discontinue business.

90 Acts, ch 1148, §29

512B.29 Suspension, revocation, or refusal of license of foreign or alien society.

1. When the commissioner upon investigation finds that a foreign or alien society transacting or applying to transact business in this state has exceeded its powers; failed to comply with a provision of this chapter; failed to fulfill a contract in good faith; or conducted its business fraudulently or in a manner hazardous to its members or creditors or the public, the commissioner shall notify the society of the deficiency or deficiencies and state in writing the alleged facts or circumstances constituting a deficiency. The commissioner shall at once issue a written notice to the society requiring that the deficiency or deficiencies which exist be corrected on or before thirty days from entry of the notice of deficiency. After notice the society has a thirty-day period in which to comply with the commissioner's request for correction, and if the society fails to comply the commissioner shall notify the society of a finding of noncompliance and require the society to show cause on or before a date named why its license should not be suspended, revoked, or refused. If, on or before the date named, the society does not present good and sufficient reason why its license to do business in this state should not be suspended, revoked, or refused, the commissioner may suspend or refuse the license of the society to do business in this state until evidence satisfactory to the commissioner is furnished to the commissioner that the suspension or refusal should be withdrawn or the commissioner may revoke the license of the society to do business in this state.

2. A society whose license to do business in this state is suspended, revoked, or refused pursuant to subsection 1 shall continue in good faith all contracts made in this state during the time the society was legally authorized to transact business in this state. Lack of authority to transact business within the state is not a defense to an action by a person against the society to enforce a contract entered into by the society without compliance with this chapter, or prior applicable law.

90 Acts, ch 1148, §30

512B.30 Standing.

A petition or complaint for injunction against a domestic, foreign, or alien society, or lodge shall not be recognized in a court of this state unless made by the attorney general upon request of the commissioner.

90 Acts, ch 1148, §31

512B.31 Licensing of agents. Repealed by 2001 Acts, ch 16, §36, 37. See chapter 522B.

512B.32 Unfair methods of competition and unfair and deceptive acts and practices.

A society is subject to chapter 507B relating to unfair insurance trade practices. However, chapter 507B does not apply to or affect the right of a society to determine its eligibility requirements for membership, and does not apply to or affect the offering of benefits exclusively to members or persons eligible for membership in the society by a subsidiary corporation or affiliated organization of a society.

90 Acts, ch 1148, §33

SUBCHAPTER VII

MISCELLANEOUS

512B.33 Service of process.

1. A society authorized to do business in this state shall file in the office of the commissioner a power of attorney and an agreement in writing that service of process in any action or proceeding against the society may be served on the commissioner and shall be of the same legal force and validity as if served upon the society, and that the authority shall continue in force so long as any liability remains outstanding in this state. A copy of the power of attorney, certified by the commissioner, shall be deemed sufficient evidence of the appointment and shall be admitted in evidence with the same force and effect as the original.

2. Service of process made on the commissioner as the agent for service of process shall be made as provided in section 505.30. A society shall not be required to file its answer, pleading, or defense in less than thirty days from the date the commissioner sends a copy of the service of process to the society by certified mail as provided in section 505.30. Legal process shall not be made upon a society except in the manner provided in this section.

90 Acts, ch 1148, §34; 2003 Acts, ch 91, §23; 2018 Acts, ch 1018, §6

Referred to in §512B.27

Section amended

512B.34 Review.

All decisions and findings of the commissioner made under this chapter are subject to review pursuant to chapter 17A.

90 Acts, ch 1148, §35

512B.35 False or fraudulent statements.

1. It shall be unlawful for a person knowingly to make a false or fraudulent statement or representation in or relating to an application for membership or for the purpose of obtaining money from or a benefit in a society.

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

3. It shall be unlawful for a person to solicit membership for, or in any manner to assist in procuring membership in, a society not licensed to do business in this state.

90 Acts, ch 1148, §36; 2004 Acts, ch 1110, §34

512B.36 Exemption of certain societies.

1. This chapter does not affect or apply to any of the following:

a. Grand or subordinate lodges of societies, orders, or associations now doing business in this state which provide benefits exclusively through local or subordinate lodges.

b. Orders, societies, or associations which admit to membership only persons engaged in one or more crafts or hazardous occupations, in the same or similar lines of business, insuring only their own members and their families, and the spouses' societies or spouses' auxiliaries to such orders, societies, or associations.

c. Domestic societies which limit their membership to employees of a particular city or town, designated firm, business house, or corporation which provide for a death benefit of not more than four hundred dollars or disability benefits of not more than three hundred fifty dollars to any person in any one year, or both.

d. Domestic societies or associations of a purely religious, charitable, or benevolent description, which provide for a death benefit of not more than four hundred dollars or for disability benefits of not more than three hundred fifty dollars to any one person in any one year, or both.

2. A society or association described in subsection 1, paragraph "*a*" or "*d*", which provides for death or disability benefits for which benefit certificates are issued, and any such society or association included in paragraph "*d*" which has more than one thousand members, is not exempt from this chapter but shall comply with all requirements of this chapter.

3. A society which is exempt from the requirements of this chapter, except a society described in subsection 1, paragraph "*b*", shall not give or allow, or promise to give or allow to any person any compensation for procuring new members.

4. A society which provides for benefits in case of death or disability resulting solely from accident, and which does not obligate itself to pay natural death or sick benefits, has all of the privileges and is subject to all the applicable provisions of this chapter and rules adopted by the commission pursuant to this chapter except that the provisions relating to medical examination, valuations of benefit certificates, and incontestability, do not apply to such a society.

5. The commissioner may require from a society, by examination or otherwise, information that will enable the commissioner to determine whether the society is exempt from this chapter.

6. A society exempt under this section, is also exempt from all other provisions of the general insurance laws of this state.

90 Acts, ch 1148, §37
Referred to in §512B.3

CHAPTER 513

EMPLOYEES MUTUAL INSURANCE

Referred to in §87.4, 296.7, 331.301, 364.4, 505.28, 505.29, 669.14, 670.7

513.1 Exemption. 513.2 Power of commissioner.

513.1 Exemption.

Unless specific reference is made thereto, no provision of this subtitle shall include or apply to domestic societies which limit their membership to the employees of:

1. A particular city or
2. A designated firm, business house, or corporation.

[C24, 27, 31, 35, 39, §**8894;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §513.1]

513.2 Power of commissioner.

The commissioner of insurance may require from any society such information as will enable the commissioner to determine whether such society is exempt from the provisions of the laws relating to insurance or to fraternal benefit societies.

[C24, 27, 31, 35, 39, §**8895;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §513.2]

CHAPTER 513A

THIRD-PARTY PAYORS OF HEALTH CARE BENEFITS

Referred to in §87.4, 296.7, 331.301, 364.4, 505.28, 505.29, 508.15A, 515.144, 669.14, 670.7

513A.1 Purpose.
513A.2 Authority and jurisdiction of commissioner.
513A.3 How to show jurisdiction.
513A.4 Examination.
513A.5 Subject to state laws.
513A.6 Production agency or administrator — disclosure.
513A.7 Unfair competition or unfair and deceptive acts or practices prohibited.
513A.8 Repealed by 97 Acts, ch 67, §3, 4.

513A.1 Purpose.

The purpose of this chapter is to give the commissioner jurisdiction over third-party payors of health care benefits, to indicate how a third-party payor of health care benefits may show the jurisdiction to which the third-party payor is subject, to allow for examinations by the commissioner if the third-party payor of health care benefits is unable to establish that a third-party payor is subject to another jurisdiction, to make a third-party payor of health care benefits subject to the laws of this state if the third-party payor cannot show that it is subject to another jurisdiction, and to disclose to purchasers of such health care benefits whether or not the plans are fully insured.

91 Acts, ch 213, §11

513A.2 Authority and jurisdiction of commissioner.

Except as provided in this chapter, a third-party payor providing coverage in this state for medical, surgical, chiropractic, physical therapy, speech pathology, audiology, professional mental health, dental, hospital, or optometric expenses, whether the coverage is by direct payment, reimbursement, or otherwise, is presumed to be subject to the jurisdiction of the commissioner of insurance, unless the person shows that while providing such services the person is subject to the jurisdiction of another agency of the state or the federal government.

91 Acts, ch 213, §12
Referred to in §513A.6

513A.3 How to show jurisdiction.

A third-party payor may establish that the third-party payor is subject to the jurisdiction of another agency of the state, any subdivision of the state, or the federal government, by providing to the insurance commissioner the appropriate certificate, license, or other document issued by the agency which permits or qualifies the third-party payor to provide those services.

91 Acts, ch 213, §13
Referred to in §513A.4

513A.4 Examination.

A third-party payor unable to establish under section 513A.3 that the third-party payor is subject to the jurisdiction of another agency of the state, any subdivision of the state, or the federal government, shall submit to an examination by the insurance commissioner to determine the organization and solvency of the third-party payor or the entity, and to determine whether or not the third-party payor complies with the applicable provisions of state law.

91 Acts, ch 213, §14
Referred to in §513A.6

513A.5 Subject to state laws.

A third-party payor unable to establish that the third-party payor is subject to the jurisdiction of another agency of the state, any subdivision of the state, or the federal government, is subject to all appropriate provisions of Title XIII, subtitle 1, regarding the

conduct of the business of the third-party payor including, but not limited to, filing with and approval by the commissioner of the form of the health benefit policy, contract, or certificate.

91 Acts, ch 213, §15; 92 Acts, ch 1162, §19

513A.6 Production agency or administrator — disclosure.

A production agency or administrator which advertises, sells, transacts, or administers the coverage in this state as defined in section 513A.2 and which is required to submit to an examination by the insurance commissioner under section 513A.4, shall, if the coverage is not fully insured or otherwise fully covered by an admitted life or disability insurer, nonprofit hospital service plan, or nonprofit health care plan, advise every purchaser, prospective purchaser, and covered person of the lack of insurance or other coverage.

An administrator which advertises or administers the coverage in this state as defined in section 513A.2 and which is required to submit to an examination by the insurance commissioner under section 513A.4, shall advise any production agency of the elements of the coverage, including the amount of stop-loss insurance in effect.

91 Acts, ch 213, §16

513A.7 Unfair competition or unfair and deceptive acts or practices prohibited.

A third-party payor of health care benefits is subject to chapter 507B relating to unfair insurance trade practices.

93 Acts, ch 88, §15

513A.8 Repealed by 97 Acts, ch 67, §3, 4.

CHAPTER 513B

SMALL GROUP HEALTH COVERAGE

Referred to in §87.4, 296.7, 331.301, 364.4, 505.8, 505.28, 505.29, 507A.4, 509.19, 513C.11, 514I.3, 514K.2, 669.14, 670.7

SUBCHAPTER I

RATING PRACTICES — AVAILABILITY

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BASIC BENEFIT COVERAGE

513B.31 through 513B.43 Repealed by 2001 Acts, ch 69, §38, 39.

SUBCHAPTER I

RATING PRACTICES — AVAILABILITY

513B.1 Title — purpose.

1. This subchapter shall be known and may be cited as the *"Model Small Group Rating Law"*.

2. The intent of this subchapter is to promote the availability of health insurance coverage to small employers, to prevent abusive rating practices, to require disclosure of rating practices to purchasers, to establish rules for continuity of coverage for employers and covered individuals, and to improve the efficiency and fairness of the small group health insurance marketplace.

91 Acts, ch 244, §1; 93 Acts, ch 80, §1

513B.2 Definitions.

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

1. *"Actuarial certification"* means a written statement by a member of the American academy of actuaries or other individual acceptable to the commissioner that a small employer carrier is in compliance with the provisions of section 513B.4, based upon the person's examination, including a review of the appropriate records and of the actuarial assumptions and methods utilized by the small employer carrier in establishing premium rates for applicable health insurance coverages.

2. *"Base premium rate"* means, for each class of business as to a rating period, the lowest premium rate charged or which could have been charged under a rating system for that class of business, by the small employer carrier to small employers for health insurance plans with the same or similar coverage.

3. *"Basic health benefit plan"* means a plan established by the board of the small employer health reinsurance program pursuant to section 513B.13, subsection 8, paragraph *"a"*.

4. *"Carrier"* means an entity subject to the insurance laws and regulations of this state, or subject to the jurisdiction of the commissioner, that contracts or offers to contract to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services, including an insurance company offering sickness and accident plans, a health maintenance organization, a nonprofit health service corporation, or any other entity providing a plan of health insurance, health benefits, or health services.

5. *"Case characteristics"* means demographic or other relevant characteristics of a small employer, as determined by a small employer carrier, which are considered by the insurer in the determination of premium rates for the small employer. Claim experience, health status, and duration of coverage since issue are not case characteristics for the purpose of this subchapter.

6. *"Class of business"* means all or a distinct grouping of small employers as shown on the records of the small employer carrier.

a. A distinct grouping may only be established by the small employer carrier on the basis that the applicable health insurance coverages meet one or more of the following requirements:

(1) The coverages are marketed and sold through individuals and organizations which are not participating in the marketing or sales of other distinct groupings of small employers for the small employer carrier.

(2) The coverages have been acquired from another small employer carrier as a distinct grouping of plans.

(3) The coverages are provided by a policy of group health insurance coverage through a bona fide association as provided in section 509.1, subsection 8, which meets the requirements for a class of business under section 513B.4. A small employer carrier may condition coverages under such a policy of group health insurance coverage on any of the following requirements:

(a) Minimum levels of participation by employees of each member of a bona fide association that offers the coverage to its employees.

(b) Minimum levels of contribution by each member of a bona fide association that offers the coverage to its employees.

(c) A specified policy term, subject to annual premium rate adjustments as permitted by section 513B.4.

(4) The coverages are provided by a policy of group health insurance coverage through two or more bona fide associations as provided in section 509.1, subsection 8, which a small employer carrier has aggregated as a distinct grouping that meets the requirements for a class of business under section 513B.4. After a distinct grouping of bona fide associations is established as a class of business, the small employer carrier shall not remove a bona fide association from the class based on the claims experience of that association. A small employer carrier may condition coverages under such a policy of group health insurance coverage on any of the following requirements:

(a) Minimum levels of participation by employees of each member of a bona fide association in the class that offers the coverage to its employees.

(b) Minimum levels of contribution by each member of a bona fide association in the class that offers the coverage to its employees.

(c) A specified policy term, subject to annual premium rate adjustments as permitted by section 513B.4.

b. A small employer carrier may establish additional groupings under each of the subparagraphs in paragraph *"a"* on the basis of underwriting criteria which are expected to produce substantial variation in the health care costs.

c. The commissioner may approve the establishment of additional distinct groupings upon application to the commissioner and a finding by the commissioner that such action would enhance the efficiency and fairness of the small employer insurance marketplace.

7. *"Commissioner"* means the commissioner of insurance.

8. *"Creditable coverage"* means health benefits or coverage provided to an individual under any of the following:

a. A group health plan.

b. Health insurance coverage.

c. Part A or Part B Medicare pursuant to Tit. XVIII of the federal Social Security Act.

d. Medicaid pursuant to Tit. XIX of the federal Social Security Act, other than coverage consisting solely of benefits under section 1928 of that Act.

e. 10 U.S.C. ch. 55.

f. A health or medical care program provided through the Indian health service or a tribal organization.

g. A state health benefits risk pool.

h. A health plan offered under 5 U.S.C. ch. 89.

i. A public health plan as defined under federal regulations.

j. A health benefit plan under section 5(e) of the federal Peace Corps Act, 22 U.S.C. §2504(e).

k. A short-term limited duration policy.

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

9. *"Division"* means the division of insurance.

10. *"Eligible employee"* means an employee who works on a full-time basis and has a normal workweek of thirty or more hours. The term includes a sole proprietor, a partner of a partnership, and an independent contractor, if the sole proprietor, partner, or independent contractor is included as an employee under health insurance coverage of a small employer, but does not include an employee who works on a part-time, temporary, or substitute basis.

11. *a.* *"Group health plan"* means an employee welfare benefit plan as defined in section 3(1) of the federal Employee Retirement Income Security Act of 1974, to the extent that the plan provides medical care including items and services paid for as medical care to employees or their dependents as defined under the terms of the plan directly or through insurance, reimbursement, or otherwise.

b. For purposes of this subsection, *"medical care"* means amounts paid for any of the following:

(1) The diagnosis, cure, mitigation, treatment, or prevention of disease, or amounts paid for the purpose of affecting a structure or function of the body.

(2) Transportation primarily for and essential to medical care referred to in subparagraph (1).

(3) Insurance covering medical care referred to in subparagraph (1) or (2).

c. For purposes of this subsection, a partnership which establishes and maintains a plan, fund, or program to provide medical care to present or former partners in the partnership or to their dependents directly or through insurance, reimbursement, or other method, which would not be an employee benefit welfare plan but for this paragraph, shall be treated as an employee benefit welfare plan which is a group health plan.

(1) For purposes of a group health plan, an employer includes the partnership in relation to any partner.

(2) For purposes of a group health plan, the term *"participant"* also includes both of the following:

(a) An individual who is a partner in relation to a partnership which maintains a group health plan.

(b) An individual who is a self-employed individual in connection with a group health plan maintained by the self-employed individual where one or more employees are participants, if the individual is or may become eligible to receive a benefit under the plan or the individual's beneficiaries may be eligible to receive a benefit.

12. *a. "Health insurance coverage"* means benefits consisting of health care provided directly, through insurance or reimbursement, or otherwise and including items and services paid for as health care under a hospital or health service policy or certificate, hospital or health service plan contract, or health maintenance organization contract offered by a carrier.

b. "Health insurance coverage" does not include any of the following:

(1) Coverage for accident-only, or disability income insurance.

(2) Coverage issued as a supplement to liability insurance.

(3) Liability insurance, including general liability insurance and automobile liability insurance.

(4) Workers' compensation or similar insurance.

(5) Automobile medical-payment insurance.

(6) Credit-only insurance.

(7) Coverage for on-site medical clinic care.

(8) Other similar insurance coverage, specified in federal regulations, under which benefits for medical care are secondary or incidental to other insurance coverage or benefits.

c. "Health insurance coverage" does not include benefits provided under a separate policy as follows:

(1) Limited scope dental or vision benefits.

(2) Benefits for long-term care, nursing home care, home health care, or community-based care.

(3) Any other similar limited benefits as provided by rule of the commissioner.

d. "Health insurance coverage" does not include benefits offered as independent noncoordinated benefits as follows:

(1) Coverage only for a specified disease or illness.

(2) A hospital indemnity or other fixed indemnity insurance.

e. "Health insurance coverage" does not include Medicare supplemental health insurance as defined under section 1882(g)(1) of the federal Social Security Act, coverage supplemental to the coverage provided under 10 U.S.C. ch. 55, and similar supplemental coverage provided to coverage under group health insurance coverage.

f. "Group health insurance coverage" means health insurance coverage offered in connection with a group health plan.

13. *"Index rate"* means, for each class of business for small employers, the average of the applicable base premium rate and the corresponding highest premium rate.

14. *"Late enrollee"* means an eligible employee or dependent who requests enrollment in a health benefit plan of a small employer following the initial enrollment period for which

such individual is entitled to enroll under the terms of the health benefit plan, provided the initial enrollment period is a period of at least thirty days. An eligible employee or dependent shall not be considered a late enrollee if any of the following apply:

a. The individual meets all of the following:

(1) The individual was covered under creditable coverage at the time of the initial enrollment.

(2) The individual lost creditable coverage as a result of termination of the individual's employment or eligibility, the involuntary termination of the creditable coverage, death of the individual's spouse, or the individual's divorce.

(3) The individual requests enrollment within thirty days after termination of the creditable coverage.

b. The individual is employed by an employer that offers multiple health insurance coverages and the individual elects a different coverage during an open enrollment period.

c. A court has ordered that coverage be provided for a spouse or minor or dependent child under a covered employee's health insurance coverage and the request for enrollment is made within thirty days after issuance of the court order.

d. The individual changes status and becomes an eligible employee and requests enrollment within sixty-three days after the date of the change in status.

e. The individual was covered under a mandated continuation of group health plan or group health insurance coverage plan until the coverage under that plan was exhausted.

15. *"New business premium rate"* means, for each class of business as to a rating period, the lowest premium rate charged or offered by the small employer carrier to small employers for newly issued health insurance coverages with the same or similar coverage.

16. *"Preexisting conditions exclusion"* means, with respect to health insurance coverage, a limitation or exclusion of benefits relating to a condition based on the fact that the condition was present before the date of enrollment for such coverage, whether or not any medical advice, diagnosis, care, or treatment was recommended or received before such date.

17. *"Rating period"* means the calendar period for which premium rates established by a small employer carrier are assumed to be in effect, as determined by the small employer carrier.

18. *"Small employer"* means a person actively engaged in business who, on at least fifty percent of the employer's working days during the preceding year, employed at least one and not more than fifty full-time equivalent eligible employees. In determining the number of eligible employees, companies which are affiliated companies or which are eligible to file a combined tax return for purposes of state taxation are considered one employer.

19. *"Small employer carrier"* means any carrier which offers health benefit plans covering the employees of a small employer.

20. *"Standard health benefit plan"* means a plan established by the board of the small employer health reinsurance program pursuant to section 513B.13, subsection 8, paragraph *"a"*.

91 Acts, ch 244, §2; 92 Acts, ch 1167, §1; 93 Acts, ch 80, §2, 3; 94 Acts, ch 1176, §9; 95 Acts, ch 185, §9; 97 Acts, ch 103, §2 – 11; 98 Acts, ch 1057, §8; 2000 Acts, ch 1023, §20; 2001 Acts, ch 69, §13, 39; 2007 Acts, ch 57, §3 – 5, 8; 2007 Acts, ch 215, §255; 2009 Acts, ch 118, §20; 2011 Acts, ch 70, §26, 49; 2017 Acts, ch 148, §37

Referred to in §135H.3, 509.1, 509.3, 509A.13B, 514A.3B, 514B.9A, 514C.14, 514C.15, 514C.16, 514C.17, 514C.22, 514C.27, 514C.31, 514F.5, 729.6

513B.3 Applicability and scope.

This subchapter applies to a health benefit plan providing coverage to the employees of a small employer in this state if any of the following apply:

1. Any portion of the premium or benefits is paid by or on behalf of the small employer.

2. An eligible employee or dependent is reimbursed in any manner by or on behalf of the small employer for any portion of the premium or benefits.

3. The health insurance coverage is treated by the employer or any of the eligible employees or dependents as part of a coverage or program for the purposes of section 106, 125, or 162 of the Internal Revenue Code as defined in section 422.3.

4. *a.* Except as provided in paragraph *"b"*, for purposes of this subchapter, carriers that are affiliated companies or that are eligible to file a consolidated tax return shall be treated as one carrier and any restrictions or limitations imposed by this subchapter shall apply as if all health insurance coverages delivered or issued for delivery to small employers in this state by such carriers were issued by one carrier.

b. An affiliated carrier which is a health maintenance organization possessing a certificate of authority issued pursuant to chapter 514B shall be considered to be a separate carrier for the purposes of this subchapter.

c. Unless otherwise authorized by the commissioner, a small employer carrier shall not enter into one or more ceding arrangements with respect to health insurance coverages delivered or issued for delivery to small employers in this state if the arrangements would result in less than fifty percent of the insurance obligation or risk for such health insurance coverages being retained by the ceding carrier.

91 Acts, ch 244, §3; 92 Acts, ch 1167, §2; 97 Acts, ch 103, §12, 13

513B.4 Restrictions relating to the premium rates.

1. Premium rates for health benefit plans subject to this subchapter are subject to the following requirements:

a. The index rate for a rating period for any class of business shall not exceed the index rate for any other class of business by more than twenty percent.

b. For a class of business, the premium rates charged during a rating period to small employers with similar case characteristics for the same or similar coverage, or the rates which could be charged to such employers under the rating system for that class of business, shall not vary from the index rate by more than twenty-five percent of the index rate.

c. The percentage increase in the premium rate charged to a small employer for a new rating period shall not exceed the sum of the following:

(1) The percentage change in the new business premium rate measured from the first day of the prior rating period to the first day of the new rating period. In the case of a class of business for which the small employer carrier is not issuing new policies, the small employer carrier shall use the percentage change in the base premium rate, provided that the change does not exceed, on a percentage basis, the change in the new business premium rate for the most similar health insurance coverage into which the small employer carrier is actively enrolling new insureds who are small employers.

(2) An adjustment, not to exceed fifteen percent annually and adjusted pro rata for rating periods of less than one year, due to the claim experience, health status, or duration of coverage of the employees or dependents of the small employer as determined from the small employer carrier's rate manual for the class of business.

(3) Any adjustment due to change in coverage or change in the case characteristics of the small employer as determined from the small employer carrier's rate manual for the class of business.

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

2. *a.* This section does not affect the use by a small employer carrier of legitimate rating factors other than claim experience, health status, or duration of coverage in the determination of premium rates. Small employer carriers shall apply rating factors, including case characteristics, consistently with respect to all small employers in a class of business.

b. Case characteristics other than age, geographic area, family composition, and group size shall not be used by a small employer carrier without the prior approval of the commissioner.

c. Rating factors shall produce premiums for identical groups which differ only by amounts attributable to coverage design and do not reflect differences due to the nature of the groups assumed to select particular health benefit plans. A small employer carrier

shall treat all health insurance coverages issued or renewed in the same calendar month as having the same rating period.

3. For purposes of this section, a health insurance coverage that contains a restricted network provision shall not be considered similar coverage to a health insurance coverage that does not contain such a provision, if the restriction of benefits to network providers results in substantial differences in claims costs.

4. A small employer shall not be involuntarily transferred by a small employer carrier into or out of a class of business. A small employer carrier shall not offer to transfer a small employer into or out of a class of business unless the offer is made to transfer all small employers in the class of business without regard to case characteristics, claim experience, health status, or duration since issue.

5. Notwithstanding subsection 1, the commissioner, with the concurrence of the board of the Iowa small employer health reinsurance program established in section 513B.13, may by order reduce or eliminate the allowed rating bands provided under subsection 1, paragraphs *"a"*, *"b"*, and *"c"*, or otherwise limit or eliminate the use of experience rating.

6. Notwithstanding subsection 4, a small employer carrier may offer to transfer a small employer into a different class of business with a lower index rate based upon claims experience, implementation of managed care or wellness programs, or health status improvement of the small employer since issue.

91 Acts, ch 244, §4; 92 Acts, ch 1167, §3 – 7; 93 Acts, ch 80, §4; 94 Acts, ch 1176, §10 – 12; 97 Acts, ch 103, §14 – 17; 2001 Acts, ch 69, §14, 15, 39; 2002 Acts, ch 1111, §13; 2007 Acts, ch 57, §6, 8; 2012 Acts, ch 1023, §157

Referred to in §513B.2, 513B.4A, 513B.13, 513B.17

513B.4A Exemption from premium rate restrictions.

A Taft-Hartley trust or a carrier with the written authorization of such a trust may make a written request to the commissioner for an exemption from the application of any provisions of section 513B.4 with respect to health insurance coverage provided to such a trust. The commissioner may grant an exemption if the commissioner finds that application of section 513B.4 with respect to the trust would have a substantial adverse effect on the participants and beneficiaries of such trust, and would require significant modifications to one or more collective bargaining arrangements under which the trust is established or maintained. An exemption granted under this section shall not apply to an individual if the individual participates in a trust as an associate member of an employee organization.

93 Acts, ch 80, §5; 97 Acts, ch 103, §18

513B.4B Small employer incentives — suspension or modification of premium rate restrictions.

1. In order to encourage voluntary participation in wellness or disease management programs, a small employer carrier may offer premium credits or discounts to a small employer for the benefit of eligible employees of that small employer who participate in such a program. An employee shall not be penalized in any way for not participating in such a program.

2. The commissioner shall adopt, by rule or order, provisions allowing suspension or modification of premium rate restrictions to enable a small employer carrier to provide premium credits or discounts to a small employer based on measurable reductions in costs of that small employer, including but not limited to tobacco use cessation, participation in established wellness or disease management programs, and economies of acquisition or administration.

2007 Acts, ch 57, §7, 8

513B.5 Provisions on renewability of coverage.

1. Health insurance coverage subject to this chapter is renewable with respect to all eligible employees or their dependents, at the option of the small employer, except for one or more of the following reasons:

a. The health insurance coverage sponsor fails to pay, or to make timely payment of, premiums or contributions pursuant to the terms of the health insurance coverage.

b. The health insurance coverage sponsor performs an act or practice constituting fraud or makes an intentional misrepresentation of a material fact under the terms of the coverage.

c. Noncompliance with the carrier's minimum participation requirements.

d. Noncompliance with the carrier's employer contribution requirements.

e. A decision by the carrier to discontinue offering a particular type of health insurance coverage in the state's small employer market. Health insurance coverage may be discontinued by the carrier in that market only if the carrier does all of the following:

(1) Provides advance notice of its decision to discontinue such plan to the commissioner. Notice to the commissioner, at a minimum, shall be no less than three days prior to the notice provided for in subparagraph (2) to affected small employers, participants, and beneficiaries.

(2) Provides notice of its decision not to renew such plan to all affected small employers, participants, and beneficiaries no less than ninety days prior to the nonrenewal of the plan.

(3) Offers to each plan sponsor of the discontinued coverage, the option to purchase any other coverage currently offered by the carrier to other employers in this state.

(4) Acts uniformly, in opting to discontinue the coverage and in offering the option under subparagraph (3), without regard to the claims experience of the sponsors under the discontinued coverage or to a health status-related factor relating to any participants or beneficiaries covered or new participants or beneficiaries who may become eligible for the coverage.

f. A decision by the carrier to discontinue offering and to cease to renew all of its health insurance coverage delivered or issued for delivery to small employers in this state. A carrier making such decision shall do all of the following:

(1) Provide advance notice of its decision to discontinue such coverage to the commissioner. Notice to the commissioner, at a minimum, shall be no less than three days prior to the notice provided for in subparagraph (2) to affected small employers, participants, and beneficiaries.

(2) Provide notice of its decision not to renew such coverage to all affected small employers, participants, and beneficiaries no less than one hundred eighty days prior to the nonrenewal of the coverage.

(3) Discontinue all health insurance coverage issued or delivered for issuance to small employers in this state and cease renewal of such coverage.

g. The membership of an employer in an association, which is the basis for the coverage which is provided through such association, ceases, but only if the termination of coverage under this paragraph occurs uniformly without regard to any health status-related factor relating to any covered individual.

h. The commissioner finds that the continuation of the coverage is not in the best interests of the policyholders or certificate holders, or would impair the carrier's ability to meet its contractual obligations.

i. At the time of coverage renewal, a carrier may modify the health insurance coverage for a product offered under group health insurance coverage in the small group market, for coverage that is available in such market other than only through one or more bona fide associations, if such modification is consistent with the laws of this state, and is effective on a uniform basis among group health insurance coverage with that product.

2. A carrier that elects not to renew health insurance coverage under subsection 1, paragraph "*f*", shall not write any new business in the small employer market in this state for a period of five years after the date of notice to the commissioner.

3. This section, with respect to a carrier doing business in one established geographic service area of the state, applies only to such carrier's operations in that service area.

91 Acts, ch 244, §5; 92 Acts, ch 1167, §8, 9; 93 Acts, ch 80, §6; 97 Acts, ch 103, §19; 2017 Acts, ch 148, §38

Referred to in §513B.10

513B.6 Disclosure of rating practices and renewability provisions.

A small employer carrier shall make reasonable disclosure in solicitation and sales materials provided to small employers of all of the following:

1. The extent to which premium rates for a specific small employer are established or adjusted due to the claim experience, health status, or duration of coverage of the employees or dependents of the small employer.
2. The provisions concerning the small employer carrier's right to change premium rates and factors, including case characteristics, which affect changes in premium rates.
3. The provisions relating to any preexisting condition provision.
4. The provisions relating to renewability of coverage.

91 Acts, ch 244, §6; 92 Acts, ch 1167, §10; 97 Acts, ch 103, §20, 21; 2017 Acts, ch 148, §39, 40

513B.7 Maintenance of records.

1. A small employer carrier shall maintain at its principal place of business a complete and detailed description of its rating practices and renewal underwriting practices, including information and documentation which demonstrate that its rating methods and practices are based upon commonly accepted actuarial assumptions and are in accordance with sound actuarial principles.
2. A small employer carrier shall file each March 1 with the commissioner an actuarial certification that the small employer carrier is in compliance with this section and that the rating methods of the small employer carrier are actuarially sound. A copy of the certification shall be retained by the small employer carrier at its principal place of business.
3. A small employer carrier shall make the information and documentation described in subsection 1 available to the commissioner upon request. The information is not a public record or otherwise subject to disclosure under chapter 22, and is considered proprietary and trade secret information and is not subject to disclosure by the commissioner to persons outside of the division except as agreed to by the small employer carrier or as ordered by a court of competent jurisdiction.

91 Acts, ch 244, §7; 97 Acts, ch 103, §22; 98 Acts, ch 1100, §68; 2017 Acts, ch 148, §41

513B.8 Reserved.

513B.9 Reserved.

513B.9A Eligibility to enroll.

1. A carrier offering group health insurance coverage shall not establish rules for eligibility, including continued eligibility, of an individual to enroll under the terms of the coverage based on any of the following health status-related factors in relation to the individual or a dependent of the individual:

a. Health status.
b. Medical condition, including both physical and mental conditions.
c. Claims experience.
d. Receipt of health care.
e. Medical history.
f. Genetic information.
g. Evidence of insurability, including conditions arising out of acts of domestic violence.
h. Disability.

2. Subsection 1 does not require group health insurance coverage to provide particular benefits other than those provided under the terms of the coverage, and does not prevent a coverage from establishing limitations or restrictions on the amount, level, extent, or nature of the benefits or coverage for similarly situated individuals enrolled in the coverage.
3. Rules for eligibility to enroll under group health insurance coverage include rules defining any applicable waiting periods for such enrollment.
4. *a.* A carrier offering health insurance coverage shall not require an individual, as a condition of enrollment or continued enrollment under the coverage, to pay a premium

or contribution which is greater than a premium or contribution for a similarly situated individual enrolled in the coverage on the basis of a health status-related factor in relation to the individual or to a dependent of an individual enrolled under the coverage.

b. Paragraph *"a"* shall not be construed to do either of the following:

(1) Restrict the amount that an employer may be charged for health insurance coverage.

(2) Prevent a carrier offering group health insurance coverage from establishing premium discounts or rebates or modifying otherwise applicable copayments or deductibles in return for adherence to programs of health promotion and disease prevention.

97 Acts, ch 103, §23; 2017 Acts, ch 148, §42 - 44

513B.10 Availability of coverage.

1. *a.* A carrier that offers health insurance coverage in the small group market shall accept every small employer that applies for health insurance coverage and shall accept for enrollment under such coverage every eligible individual who applies for enrollment during the period in which the individual first becomes eligible to enroll under the terms of the health insurance coverage and shall not place any restriction which is inconsistent with eligibility rules established under this chapter.

b. A carrier that offers health insurance coverage in the small group market through a network plan may do either of the following:

(1) Limit employers that may apply for such coverage to those with eligible individuals who live, work, or reside in the service area for such network plan.

(2) Deny such coverage to such employers within the service area of such plan if the carrier has demonstrated to the applicable state authority both of the following:

(a) The carrier will not have the capacity to deliver services adequately to enrollees of any additional groups because of its obligations to existing group contract holders and enrollees.

(b) The carrier is applying this subparagraph uniformly to all employers without regard to the claims experience of those employers and their employees and their dependents, or any health status-related factor relating to such employees or dependents.

c. A carrier, upon denying health insurance coverage in any service area pursuant to paragraph *"b"*, subparagraph (2), shall not offer coverage in the small group market within such service area for a period of one hundred eighty days after the date such coverage is denied.

d. A carrier may deny health insurance coverage in the small group market if the issuer has demonstrated to the commissioner both of the following:

(1) The carrier does not have the financial reserves necessary to underwrite additional coverage.

(2) The carrier is applying the provisions of this paragraph uniformly to all employers in the small group market in this state consistent with state law and without regard to the claims experience of those employers and the employees and dependents of such employers, or any health status-related factor relating to such employees and their dependents.

e. A carrier, upon denying health insurance coverage pursuant to paragraph *"d"*, shall not offer coverage in connection with health insurance coverages in the small group market in this state for a period of one hundred eighty days after the date such coverage is denied or until the carrier has demonstrated to the commissioner that the carrier has sufficient financial reserves to underwrite additional coverage, whichever is later. The commissioner may provide for the application of this paragraph on a service area-specific basis.

f. Paragraph *"a"* shall not be construed to preclude a carrier from establishing employer contribution rules or group participation rules for the offering of health insurance coverage in the small group market.

2. A carrier, subject to subsection 1, shall issue health insurance coverage to an eligible small employer that applies for the coverage and agrees to make the required premium payments and satisfy the other reasonable provisions of the health insurance coverage not inconsistent with this chapter. A carrier is not required to issue health insurance coverage to a self-employed individual who is covered by, or is eligible for coverage under, health insurance coverage offered by an employer.

3. Health insurance coverage for small employers shall satisfy all of the following:

a. A carrier offering group health insurance coverage, with respect to a participant or beneficiary, may impose a preexisting condition exclusion only as follows:

(1) The exclusion relates to a condition, whether physical or mental, regardless of the cause of the condition, for which medical advice, diagnosis, care, or treatment was recommended or received within the six-month period ending on the enrollment date. However, genetic information shall not be treated as a condition under this subparagraph in the absence of a diagnosis of the condition related to such information.

(2) The exclusion extends for a period of not more than twelve months, or eighteen months in the case of a late enrollee, after the enrollment date.

(3) The period of any such preexisting condition exclusion is reduced by the aggregate of the periods of creditable coverage applicable to the participant or beneficiary as of the enrollment date.

b. A carrier offering group health insurance coverage shall not impose any preexisting condition exclusion as follows:

(1) In the case of a child who is adopted or placed for adoption before attaining eighteen years of age and who, as of the last day of the thirty-day period beginning on the date of the adoption or placement for adoption, is covered under creditable coverage. This subparagraph shall not apply to coverage before the date of such adoption or placement for adoption.

(2) In the case of an individual who, as of the last day of the thirty-day period beginning with the date of birth, is covered under creditable coverage.

(3) Relating to pregnancy as a preexisting condition.

c. A carrier shall waive any waiting period applicable to a preexisting condition exclusion or limitation period with respect to particular services under health insurance coverage for the period of time an individual was covered by creditable coverage, provided that the creditable coverage was continuous to a date not more than sixty-three days prior to the effective date of the new coverage. Any period that an individual is in a waiting period for any coverage under group health insurance coverage, or is in an affiliation period, shall not be taken into account in determining the period of continuous coverage. A health maintenance organization that does not use preexisting condition limitations in any of its health insurance coverage may impose an affiliation period. For purposes of this section, "*affiliation period*" means a period of time not to exceed sixty days for new entrants and not to exceed ninety days for late enrollees during which no premium shall be collected and coverage issued is not effective, so long as the affiliation period is applied uniformly, without regard to any health status-related factors. This paragraph does not preclude application of a waiting period applicable to all new enrollees under the health insurance coverage, provided that any carrier-imposed waiting period is no longer than sixty days and is used in lieu of a preexisting condition exclusion.

d. Health insurance coverage may exclude coverage for late enrollees for preexisting conditions for a period not to exceed eighteen months.

e. (1) Requirements used by a carrier in determining whether to provide coverage to a small employer shall be applied uniformly among all small employers applying for coverage or receiving coverage from the carrier.

(2) In applying minimum participation requirements with respect to a small employer, a carrier shall not consider employees or dependents who have other creditable coverage in determining whether the applicable percentage of participation is met.

(3) A carrier shall not increase any requirement for minimum employee participation or modify any requirement for minimum employer contribution applicable to a small employer at any time after the small employer has been accepted for coverage.

f. (1) If a carrier offers coverage to a small employer, the carrier shall offer coverage to all eligible employees of the small employer and the employees' dependents. A carrier shall not offer coverage to only certain individuals or dependents in a small employer group or to only part of the group.

(2) Except as provided under paragraphs "*a*" and "*d*", a carrier shall not modify health insurance coverage with respect to a small employer or any eligible employee or dependent through riders, endorsements, or other means, to restrict or exclude coverage or benefits for certain diseases, medical conditions, or services otherwise covered by the health insurance coverage.

g. A carrier offering coverage through a network plan shall not be required to offer coverage or accept applications pursuant to subsection 1 with respect to a small employer where any of the following applies:

(1) The small employer does not have eligible individuals who live, work, or reside in the service area for the network plan.

(2) The small employer does have eligible individuals who live, work, or reside in the service area for the network plan, but the carrier, if required, has demonstrated to the commissioner that it will not have the capacity to deliver services adequately to enrollees of any additional groups because of its obligations to existing group contract holders and enrollees and that it is applying the requirements of this lettered paragraph uniformly to all employers without regard to the claims experience of those employers and their employees and the employees' dependents, or any health status-related factor relating to such employees and dependents.

(3) A carrier, upon denying health insurance coverage in a service area pursuant to subparagraph (2), shall not offer coverage in the small employer market within such service area for a period of one hundred eighty days after the coverage is denied.

4. A carrier shall not be required to offer coverage to small employers pursuant to subsection 1 for any period of time where the commissioner determines that the acceptance of the offers by small employers in accordance with subsection 1 would place the carrier in a financially impaired condition.

5. A carrier shall not be required to provide coverage to small employers pursuant to subsection 1 if the carrier elects not to offer new coverage to small employers in this state. However, a carrier that elects not to offer new coverage to small employers under this subsection shall be allowed to maintain its existing policies in the state, subject to the requirements of section 513B.5.

6. A carrier that elects not to offer new coverage to small employers pursuant to subsection 5 shall provide notice to the commissioner and is prohibited from writing new business in the small employer market in this state for a period of five years from the date of notice to the commissioner.

92 Acts, ch 1167, §11; 93 Acts, ch 80, §7 – 9, 20; 97 Acts, ch 103, §24; 98 Acts, ch 1100, §69; 2001 Acts, ch 69, §16, 17, 39; 2017 Acts, ch 148, §45

Referred to in §513B.12

513B.11 Notice of intent to operate as a risk-assuming carrier or reinsuring carrier.

1. *a.* Upon the approval of a plan of operation by the commissioner under section 513B.13, subsection 4, a small employer carrier authorized to transact the business of insurance in this state shall notify the commissioner of the carrier's intention to operate as a risk-assuming carrier or a reinsuring carrier. The notification shall be made as deemed appropriate by the commissioner. A small employer carrier seeking to operate as a risk-assuming carrier shall make an application pursuant to section 513B.12.

b. The notification of the commissioner concerning the carrier's intention pursuant to paragraph *"a"* is binding for a five-year period from the date notification is given, except that the initial notification given by carriers after July 1, 1992, is binding for a two-year period. The commissioner may permit a carrier to modify the carrier's decision at any time for good cause.

c. The commissioner shall establish an application process for small employer carriers seeking to change their status pursuant to this subsection. If a small employer carrier has been acquired by another such carrier, the commissioner may waive or modify the time periods established in paragraph *"b"*.

2. A reinsuring carrier that applies and is approved to operate as a risk-assuming carrier shall not be permitted to continue to reinsure any health insurance coverage with the program. The carrier shall pay a prorated assessment based upon business issued as a reinsuring carrier for any portion of the year that the business was reinsured.

92 Acts, ch 1167, §12; 93 Acts, ch 80, §10; 97 Acts, ch 103, §25

513B.12 Application to become a risk-assuming carrier.

1. A small employer carrier may apply to become a risk-assuming carrier by filing an application with the commissioner in a form and manner prescribed by the commissioner.

2. In evaluating an application made pursuant to this section, the commissioner shall consider the following factors:

a. The carrier's financial condition.

b. The carrier's history of rating and underwriting small employer groups.

c. The carrier's commitment to market fairly to all small employers in the state or the carrier's established geographic service area, as applicable.

d. The carrier's experience with managing the risk of small employer groups.

3. The commissioner shall provide public notice of an application by a small employer carrier to be a risk-assuming carrier and shall provide at least a sixty-day period for public comment prior to making a decision on the application. If the application is not acted upon within ninety days of the receipt of the application by the commissioner, the carrier may request a hearing.

4. The commissioner may rescind the approval granted to a risk-assuming carrier under this section if the commissioner finds any of the following:

a. The carrier's financial condition will no longer support the assumption of risk from issuing coverage to small employers in compliance with section 513B.10 without the protection provided by the program.

b. The carrier has failed to market fairly to all small employers in the state or the carrier's established geographic service area, as applicable.

c. The carrier has failed to provide coverage to eligible small employers as required under section 513B.10.

5. A small employer carrier electing to be a risk-assuming carrier shall not be subject to the provisions of section 513B.13.

6. During the period of time that the operation of the small employer carrier reinsurance program is suspended pursuant to section 513B.13, subsection 14, a small employer carrier is not required to make an application to become a risk-assuming carrier pursuant to this section.

92 Acts, ch 1167, §13; 2005 Acts, ch 70, §8
Referred to in §513B.11

513B.13 Small employer carrier reinsurance program.

1. A nonprofit corporation is established to be known as the Iowa small employer health reinsurance program.

2. A reinsuring carrier is subject to this program.

3. *a.* The program shall operate subject to the supervision and control of a board. Subject to the provisions of paragraph *"b"*, the board shall consist of nine members appointed by the commissioner, and the commissioner or the commissioner's designee, who shall serve as an ex officio member and as chairperson of the board.

b. In appointing the members of the board, the commissioner shall include representatives of small employers and small employer carriers and such other individuals as determined to be qualified by the commissioner. At least five of the members of the board shall be representatives of carriers and shall be selected from individuals nominated by small employer carriers in this state pursuant to procedures and guidelines provided by rule of the commissioner.

c. Members shall be appointed for terms of three years. A board member's term shall continue until the member's successor is appointed.

d. A vacancy in the board shall be filled by the commissioner for the remainder of the term. A member of the board may be removed by the commissioner for cause.

e. During the period of time that the program is suspended pursuant to subsection 14, the size of the board may be reduced with the approval of the commissioner.

4. The board may submit a plan of operation to the commissioner. The commissioner, after notice and hearing, may approve a plan of operation if the commissioner determines that the plan is suitable to assure the fair, reasonable, and equitable administration of the program,

and provides for the sharing of program gains and losses on an equitable and proportionate basis in accordance with the provisions of this section. A plan of operation is effective upon written approval of the commissioner.

5. The board may submit to the commissioner any amendments to the plan necessary or suitable to assure the fair, reasonable, and equitable administration of the program. The amendments shall be effective upon the written approval of the commissioner.

6. The plan of operation shall do all of the following:

a. Establish procedures for the handling and accounting of program assets and moneys, and for an annual fiscal reporting to the commissioner.

b. Establish procedures for selecting an administering carrier and setting forth the powers and duties of the administering carrier.

c. Establish procedures for reinsuring risks in accordance with the provisions of this section.

d. Establish procedures for collecting assessments from reinsuring carriers to fund claims and administrative expenses incurred or estimated to be incurred by the program.

e. Establish a methodology for applying the dollar thresholds contained in this section for carriers that pay or reimburse health care providers through capitation or a salary.

f. Provide for any additional matters necessary to implement and administer the program.

7. The same general powers and authority granted under the laws of this state to insurance companies and health maintenance organizations licensed to transact business in this state may be exercised by the board under the program, except the power to issue health insurance coverages directly to either groups or individuals. Additionally, the board is granted the specific authority to do all or any of the following:

a. Enter into contracts as necessary or proper to administer the provisions and purposes of this subchapter, including the authority, with the approval of the commissioner, to enter into contracts with similar programs in other states for the joint performance of common functions or with persons or other organizations for the performance of administrative functions.

b. Sue or be sued, including taking any legal action necessary or proper to recover any assessments and penalties for, on behalf of, or against the program or any reinsuring carriers.

c. Take any legal action necessary to avoid the payment of improper claims made against the program.

d. Define the health insurance coverages for which reinsurance will be provided, and issue reinsurance policies, pursuant to this subchapter.

e. Establish rules, conditions, and procedures for reinsuring risks under the program.

f. Establish and implement actuarial functions as appropriate for the operation of the program.

g. Assess reinsuring carriers in accordance with the provisions of subsection 11, and make advance interim assessments as may be reasonable and necessary for organizational and interim operating expenses. Any interim assessments shall be credited as offsets against any regular assessments due following the close of the calendar year.

h. Appoint appropriate legal, actuarial, and other committees as necessary to provide technical assistance in the operation of the program, policy and other contract design, and any other function within the authority of the program.

i. Borrow money to effect the purposes of the program. Any notes or other evidence of indebtedness of the program not in default are legal investments for carriers and may be carried as admitted assets.

8. A reinsuring carrier may reinsure with the program as provided in this section.

a. The program shall reinsure up to the level of coverage provided in either a basic health benefit plan or standard health benefit plan established by the board.

b. A small employer carrier may reinsure an entire employer group within sixty days of the commencement of the group's coverage under health insurance coverage.

c. A reinsuring carrier may reinsure an eligible employee or dependent within a period of sixty days following the commencement of the coverage with the small employer. A newly eligible employee or dependent of a reinsured small employer may be reinsured within sixty days of the commencement of such person's coverage.

d. (1) The program shall not reimburse a reinsuring carrier with respect to the claims of

a reinsured employee or dependent until the small employer carrier has incurred an initial level of claims for such employee or dependent of five thousand dollars in a calendar year for benefits covered by the program. In addition, the reinsuring carrier is responsible for ten percent of the next fifty thousand dollars of incurred claims during a calendar year and the program shall reinsure the remainder. A reinsuring carrier's liability under this subparagraph shall not exceed a maximum limit of ten thousand dollars in any one calendar year with respect to any reinsured individual.

(2) The board annually shall adjust the initial level of claims and the maximum limit to be retained by the small employer carrier to reflect increases in costs and utilization within the standard market for health benefit plans within the state. The adjustment shall not be less than the annual change in the medical component of the "consumer price index for all urban consumers" of the United States department of labor, bureau of labor statistics, unless the board proposes and the commissioner approves a lower adjustment factor.

e. A small employer carrier may terminate reinsurance for one or more of the reinsured employees or dependents of a small employer on any plan anniversary date.

f. Premium rates charged for reinsurance by the program to a health maintenance organization that is federally qualified under 42 U.S.C. §300e(c)(2)(A), and is thereby subject to requirements that limit the amount of risk that may be ceded to the program that are more restrictive than those specified in paragraph *"d"*, shall be reduced to reflect that portion of the risk above the amount set forth in paragraph *"d"* that may not be ceded to the program, if any.

9. *a.* The board, as part of the plan of operation, shall establish a methodology for determining premium rates to be charged by the program for reinsuring small employers and individuals pursuant to this section. The methodology shall include a system for classification of small employers that reflects the types of case characteristics commonly used by small employer carriers in the state. The methodology shall provide for the development of base reinsurance premium rates, which shall be multiplied by the factors set forth in paragraph *"b"* to determine the premium rates for the program. The base reinsurance premium rates shall be established by the board, subject to the approval of the commissioner, and shall be set at levels which reasonably approximate gross premiums charged to small employers by small employer carriers for health insurance coverages with benefits similar to the standard health benefit plan.

b. Premiums for the program shall be as follows:

(1) An entire small employer group may be reinsured for a rate that is one and one-half times the base reinsurance premium rate for the group established pursuant to this subsection.

(2) An eligible employee or dependent may be reinsured for a rate that is five times the base reinsurance premium rate for the individual established pursuant to this subsection.

c. The board periodically shall review the methodology established under paragraph *"a"*, including the system of classification and any rating factors, to assure that it reasonably reflects the claims experience of the program. The board may propose changes to the methodology which shall be subject to the approval of the commissioner.

10. If health insurance coverage for a small employer is entirely or partially reinsured with the program, the premium charged to the small employer for any rating period for the coverage issued shall meet the requirements relating to premium rates set forth in section 513B.4.

11. *a.* Prior to March 1 of each year, the board shall determine and report to the commissioner the program net loss for the previous calendar year, including administrative expenses and incurred losses for the year, taking into account investment income and other appropriate gains and losses.

b. Any net loss for the year shall be recouped by assessments of reinsuring carriers.

(1) The board shall establish, as part of the plan of operation, a formula by which to make assessments against reinsuring carriers. The assessment formula shall be based on both of the following:

(a) Each reinsuring carrier's share of the total premiums earned in the preceding calendar

year from health insurance coverages delivered or issued for delivery to small employers in this state by reinsuring carriers.

(b) Each reinsuring carrier's share of the premiums earned in the preceding calendar year from newly issued health insurance coverages delivered or issued for delivery during such calendar year to small employers in this state by reinsuring carriers.

(2) The formula established pursuant to subparagraph (1) shall not result in any reinsuring carrier having an assessment share that is less than fifty percent nor more than one hundred fifty percent of an amount which is based on the proportion of the reinsuring carrier's total premiums earned in the preceding calendar year from health insurance coverages delivered or issued for delivery to small employers in this state by reinsuring carriers to total premiums earned in the preceding calendar year from health insurance coverages delivered or issued for delivery to small employers in this state by all reinsuring carriers.

(3) The board, with approval of the commissioner, may change the assessment formula established pursuant to subparagraph (1) from time to time as appropriate. The board may provide for the shares of the assessment base attributable to premiums from all health insurance coverages and to premiums from newly issued health insurance coverages to vary during a transition period.

(4) Subject to the approval of the commissioner, the board shall make an adjustment to the assessment formula for reinsuring carriers that are approved health maintenance organizations which are federally qualified under 42 U.S.C. §300e et seq., to the extent, if any, that restrictions are placed on them that are not imposed on other small employer carriers.

(5) Premiums and benefits paid by a reinsuring carrier that are less than an amount determined by the board to justify the cost of collection shall not be considered for purposes of determining assessments.

c. (1) Prior to March 1 of each year, the board shall determine and file with the commissioner an estimate of the assessments needed to fund the losses incurred by the program in the previous calendar year.

(2) If the board determines that the assessments needed to fund the losses incurred by the program in the previous calendar year will exceed the amount specified in subparagraph (3), the board shall evaluate the operation of the program and report its findings, including any recommendations for changes to the plan of operation, to the commissioner within ninety days following the end of the calendar year in which the losses were incurred. The evaluation shall include: an estimate of future assessments, the administrative costs of the program, the appropriateness of the premiums charged, and the level of insurer retention under the program and the costs of coverage for small employers. If the board fails to file the report with the commissioner within ninety days following the end of the applicable calendar year, the commissioner may evaluate the operations of the program and implement such amendments to the plan of operation the commissioner deems necessary to reduce future losses and assessments.

(3) For any calendar year, the amount specified in this subparagraph is five percent of total premiums earned in the previous year from health insurance coverages delivered or issued for delivery to small employers in this state by reinsuring carriers.

(4) If assessments in each of two consecutive calendar years exceed by ten percent the amount specified in subparagraph (3), the commissioner may relieve carriers from any or all of the regulations of this subchapter or take such other actions as the commissioner deems equitable and necessary to spread the risk of loss and assure portability of coverages and continuity of benefits so as to reduce assessments to ten percent or less of that amount specified in subparagraph (3).

d. If assessments exceed net losses of the program, the excess shall be held in an interest-bearing account and used by the board to offset future losses or to reduce program premiums. As used in this paragraph, *"future losses"* includes reserves for incurred but not reported claims.

e. Each reinsuring carrier's proportion of the assessment shall be determined annually by the board based on annual statements and other reports deemed necessary by the board and filed by the reinsuring carriers with the board.

f. The plan of operation shall provide for the imposition of an interest penalty for late payment of assessments.

g. A reinsuring carrier may seek from the commissioner a deferment from all or part of an assessment imposed by the board. The commissioner may defer all or part of the assessment of a reinsuring carrier if the commissioner determines that the payment of the assessment would place the reinsuring carrier in a financially impaired condition. If all or part of an assessment against a reinsuring carrier is deferred, the amount deferred shall be assessed against the other participating carriers in a manner consistent with the basis for assessment set forth in this subsection. The reinsuring carrier receiving such deferment shall remain liable to the program for the amount deferred and shall be prohibited from reinsuring any individuals or groups in the program until such time as it pays such assessments.

12. The participation in the program as reinsuring carriers, the establishment of rates, forms, or procedures, or any other joint or collective action required by this subchapter shall not be the basis of any legal action, criminal or civil liability, or penalty against the program or any of its reinsuring carriers either jointly or separately.

13. The program is exempt from any and all state or local taxes.

14. The board of the Iowa small employer health reinsurance program, on an ongoing basis, shall review the program and make recommendations as to the continued cost effectiveness of the program to the commissioner, which recommendations may include proposed modifications or suspension of operation of the program. In making such a review, the board shall consider such factors as the population reinsured by the program, the premiums and assessments paid to the program, the number and percentage of carriers electing to utilize the program, health care reform measures implemented in the state, as well as other factors deemed relevant by the board. The commissioner, upon finding that the program is not cost effective, may make modifications to the program or suspend the operation of the program by rule.

92 Acts, ch 1167, §14; 93 Acts, ch 80, §11, 12; 97 Acts, ch 103, §26 – 32; 99 Acts, ch 165, §8; 2001 Acts, ch 69, §18 – 22, 39; 2005 Acts, ch 70, §9; 2014 Acts, ch 1092, §182, 183

Referred to in §513B.2, 513B.4, 513B.11, 513B.12

513B.14 Health benefit plan standards. Repealed by 2001 Acts, ch 69, §38, 39.

513B.15 Periodic market evaluation.

The board shall study and report at least every three years to the commissioner on the effectiveness of this subchapter. The report shall analyze the effectiveness of the subchapter in promoting rate stability, product availability, and coverage affordability. The report may contain recommendations for actions to improve the overall effectiveness, efficiency, and fairness of the small group health insurance marketplace. The report shall address whether carriers and producers are fairly and actively marketing or issuing health insurance coverages to small employers in fulfillment of the purposes of this subchapter. The report may contain recommendations for market conduct or other regulatory standards or action.

92 Acts, ch 1167, §16; 97 Acts, ch 103, §33

513B.16 Applicability of certain state laws. Repealed by 2001 Acts, ch 69, §38, 39.

513B.17 Discretion of the commissioner.

1. The commissioner may suspend all or any part of section 513B.4 as to the premium rates applicable to one or more small employers for one or more rating periods upon a filing by the small employer carrier and a finding by the commissioner that the suspension is reasonable in light of the financial condition of the carrier or that the suspension would enhance the efficiency and fairness of the marketplace for small employer health insurance.

2. The commissioner may suspend or modify the normal workweek requirement of thirty or more hours under the definition of eligible employee upon a finding by the commissioner that the suspension would enhance the availability of health insurance to employees of small employers.

3. The commissioner may adopt, by rule or order, transition provisions to facilitate the implementation and administration of this chapter.

91 Acts, ch 244, §8
CS91, §513B.8
92 Acts, ch 1167, §18
C93, §513B.17
93 Acts, ch 80, §14; 97 Acts, ch 103, §34; 2005 Acts, ch 70, §10

513B.17A Restoration of terminated coverage. Repealed by 2001 Acts, ch 69, §38, 39.

513B.18 Uniform application form.

The commissioner shall develop, by rule, a uniform application form for use by small employers applying for new health insurance coverage under group health plans offered by small employer carriers. Small employer carriers shall be required to use the uniform application form not less than six months after the rules developing the form become effective under chapter 17A.

2007 Acts, ch 169, §1

513B.19 through 513B.30 Reserved.

SUBCHAPTER II

BASIC BENEFIT COVERAGE

513B.31 through 513B.43 Repealed by 2001 Acts, ch 69, §38, 39.

CHAPTER 513C

INDIVIDUAL HEALTH INSURANCE MARKET REFORM

Referred to in §87.4, 296.7, 331.301, 364.4, 505.28, 505.29, 514E.2, 514E.7, 514I.3, 514K.2, 669.14, 670.7

513C.1 Short title.
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513C.9 Standards to assure fair marketing.
513C.10 Iowa individual health benefit reinsurance association.
513C.11 Self-funded employer-sponsored health benefit plan participation in reinsurance association.
513C.12 Commissioner's duties.

513C.1 Short title.

This chapter shall be known and may be cited as the "*Individual Health Insurance Market Reform Act*".

95 Acts, ch 5, §3

513C.2 Purpose.

The purpose and intent of this chapter is to promote the availability of health insurance coverage to individuals regardless of their health status or claims experience, to prevent abusive rating practices, to require disclosure of rating practices to purchasers, to establish rules regarding the renewal of coverage, to establish limitations on the use of preexisting condition exclusions, to assure fair access to health plans, and to improve the overall fairness and efficiency of the individual health insurance market.

95 Acts, ch 5, §4

513C.3 Definitions.

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

1. *"Actuarial certification"* means a written statement by a member of the American academy of actuaries or other individual acceptable to the commissioner that an individual carrier is in compliance with the provisions of section 513C.5 which is based upon the actuary's or individual's examination, including a review of the appropriate records and the actuarial assumptions and methods used by the carrier in establishing premium rates for applicable individual health benefit plans.

2. *"Affiliate"* or *"affiliated"* means any entity or person who directly or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, a specified entity or person.

3. *"Basic or standard health benefit plan"* means the core group of health benefits developed pursuant to section 513C.8.

4. *"Block of business"* means all the individuals insured under the same individual health benefit plan.

5. *"Carrier"* means any entity that provides individual health benefit plans in this state. For purposes of this chapter, carrier includes an insurance company, a group hospital or medical service corporation, a fraternal benefit society, a health maintenance organization, and any other entity providing an individual plan of health insurance or health benefits subject to state insurance regulation.

6. *"Commissioner"* means the commissioner of insurance.

7. *"Eligible individual"* means an individual who is a resident of this state and who either has qualifying existing coverage or has had qualifying existing coverage within the immediately preceding thirty days, or an individual who has had a qualifying event occur within the immediately preceding thirty days.

8. *"Established service area"* means a geographic area, as approved by the commissioner and based upon the carrier's certificate of authority to transact business in this state, within which the carrier is authorized to provide coverage.

9. *"Filed rate"* means, for a rating period related to each block of business, the rate charged to all individuals with similar rating characteristics for individual health benefit plans.

10. *"Individual health benefit plan"* means any hospital or medical expense incurred policy or certificate, hospital or medical service plan, or health maintenance organization subscriber contract sold to an individual, or any discretionary group trust or association policy, whether issued within or outside of the state, providing hospital or medical expense incurred coverage to individuals residing within this state. Individual health benefit plan does not include a self-insured group health plan, a self-insured multiple employer group health plan, a group conversion plan, an insured group health plan, accident-only, specified disease, short-term hospital or medical, hospital confinement indemnity, credit, dental, vision, Medicare supplement, long-term care, or disability income insurance coverage, coverage issued as a supplement to liability insurance, workers' compensation or similar insurance, or automobile medical payment insurance.

11. *"Premium"* means all moneys paid by an individual and eligible dependents as a condition of receiving coverage from a carrier or an organized delivery system, including any fees or other contributions associated with an individual health benefit plan.

12. *"Qualifying event"* means any of the following:

a. Loss of eligibility for medical assistance provided pursuant to chapter 249A or Medicare coverage provided pursuant to Tit. XVIII of the federal Social Security Act.

b. Loss or change of dependent status under qualifying previous coverage.

c. The attainment by an individual of the age of majority.

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

13. *a. "Qualifying existing coverage"* or *"qualifying previous coverage"* means benefits or coverage provided under any of the following:

(1) Any group health insurance that provides benefits similar to or exceeding benefits provided under the standard health benefit plan, provided that such policy has been in effect for a period of at least one year.

(2) An individual health insurance benefit plan, including coverage provided under a

health maintenance organization contract, a hospital or medical service plan contract, or a fraternal benefit society contract, that provides benefits similar to or exceeding the benefits provided under the standard health benefit plan, provided that such policy has been in effect for a period of at least one year.

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

14. *"Rating characteristics"* means demographic characteristics of individuals which are considered by the carrier in the determination of premium rates for the individuals and which are approved by the commissioner.

15. *"Rating period"* means the period for which premium rates established by a carrier are in effect.

16. *"Restricted network provision"* means a provision of an individual health benefit plan that conditions the payment of benefits, in whole or in part, on the use of health care providers that have entered into a contractual arrangement with the carrier to provide health care services to covered individuals.

95 Acts, ch 5, §5; 2002 Acts, ch 1111, §14; 2003 Acts, ch 108, §131; 2004 Acts, ch 1110, §35; 2004 Acts, ch 1158, §1; 2012 Acts, ch 1023, §79, 157; 2017 Acts, ch 148, §46 - 51

Referred to in §514A.3B

513C.4 Applicability and scope.

1. Except as provided in subsection 2, for purposes of this chapter, carriers that are affiliated companies or that are eligible to file a consolidated tax return shall be treated as one carrier and any restrictions or limitations imposed by this chapter shall apply as if all individual health benefit plans delivered or issued for delivery to residents of this state by such affiliated carriers were issued by one carrier.

2. An affiliated carrier that is a health maintenance organization having a certificate of authority under section 514B.5 shall be considered to be a separate carrier for the purposes of this chapter.

95 Acts, ch 5, §6; 96 Acts, ch 1034, §48

513C.5 Restrictions relating to premium rates.

1. Premium rates for any block of individual health benefit plan business issued on or after January 1, 1996, or the date rules are adopted by the commissioner of insurance and become effective, whichever date is later, by a carrier subject to this chapter shall be limited to the composite effect of allocating costs among the following:

a. After making actuarial adjustments based upon benefit design and rating characteristics, the filed rate for any block of business shall not exceed the filed rate for any other block of business by more than twenty percent.

b. The filed rate for any block of business shall not exceed the filed rate for any other block of business by more than thirty percent due to factors relating to rating characteristics.

c. The filed rate for any block of business shall not exceed the filed rate for any other block of business by more than thirty percent due to any other factors approved by the commissioner.

d. Premium rates for individual health benefit plans shall comply with the requirements of this section notwithstanding any assessments paid or payable by the carrier pursuant to any reinsurance program or risk adjustment mechanism.

e. An adjustment applied to a single block of business shall not exceed the adjustment applied to all blocks of business by more than fifteen percent due to the claim experience or health status of that block of business.

f. For purposes of this subsection, an individual health benefit plan that contains a restricted network provision shall not be considered similar coverage to an individual health benefit plan that does not contain such a provision, provided that the differential in payments made to network providers results in substantial differences in claim costs.

2. Notwithstanding subsection 1, the commissioner, with the concurrence of the board established under chapter 514E, may by order reduce or eliminate the allowed rating bands

provided under subsection 1, paragraphs *"a"*, *"b"*, *"c"*, and *"e"*, or otherwise limit or eliminate the use of experience rating.

3. A carrier shall not transfer an individual involuntarily into or out of a block of business.

4. The commissioner may suspend for a specified period the application of subsection 1, paragraph *"a"*, as to the premium rates applicable to one or more blocks of business of a carrier for one or more rating periods upon a filing by the carrier requesting the suspension and a finding by the commissioner that the suspension is reasonable in light of the financial condition of the carrier.

5. A carrier shall make a reasonable disclosure at the time of the offering for sale of any individual health benefit plan of all of the following:

a. The extent to which premium rates for a specified individual are established or adjusted based upon rating characteristics.

b. The carrier's right to change premium rates, and the factors, other than claim experience, that affect changes in premium rates.

c. The provisions relating to the renewal of policies and contracts.

d. Any provisions relating to any preexisting condition.

e. All plans offered by the carrier, the prices of such plans, and the availability of such plans to the individual.

6. A carrier shall maintain at its principal place of business a complete and detailed description of its rating practices, including information and documentation that demonstrate that its rating methods and practices are based upon commonly accepted actuarial assumptions and are in accordance with sound actuarial principles.

7. A carrier shall file with the commissioner annually on or before March 15, an actuarial certification certifying that the carrier is in compliance with this chapter and that the rating methods of the carrier are actuarially sound. The certification shall be in a form and manner and shall contain information as specified by the commissioner. A copy of the certification shall be retained by the carrier at its principal place of business. Rate adjustments made in order to comply with this section are exempt from loss ratio requirements.

8. A carrier shall make the information and documentation maintained pursuant to subsection 6 available to the commissioner upon request. The information and documentation shall be considered proprietary and trade secret information and shall not be subject to disclosure by the commissioner to persons outside of the division except as agreed to by the carrier or as ordered by a court of competent jurisdiction.

95 Acts, ch 5, §7; 2001 Acts, ch 125, §2; 2002 Acts, ch 1119, §65; 2017 Acts, ch 148, §52
Referred to in §513C.3

513C.6 Provisions on renewability of coverage.

1. An individual health benefit plan subject to this chapter is renewable with respect to an eligible individual or dependents, at the option of the individual, except for one or more of the following reasons:

a. The individual fails to pay, or to make timely payment of, premiums or contributions pursuant to the terms of the individual health benefit plan.

b. The individual performs an act or practice constituting fraud or makes an intentional misrepresentation of a material fact under the terms of the individual health benefit plan.

c. A decision by the individual carrier to discontinue offering a particular type of individual health benefit plan in the state's individual insurance market. An individual health benefit plan may be discontinued by the carrier in that market with the approval of the commissioner and only if the carrier does all of the following:

(1) Provides advance notice of its decision to discontinue such plan to the commissioner. Notice to the commissioner, at a minimum, shall be no less than three days prior to the notice provided for in subparagraph (2) to affected individuals.

(2) Provides notice of its decision not to renew such plan to all affected individuals no less than ninety days prior to the nonrenewal date of any discontinued individual health benefit plans.

(3) Offers to each individual of the discontinued plan the option to purchase any other health plan currently offered by the carrier to individuals in this state.

(4) Acts uniformly in opting to discontinue the plan and in offering the option under subparagraph (3), without regard to the claims experience of any affected eligible individual or beneficiary under the discontinued plan or to a health status-related factor relating to any covered individuals or beneficiaries who may become eligible for the coverage.

d. A decision by the carrier to discontinue offering and to cease to renew all of its individual health benefit plans delivered or issued for delivery to individuals in this state. A carrier making such decision shall do all of the following:

(1) Provide advance notice of its decision to discontinue such plan to the commissioner. Notice to the commissioner, at a minimum, shall be no less than three days prior to the notice provided for in subparagraph (2) to affected individuals.

(2) Provide notice of its decision not to renew such plan to all individuals and to the commissioner in each state in which an individual under the discontinued plan is known to reside, no less than one hundred eighty days prior to the nonrenewal of the plan.

e. The commissioner finds that the continuation of the coverage is not in the best interests of the individuals, or would impair the carrier's ability to meet its contractual obligations.

2. At the time of coverage renewal, a carrier may modify the health insurance coverage for a policy form offered to individuals in the individual market so long as such modification is consistent with state law and effective on a uniform basis among all individuals with that policy form.

3. An individual carrier that elects not to renew an individual health benefit plan under subsection 1, paragraph *"d"*, shall not write any new business in the individual market in this state for a period of five years after the date of notice to the commissioner.

4. This section, with respect to a carrier doing business in one established geographic service area of the state, applies only to such carrier's operations in that service area.

5. A carrier offering coverage through a network plan is not required to renew or continue in force coverage or to accept applications from an individual who no longer resides or lives in, or is no longer employed in, the service area of such carrier, or no longer resides or lives in, or is no longer employed in, a service area for which the carrier is authorized to do business, but only if coverage is not offered or terminated uniformly without regard to health status-related factors of a covered individual.

6. A carrier offering coverage through a bona fide association is not required to renew or continue in force coverage or to accept applications from an individual through an association if the membership of the individual in the association on which the basis of coverage is provided ceases, but only if the coverage is not offered or terminated under this paragraph uniformly without regard to health status-related factors of a covered individual.

7. An individual who has coverage as a dependent under a basic or standard health benefit plan may, when that individual is no longer a dependent under such coverage, elect to continue coverage under the basic or standard health benefit plan if the individual so elects immediately upon termination of the coverage under which the individual was covered as a dependent.

95 Acts, ch 5, §8; 97 Acts, ch 103, §36; 2005 Acts, ch 70, §11, 51; 2017 Acts, ch 148, §53

513C.7 Availability of coverage.

1. *a.* A carrier shall file with the commissioner, in a form and manner prescribed by the commissioner, the basic or standard health benefit plan. A basic or standard health benefit plan filed pursuant to this paragraph may be used by a carrier beginning thirty days after it is filed unless the commissioner disapproves of its use.

b. The commissioner may at any time, after providing notice and an opportunity for a hearing to the carrier, disapprove the continued use by a carrier of a basic or standard health benefit plan on the grounds that the plan does not meet the requirements of this chapter.

2. The individual basic or standard health benefit plan shall not deny, exclude, or limit benefits for a covered individual for losses incurred more than twelve months following the effective date of the individual's coverage due to a preexisting condition. A preexisting condition shall not be defined more restrictively than any of the following:

a. A condition that would cause an ordinarily prudent person to seek medical advice,

diagnosis, care, or treatment during the twelve months immediately preceding the effective date of coverage.

b. A condition for which medical advice, diagnosis, care, or treatment was recommended or received during the twelve months immediately preceding the effective date of coverage.

c. A pregnancy existing on the effective date of coverage.

3. A carrier shall not modify a basic or standard health benefit plan with respect to an individual or dependent through riders, endorsements, or other means to restrict or exclude coverage for certain diseases or medical conditions otherwise covered by the health benefit plan.

95 Acts, ch 5, §9; 97 Acts, ch 103, §37 – 39; 99 Acts, ch 165, §9, 10; 2003 Acts, ch 91, §24; 2004 Acts, ch 1158, §2, 21; 2008 Acts, ch 1188, §40, 41, 43; 2012 Acts, ch 1023, §157; 2017 Acts, ch 148, §54, 55

513C.8 Health benefit plan standards.

The board of directors of the Iowa comprehensive health insurance association, with the approval of the commissioner, shall adopt the form and level of coverage of the basic health benefit plan and the standard health benefit plan for the individual market which shall provide benefits substantially similar to the current state of the individual market.

95 Acts, ch 5, §10; 2001 Acts, ch 125, §3; 2004 Acts, ch 1110, §36; 2004 Acts, ch 1158, §3

Referred to in §513C.3

513C.9 Standards to assure fair marketing.

1. A carrier or an agent shall not do either of the following:

a. Encourage or direct individuals to refrain from filing an application for coverage with the carrier because of the health status, claims experience, industry, occupation, or geographic location of the individuals.

b. Encourage or direct individuals to seek coverage from another carrier because of the health status, claims experience, industry, occupation, or geographic location of the individuals.

2. Subsection 1, paragraph "*a*", shall not apply with respect to information provided by a carrier or an agent to an individual regarding the established geographic service area of the carrier or the restricted network provision of the carrier.

3. A carrier shall not, directly or indirectly, enter into any contract, agreement, or arrangement with an agent that provides for, or results in, the compensation paid to an agent for a sale of a basic or standard health benefit plan to vary because of the health status or permitted rating characteristics of the individual or the individual's dependents.

4. Notwithstanding subsection 3, a commission shall be paid to an agent related to the sale of a basic or standard health benefit plan under this chapter. A commission paid pursuant to this subsection shall not be considered by the board for purposes of section 513C.10, subsection 5.

5. Subsection 3 does not apply with respect to the compensation paid to an agent on the basis of percentage of premium, provided that the percentage shall not vary because of the health status or other permitted rating characteristics of the individual or the individual's dependents.

6. Denial by a carrier of an application for coverage from an individual shall be in writing and shall state the reason or reasons for the denial.

7. A violation of this section by a carrier or an agent is an unfair trade practice under chapter 507B.

8. If a carrier enters into a contract, agreement, or other arrangement with a third-party administrator to provide administrative, marketing, or other services related to the offering of individual health benefit plans in this state, the third-party administrator is subject to this section as if it were a carrier.

95 Acts, ch 5, §11; 97 Acts, ch 103, §40; 2006 Acts, ch 1117, §56; 2017 Acts, ch 148, §56

513C.10 Iowa individual health benefit reinsurance association.

1. The Iowa individual health benefit reinsurance association is established as a nonprofit corporation.

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

b. The association shall be incorporated under chapter 504, shall operate under a plan of operation established and approved pursuant to chapter 504, and shall exercise its powers through the board of directors established under chapter 514E.

2. *a.* Rates for basic and standard coverages as provided in this chapter shall be determined by each carrier as the product of a basic and standard factor and the lowest rate available for issuance by that carrier adjusted for rating characteristics and benefits. Basic and standard factors shall be established annually by the Iowa comprehensive health insurance association board with the approval of the commissioner. Multiple basic and standard factors for a distinct grouping of basic and standard policies may be established. A basic and standard factor is limited to a minimum value defined as the ratio of the average of the lowest rate available for issuance and the maximum rate allowable by law divided by the lowest rate available for issuance. A basic and standard factor is limited to a maximum value defined as the ratio of the maximum rate allowable by law divided by the lowest rate available for issuance. The maximum rate allowable by law and the lowest rate available for issuance is determined based on the rate restrictions under this chapter. For policies written after January 1, 2002, rates for the basic and standard coverages as provided in this chapter shall be calculated using the basic and standard factors and shall be no lower than the maximum rate allowable by law. However, to maintain assessable loss assessments at or below one percent of total health insurance premiums or payments as determined in accordance with subsection 6, the Iowa comprehensive health insurance association board with the approval of the commissioner may increase the value for any basic and standard factor greater than the maximum value.

b. The Iowa individual health benefit reinsurance association may, with the approval of the commissioner, increase cost-sharing provisions including, but not limited to, basic and standard plan deductibles, coinsurance, or copayments.

3. Following the close of each calendar year, the association, in conjunction with the commissioner, shall require each carrier to report the amount of earned premiums and the associated paid losses for all basic and standard plans issued by the carrier. The reporting of these amounts must be certified by an officer of the carrier.

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

5. If the statewide aggregate ratio of paid claims to ninety percent of earned premiums is greater than one, the dollar difference between ninety percent of earned premiums and the paid claims shall represent an assessable loss.

6. The assessable loss plus necessary operating expenses for the association, plus any additional expenses as provided by law, shall be assessed by the association to all members in proportion to their respective shares of total health insurance premiums or payments for subscriber contracts received in Iowa during the second preceding calendar year, or with paid losses in the year, coinciding with or ending during the calendar year, or on any other equitable basis as provided in the plan of operation. In sharing losses, the association may abate or defer any part of the assessment of a member, if, in the opinion of the board, payment of the assessment would endanger the ability of the member to fulfill its contractual obligations. The association may also provide for an initial or interim assessment against the members of the association to meet the operating expenses of the association until the

next calendar year is completed. For purposes of this subsection, *"total health insurance premiums"* and *"payments for subscriber contracts"* include, without limitation, premiums or other amounts paid to or received by a member for individual and group health plan care coverage provided under any chapter of the Code or Acts, and *"paid losses"* includes, without limitation, claims paid by a member operating on a self-funded basis for individual and group health plan care coverage provided under any chapter of the Code or Acts. For purposes of calculating and conducting the assessment, the association shall have the express authority to require members to report on an annual basis each member's total health insurance premiums and payments for subscriber contracts and paid losses. A member is liable for its share of the assessment calculated in accordance with this section regardless of whether it participates in the individual insurance market.

7. The board shall develop procedures for distributing the assessable loss assessments to each carrier in proportion to the carrier's respective share of premium for basic and standard plans to the statewide total premium for all basic and standard plans.

8. The board shall ensure that procedures for collecting and distributing assessments are as efficient as possible for carriers. The board may establish procedures which combine, or offset, the assessment from, and the distribution due to, a carrier.

9. A carrier may petition the association board to seek remedy from writing a significantly disproportionate share of basic and standard policies in relation to total premiums written in this state for health benefit plans. Upon a finding that a carrier has written a disproportionate share, the board may agree to compensate the carrier either by paying to the carrier an additional fee not to exceed two percent of earned premiums from basic and standard policies for that carrier or by petitioning the commissioner for remedy.

10. The commissioner, upon a finding that the acceptance of the offer of basic and standard coverage by individuals pursuant to this chapter would place the carrier in a financially impaired condition, shall not require the carrier to offer coverage or accept applications for any period of time the financial impairment is deemed to exist.

95 Acts, ch 5, §12; 2000 Acts, ch 1023, §21; 2001 Acts, ch 125, §4 – 6; 2002 Acts, ch 1119, §66; 2003 Acts, ch 91, §25, 26, 53; 2004 Acts, ch 1049, §191; 2004 Acts, ch 1110, §37, 38; 2004 Acts, ch 1158, §4, 5; 2004 Acts, ch 1175, §394; 2012 Acts, ch 1023, §157; 2017 Acts, ch 148, §57 – 59

Referred to in §507A.4, 513C.9, 513C.11

513C.11 Self-funded employer-sponsored health benefit plan participation in reinsurance association.

1. A self-funded employer-sponsored health benefit plan qualified under the federal Employee Retirement Income Security Act of 1974 may voluntarily elect to participate in the Iowa individual health benefit reinsurance association established in section 513C.10 in accordance with the plan of operation and subject to such terms and conditions adopted by the board of the association established in section 514E.2 to provide portability and continuity to its covered employees and their covered spouses and dependents subject to the same terms and conditions as a participating insurer.

2. If the federal Employee Retirement Income Security Act of 1974 is amended such that the state may require the participation of a self-funded employer, the individual reinsurance requirements shall apply equally to such employers.

3. When and if the federal government imposes conditions of portability and continuity on self-funded employers qualified under the federal Employee Retirement Income Security Act of 1974 that the commissioner deems are substantially similar to those required of Iowa insurers, coverage under such qualified plans shall be deemed qualified prior coverage for purposes of chapter 513B and this chapter.

95 Acts, ch 5, §13; 2002 Acts, ch 1119, §67

513C.12 Commissioner's duties.

The commissioner shall adopt rules administering this chapter.

97 Acts, ch 103, §41

CHAPTER 513D

ASSOCIATION HEALTH PLANS

Referred to in §87.4, 296.7, 331.301, 364.4, 505.28, 505.29, 669.14, 670.7

513D.1 Association health plans.
513D.2 Rules and enforcement.

513D.1 Association health plans.

The commissioner shall adopt rules that allow for the creation of association health plans that are consistent with the United States department of labor's regulations in 29 C.F.R. pt. 2510. A multiple employer welfare arrangement that is recognized as tax-exempt under Internal Revenue Code section 501(c)(9) and that is registered with the commissioner prior to January 1, 2018, shall not be considered an association health plan unless the multiple employer welfare arrangement affirmatively elects to be treated as an association health plan.

2018 Acts, ch 1063, §5; 2018 Acts, ch 1172, §68
Referred to in §509.1
NEW section

513D.2 Rules and enforcement.

1. The commissioner shall adopt rules, as necessary, pursuant to chapter 17A to administer this chapter.

2. The commissioner may take any enforcement action under the commissioner's authority to enforce compliance with this chapter.

2018 Acts, ch 1063, §6
NEW section

CHAPTER 514

NONPROFIT HEALTH SERVICE CORPORATIONS

Referred to in §87.4, 135B.30, 249A.4, 296.7, 331.301, 364.4, 423.3, 432.2, 505.16, 505.28, 505.29, 507.1, 507B.2, 507B.4A, 507C.3, 508C.3, 509.19, 509A.6, 509B.1, 510.11, 513C.10, 514B.5, 514B.6, 514B.9, 514B.20, 514B.31, 514B.32, 514C.1, 514C.2, 514C.3, 514C.3A, 514C.4, 514C.6, 514C.10, 514C.11, 514C.12, 514C.18, 514C.19, 514C.20, 514C.21, 514C.23, 514C.24, 514C.25, 514C.26, 514C.29, 514C.30, 514C.32, 514C.33, 514C.34, 514D.1, 514D.2, 514D.6, 514E.1, 514E.2, 514F.4, 514G.103, 514L.1, 515.1, 515B.2, 515B.9, 518C.10, 521A.1, 521A.14, 521E.1, 521F.2, 521F.10, 533C.103, 669.14, 670.7

514.1 Applicability — definitions.
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514.2A Service of process.
514.3 Approval by commissioner.
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514.5 Contracts for service.
514.6 Rates — approval by commissioner. Repealed by 2004 Acts, ch 1110, §71, 72.
514.7 Contracts — approval by commissioner — provisions to be available.
514.8 Contracts with providers — approval.
514.9 Annual report.
514.9A Certificate of authority — renewal.
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514.11 Costs approved.
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514.17 Physicians and surgeons, podiatric physicians, or dentists — number required.
514.18 Podiatric physicians.
514.19 Combined service corporations.
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514.21 Utilization review program.
514.22 Reserved.
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514.1 Applicability — definitions.

1. A corporation organized under chapter 504, Code 1989, or current chapter 504 for the purpose of establishing, maintaining, and operating a nonprofit hospital service plan, whereby hospital service may be provided by the corporation or by a hospital with which it has a contract for service, to the public who become subscribers to this plan under a contract which entitles each subscriber to hospital service; or a corporation organized

for the purpose of establishing, maintaining, and operating a plan whereby health care service may be provided at the expense of this corporation, by licensed physicians and surgeons, dentists, podiatric physicians, osteopathic physicians, osteopathic physicians and surgeons or chiropractors, to subscribers under contract, entitling each subscriber to health care service, as provided in the contract; or a corporation organized for the purpose of establishing, maintaining, and operating a nonprofit pharmaceutical service plan or optometric service plan, whereby pharmaceutical or optometric service may be provided by this corporation or by a licensed pharmacy with which it has a contract for service, to the public who become subscribers to this plan under a contract which entitles each subscriber to pharmaceutical or optometric service; shall be governed by this chapter and is exempt from all other provisions of the insurance laws of this state, unless specifically designated in this chapter, not only in governmental relations with the state but for every other purpose, and additions enacted after July 1, 1939, shall not apply to these corporations unless they are expressly designated in the additions.

2. For the purposes of this chapter:

a. "Health care" means that care necessary for the purpose of preventing, alleviating, curing, or healing human physical or mental illness, injury, or disability.

b. "Provider" means a person as defined in section 4.1, subsection 20, which is licensed or authorized in this state to furnish health care services.

c. "Subscriber" means an individual who enters into a contract for health care services with a corporation subject to this chapter and includes a person eligible for mandatory medical assistance or optional medical assistance as defined under chapter 249A, with respect to whom the department of human services has entered into a contract with a firm operating under this chapter.

[C39, §**8895.01;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §514.1]

83 Acts, ch 27, §11; 83 Acts, ch 96, §157, 159; 84 Acts, ch 1122, §3; 86 Acts, ch 1180, §3; 96 Acts, ch 1034, §68; 2003 Acts, ch 108, §96; 2004 Acts, ch 1049, §191; 2004 Acts, ch 1175, §394; 2007 Acts, ch 22, §86; 2013 Acts, ch 138, §76; 2014 Acts, ch 1026, §114

514.2 Incorporation.

Persons desiring to form a nonprofit hospital service corporation, or a nonprofit medical service corporation, or a nonprofit pharmaceutical or optometric service corporation shall have been incorporated under the provisions of chapter 504, Code 1989, or shall incorporate under the provisions of current chapter 504.

[C39, §**8895.02;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §514.2]

2003 Acts, ch 108, §97; 2004 Acts, ch 1049, §191; 2004 Acts, ch 1086, §87; 2004 Acts, ch 1175, §394; 2006 Acts, ch 1030, §62

514.2A Service of process.

A nonprofit health service corporation authorized to do business in this state shall file in the office of the commissioner a power of attorney and an agreement in writing that service of process in any action or proceeding against the corporation may be made on the commissioner and shall be of the same legal force and validity as if made upon the corporation, and that the authority shall continue in force so long as any liability remains outstanding in this state. A copy of the power of attorney, certified by the commissioner, shall be deemed sufficient evidence of the appointment and shall be admitted in evidence with the same force and effect as the original. Service of process made on the commissioner as the attorney for service of process shall be made as provided in section 505.30.

2003 Acts, ch 91, §27; 2018 Acts, ch 1018, §7

Section amended

514.3 Approval by commissioner.

The articles of incorporation, and any subsequent amendments, of a corporation shall have endorsed on or annexed to those articles or amendments the approval of the commissioner of insurance before the same shall be filed for record. A corporation shall file with the

commissioner bylaws and subsequent amendments to the bylaws within thirty days of the adoption of the bylaws and amendments.

[C39, §**8895.03;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §514.3]

2000 Acts, ch 1023, §22; 2002 Acts, ch 1119, §180

514.4 Directors.

1. *a.* At least two-thirds of the directors of a hospital service corporation, medical service corporation, dental service corporation, or pharmaceutical or optometric service corporation subject to this chapter shall be at all times subscribers and not more than one-third of the directors shall be providers as provided in this section. The board of directors of each corporation shall consist of at least nine members.

b. A subscriber director is a director of the board of a corporation who is a subscriber and who is not a provider of health care pursuant to section 514B.1, subsection 7, a person who has material financial or fiduciary interest in the delivery of health care services or a related industry, an employee of an institution which provides health care services, or a spouse or a member of the immediate family of such a person. However, a subscriber director of a dental service corporation may be an employee, officer, director, or trustee of a hospital that does not contract with the dental service corporation. A subscriber director of a hospital or medical service corporation shall be a subscriber of the services of that corporation.

c. A provider director of a corporation subject to this chapter shall be at all times a person who has a material financial interest in or is a fiduciary to or an employee of or is a spouse or member of the immediate family of a provider having a contract with such corporation to render to its subscribers the services of such corporation or who is a hospital trustee.

2. A director may serve on a board of only one corporation at a time subject to this chapter.

3. The commissioner of insurance shall adopt rules pursuant to chapter 17A to implement the process of the election of subscriber directors of the board of directors of a corporation to ensure the representation of a broad spectrum of subscriber interest on each board and establish criteria for the selection of nominees. The rules shall provide for an independent subscriber nominating committee to serve until the composition of the board of directors meets the percentage requirements of this section. Once the composition requirements of this section are met, the nominations for subscriber directors shall be made by the subscriber directors of the board under procedures the board establishes which shall also permit nomination by a petition of at least fifty subscribers. The board shall also establish procedures to permit nomination of provider directors by petition of at least fifty participating providers. A member of the board of directors of a corporation subject to this chapter shall not serve on the independent subscriber nominating committee. The nominating committee shall consist of subscribers as defined in this section. The rules of the commissioner of insurance shall also permit nomination of subscriber directors by a petition of at least fifty subscribers, and nomination of provider directors by a petition of at least fifty participating providers. These petitions shall be considered only by the independent nominating committee during the duration of the committee. Following the discontinuance of the committee, the petition process shall be continued and the board of directors of the corporation shall consider the petitions. The independent subscriber nominating committee is not subject to chapter 17A. The nominating committee shall not receive per diem or expenses for the performance of their duties.

4. Population factors, representation of different geographic regions, and the demography of the service area of the corporation subject to this chapter shall be considered when making nominations for the board of directors of a corporation subject to this chapter.

5. A corporation serving states in addition to Iowa shall be required to implement this section only for directors who are residents of Iowa and elected as board members from Iowa.

[C39, §**8895.04;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §514.4]

83 Acts, ch 27, §12, 15; 84 Acts, ch 1282, §1; 91 Acts, ch 258, §58; 2000 Acts, ch 1023, §23; 2007 Acts, ch 137, §10; 2015 Acts, ch 29, §73

514.5 Contracts for service.

1. A hospital service corporation organized under chapter 504, Code 1989, or current

chapter 504, and governed by this chapter, may enter into contracts for the rendering of hospital service to any of its subscribers with hospitals maintained and operated by the state or any of its political subdivisions, or by any corporation, association, or individual. Such hospital service corporation may also contract with an ambulatory surgical facility to provide surgical services to the corporation's subscribers. Hospital service is meant to include bed and board, general nursing care, use of the operating room, use of the delivery room, ordinary medications and dressings and other customary routine care. *"Ambulatory surgical facility"* means a facility constructed and operated for the specific purpose of providing surgery to patients admitted to and discharged from the facility within the same day.

2. A medical service corporation organized under chapter 504, Code 1989, or current chapter 504, and governed by this chapter, may enter into contracts with subscribers to furnish health care service through physicians and surgeons, dentists, podiatric physicians, osteopathic physicians, osteopathic physicians and surgeons, or chiropractors.

3. Any pharmaceutical or optometric service corporation organized under chapter 504, Code 1989, or current chapter 504, and governed by this chapter, may enter into contracts for the rendering of pharmaceutical or optometric service to any of its subscribers. Membership in any pharmaceutical service corporation shall be open to all pharmacies licensed under chapter 155A.

4. A hospital service corporation or medical service corporation organized under chapter 504, Code 1989, or current chapter 504, and governed by this chapter, may enter into contracts with subscribers and providers to furnish health care services not otherwise allocated by this section.

[C39, §**8895.05;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §514.5]

83 Acts, ch 27, §13; 84 Acts, ch 1122, §4; 86 Acts, ch 1180, §4; 87 Acts, ch 215, §48; 96 Acts, ch 1034, §68; 2003 Acts, ch 108, §98; 2004 Acts, ch 1049, §191; 2004 Acts, ch 1175, §394; 2016 Acts, ch 1011, §121; 2017 Acts, ch 29, §146

514.6 Rates — approval by commissioner. Repealed by 2004 Acts, ch 1110, §71, 72.

514.7 Contracts — approval by commissioner — provisions to be available.

1. The contracts by any such corporation with the subscribers for health care service shall at all times be subject to the approval of the commissioner of insurance. The commissioner shall require that participating pharmacies be reimbursed by the pharmaceutical service corporation at rates or prices equal to rates or prices charged nonsubscribers, unless the commissioner determines otherwise to prevent loss to subscribers.

2. A provision shall be available in approved contracts with hospital and medical service corporate subscribers under group subscriber contracts or plans covering vision care services or procedures, for payment of necessary medical or surgical care and treatment provided by an optometrist licensed under chapter 154, if the care and treatment are provided within the scope of the optometrist's license and if the subscriber contract would pay for the care and treatment if it were provided by a person engaged in the practice of medicine or surgery as licensed under chapter 148. The subscriber contract shall also provide that the subscriber may reject the coverage or provision if the coverage or provision for services which may be provided by an optometrist is rejected for all providers of similar vision care services as licensed under chapter 148 or 154. This subsection applies to group subscriber contracts delivered after July 1, 1983, and to group subscriber contracts on their anniversary or renewal date, or upon the expiration of the applicable collective bargaining contract, if any, whichever is the later. This subsection does not apply to contracts designed only for issuance to subscribers eligible for coverage under Tit. XVIII of the Social Security Act, or any other similar coverage under a state or federal government plan.

3. A provision shall be made available in approved contracts with hospital and medical subscribers under group subscriber contracts or plans covering diagnosis and treatment of human ailments, for payment or reimbursement for necessary diagnosis or treatment provided by a chiropractor licensed under chapter 151 if the diagnosis or treatment is provided within the scope of the chiropractor's license and if the subscriber contract would pay or reimburse for the diagnosis or treatment of the human ailments, irrespective of

and disregarding variances in terminology employed by the various licensed professions in describing the human ailments or their diagnosis or treatment, if it were provided by a person licensed under chapter 148. The subscriber contract shall also provide that the subscriber may reject the coverage or provision if the coverage or provision for diagnosis or treatment of a human ailment by a chiropractor is rejected for all providers of diagnosis or treatment for similar human ailments licensed under chapter 148 or 151. A group subscriber contract may limit or make optional the payment or reimbursement for lawful diagnostic or treatment service by all licensees under chapters 148 and 151 on any rational basis which is not solely related to the license under or the practices authorized by chapter 151 or is not dependent upon a method of classification, categorization, or description based upon differences in terminology used by different licensees in describing human ailments or their diagnosis or treatment. This subsection applies to group subscriber contracts delivered after July 1, 1986, and to group subscriber contracts on their anniversary or renewal date, or upon the expiration of the applicable collective bargaining contract, if any, whichever is the later. This subsection does not apply to contracts designed only for issuance to subscribers eligible for coverage under Tit. XVIII of the Social Security Act, or any other similar coverage under a state or federal government plan.

4. A provision shall be available in approved contracts with hospital and medical service corporate subscribers under group subscriber contracts or plans covering medical and surgical service, for payment of covered services determined to be medically necessary provided by certified registered nurses certified by a national certifying organization, which organization shall be identified by the Iowa board of nursing pursuant to rules adopted by the board, if the services are within the practice of the profession of a registered nurse as that practice is defined in section 152.1, under terms and conditions agreed upon between the corporation and subscriber group, subject to utilization controls. This subsection shall not require payment for nursing services provided by a certified registered nurse practicing in a hospital, nursing facility, health care institution, a physician's office, or other noninstitutional setting if the certified registered nurse is an employee of the hospital, nursing facility, health care institution, physician, or other health care facility or health care provider. This subsection applies to group subscriber contracts delivered in this state on or after July 1, 1989, and to group subscriber contracts on their anniversary or renewal date, or upon the expiration of the applicable collective bargaining contract, if any, whichever is the later. This subsection does not apply to limited or specified disease or individual contracts or contracts designed only for issuance to subscribers eligible for coverage under Tit. XVIII of the federal Social Security Act, contracts which are rated on a community basis, or any other similar coverage under a state or federal government plan.

[C39, §**8895.07;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §514.7]

83 Acts, ch 166, §2; 84 Acts, ch 1122, §6; 84 Acts, ch 1290, §2; 86 Acts, ch 1180, §5; 89 Acts, ch 164, §3; 99 Acts, ch 75, §3; 2000 Acts, ch 1058, §46; 2008 Acts, ch 1088, §126; 2010 Acts, ch 1061, §180

Referred to in §514.21, 514.23

514.8 Contracts with providers — approval.

The contracts by any such corporation with participating hospitals for hospital service or with participating physicians and surgeons, dentists, podiatric physicians, osteopathic physicians, or osteopathic physicians and surgeons for medical and surgical service, or with participating pharmacies for pharmaceutical service, or with participating optometrists for optometric service, or with other providers shall at all times be subject to the approval of the commissioner of insurance.

[C39, §**8895.08;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §514.8]

84 Acts, ch 1122, §7; 96 Acts, ch 1034, §68

514.9 Annual report.

Every such corporation shall annually, on or before the first day of March, file in the office of the commissioner of insurance a statement verified by at least two of the principal officers of said corporation showing its condition on the thirty-first day of December then next

preceding, which shall be in such form and shall contain such matters as the commissioner of insurance shall prescribe.

[C39, §**8895.09;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §514.9]

514.9A Certificate of authority — renewal.

A certificate of authority of a corporation formed under this chapter expires on June 1 succeeding its issue and shall be renewed annually so long as the corporation transacts its business in accordance with all legal requirements. A corporation shall submit annually, on or before March 1, a completed application for renewal of its certificate of authority. A corporation that fails to timely file an application for renewal shall pay an administrative penalty of five hundred dollars to the treasurer of state for deposit as provided in section 505.7. A duly certified copy or duplicate of the certificate is admissible in evidence for or against the corporation with the same effect as the original.

2006 Acts, ch 1117, §57; 2009 Acts, ch 181, §72

514.10 Examination.

Every such corporation shall be subject to examination under the provisions of chapter 507 and any acts amendatory thereto, so far as the chapter may be applicable.

[C39, §**8895.10;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §514.10]

514.11 Costs approved.

All acquisition costs in connection with the solicitation of subscribers to such hospital service plan or medical service plan or pharmaceutical or optometric service plan, and administration costs including salaries paid its officers, if any, shall at all times be subject to the approval of the commissioner of insurance.

[C39, §**8895.11;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §514.11]

514.12 Investment of funds.

The funds of any corporation subject to the provisions of this chapter shall be invested only in securities permitted by the laws of this state for the investment of funds of life insurance companies.

[C39, §**8895.12;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §514.12]

514.13 Arbitration of disputes.

Any dispute arising between a corporation organized under chapter 504, Code 1989, or current chapter 504, and governed by this chapter, and a provider may be submitted to the commissioner of insurance for a decision. All decisions and findings of the commissioner of insurance may be judicially reviewed in accordance with the terms of chapter 17A.

[C39, §**8895.13;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §514.13]

84 Acts, ch 1122, §8; 2017 Acts, ch 29, §147

514.14 Dissolution or merger.

Any dissolution, merger, or liquidation of a corporation organized under chapter 504, Code 1989, or current chapter 504, and governed by this chapter shall be under the supervision of the commissioner of insurance who shall have all powers with respect thereto granted to the commissioner under the insurance laws of this state.

[C39, §**8895.14;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §514.14]

2017 Acts, ch 29, §148

514.15 Nonexempt from taxation.

Every corporation organized under chapter 504, Code 1989, or current chapter 504, and governed by this chapter, is hereby declared to be a charitable and benevolent institution but its property and funds, including subscribers' contracts, shall not be exempt from taxation. For purposes of this section, the term "*subscriber contract*" shall mean only those benefit contracts issued or delivered in Iowa by corporations subject to this chapter, including

certificates issued under such contracts, and which provide coverage to residents of Iowa on a risk basis.

[C39, §**8895.15;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §514.15; 82 Acts, ch 1003, §6] 85 Acts, ch 239, §3; 2017 Acts, ch 29, §149

Rate of tax; §432.2

514.16 Governmental employees included.

An employee or employees of the state, or of any county, city or of any institution supported in whole or in part by public funds, or any subdivisions thereof, may authorize the deduction from their salary or wages of the amount of their subscription payments to any corporation operating a nonprofit hospital service plan or medical service plan or pharmaceutical or optometric service plan, as provided in this chapter. The governing body of the state, or of the county, city or of any institution supported in whole or in part by public funds, or any subdivisions thereof, may authorize deductions from the salaries or wages of employees subscribing to such nonprofit hospital service plan or medical service plan or pharmaceutical or optometric service plan. The authorization by an employee or employees for deductions from the employee's or employees' salaries or wages shall be evidenced by a written request signed by the employee directed to and filed with the treasurer of the state, county, city or of any institution supported in whole or in part by public funds, or any subdivisions thereof, and said treasurer is authorized to draw and deliver checks in favor of the hospital service corporation or medical service corporation or pharmaceutical or optometric service corporation stipulated in such authorization for the amount covering the sum total of the deductions authorized. The foregoing provisions are not to be deemed an assignment of salaries or wages.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §514.16]

Referred to in §509A.3, 514B.21

514.17 Physicians and surgeons, podiatric physicians, or dentists — number required.

No nonprofit medical service corporation shall be permitted to operate until it shall have entered into contracts with at least one hundred fifty physicians and surgeons licensed to practice medicine and surgery pursuant to chapter 148, or one hundred fifty dentists licensed to practice dentistry pursuant to chapter 153, or at least one hundred fifty osteopathic physicians and surgeons licensed to practice osteopathic medicine and surgery pursuant to chapter 148, or at least twenty-five podiatric physicians licensed to practice podiatry pursuant to chapter 149, who agree to furnish medical and surgical, podiatric, or dental service and be governed by the bylaws of the corporation.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §514.17]

96 Acts, ch 1034, §68; 2008 Acts, ch 1088, §127

514.18 Podiatric physicians.

Medical or surgical services or procedures constituting the practice of podiatry, also known as chiropody, as provided in chapter 149, and covered by the terms of any individual, group, blanket, or franchise policy providing accident or health benefits hereafter delivered or hereafter issued for delivery in Iowa and covering an Iowa risk may be performed by any practitioner, selected by the insured, licensed under chapter 149 to perform such medical or surgical services or procedures. Any provision of such policy or exclusion or limitation denying an insured the free choice of such licensed podiatric physician, also known as chiropodist, shall to the extent of the denial, be void, but such voidance shall not affect the validity of the other provisions of the policy.

[C66, 71, 73, 75, 77, 79, 81, §514.18]

95 Acts, ch 108, §18; 2017 Acts, ch 29, §150

514.19 Combined service corporations.

A corporation subject to this chapter may combine with any other corporation subject to this chapter as permitted under chapter 504 and upon the approval by the commissioner of insurance. Each corporation shall comply with chapter 504, the corporation's articles of incorporation, and the corporation's bylaws. The combined service corporation shall

continue the service benefits previously provided by each corporation and may, subject to the approval of the commissioner of insurance, offer other service benefits not previously provided by the corporations before combining, which are permitted under this chapter.

83 Acts, ch 27, §14; 2004 Acts, ch 1049, §191; 2004 Acts, ch 1175, §393; 2007 Acts, ch 22, §87

514.20 Reserved.

514.21 Utilization review program.

A utilization review program shall be established for purposes of health care cost control, according to usual and customary third-party insurance payment or reimbursement procedures, by a corporation subject to this chapter and by physician providers as defined in section 135.1 and registered nurse providers licensed under chapter 152. This utilization review program shall not be used directly or indirectly to circumvent the provisions for payment or reimbursement to providers of health care services as provided in section 509.3, subsection 1, paragraphs *"f"* and *"g"*, and section 514.7.

86 Acts, ch 1180, §9; 89 Acts, ch 164, §4

Utilization and cost control; see also chapter 514F

514.22 Reserved.

514.23 Mutualization plan.

1. A corporation organized under chapter 504, Code 1989, or current chapter 504, and governed by this chapter, may become a mutual insurer under a plan which is approved by the commissioner of insurance. The plan shall state whether the insurer will be organized as a for-profit corporation pursuant to chapter 490 or 491 or a nonprofit corporation pursuant to chapter 504. Upon consummation of the plan, the corporation shall fully comply with the requirements of the law that apply to a mutual insurance company. If the insurer is to be organized under chapter 504, then at least seventy-five percent of the initial board of directors of the mutual insurer so formed shall be policyholders who are also nonproviders of health care. All directors comprising this initial board of directors shall be selected by an independent committee appointed by the state commissioner of insurance. This independent committee shall consist of seven to eleven persons who are current policyholders, who are nonproviders of health care, and who are not directors of a corporation subject to this chapter. For purposes of this subsection, a *"nonprovider of health care"* is an individual who is not any of the following:

a. A "provider" as defined in section 514B.1, subsection 7.

b. A person who has material financial or fiduciary interest in the delivery of health care services or a related industry.

c. An employee of an institution which provides health care services.

d. A spouse or a member of the immediate family of a person described in paragraphs *"a"* through *"c"*.

2. A corporation organized under chapter 504, Code 1989, or current chapter 504, and governed by this chapter, which becomes a mutual insurer under this section shall continue as a mutual insurer to be governed by the provisions of section 514.7 and shall also be governed by section 509.3, subsection 1, paragraph *"f"*.

85 Acts, ch 239, §4; 86 Acts, ch 1180, §6; 90 Acts, ch 1205, §36; 2004 Acts, ch 1049, §191; 2004 Acts, ch 1175, §393; 2017 Acts, ch 29, §151, 152

Referred to in §504.1108, 514E.1

CHAPTER 514A

ACCIDENT AND HEALTH INSURANCE

Referred to in §87.4, 296.7, 331.301, 364.4, 505.28, 505.29, 507B.4A, 509.14, 510.11, 513C.10, 514C.1, 514C.2, 514C.3, 514C.3A, 514C.4, 514C.6, 514C.10, 514C.11, 514C.12, 514C.18, 514C.19, 514C.20, 514C.21, 514C.23, 514C.24, 514C.25, 514C.26, 514C.29, 514C.30, 514C.32, 514C.33, 514C.34, 514D.1, 514D.2, 514E.1, 514E.2, 514F.4, 514L.1, 669.14, 670.7

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514A.1 Definition of accident and sickness insurance policy.

1. As used in this chapter, *"policy of accident and sickness insurance"* includes a policy or contract covering insurance against loss resulting from sickness, or from bodily injury or death by accident, or both. For the purposes of this chapter the words *"policy of accident and sickness insurance"* are interchangeable without deviation of meaning with the words *"policy of accident and health insurance"* or the words *"policy of accident or health insurance"*.

2. This chapter applies to all individual policies of such accident and sickness insurance written by Iowa or non-Iowa companies or associations duly licensed under chapter 508, 515, or 520 and, societies, orders, or associations licensed under chapter 512B writing sickness and accident policies providing benefits for loss of time.

3. Orders, societies or associations which admit to membership only persons engaged in one or more crafts or hazardous occupations in the same or similar lines of business and the societies or auxiliaries to such orders shall not be subject to the provisions of this chapter nor shall any religious order be subject to the provisions of this chapter.

[C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §514A.1]
89 Acts, ch 83, §72, 73; 2012 Acts, ch 1023, §115
Referred to in §514D.2, 514D.3, 514D.7

514A.2 Form of policy.

1. No policy of accident and sickness insurance shall be delivered or issued for delivery to any person in this state unless:

a. The entire money and other considerations therefor are expressed therein; and

b. The time at which the insurance takes effect and terminates is expressed therein; and

c. It purports to insure only one person, except that a policy may insure, originally or by subsequent amendment, upon the application of an adult member of a family who shall be deemed the policyholder, any two or more eligible members of that family, including husband, wife, dependent children or any children under a specified age which shall not exceed nineteen years and any other person dependent upon the policyholder; and

d. The style, arrangement and over-all appearance of the policy give no undue prominence to any portion of the text, and unless every printed portion of the text of the policy and of any endorsements or attached papers is plainly printed in light-faced type of a style in general use, the size of which shall be uniform and not less than ten point with a lower-case unspaced alphabet length not less than one hundred and twenty point (the "text" shall include all printed matter except the name and address of the insurer, name or title of the policy, the brief description if any, and captions and subcaptions); and

e. The exceptions and reductions of indemnity are set forth in the policy and, except those which are set forth in section 514A.3, are printed, at the insurer's option, either included with the benefit provision to which they apply, or under an appropriate caption such as "exceptions", or "exceptions and reductions", provided that if an exception or reduction

specifically applies only to a particular benefit of the policy, a statement of such exception or reduction shall be included with the benefit provision to which it applies; and

f. Each such form, including riders and endorsements, shall be identified by a form number in the lower left-hand corner of the first page thereof; and

g. It contains no provision purporting to make any portion of the charter, rules, constitution, or bylaws of the insurer a part of the policy unless such portion is set forth in full in the policy, except in the case of the incorporation of, or reference to, a statement of rates or classification of risks, or short-rate table filed with the commissioner.

2. If any policy is issued by an insurer domiciled in this state for delivery to a person residing in another state, and if the official having responsibility for the administration of the insurance laws of such other state shall have advised the commissioner that any such policy is not subject to approval or disapproval by such official, the commissioner may by ruling require that such policy meet the standards set forth in subsection 1 of this section and in section 514A.3.

[C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §514A.2]
Referred to in §514A.12, 514D.3, 514D.7

514A.3 Accident and sickness policy provisions.

1. *Required provisions.* Except as provided in subsection 3 of this section, each such policy delivered or issued for delivery to any person in this state shall contain the provisions specified in this subsection in the words in which the same appear in this section; provided, however, that the insurer may, at its option, substitute for one or more of such provisions corresponding provisions of different wording approved by the commissioner which are in each instance not less favorable in any respect to the insured or the beneficiary. Such provisions shall be preceded individually by the caption appearing in this subsection or, at the option of the insurer, by such appropriate individual or group captions or subcaptions as the commissioner may approve.

a. A provision as follows:

Entire contract — changes: This policy, including the endorsements and the attached papers, if any, constitutes the entire contract of insurance. No change in this policy shall be valid until approved by an executive officer of the insurer and unless such approval be endorsed hereon or attached hereto. No agent has authority to change this policy or to waive any of its provisions.

b. A provision as follows:

Time limit on certain defenses: (1) After two years from the date of issue of this policy no misstatements, except fraudulent misstatements, made by the applicant in the application for such policy shall be used to void the policy or to deny a claim for loss incurred or disability (as defined in the policy) commencing after the expiration of this two-year period.

(The foregoing policy provision shall not be so construed as to affect any legal requirement for avoidance of a policy or denial of a claim during such initial two-year period, nor to limit the application of subsection 2, paragraphs *"a"*, *"b"*, *"c"*, *"d"* and *"e"*, in the event of misstatement with respect to age or occupation or other insurance.)

(A policy which the insured has the right to continue in force subject to its terms by the timely payment of premium *(a)* until at least age fifty or, *(b)* in the case of a policy issued after age forty-four, for at least five years from its date of issue, may contain in lieu of the foregoing the following provision (from which the clause in parentheses may be omitted at the insurer's option) under the caption "incontestable":

After this policy has been in force for a period of two years during the lifetime of the insured, (excluding any period during which the insured is disabled), it shall become incontestable as to the statements contained in the application.)

(2) No claim for loss incurred or disability (as defined in the policy) commencing after two years from the date of issue of this policy shall be reduced or denied on the ground that a disease or physical condition not excluded from coverage by name or specific description effective on the date of loss had existed prior to the effective date of coverage of this policy.

c. A provision as follows:

Grace period: A grace period of ..... (insert a number not less than "7" for weekly

premium policies, "10" for monthly premium policies and "31" for all other policies) days will be granted for the payment of each premium falling due after the first premium, during which grace period the policy shall continue in force.

(A policy which contains a cancellation provision may add, at the end of the above provision, subject to the right of the insurer to cancel in accordance with the cancellation provision hereof.

A policy in which the insurer reserves the right to refuse any renewal shall have, at the beginning of the above provision,

Unless not less than five days prior to the premium due date the insurer has delivered to the insured or has mailed to the insured's last address as shown by the records of the insurer written notice of its intention not to renew this policy beyond the period for which the premium has been accepted.)

d. A provision as follows:

Reinstatement: If any renewal premium be not paid within the time granted the insured for payment, a subsequent acceptance of premium by the insurer or by any agent duly authorized by the insurer to accept such premium, without requiring in connection therewith an application for reinstatement, shall reinstate the policy; provided, however, that if the insurer or such agent requires an application for reinstatement and issues a conditional receipt for the premium tendered, the policy will be reinstated upon approval of such application by the insurer or, lacking such approval, upon the forty-fifth day following the date of such conditional receipt unless the insurer has previously notified the insured in writing of its disapproval of such application. The reinstated policy shall cover only loss resulting from such accidental injury as may be sustained after the date of reinstatement and loss due to such sickness as may begin more than ten days after such date. In all other respects the insured and insurer shall have the same rights thereunder as they had under the policy immediately before the due date of the defaulted premium, subject to any provisions endorsed hereon or attached hereto in connection with the reinstatement. Any premium accepted in connection with a reinstatement shall be applied to a period for which premium has not been previously paid, but not to any period more than sixty days prior to the date of reinstatement.

(The last sentence of the above provision may be omitted from any policy which the insured has the right to continue in force subject to its terms by the timely payment of premiums (1) until at least age fifty or, (2) in the case of a policy issued after age forty-four, for at least five years from its date of issue.)

e. A provision as follows:

Notice of claim: Written notice of claim must be given to the insurer within twenty days after the occurrence or commencement of any loss covered by the policy, or as soon thereafter as is reasonably possible. Notice given by or on behalf of the insured or the beneficiary to the insurer at ..... (insert the location of such office as the insurer may designate for the purpose), or to any authorized agent of the insurer, with information sufficient to identify the insured, shall be deemed notice to the insurer.

(In a policy providing a loss-of-time benefit which may be payable for at least two years, an insurer may at its option insert the following between the first and second sentences of the above provision:

Subject to the qualifications set forth below, if the insured suffers loss of time on account of disability for which indemnity may be payable for at least two years, the insured shall, at least once in every six months after having given notice of claim, give to the insurer notice of continuance of said disability, except in the event of legal incapacity. The period of six months following any filing of proof by the insured or any payment by the insurer on account of such claim or any denial of liability in whole or in part by the insurer shall be excluded in applying this provision. Delay in the giving of such notice shall not impair the insured's right to any indemnity which would otherwise have accrued during the period of six months preceding the date on which such notice is actually given.)

f. A provision as follows:

Claim forms: The insurer, upon receipt of a notice of claim, will furnish to the claimant such forms as are usually furnished by it for filing proofs of loss. If such forms are not

furnished within fifteen days after the giving of such notice the claimant shall be deemed to have complied with the requirements of this policy as to proof of loss upon submitting, within the time fixed in the policy for filing proofs of loss, written proof covering the occurrence, the character and the extent of the loss for which claim is made.

g. A provision as follows:

Proofs of loss: Written proof of loss must be furnished to the insurer at its said office in case of claim for loss for which this policy provides any periodic payment contingent upon continuing loss within ninety days after the termination of the period for which the insurer is liable and in case of claim for any other loss within ninety days after the date of such loss. Failure to furnish such proof within the time required shall not invalidate nor reduce any claim if it was not reasonably possible to give proof within such time, provided such proof is furnished as soon as reasonably possible and in no event, except in the absence of legal capacity, later than one year from the time proof is otherwise required.

h. A provision as follows:

Time of payment of claims: Indemnities payable under this policy for any loss other than loss for which this policy provides any periodic payment will be paid immediately upon receipt of due written proof of such loss. Subject to due written proof of loss, all accrued indemnities for loss for which this policy provides periodic payment will be paid ..... (insert period for payment which must not be less frequently than monthly) and any balance remaining unpaid upon the termination of liability will be paid immediately upon receipt of due written proof.

i. A provision as follows:

Payment of claims: Indemnity for loss of life will be payable in accordance with the beneficiary designation and the provisions respecting such payment which may be prescribed herein and effective at the time of payment. If no such designation or provision is then effective, such indemnity shall be payable to the estate of the insured. Any other accrued indemnities unpaid at the insured's death may, at the option of the insurer, be paid either to such beneficiary or to such estate. All other indemnities will be payable to the insured.

(The following provisions, or either of them, may be included with the foregoing provision at the option of the insurer:

If any indemnity of this policy shall be payable to the estate of the insured, or to an insured or beneficiary who is a minor or otherwise not competent to give a valid release, the insurer may pay such indemnity, up to an amount not exceeding $..... (insert an amount which shall not exceed one thousand dollars), to any relative by blood or connection by marriage of the insured or beneficiary who is deemed by the insurer to be equitably entitled thereto. Any payment made by the insurer in good faith pursuant to this provision shall fully discharge the insurer to the extent of such payment.

Subject to any written direction of the insured in the application or otherwise all or a portion of any indemnities provided by this policy on account of hospital, nursing, medical, or surgical services may, at the insurer's option and unless the insured requests otherwise in writing not later than the time of filing proofs of such loss, be paid directly to the hospital or person rendering such services; but it is not required that the service be rendered by a particular hospital or person.)

j. A provision as follows:

Physical examinations and autopsy: The insurer at its own expense shall have the right and opportunity to examine the person of the insured when and as often as it may reasonably require during the pendency of a claim hereunder and to make an autopsy in case of death where it is not forbidden by law.

k. A provision as follows:

Legal actions: No action at law or in equity shall be brought to recover on this policy prior to the expiration of sixty days after written proof of loss has been furnished in accordance with the requirements of this policy. No such action shall be brought after the expiration of three years after the time written proof of loss is required to be furnished.

l. A provision as follows:

Change of beneficiary: Unless the insured makes an irrevocable designation of beneficiary, the right to change of beneficiary is reserved to the insured and the consent

of the beneficiary or beneficiaries shall not be requisite to surrender or assignment of this policy or to any change of beneficiary or beneficiaries, or to any other changes in this policy.

(The first clause of this provision, relating to the irrevocable designation of beneficiary, may be omitted at the insurer's option.)

m. A provision as follows:

Right to return policy: The insured has the right, within ten days after receipt of this policy, to return it to the company at its home office or branch office or to the agent through whom it was purchased, and if so returned the premium paid will be refunded and the policy will be void from the beginning and the parties shall be in the same position as if a policy had not been issued.

The foregoing provision shall be prominently printed on the first page of the policy or attached to the policy.

The provisions of this paragraph "*m*" shall apply to any insurance policy which is delivered or issued for delivery or renewed in this state on or after July 1, 1978.

2. *Other provisions.* Except as provided in subsection 3 of this section, no such policy delivered or issued for delivery to any person in this state shall contain provisions respecting the matters set forth below unless such provisions are in the words in which the same appear in this section; provided, however, that the insurer may, at its option, use in lieu of any such provision a corresponding provision of different wording approved by the commissioner which is not less favorable in any respect to the insured or the beneficiary. Any such provision contained in the policy shall be preceded individually by the appropriate caption appearing in this subsection or, at the option of the insurer, by such appropriate individual or group captions or subcaptions as the commissioner may approve.

a. A provision as follows:

Change of occupation: If the insured be injured or contract sickness after having changed the insured's occupation to one classified by the insurer as more hazardous than that stated in this policy or while doing for compensation anything pertaining to an occupation so classified, the insurer will pay only such portion of the indemnities provided in this policy as the premium paid would have purchased at the rates and within the limits fixed by the insurer for such more hazardous occupation. If the insured changes the insured's occupation to one classified by the insurer as less hazardous than that stated in this policy, the insurer, upon receipt of proof of such change of occupation, will reduce the premium rate accordingly, and will return the excess pro rata unearned premium from the date of change of occupation or from the policy anniversary date immediately preceding receipt of such proof, whichever is the more recent. In applying this provision, the classification of occupational risk and the premium rates shall be such as have been last filed by the insurer prior to the occurrence of the loss for which the insurer is liable or prior to date of proof of change in occupation with the state official having supervision of insurance in the state where the insured resided at the time this policy was issued; but if such filing was not required, then the classification of occupational risk and the premium rates shall be those last made effective by the insurer in such state prior to the occurrence of the loss or prior to the date of proof of change in occupation.

b. A provision as follows:

Misstatement of age: If the age of the insured has been misstated, all amounts payable under this policy shall be such as the premium paid would have purchased at the correct age.

c. A provision as follows:

Other insurance in this insurer: If an accident or sickness or accident and sickness policy or policies previously issued by the insurer to the insured be in force concurrently herewith, making the aggregate indemnity for ..... (insert type of coverage or coverages) in excess of $..... (insert maximum limit of indemnity or indemnities) the excess insurance shall be void and all premiums paid for such excess shall be returned to the insured or to the insured's estate.

Or, in lieu thereof:

Insurance effective at any one time on the insured under a like policy or policies in this insurer is limited to the one such policy elected by the insured, or the insured's beneficiary

or estate, as the case may be, and the insurer will return all premiums paid for all other such policies.

d. A provision as follows:

Insurance with other insurers: If there be other valid coverage, not with this insurer, providing benefits for the same loss on a provision of service basis or on an expense incurred basis and of which this insurer has not been given written notice prior to the occurrence or commencement of loss, the only liability under any expense incurred coverage of this policy shall be for such proportion of the loss as the amount which would otherwise have been payable hereunder plus the total of the like amounts under all such other valid coverages for the same loss of which this insurer had notice bears to the total like amounts under all valid coverages for such loss, and for the return of such portion of the premiums paid as shall exceed the pro rata portion for the amount so determined. For the purpose of applying this provision when other coverage is on a provision of service basis, the "like amount" of such other coverage shall be taken as the amount which the services rendered would have cost in the absence of such coverage.

(If the foregoing policy provision is included in a policy which also contains the next following policy provision there shall be added to the caption of the foregoing provision the phrase " — expense incurred benefits". The insurer may, at its option, include in this provision a definition of "other valid coverage", approved as to form by the commissioner, which definition shall be limited in subject matter to coverage provided by organizations subject to regulation by insurance law or by insurance authorities of this or any other state of the United States or any province of Canada, and by hospital or medical service organizations, and to any other coverage the inclusion of which may be approved by the commissioner. In the absence of such definition such term shall not include group insurance, automobile medical payments insurance, or coverage provided by hospital or medical service organizations or by union welfare plans or employer or employee benefit organizations. For the purpose of applying the foregoing policy provision with respect to any insured, any amount of benefit provided for such insured pursuant to any compulsory benefit statute (including any workers' compensation or employer's liability statute) whether provided by a governmental agency or otherwise shall in all cases be deemed to be "other valid coverage" of which the insurer has had notice. In applying the foregoing policy provision no third party liability coverage shall be included as "other valid coverage".)

e. A provision as follows:

Insurance with other insurers: If there be other valid coverage, not with this insurer, providing benefits for the same loss on other than an expense incurred basis and of which this insurer has not been given written notice prior to the occurrence or commencement of loss, the only liability for such benefits under this policy shall be for such proportion of the indemnities otherwise provided hereunder for such loss as the like indemnities of which the insurer had notice (including the indemnities under this policy) bear to the total amount of all like indemnities for such loss, and for the return of such portion of the premium paid as shall exceed the pro rata portion for the indemnities thus determined.

(If the foregoing policy provision is included in a policy which also contains the next preceding policy provision there shall be added to the caption of the foregoing provision the phrase " — other benefits". The insurer may, at its option, include in this provision a definition of "other valid coverage", approved as to form by the commissioner, which definition shall be limited in subject matter to coverage provided by organizations subject to regulation by insurance law or by insurance authorities of this or any other state of the United States or any province of Canada, and to any other coverage the inclusion of which may be approved by the commissioner. In the absence of such definition such term shall not include group insurance, or benefits provided by union welfare plans or by employer or employee benefit organizations. For the purpose of applying the foregoing policy provision with respect to any insured, any amount of benefit provided for such insured pursuant to any compulsory benefit statute (including any workers' compensation or employer's liability statute) whether provided by a governmental agency or otherwise shall in all cases be deemed to be "other valid coverage" of which the insurer has had notice. In applying the

foregoing policy provision no third party liability coverage shall be included as "other valid coverage".)

f. A provision as follows:

Relation of earnings to insurance: If the total monthly amount of loss of time benefits promised for the same loss under all valid loss of time coverage upon the insured, whether payable on a weekly or monthly basis, shall exceed the monthly earnings of the insured at the time disability commenced or the insured's average monthly earnings for the period of two years immediately preceding a disability for which claim is made, whichever is the greater, the insurer will be liable only for such proportionate amount of such benefits under this policy as the amount of such monthly earnings or such average monthly earnings of the insured bears to the total amount of monthly benefits for the same loss under all such coverage upon the insured at the time such disability commences and for the return of such part of the premiums paid during such two years as shall exceed the pro rata amount of the premiums for the benefits actually paid hereunder; but this shall not operate to reduce the total monthly amount of benefits payable under all such coverage upon the insured below the sum of two hundred dollars or the sum of the monthly benefits specified in such coverages, whichever is the lesser, nor shall it operate to reduce benefits other than those payable for loss of time.

(The foregoing policy provision may be inserted only in a policy which the insured has the right to continue in force subject to its terms by the timely payment of premiums (1) until at least age fifty or, (2) in the case of a policy issued after age forty-four, for at least five years from its date of issue. The insurer may, at its option, include in this provision a definition of "valid loss of time coverage", approved as to form by the commissioner, which definition shall be limited in subject matter to coverage provided by governmental agencies or by organizations subject to regulation by insurance law or by insurance authorities of this or any other state of the United States or any province of Canada, or to any other coverage the inclusion of which may be approved by the commissioner or any combination of such coverages. In the absence of such definition such term shall not include any coverage provided for such insured pursuant to any compulsory benefit statute (including any workers' compensation or employer's liability statute), or benefits provided by union welfare plans or by employer or employee benefit organizations.)

g. A provision as follows:

Unpaid premium: Upon the payment of a claim under this policy, any premium then due and unpaid or covered by any note or written order may be deducted therefrom.

h. A provision as follows:

Cancellation: The insurer may cancel this policy at any time by written notice delivered to the insured, or mailed to the insured's last address as shown by the records of the insurer, stating when, not less than five days thereafter, such cancellation shall be effective; and after the policy has been continued beyond its original term the insured may cancel this policy at any time by written notice delivered or mailed to the insurer, effective upon receipt or on such later date as may be specified in such notice. In the event of cancellation, the insurer will return promptly the unearned portion of any premium paid. If the insured cancels, the earned premium shall be computed by the use of the short-rate table last filed with the state official having supervision of insurance in the state where the insured resided when the policy was issued. If the insurer cancels, the earned premium shall be computed pro rata. Cancellation shall be without prejudice to any claim originating prior to the effective date of cancellation.

i. A provision as follows:

Conformity with state statutes: Any provision of this policy which, on its effective date, is in conflict with the statutes of the state in which the insured resides on such date is hereby amended to conform to the minimum requirements of such statutes.

j. A provision as follows:

Illegal occupation: The insurer shall not be liable for any loss to which a contributing cause was the insured's commission of or attempt to commit a felony or to which a contributing cause was the insured's being engaged in an illegal occupation.

k. A provision as follows:

Intoxicants and narcotics: The insurer shall not be liable for any loss sustained or contracted in consequence of the insured's being intoxicated or under the influence of any

narcotic unless administered on the advice of a physician. This provision shall not be used with respect to a medical expense policy. For purposes of this provision, *"medical expense policy"* means an accident and sickness insurance policy that provides hospital, medical, and surgical expense coverage.

3. *Inapplicable or inconsistent provisions.* If any provision of this section is in whole or in part inapplicable to or inconsistent with the coverage provided by a particular form of policy, the insurer, with the approval of the commissioner, shall omit from such policy any inapplicable provision or part of a provision, and shall modify any inconsistent provision or part of the provision in such manner as to make the provision as contained in the policy consistent with the coverage provided by the policy.

4. *Order of certain policy provisions.* The provisions which are the subject of subsections 1 and 2 of this section, or any corresponding provisions which are used in lieu thereof in accordance with such subsections, shall be printed in the consecutive order of the provisions in such subsections or, at the option of the insurer, any such provision may appear as a unit in any part of the policy, with other provisions to which it may be logically related, provided the resulting policy shall not be in whole or in part unintelligible, uncertain, ambiguous, abstruse, or likely to mislead a person to whom the policy is offered, delivered or issued.

5. *Third party ownership.* The word *"insured"*, as used in this chapter, shall not be construed as preventing a person other than the insured with a proper insurable interest from making application for and owning a policy covering the insured or from being entitled under such a policy to any indemnities, benefits and rights provided therein.

6. *Requirements of other jurisdictions.*

a. Any policy of a foreign or alien insurer, when delivered or issued for delivery to any person in this state, may contain any provision which is not less favorable to the insured or the beneficiary than the provisions of this chapter and which is prescribed or required by the law of the state under which the insurer is organized.

b. Any policy of a domestic insurer may, when issued for delivery in any other state or country, contain any provision permitted or required by the laws of such other state or country.

7. *Filing procedure.* The commissioner may make such reasonable rules and regulations concerning the procedure for the filing or submission of policies subject to this chapter as are necessary, proper or advisable to the administration of this chapter. This provision shall not abridge any other authority granted the commissioner by law.

[S13, §1820; C24, 27, 31, 35, 39, §**8775;** C46, 50, §511.36; C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §514A.3]

90 Acts, ch 1234, §31; 2002 Acts, ch 1111, §15; 2002 Acts, ch 1119, §68

Referred to in §514A.2, 514A.4, 514A.12, 514D.3, 514D.6, 514D.7

514A.3A Refund of unearned premium upon death of insured.

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

2004 Acts, ch 1110, §39

Referred to in §514D.3, 514D.7

514A.3B Additional requirements.

1. An insurer which accepts an individual for coverage under an individual policy or contract of accident and health insurance shall waive any time period applicable to a preexisting condition exclusion or limitation period requirement of the policy or contract with respect to particular services in an individual health benefit plan for the period of time the individual was previously covered by qualifying previous coverage as defined in section 513C.3, by chapter 249A or 514I, or by Medicare coverage provided pursuant to Tit.

XVIII of the federal Social Security Act that provided benefits with respect to such services, provided that the coverage was continuous to a date not more than sixty-three days prior to the effective date of the new policy or contract.

2. An insurer issuing an individual policy or contract of accident and health insurance which provides coverage for children of the insured shall permit continuation of existing coverage or reenrollment in previously existing coverage for an individual who meets the requirements of section 513B.2, subsection 14, paragraph *"a"*, *"b"*, *"c"*, *"d"*, or *"e"*, and who is an unmarried child of an insured or enrollee who so elects, at least through the policy anniversary date on or after the date the child marries, ceases to be a resident of this state, or attains the age of twenty-five years old, whichever occurs first, or so long as the unmarried child maintains full-time status as a student in an accredited institution of postsecondary education.

3. For the purposes of any policies of accident and sickness insurance issued in this state, *"creditable coverage"* means health benefits or coverage provided to an individual under any of the following:

a. A group health plan.

b. Health insurance coverage.

c. Part A or Part B Medicare pursuant to Tit. XVIII of the federal Social Security Act.

d. Medicaid pursuant to Tit. XIX of the federal Social Security Act, other than coverage consisting solely of benefits under section 1928 of that Act.

e. 10 U.S.C. ch. 55.

f. A health or medical care program provided through the Indian health service or a tribal organization.

g. A state health benefits risk pool.

h. A health plan offered under 5 U.S.C. ch. 89.

i. A public health plan as defined under federal regulations.

j. A health benefit plan under section 5(e) of the federal Peace Corps Act, 22 U.S.C. §2504(e).

k. A short-term limited duration policy.

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

2008 Acts, ch 1188, §42, 43; 2009 Acts, ch 118, §9, 11, 21, 22; 2017 Acts, ch 148, §60
Referred to in §514D.3, 514D.7

514A.4 Conforming to statute.

1. *Other policy provisions.* No policy provision which is not subject to section 514A.3 shall make a policy, or any portion thereof, less favorable in any respect to the insured or the beneficiary than the provisions thereof which are subject to this chapter.

2. *Policy conflicting with this chapter.* A policy delivered or issued for delivery to any person in this state in violation of this chapter shall be held valid but shall be construed as provided in this chapter. When any provision in a policy subject to this chapter is in conflict with any provision of this chapter, the rights, duties and obligations of the insurer, the insured and the beneficiary shall be governed by the provisions of this chapter.

[C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §514A.4]
Referred to in §514A.12, 514D.3, 514D.7

514A.5 Application.

1. The insured shall not be bound by any statement made in an application for a policy unless a copy of such application is endorsed on the policy when issued as a part thereof or is furnished to the policyholder within thirty days after the policy is issued. If any such policy delivered or issued for delivery to any person in this state shall be reinstated or renewed, and the insured or the beneficiary or assignee of such policy shall make written request to the insurer for a copy of the application, if any, for such reinstatement or renewal, the insurer shall within fifteen days after the receipt of such request at its home office or any branch office of the insurer, deliver or mail to the person making such request, a copy of such application. If such copy shall not be so delivered or mailed, the insurer shall be precluded from introducing

such application as evidence in any action or proceeding based upon or involving such policy or its reinstatement or renewal.

2. No alteration of any written application for any such policy shall be made by any person other than the applicant without the applicant's written consent, except that insertions may be made by the insurer, for administrative purposes only, in such manner as to indicate clearly that such insertions are not to be ascribed to the applicant.

3. The falsity of any statement in the application for any policy covered by this chapter may not bar the right to recovery thereunder unless such false statement materially affected either the acceptance of the risk or the hazard assumed by the insurer.

[C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §514A.5]

2005 Acts, ch 70, §12

Referred to in §514D.3, 514D.7

514A.6 Notice — waiver.

The acknowledgment by any insurer of the receipt of notice given under any policy covered by this chapter, or the furnishing of forms for filing proofs of loss, or the acceptance of such proofs, or the investigation of any claim thereunder shall not operate as a waiver of any of the rights of the insurer in defense of any claim arising under such policy.

[C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §514A.6]

Referred to in §514D.3, 514D.7

514A.7 Age limit.

If any such policy contains a provision establishing, as an age limit or otherwise, a date after which the coverage provided by the policy will not be effective, and if such date falls within a period for which premium is accepted by the insurer or if the insurer accepts a premium after such date, the coverage provided by the policy will continue in force subject to any right of cancellation until the end of the period for which premium has been accepted. In the event the age of the insured has been misstated and if, according to the correct age of the insured, the coverage provided by the policy would not have become effective, or would have ceased prior to the acceptance of such premium or premiums, then the liability of the insurer shall be limited to the refund, upon request, of all premiums paid for the period not covered by the policy.

[C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §514A.7]

Referred to in §514D.3, 514D.7

514A.8 Nonapplication to certain policies.

Nothing in this chapter shall apply to or affect any of the following:

1. Any policy of workers' compensation insurance or any policy of liability insurance with or without supplementary expense coverage therein.

2. Any policy or contract of reinsurance.

3. Any blanket or group policy of insurance.

4. Life insurance, endowment or annuity contracts, or contracts supplemental thereto which contain only such provisions relating to accident and sickness insurance as provide additional benefits in case of death or dismemberment or loss of sight by accident, or as operate to safeguard such contracts against lapse, or to give a special surrender value or special benefit or an annuity in the event that the insured or annuitant shall become totally and permanently disabled, as defined by the contract or supplemental contract.

[C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §514A.8]

2018 Acts, ch 1041, §102

Referred to in §514D.3, 514D.7

Section amended

514A.9 Violation. Repealed by 2004 Acts, ch 1110, §71.

514A.10 Judicial review.

Judicial review of the actions of the commissioner may be sought in accordance with the terms of the Iowa administrative procedure Act, chapter 17A.

[C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §514A.10]

2003 Acts, ch 44, §114

Referred to in §514D.3, 514D.7

514A.11 Inconsistent acts not applicable.

All Acts or parts of Acts inconsistent with this chapter shall not apply to the provisions hereof to the extent of said inconsistency.

[C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §514A.11]

Referred to in §514D.3, 514D.7

514A.12 Title and effective date of chapter.

This chapter may be cited as the *"Uniform Individual Accident and Sickness Act."* This chapter shall take effect on the fourth day of July, 1951. A policy, filed with and approved by the insurance commissioner prior to the effective date of this chapter for use, delivery, or issue for delivery to any person in this state, may continue to be used, or delivered, or issued for delivery to any person in this state for a period of five years from and after said effective date without being subject to the provisions of sections 514A.2, 514A.3 and 514A.4; and any rider or endorsement filed with and approved by the insurance commissioner at any time may be used, or delivered, or issued for delivery to any person holding such a policy without being subject to the provisions of sections 514A.2, 514A.3 and 514A.4.

[C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §514A.12]

Referred to in §514D.3, 514D.7

514A.13 Filing requirement — prior approval.

1. A policy of insurance against loss or expense from sickness or from the bodily injury or death by accident of the insured shall not be issued or delivered to any person in this state and an application, rider, or endorsement shall not be used in connection with the policy until a copy of the policy form and of the classification of risks and the premium rates, or, in the case of cooperatives or assessment companies the estimated costs pertaining to the policy, have been filed with and approved by the commissioner.

2. A filing is deemed to be approved unless disapproved by the commissioner within thirty days of receipt of the filing by the commissioner. Subsequent rate changes are also subject to this section.

91 Acts, ch 213, §17; 92 Acts, ch 1162, §20; 2018 Acts, ch 1041, §127

Referred to in §514A.14

Code editor directive applied

514A.14 Disapproval of filing.

1. The commissioner shall notify an insurer which has filed a policy form pursuant to section 514A.13 that does not comply with this chapter or chapter 514D, or rules adopted pursuant to those chapters. The notice shall inform the insurer that it is unlawful for the insurer to issue the form or use it in connection with any policy, if the commissioner finds upon review of the form, either of the following:

a. The benefits provided are unreasonable in relation to the premium charged.

b. The form contains a provision which is unjust, unfair, inequitable, misleading, deceptive, or which encourages misrepresentation of the policy.

2. In a notice provided under subsection 1, the commissioner shall specify the reasons for disapproval and state that a hearing will be granted within twenty days after request in writing by the insurer.

91 Acts, ch 213, §18

Referred to in §514A.15

514A.15 Withdrawal of approval.

The commissioner may at any time, after opportunity for hearing, withdraw the commissioner's previously given approval of any such form on any of the grounds stated

in section 514A.14. It shall be unlawful for the insurer to issue a form or use the form in connection with any policy after the effective date of the withdrawal of approval. The notice of any hearing granted under this section shall specify the matters to be considered at the hearing. Any decision affirming disapproval or directing withdrawal of approval under this section shall be in writing and shall specify the reasons for the disapproval or withdrawal of approval.

91 Acts, ch 213, §19

CHAPTER 514B

HEALTH MAINTENANCE ORGANIZATIONS

Referred to in §87.4, 296.7, 331.301, 364.4, 505.16, 505.28, 505.29, 507.1, 508C.3, 509.19, 509B.1, 510.11, 513B.3, 514C.2, 514C.3, 514C.4, 514C.6, 514C.9, 514C.10, 514C.11, 514C.12, 514C.18, 514C.19, 514C.20, 514C.21, 514C.23, 514C.24, 514C.25, 514C.26, 514C.29, 514C.30, 514C.32, 514C.33, 514C.34, 514D.7, 514E.1, 514E.11, 514F.4, 514G.103, 514L.1, 515.1, 521.1, 521.2, 521A.1, 521E.1, 521F.2, 533C.103, 669.14, 670.7

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514B.1 Definitions — services required or available.

As provided in this chapter, unless the context otherwise requires:

1. *"Basic health care services"* means services which an enrollee might reasonably require in order to be maintained in good health, including as a minimum, emergency care, inpatient hospital and physician care, and outpatient medical services rendered within or outside of a hospital.

2. *"Commissioner"* means the commissioner of insurance.

3. *"Enrollee"* means an individual who is enrolled in a health maintenance organization.

4. *"Evidence of coverage"* means any certificate, agreement or contract issued to an enrollee setting out the coverage to which the enrollee is entitled.

5. *a. "Health care services"* means services included in the furnishing to any individual of medical or dental care, or hospitalization, or incident to the furnishing of such care or

hospitalization, as well as the furnishing to any person of all other services for the purposes of preventing, alleviating, curing, or healing human illness, injury, or physical disability.

b. The health care services available to enrollees under prepaid group plans covering vision care services or procedures shall include a provision for payment of necessary medical or surgical care and treatment provided by an optometrist licensed under chapter 154, if performed within the scope of the optometrist's license, and the plan would pay for the care and treatment when the care and treatment were provided by a person engaged in the practice of medicine or surgery as licensed under chapter 148. The plan shall provide that the plan enrollees may reject the coverage for services which may be provided by an optometrist if the coverage is rejected for all providers of similar vision care services as licensed under chapter 148 or 154. This paragraph applies to services provided under plans made after July 1, 1983, and to existing group plans on their next anniversary or renewal date, or upon the expiration of the applicable collective bargaining contract, if any, whichever is the later. This paragraph does not apply to enrollees eligible for coverage under Tit. XVIII of the Social Security Act or any other similar coverage under a state or federal government plan.

c. The health care services available to enrollees under prepaid group plans covering diagnosis and treatment of human ailments shall include a provision for payment of necessary diagnosis or treatment provided by a chiropractor licensed under chapter 151 if the diagnosis or treatment is provided within the scope of the chiropractor's license and if the plan would pay or reimburse for the diagnosis or treatment of human ailment, irrespective of and disregarding variances in terminology employed by the various licensed professions in describing the human ailment or its diagnosis or its treatment, if it were provided by a person licensed under chapter 148. The plan shall also provide that the plan enrollees may reject the coverage for diagnosis or treatment of a human ailment by a chiropractor if the coverage is rejected for all providers of diagnosis or treatment for similar human ailments licensed under chapter 148 or 151. A prepaid group plan of health care services may limit or make optional the payment or reimbursement for lawful diagnostic or treatment service by all licensees under chapters 148 and 151 on any rational basis which is not solely related to the license under or the practices authorized by chapter 151 or is not dependent upon a method of classification, categorization, or description based upon differences in terminology used by different licensees in describing human ailments or their diagnosis or treatment. This paragraph applies to services provided under plans made after July 1, 1986, and to existing group plans on their next anniversary or renewal date, or upon the expiration of the applicable collective bargaining contract, if any, whichever is the later. This paragraph does not apply to enrollees eligible for coverage under Tit. XVIII of the Social Security Act, or any other similar coverage under a state or federal government plan.

d. The health care services available to enrollees under prepaid group plans covering hospital, medical, or surgical expenses, may include, at the option of the employer purchaser, a provision for payment of covered services determined to be medically necessary provided by a certified registered nurse certified by a national certifying organization, which organization shall be identified by the Iowa board of nursing pursuant to rules adopted by the board, if the services are within the practice of the profession of a registered nurse as that practice is defined in section 152.1, under terms and conditions agreed upon between the employer purchaser and the health maintenance organization, subject to utilization controls. This paragraph shall not require payment for nursing services provided by a certified registered nurse practicing in a hospital, nursing facility, health care institution, a physician's office, or other noninstitutional setting if the certified registered nurse is an employee of the hospital, nursing facility, health care institution, physician, or other health care facility or health care provider. This paragraph applies to services provided under plans within this state made on or after July 1, 1989, and to existing group plans on their next anniversary or renewal date, or upon the expiration of the applicable collective bargaining contract, if any, whichever is later. This paragraph does not apply to enrollees eligible for coverage under an individual contract or coverage designed only for issuance to enrollees eligible for coverage under Tit. XVIII of the federal Social Security Act, or under coverage which is rated on a community basis, or any other similar coverage under a state or federal government plan.

6. *"Health maintenance organization"* means any person, who:

a. Provides either directly or through arrangements with others, health care services to enrollees on a fixed prepayment basis;

b. Provides either directly or through arrangements with other persons for basic health care services; and,

c. Is responsible for the availability, accessibility and quality of the health care services provided or arranged.

7. *"Provider"* means any physician, hospital, or person as defined in chapter 4 which is licensed or otherwise authorized in this state to furnish health care services.

[C75, 77, 79, 81, §514B.1]

83 Acts, ch 166, §3; 84 Acts, ch 1290, §3; 86 Acts, ch 1180, §7; 89 Acts, ch 164, §5; 99 Acts, ch 75, §4; 2008 Acts, ch 1088, §128; 2010 Acts, ch 1061, §180; 2010 Acts, ch 1193, §71

Referred to in §135.61, 514.4, 514.23

514B.2 Establishment of health maintenance organizations.

Any person may apply to the commissioner for and obtain a certificate of authority to establish and operate a health maintenance organization in compliance with this chapter. A person shall not establish or operate a health maintenance organization in this state, nor sell, offer to sell, or solicit offers to purchase or receive advance or periodic consideration in conjunction with a health maintenance organization without obtaining a certificate under this chapter.

[C75, 77, 79, 81, §514B.2]

514B.3 Application for a certificate of authority.

1. An application for a certificate of authority shall be verified by an officer or authorized representative of the health maintenance organization, shall be in a form prescribed by the commissioner, and shall set forth or be accompanied by the following:

a. A copy of the basic organizational document, if any, of the applicant such as the articles of incorporation, articles of association, partnership agreement, trust agreement, or other applicable documents, and all of its amendments.

b. A copy of the bylaws, rules or similar document, if any, regulating the conduct of the internal affairs of the applicant.

c. A list of the names, addresses and official positions of the persons who are to be responsible for the conduct of the affairs of the applicant, including all members of the board of directors, board of trustees, executive committee, or other governing board or committee, the principal officers if a corporation and the partners or members if a partnership or association.

d. A copy of any contract made or to be made between any providers or persons listed in paragraph *"c"* and the applicant.

e. A statement generally describing the health maintenance organization including, but not limited to, a description of its facilities and personnel.

f. A copy of the form of evidence of coverage.

g. A copy of the form of the group contract, if any, which is to be issued to employers, unions, trustees or other organizations.

h. Financial statements showing the applicant's assets, liabilities and sources of financial support. If the applicant's financial affairs are audited by an independent certified public accountant, a copy of the applicant's most recent regular certified financial statement shall satisfy this requirement unless the commissioner directs that additional financial information is required for the proper administration of this chapter.

i. A description of the proposed method of marketing the plan, a financial plan which includes a three-year projection of operating results anticipated, and a statement as to the sources of funding.

j. A power of attorney executed by any applicant appointing the commissioner, the commissioner's successors in office, and deputies to receive process in any legal action or proceeding against the health maintenance organization on a cause of action arising in this state.

k. A statement reasonably describing the geographic area to be served.

l. A description of the complaint procedures to be utilized as required under section 514B.14.

m. A description of the procedures and programs to be implemented to meet the requirements for quality of health care as determined by the director of public health under section 514B.4.

n. A description of the mechanism by which enrollees shall be allowed to participate in matters of policy and operation as required by section 514B.7.

o. Other information the commissioner finds reasonably necessary to make the determinations required in section 514B.5.

2. A health maintenance organization shall, unless otherwise provided for in this chapter, file notice with the commissioner and receive approval from the commissioner before modifying the operations described in the information required by this section.

3. Upon receipt of an application for a certificate of authority, the commissioner shall immediately transmit copies of the application and accompanying documents to the director of public health and the affected regional health planning council, as authorized by Pub. L. No. 89-749, 42 U.S.C. §246(b)2b, for their nonbinding consultation and advice.

[C75, 77, 79, 81, §514B.3]

2003 Acts, ch 91, §28; 2006 Acts, ch 1010, §140; 2012 Acts, ch 1023, §116

Referred to in §514B.5, 514B.12

514B.3A Articles — approval — bylaws.

The articles of incorporation, and any subsequent amendments, of a corporation shall be filed with and approved by the commissioner of insurance before filing with the secretary of state. A corporation shall file bylaws and subsequent amendments to the bylaws with the commissioner within thirty days of adoption of the bylaws and amendments.

2000 Acts, ch 1023, §24; 2009 Acts, ch 145, §10

514B.3B Certificate of authority — renewal.

A certificate of authority of a health maintenance organization formed under this chapter expires on June 1 succeeding its issue and shall be renewed annually so long as the organization transacts its business in accordance with all legal requirements. A health maintenance organization shall submit annually, on or before March 1, a completed application for renewal of its certificate of authority. A health maintenance organization that fails to timely file an application for renewal shall pay an administrative penalty of five hundred dollars to the treasurer of state for deposit as provided in section 505.7. A duly certified copy or duplicate of the certificate is admissible in evidence for or against the organization with the same effect as the original.

2006 Acts, ch 1117, §58; 2009 Acts, ch 181, §73

Referred to in §514B.33

514B.4 Applicant for certificate of authority.

1. The commissioner shall determine whether the applicant for a certificate of authority, with respect to health care services to be furnished:

a. Has demonstrated the willingness and potential ability to assure the availability, accessibility, and continuity of service through adequate personnel and facilities.

b. Has arrangements established in accordance with rules adopted by the commissioner for a continuous review of health care processes and outcomes. If a health maintenance organization is accredited by the national committee on quality assurance, or another accreditation entity approved by the commissioner, an external peer review under rules of the commissioner shall not be applicable. However, at the discretion of the commissioner, an on-site inspection of the health maintenance organization may be conducted.

c. Has a procedure established in accordance with rules adopted by the commissioner to develop, compile, evaluate, and report statistics relating to the cost of its operations, the pattern of utilization of its services, the availability and accessibility of its services, and other matters as may be reasonably required by the commissioner.

2. The commissioner, in administering this section and sections 514B.25 and 514B.26, may

contract with qualified persons to make recommendations concerning the determinations required to be made by the commissioner. Such recommendations may be accepted in full or in part by the commissioner.

[C75, 77, 79, 81, §514B.4]

92 Acts, ch 1162, §21; 99 Acts, ch 165, §11; 2012 Acts, ch 1023, §157

Referred to in §514B.3, 514B.5

514B.4A Direct provision of health care services.

1. An application for a certificate of authority to provide health care services, directly, shall be forwarded by the commissioner to the director of public health for review, comment, and recommendation, with respect to the health care services to be provided directly, to assure that the applicant has demonstrated the willingness and potential ability to provide the health care services through adequate personnel and facilities.

2. Rules proposed by the commissioner for adoption for the direct provision of health care services by a health maintenance organization, shall be forwarded by the commissioner to the director of public health for review, comment, and recommendation, prior to submission to the administrative rules coordinator pursuant to section 17A.4.

3. The director of public health shall respond to the commissioner, with respect to an application or proposed rule, with any comments or recommendations within thirty days of the forwarding of the application or proposed rules to the director of public health.

92 Acts, ch 1237, §12

514B.5 Issuance and denial of a certificate of authority.

1. The commissioner shall issue or deny a certificate of authority to any person filing an application pursuant to section 514B.3 within a reasonable period of time. Issuance of a certificate of authority shall be granted upon payment of the application fee prescribed in section 514B.22 if the commissioner is satisfied that the following conditions are met:

a. The persons responsible for the conduct of the affairs of the applicant are competent and trustworthy.

b. The commissioner finds that the health maintenance organization's proposed plan of operation meets the requirements of section 514B.4.

c. The health maintenance organization provides or arranges for the provision of basic health care services on a prepaid basis, except that the health maintenance organization may impose deductible and coinsurance charges subject to approval by the commissioner. The commissioner has the authority to promulgate rules pursuant to chapter 17A establishing reasonable maximum deductible and coinsurance charges which may be imposed by health maintenance organizations.

d. The health maintenance organization is fiscally sound and may reasonably be expected to meet its obligations to enrollees. In making this determination, the commissioner may consider:

(1) The financial soundness of the health maintenance organization's arrangements for health care services in relation to its schedule of charges.

(2) The adequacy of the health maintenance organization's working capital.

(3) Any agreement made by the health maintenance organization with an insurer, a corporation authorized under chapter 514 or any other organization for insuring the payment of the cost of health care services or for providing immediate alternative coverage in the event of discontinuance of the health maintenance organization.

(4) Any agreement made with providers for the provision of health care services.

(5) Any surety bond or deposit of cash or securities submitted in accordance with section 514B.16.

e. The enrollees may participate in matters of policy and operation pursuant to section 514B.7.

f. Nothing in the proposed method of operation as shown by the information submitted pursuant to section 514B.3 or by independent investigation is contrary to the public interest.

2. A certificate of authority shall be denied only after compliance with the requirements of section 514B.26.

[C75, 77, 79, 81, §514B.5]

92 Acts, ch 1162, §22, 23; 2012 Acts, ch 1023, §117

Referred to in §513C.4, 514B.3, 514B.9

514B.6 Powers of health maintenance organizations.

1. The powers of a health maintenance organization include, but are not limited to, the following:

a. The purchase, lease, construction, renovation, operation or maintenance of hospitals, medical facilities, or both, and their ancillary equipment, and such property as may reasonably be required for transacting the business of the organization.

b. The making of loans to a medical group under contract with it or to a corporation under its control for the purpose of acquiring or constructing medical facilities and hospitals or in furtherance of a program providing health care services to enrollees.

c. The furnishing of health care services to the public through providers which are under contract with or employed by the health maintenance organization.

d. The contracting with any person for the performance on its behalf of certain functions such as marketing, enrollment and administration.

e. The contracting with an insurance company authorized to insure groups or individuals in this state for the cost of health care or with a corporation authorized under chapter 514 for the provision of insurance, indemnity, or reimbursement against the cost of health care services provided by the health maintenance organization.

f. The offering, in addition to basic health care services, of health care services and indemnity benefits to enrollees or groups of enrollees.

g. The acceptance from any person of payments covering all or part of the charges made to enrollees of the health maintenance organization.

2. A health maintenance organization shall file notice with the commissioner before the exercise of any power granted in subsection 1, paragraphs "*a*" and "*b*". The commissioner shall disapprove the exercise of power if in the commissioner's opinion it would substantially and adversely affect the financial soundness of the health maintenance organization and endanger its ability to meet its obligations. The commissioner may adopt rules exempting from the filing requirement of this section those activities having a minimum effect.

[C75, 77, 79, 81, §514B.6]

92 Acts, ch 1162, §24; 2012 Acts, ch 1023, §118

Referred to in §514B.15

514B.7 Governing body.

The governing body of a health maintenance organization may include providers, other individuals, or both, but it shall establish a mechanism to allow a reasonable representation of enrollees to participate in matters of policy and operation. The commissioner shall establish guidelines to implement this section.

[C75, 77, 79, 81, §514B.7]

86 Acts, ch 1180, §8

Referred to in §514B.3, 514B.5

514B.8 Fiduciary responsibilities.

Any director, officer or partner of a health maintenance organization who receives, collects, disburses or invests funds in connection with the activities of a health maintenance organization shall be responsible for these funds in a fiduciary relationship to the enrollees.

[C75, 77, 79, 81, §514B.8]

514B.9 Evidence of coverage.

1. Every enrollee shall receive an evidence of coverage and any amendments. If the enrollee obtains coverage through an insurance policy or a contract issued by a corporation authorized under chapter 514, the insurer or the corporation shall issue the evidence of coverage. No evidence of coverage or amendment shall be issued or delivered to any person

in this state until a copy of the form of the evidence of coverage or amendment has been filed with and approved by the commissioner.

2. An evidence of coverage shall contain a clear and complete statement of:

a. The health care services and the insurance or other benefits, if any, to which the enrollee is entitled in the total context of the organizational structure of the health maintenance organization.

b. Any limitations on the services or benefits to be provided, including any deductible or coinsurance charges permitted under section 514B.5, subsection 1, paragraph "*c*".

c. The manner in which information is available on the method of obtaining health care services.

d. The total amount of payment for health care services and indemnity or service benefits, if any, which the enrollee is obligated to pay with respect to individual contracts, or an indication whether the plan offered through the health maintenance organization is contributory or noncontributory with respect to group contracts.

e. The health maintenance organization's method for resolving enrollee complaints.

f. The mechanism by which enrollees shall be allowed to participate in matters of policy and operation.

3. A copy of the form of the evidence of coverage to be used in this state and any amendment shall be subject to the filing and approval requirements of this section unless it is subject to the jurisdiction of the commissioner under the laws governing health insurance or corporations authorized under chapter 514 in which event the filing and approval provisions of such laws apply. To the extent, however, that those provisions are less strict than those provided under this section, then the requirements of this section shall apply.

4. Enrollees shall be entitled to receive the most recent annual statement of the financial condition of the health maintenance organization in which they are enrolled, which statement shall include a balance sheet and summary of receipts and disbursements.

[C75, 77, 79, 81, §514B.9]
2012 Acts, ch 1023, §119
Referred to in §514B.11

514B.9A Coverage of children — continuation or reenrollment.

A health maintenance organization which provides health care coverage pursuant to an individual or group health maintenance organization contract regulated under this chapter for children of an enrollee shall permit continuation of existing coverage or reenrollment in previously existing coverage for an individual who meets the requirements of section 513B.2, subsection 14, paragraph "*a*", "*b*", "*c*", "*d*", or "*e*", and who is an unmarried child of an enrollee who so elects, at least through the policy anniversary date on or after the date the child marries, ceases to be a resident of this state, or attains the age of twenty-five years old, whichever occurs first, or so long as the unmarried child maintains full-time status as a student in an accredited institution of postsecondary education.

2009 Acts, ch 118, §10, 11

514B.10 Charges.

Charges to enrollees may be established in accordance with actuarial principles for various categories of enrollees, but the charges shall not be determined according to the status of an individual enrollee's health or sex and shall not be excessive, inadequate, or unfairly discriminatory.

[C75, 77, 79, 81, §514B.10]
95 Acts, ch 185, §10
Referred to in §514B.11, 514B.17

514B.11 Disapproval of filings.

If the commissioner disapproves a filing made pursuant to sections 514B.9 and 514B.10, the commissioner shall notify the filer and in the notice specify the reasons for the disapproval. A hearing shall be granted by the commissioner within a reasonable period of time from the request for the hearing, which request must be made within thirty days after receipt by the filer of the notice of disapproval. The commissioner may require the submission of

whatever relevant information the commissioner deems necessary in determining whether to disapprove a filing.

[C75, 77, 79, 81, §514B.11]

514B.12 Annual report.

1. A health maintenance organization shall annually on or before the first day of March file with the commissioner or a depository designated by the commissioner a report verified by at least two of the principal officers of the health maintenance organization and covering the preceding calendar year. The report shall be on forms prescribed by the commissioner and shall include:

a. Financial statements of the organization including a balance sheet as of the end of the preceding calendar year and statement of profit and loss for the year then ended, certified by a certified public accountant or an independent public accountant.

b. Any material changes in the information submitted pursuant to section 514B.3.

c. The number of persons enrolled during the year, the number of enrollees as of the end of the year and the number of enrollments terminated during the year.

d. Other information relating to the performance of the health maintenance organization as is necessary to enable the commissioner to carry out the commissioner's duties under this chapter.

2. The commissioner shall refuse to renew a certificate of authority of a health maintenance organization that fails to comply with the provisions of this section and the organization's right to transact new business in this state shall immediately cease until the organization has so complied.

3. A health maintenance organization that fails to timely file the report required under subsection 1 is in violation of this section and shall pay an administrative penalty of five hundred dollars to the treasurer of state for deposit as provided in section 505.7.

4. The commissioner may give notice to a health maintenance organization that the organization has not timely filed the report required under subsection 1 and is in violation of this section. If the organization fails to file the required report and comply with this section within ten days of the date of the notice, the organization shall pay an additional administrative penalty of one hundred dollars for each day that the failure continues to the treasurer of state for deposit as provided in section 505.7.

[C75, 77, 79, 81, §514B.12]

92 Acts, ch 1162, §25; 2003 Acts, ch 91, §29; 2004 Acts, ch 1101, §73; 2006 Acts, ch 1117, §59; 2009 Acts, ch 181, §74

Referred to in §514B.33

514B.13 Open enrollment.

1. After a health maintenance organization has been in operation twenty-four months, it shall have an annual open enrollment period of at least one month during which it accepts enrollees up to the limits of its capacity, as determined by the health maintenance organization, in the order in which they apply for enrollment. A health maintenance organization may apply to the commissioner for authorization to impose such underwriting restrictions upon enrollment as are necessary to preserve its financial stability, to prevent excessive adverse selection by prospective enrollees, or to avoid unreasonably high or unmarketable charges for enrollee coverage for health care services. The commissioner shall approve or deny the application made pursuant to this section within a reasonable period of time from the receipt of the application.

2. Health maintenance organizations providing services exclusively on a group contract basis may limit the open enrollment provided for in this section to all members of the group covered by the contract, including those members of the group who previously waived coverage.

[C75, 77, 79, 81, §514B.13]

2005 Acts, ch 70, §13; 2018 Acts, ch 1041, §127

Code editor directive applied

514B.14 Complaint system.

1. A health maintenance organization shall establish and maintain a complaint system which has been approved by the commissioner and which shall provide for the resolution of written complaints initiated by enrollees concerning health care services. A health maintenance organization shall submit to the commissioner an annual report in a form prescribed by the commissioner which shall include:

a. A description of the procedures of the complaint system.

b. The total number of complaints handled through the complaint system and a compilation of causes underlying the complaints filed.

c. The number, amount and disposition of malpractice claims settled during the year by the health maintenance organization and any of its providers.

2. The health maintenance organization shall maintain statistical information of written complaints filed with it concerning benefits over which the health maintenance organization does not have control and shall submit to the commissioner a summary report at the time and in the format that the commissioner may require. Complaints involving other persons shall be referred to those persons and a copy of the complaint sent to the commissioner.

[C75, 77, 79, 81, §514B.14]

92 Acts, ch 1162, §26; 2012 Acts, ch 1023, §157

Referred to in §514B.3

514B.15 Investments.

With the exception of investments made in accordance with section 514B.6, the investable funds of a health maintenance organization shall be invested only in securities or other investments permitted by section 511.8 for the investment of assets constituting the legal reserves of life insurance companies or such other securities or investments as the commissioner may permit. For purposes of this section, investable funds of a health maintenance organization are all moneys held in trust for the purpose of fulfilling the obligations incurred by a health maintenance organization in providing health care services to enrollees.

[C75, 77, 79, 81, §514B.15]

514B.16 Protection against insolvency.

A health maintenance organization shall furnish a surety bond in an amount satisfactory to the commissioner, or deposit with the commissioner cash or securities acceptable to the commissioner in at least the same amount, as a guarantee that its obligations to enrollees will be performed. The commissioner may waive this requirement when satisfied that the assets of the organization or its contracts with other organizations are sufficient to reasonably assure the performance of its obligations.

[C75, 77, 79, 81, §514B.16]

Referred to in §514B.5

514B.17 Cancellation of enrollees.

1. An enrollee enrolled in a prepaid individual plan shall not be canceled except for the failure to pay the charges permitted under section 514B.10 or for other reasons stated in the rules adopted by the commissioner and subject to review in accordance with chapter 17A. Except as provided in subsection 2 concerning prepaid group plans, notice of cancellation to an enrollee shall not be effective unless delivered to the enrollee by the health maintenance organization in a manner prescribed by the commissioner and at least thirty days before the effective date of cancellation and unless accompanied by a statement of reason for cancellation. At any time before cancellation of the policy for nonpayment, the enrollee may pay to the health maintenance organization the full amount due, including court costs if any, and from the date of payment by the enrollee or the collection of the judgment, coverage shall revive and be in full force and effect.

2. The effect of cancellation of a prepaid group plan providing health care services to enrollees, and the duty to provide notice and liability for benefits, is the same as provided

under section 509B.5, subsection 2, for the termination of accident or health insurance for employees or members.

[C75, 77, 79, 81, §514B.17]

95 Acts, ch 185, §11

514B.17A Rescission.

1. A health maintenance organization may rescind an enrollee's membership in the health maintenance organization if the enrollee makes a material false statement or misrepresentation in the enrollee's application for membership. A written notice of rescission shall be sent to the enrollee by certified mail addressed to the enrollee and sent to the enrollee's last address known to the health maintenance organization and shall state the reason for the rescission. The enrollee may appeal the rescission to the commissioner as provided by the commissioner by rules adopted under chapter 17A.

2. An enrollee's membership in a health maintenance organization shall not be rescinded as provided in subsection 1 more than two years after the date of the enrollee's enrollment in the health maintenance organization.

2008 Acts, ch 1123, §24; 2017 Acts, ch 54, §76

514B.18 False representation.

A health maintenance organization, unless licensed as an insurer, shall not use in its name, contracts, or literature any words descriptive of an insurance, casualty, or surety business or deceptively similar to the name or description of any insurance or surety corporation doing business in this state. No health maintenance organization or any person on its behalf shall advertise or merchandise its services in a manner to misrepresent its services or capacity for service, nor shall it engage in misleading, deceptive or unfair practices with respect to advertising or merchandising. This section does not exempt health maintenance organizations which are engaged in the business of insurance from regulation under the provisions of chapter 507B.

[C75, 77, 79, 81, §514B.18]

514B.19 Regulation of insurance producers.

The commissioner may, after notice and hearing, promulgate such reasonable rules under the provisions of chapter 522B that are necessary to provide for the licensing of insurance producers who engage in solicitation or enrollment for a health maintenance organization.

[C75, 77, 79, 81, §514B.19]

2001 Acts, ch 16, §14, 37

514B.20 Powers of insurers and hospital and medical service corporations.

1. An insurance company authorized to engage in insuring individuals or groups for the cost of health care in this state or a corporation authorized under chapter 514 may either directly or through a subsidiary or affiliate do one or more of the following:

a. Organize and operate a health maintenance organization under the provisions of this chapter.

b. Contract with a health maintenance organization to provide insurance or similar protection against the cost of care provided through the health maintenance organization.

c. Contract with a health maintenance organization to provide coverage in the event of the failure of the health maintenance organization to meet its obligations.

2. Any two or more insurance companies, corporations, or their subsidiaries or affiliates may jointly organize and operate a health maintenance organization.

[C75, 77, 79, 81, §514B.20]

2012 Acts, ch 1023, §157

514B.21 Public employees included.

Any employee of the state, political subdivision of the state, or of any institution supported in whole or in part by public funds may authorize the deduction from the employee's salary or wages of the amount charged to the employee for any health care services provided

through health maintenance organizations under this chapter in the manner provided in section 514.16.

[C75, 77, 79, 81, §514B.21]

514B.22 Fees.

When not otherwise provided, a foreign or domestic health maintenance organization doing business in this state shall pay the commissioner of insurance the fees as required in section 511.24.

[C75, 77, 79, 81, §514B.22]

2006 Acts, ch 1117, §60

Referred to in §514B.5

514B.23 Rules.

The commissioner shall adopt rules, pursuant to chapter 17A, as are necessary to administer this chapter.

[C75, 77, 79, 81, §514B.23]

92 Acts, ch 1162, §27

514B.24 Examinations permitted.

1. The commissioner shall make an examination of the affairs of a health maintenance organization and its providers as often as the commissioner deems necessary for the protection of the interests of the people of this state, but not less frequently than once every five years.

2. Every health maintenance organization and provider shall submit its books and records to the commissioner and in every way facilitate the examination. For the purpose of examinations, the commissioner may administer oaths to and examine the officers and agents of the health maintenance organization and the principals of its providers concerning their business. The expenses of examinations under this section shall be assessed against the organization being examined and remitted to the commissioner.

3. In lieu of the examination required by this section, the commissioner may accept the report of an examination made by the appropriate departments in other states.

[C75, 77, 79, 81, §514B.24]

92 Acts, ch 1162, §28; 2000 Acts, ch 1023, §25; 2018 Acts, ch 1041, §127

Referred to in §514B.30

Code editor directive applied

514B.25 Financially impaired or insolvent health maintenance organizations.

The provisions of chapter 507C shall apply to health maintenance organizations, which shall be considered insurers for the purposes of chapter 507C.

[C75, 77, 79, 81, §514B.25]

91 Acts, ch 26, §39

Referred to in §514B.4

514B.25A Insolvency protection — assessment.

1. Upon a health maintenance organization authorized to do business in this state being declared insolvent by the district court, the commissioner may levy an assessment on each health maintenance organization doing business in this state, to pay claims for uncovered expenditures for enrollees. The commissioner shall not assess an amount in any one calendar year which is more than two percent of the aggregate premium written by each health maintenance organization.

2. The commissioner may use funds obtained through an assessment under subsection 1 to pay claims for uncovered expenditures for enrollees of an insolvent health maintenance organization and administrative costs. The commissioner, by rule, may prescribe the time, manner, and form for filing claims under this section. The commissioner may require claims to be allowed by an ancillary receiver or the domestic receiver or liquidator.

3. *a.* A receiver or liquidator of an insolvent health maintenance organization shall allow

a claim in the proceeding in an amount equal to uncovered expenditures and administrative costs paid under this section.

b. A person receiving benefits under this section for uncovered expenditures is deemed to have assigned the rights under the covered health care plan certificates to the commissioner to the extent of the benefits received. The commissioner may require an assignment of such rights by a payee, enrollee, or beneficiary, to the commissioner as a condition precedent to the receipt of such benefits. The commissioner is subrogated to these rights against the assets of the insolvent health maintenance organization that are held by a receiver or liquidator of a foreign jurisdiction.

c. The assigned subrogation rights of the commissioner and allowed claims under this subsection have the same priority against the assets of the insolvent health maintenance organization as those claims of persons entitled to receive benefits under this section or for similar expenses in the receivership or liquidation.

4. If funds assessed under subsection 1 are unused following the completion of the liquidation of an insolvent health maintenance organization, the commissioner shall distribute the remaining amounts, if such amounts are not de minimis, to the health maintenance organizations that were assessed.

5. The aggregate coverage of uncovered expenditures under this section shall not exceed three hundred thousand dollars with respect to one individual. Continuation of coverage shall cease after the lesser of one year after the health maintenance organization is terminated by insolvency or the remaining term of the contract. The commissioner may provide continuation of coverage on a reasonable basis, including, but not limited to, continuation of the health maintenance organization contract or substitution of indemnity coverage in a form as determined by the commissioner.

6. The commissioner may waive an assessment of a health maintenance organization if such organization is impaired financially or would be impaired financially as a result of such assessment. A health maintenance organization that fails to pay an assessment within thirty days after notice of the assessment is subject to a civil forfeiture of not more than one thousand dollars for each day the failure continues, and suspension or revocation of its certificate of authority. An action taken by the commissioner to enforce an assessment under this section may be appealed by the health maintenance organization pursuant to chapter 17A.

2000 Acts, ch 1023, §26; 2017 Acts, ch 148, §61

514B.26 Administrative procedures.

1. When the commissioner has cause to believe that grounds for the denial, suspension, or revocation of a certificate of authority exist, the commissioner shall notify the health maintenance organization in writing of the particular grounds for denial, suspension, or revocation and shall issue a notice of a time fixed for a hearing, which shall be held not less than ten days after the receipt by the health maintenance organization of the notice.

2. At the time and place fixed for a hearing, the person charged shall have an opportunity to be heard and to show cause why the order should not be made by the commissioner. Upon good cause shown, the commissioner may permit any person to intervene, appear and be heard at the hearing by counsel or in person. Nothing contained in this chapter shall require the observance at any hearing of formal rules of pleading or evidence. The provisions of section 507B.6, subsections 4 and 5, relating to the powers and duties of the commissioner in relation to the hearing and relating to the rights and obligations of persons upon whom the commissioner has served notice shall apply to this chapter.

3. After the hearing, or upon the failure of the health maintenance organization to appear at the hearing, the commissioner shall take action as the commissioner deems advisable and which is permitted by the commissioner under the provisions of this chapter and shall

reduce the findings to writing. Copies of the written findings shall be mailed to the health maintenance organization charged with violation of this chapter.

[C75, 77, 79, 81, §514B.26]

92 Acts, ch 1162 §29; 2018 Acts, ch 1041, §127

Referred to in §514B.4, 514B.5, 514B.27

Code editor directive applied

514B.27 Judicial review.

The action of the commissioner under section 514B.26 is subject to judicial review in accordance with chapter 17A.

[C75, 77, 79, 81, §514B.27]

92 Acts, ch 1162, §30

514B.28 Injunction.

The commissioner may, in the manner provided by law, maintain an action in the name of the state for injunction or other process against the person violating any provision of this chapter.

[C75, 77, 79, 81, §514B.28]

514B.29 Penalty. Repealed by 2004 Acts, ch 1110, §71.

514B.30 Communications in professional confidence.

1. An officer, director, trustee, partner, or employee of a health maintenance organization shall not testify as to or make other public disclosure of any communication made to a provider and deemed privileged under section 622.10, and which communication has come into the knowledge or possession of such officer, director, trustee, partner, or employee by reason of employment with the health maintenance organization. To the extent necessary to effectuate the examinations provided in section 514B.24 only, the commissioner may examine medical or hospital records of a person receiving basic health care services under the provisions of this chapter but shall not testify as to such confidential communications or make other public disclosure thereof without the express consent of the person or the person's legal representative, if the person is deceased or incompetent. The provisions of section 622.10 respecting waiver shall apply to this section.

2. A health maintenance organization is hereby prohibited from releasing the names of its membership list of enrollees, whether or not for value or consideration, except to the extent necessary to effectuate the provisions of this chapter or to conduct research or analyses regarding cost or quality issues.

[C75, 77, 79, 81, §514B.30]

92 Acts, ch 1162, §31; 92 Acts, ch 1206, §6; 2018 Acts, ch 1041, §127

Code editor directive applied

514B.31 Taxation.

Payments received by a health maintenance organization for health care services, insurance, indemnity, or other benefits to which an enrollee is entitled through a health maintenance organization authorized under this chapter and payments by a health maintenance organization to providers for health care services, to insurers, or corporations authorized under chapter 514 for insurance, indemnity, or other service benefits authorized under this chapter are not premiums received and taxable under the provisions of section 432.1 for the first five years of the existence of the health maintenance organization, its successors or assigns. After the first five years, the payments received shall be considered premiums received and shall be taxable under the provisions of section 432.1, subsection 1. However, payments made by the United States secretary of health and human services under contracts issued under section 1833 or 1876 of the federal Social Security Act, section 4015 of the federal Omnibus Budget Reconciliation Act of 1987, or chapter 249A for enrolled

members shall not be considered premiums received and shall not be taxable under section 432.1.

[C75, 77, 79, 81, §514B.31]

90 Acts, ch 1173, §1; 2002 Acts, ch 1158, §8

Referred to in §514E.1

514B.32 Construction.

1. Except as otherwise provided in this chapter, laws regulating the insurance business in this state and the operations of corporations authorized under chapter 514 shall not be applicable to any health maintenance organization granted a certificate of authority under this chapter with respect to its health maintenance organization activities authorized and regulated pursuant to this chapter.

2. Solicitation of enrollees by a health maintenance organization granted a certificate of authority or its representatives does not violate any provision of law prohibiting solicitation or advertising by health professionals. Upon a prospective enrollee's request, a list of locations of services and a list of providers who have current agreements with the health maintenance organization shall be made available.

3. Any health maintenance organization authorized under this chapter is not practicing medicine and shall not be subject to the limitations provided in section 135B.26 on types of contracts entered into between doctors and hospitals.

4. A health maintenance organization authorized under this chapter shall be considered a person for purposes of chapter 507B.

[C75, 77, 79, 81, §514B.32]

83 Acts, ch 28, §1; 93 Acts, ch 88, §16

514B.33 Establishment of limited service organizations.

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

2. When not otherwise provided, a foreign or domestic limited service organization doing business in this state shall pay the commissioner the fees as required in section 511.24.

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

4. Sections 514B.3B and 514B.12 apply to all foreign and domestic limited service organizations authorized to do business in this state.

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

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

97 Acts, ch 186, §9; 2003 Acts, ch 91, §30; 2006 Acts, ch 1117, §61

CHAPTER 514C

SPECIAL HEALTH AND ACCIDENT INSURANCE COVERAGES

Referred to in §87.4, 296.7, 331.301, 364.4, 505.28, 505.29, 507A.4, 669.14, 670.7

514C.1 Supplemental coverage for adopted or newly born children.

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514C.31 Applied behavior analysis for treatment of autism spectrum disorder — coverage.
514C.32 Services provided by certain licensed master social workers, licensed mental health counselors, and licensed marital and family therapists.
514C.33 Services provided by provisionally licensed psychologists.
514C.34 Health care services delivered by telehealth — coverage.

514C.1 Supplemental coverage for adopted or newly born children.

1. Any policy of individual or group accident and sickness insurance providing coverage on an expense incurred basis, and any individual or group hospital or medical service contracts issued pursuant to chapters 509, 514, and 514A, which provide coverage for a family member of the insured or subscriber shall also provide that the health insurance benefits applicable for children shall, subject to the enrollment requirements of this section, be payable with respect to a newly born child of the insured or subscriber from the moment of birth, or, in the situation of a newly adopted child of a covered person, such child shall be covered from the earlier of any of the following:

a. The date of placement of the child for the purpose of adoption and continuing in the same manner as for other dependents of the covered person, unless the placement is disrupted prior to legal adoption and the child is removed from placement.

b. The date of entry of an order granting the covered person custody of the child for purposes of adoption.

c. The effective date of adoption.

2. The coverage for adopted or newly born children shall consist of coverage for injury or sickness including the necessary care and treatment of medically diagnosed congenital defects and birth abnormalities and is not subject to any preexisting condition exclusion.

3. If payment of a specific premium or subscription fee is required to provide coverage for a newly born child, the policy or contract may require that notification of birth of a newly

born child and payment of the required premium or fees must be furnished to the insurer or nonprofit service or indemnity corporation within sixty days after the date of birth.

4. If payment of a specific premium or subscription fee is not required to provide coverage for a newly born child, the policy or contract may require that notification of birth of a newly born child must be furnished to the insurer or nonprofit service or indemnity corporation within sixty days after the date of birth in order for coverage to be provided for the child from the date of birth.

5. *a.* If payment of a specific premium or subscription fee is required to provide coverage for a newly adopted child or child placed for adoption, the policy or contract may require that notification of the adoption or placement for adoption and payment of the required premium or fees must be furnished to the insurer or nonprofit service or indemnity corporation within sixty days after the coverage is required to begin under this section.

b. If payment of a specific premium or subscription fee is not required to provide coverage for a newly adopted child or child placed for adoption, the policy or contract may require that notification of the adoption or placement for adoption must be furnished to the insurer or nonprofit service or indemnity corporation within sixty days after the coverage is required to begin under this section.

c. If a covered person fails to provide the required notice or to make payment of premium or subscription fees within the sixty-day period required in this subsection, the newly adopted child or child placed for adoption shall be treated no less favorably by a health carrier than other dependents of the covered person, other than newly born children, who seek coverage under a policy or contract at a time other than the time when the dependent is first eligible to apply for coverage.

[C75, 77, 79, 81, §514C.1]
2006 Acts, ch 1117, §62
Referred to in §514E.7

514C.2 Skilled nursing care covered in hospitals.

An insurer, a hospital service corporation, or a medical service corporation, which covers the costs of skilled nursing care under an individual or group policy of accident and health insurance regulated under chapter 509 or 514A, a nonprofit hospital or medical and surgical service plan regulated under chapter 514, or a health care service contract regulated under chapter 514B, shall also cover the costs of skilled nursing care in a hospital if the level of care needed by the insured or subscriber has been reclassified from acute care to skilled nursing care and no designated skilled nursing care beds or swing beds are available in the hospital or in another hospital or health care facility within a thirty-mile radius of the hospital. The insurer or corporation shall reimburse the insured or subscriber based on the skilled nursing care rate.

84 Acts, ch 1034, §1; 95 Acts, ch 185, §12

514C.3 Dentist's services under accident and sickness insurance policies.

A policy of accident and sickness insurance issued in this state which provides payment or reimbursement for any service which is within the lawful scope of practice of a licensed dentist shall provide benefits for the service whether the service is performed by a licensed physician or a licensed dentist. As used in this section, *"licensed physician"* includes persons licensed under chapter 148, and *"policy of accident and sickness insurance"* includes individual policies or contracts issued pursuant to chapter 514, 514A, or 514B, and group policies as defined in section 509B.1, subsection 3.

88 Acts, ch 1127, §1; 2006 Acts, ch 1117, §63; 2008 Acts, ch 1088, §129

514C.3A Disclosures relating to dental coverage reimbursement rates.

1. An individual or group policy of accident or health insurance or individual or group hospital or health care service contract issued pursuant to chapter 509, 514, or 514A, and delivered, amended, or renewed on or after July 1, 1995, that provides dental care benefits with a base payment for those benefits determined upon a usual and customary fee charged by licensed dentists, shall disclose all of the following:

a. The frequency of the determination of the usual and customary fee.

b. A general description of the methodology used to determine usual and customary fees, including geographic considerations.

c. The percentile that determines the maximum benefit that the insurer or nonprofit health service corporation will pay for any dental procedure, if the usual and customary fee is determined by taking a sample of fees submitted on actual claims from licensed dentists and then determining the benefit by selecting a percentile of those fees.

2. The disclosure shall be provided upon request to all group and individual policyholders and subscribers. All proposals for dental care benefits shall inform the prospective policyholder or subscriber that information regarding usual and customary fee determinations is available from the insurer or nonprofit health service corporation. All employee benefit descriptions or supplemental documents shall notify the employee that information regarding reimbursement rates is available from the employer.

95 Acts, ch 78, §1; 95 Acts, ch 209, §26

514C.3B Dental coverage — fee schedules.

1. A contract between a dental plan and a dentist for the provision of services to covered individuals under the plan shall not require that a dentist provide services to those covered individuals at a fee set by the dental plan unless such services are covered services under the dental plan.

2. A person or entity providing third-party administrator services shall not make available any dentists in its dentist network to a dental plan that sets fees for dental services that are not covered services.

3. For the purposes of this section:

a. *"Covered services"* means services reimbursed under the dental plan.

b. *"Dental plan"* means any policy or contract of insurance which provides for coverage of dental services not in connection with a medical plan that provides for the coverage of medical services.

4. Nothing in this section shall be construed as limiting the ability of an insurer or a third-party administrator to restrict any of the following as they relate to covered services:

a. Balance billing.

b. Waiting periods.

c. Frequency limitations.

d. Deductibles.

e. Maximum annual benefits.

2010 Acts, ch 1179, §1

514C.4 Mandated coverage for mammography.

1. *a.* A policy or contract providing for third-party payment or prepayment of health or medical expenses shall provide minimum mammography examination coverage, including, but not limited to, the following classes of third-party payment provider contracts or policies delivered, issued for delivery, continued, or renewed in this state.

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

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

(3) An individual or group health maintenance organization contract regulated under chapter 514B.

(4) An individual or group Medicare supplemental policy, unless coverage pursuant to such policy is preempted by federal law.

b. A long-term care policy or contract is specifically excluded from regulation under this section.

2. As used in this section, *"minimum mammography examination coverage"* means benefits which are better than or equal to the following minimum requirements:

a. One baseline mammogram for any woman who is thirty-five through thirty-nine years of age, or more frequent mammograms if recommended by the woman's physician.

b. A mammogram every two years for any woman who is forty through forty-nine years of age, or more frequently if recommended by the woman's physician.

c. A mammogram every year for any woman who is fifty years of age or older, or more frequently if recommended by the woman's physician.

3. Mammogram benefits may be subject to any policy or contract provisions which apply generally to other services covered by the policy or contract.

4. The commissioner of insurance shall adopt rules under chapter 17A necessary to implement this section.

89 Acts, ch 289, §1; 92 Acts, ch 1162, §32, 33; 2003 Acts, ch 135, §1 – 3; 2012 Acts, ch 1023, §157

514C.5 Prescription drug benefit restrictions.

1. A group policy or contract providing for third-party payment or prepayment for prescription drugs shall not require a person covered under the policy or contract to obtain prescription drugs from a mail order pharmacy as a condition of obtaining benefits for prescription drugs if the pharmacy selected by the covered person agrees to provide pharmaceutical services under the same terms and conditions as those provided by the mail order pharmacy.

2. Group third-party payor policies or contracts delivered, issued for delivery, continued, or renewed in this state on or after July 1, 1990, are subject to this section, including but not limited to the following classes:

a. A group accident and sickness insurance policy.

b. A group hospital or medical service contract.

c. A group health maintenance organization contract.

d. A group Medicare supplemental policy.

90 Acts, ch 1130, §1

514C.6 Uniformity of treatment — employee welfare benefit plans.

1. A statutory provision to mandate a health care coverage or service, or to mandate the offering of a health care coverage or service, applies to all state-regulated third-party payors and to employee welfare benefit plans described in 29 U.S.C. §1001 et seq. However, if an employee welfare benefit plan subject to federal regulation is not subject to a substantially similar requirement, the statutory provision does not apply to a state-regulated third-party payor until the employee welfare benefit plans are subject to a substantially similar standard under federal regulations as determined by the commissioner.

2. For purposes of this section unless the context otherwise requires, a third-party payor means:

a. An accident and sickness insurer, subject to chapter 509 or 514A.

b. A nonprofit health service corporation, subject to chapter 514.

c. A health maintenance organization, subject to chapter 514B.

d. Any other entity engaged in the business of insurance, risk transfer, or risk retention, which is subject to the jurisdiction of the commissioner.

91 Acts, ch 213, §20

Referred to in §514C.7, 514C.11, 514C.12, 514C.18, 514C.19, 514C.20, 514C.22, 514C.23, 514C.24, 514C.25, 514C.26, 514C.27, 514C.28, 514C.29, 514C.30, 514C.31, 514C.32, 514C.33, 514C.34

514C.7 Prohibition on restricting coverage in certain instances involving a diagnosis of a fibrocystic condition.

Notwithstanding the uniformity of treatment requirements of section 514C.6, a third-party payor as defined in that section shall not deny or fail to renew, or include an exception to or exclusion of benefits in, a policy or contract of individual or group accident and sickness insurance solely based upon an insured being diagnosed as having a fibrocystic condition.

92 Acts, ch 1046, §1

514C.8 Coordination of health care benefits with state medical assistance.

1. An insurer, health maintenance organization, or hospital and medical service plan providing health care coverage to individuals in this state shall not consider the availability

of or eligibility for medical assistance under Tit. XIX of the federal Social Security Act and chapter 249A, when determining eligibility of the individual for coverage or calculating payments to the individual under the health care coverage plan.

2. The state acquires the rights of an individual to payment from an insurer, health maintenance organization, or hospital or medical service plan to the extent payment for covered expenses is made pursuant to chapter 249A for health care items or services provided to the individual. Upon presentation of proof that payment was made pursuant to chapter 249A for covered expenses, the insurer, health maintenance organization, or hospital or medical service plan shall make payment to the state medical assistance program to the extent of the coverage provided in the policy or contract.

3. An insurer shall not impose requirements on the state with respect to the assignment of rights pursuant to this section that are different from the requirements applicable to an agent or assignee of a covered individual.

4. For purposes of this section, *"insurer"* means an entity which offers a health benefit plan, including a group health plan under the federal Employee Retirement Income Security Act of 1974.

95 Acts, ch 185, §13; 2010 Acts, ch 1061, §180

514C.9 Medical support — insurance requirements.

1. An insurer shall not deny coverage or enrollment of a child under the health plan of the obligor upon any of the following grounds:

a. The child is born out of wedlock.

b. The child is not claimed as a dependent on the obligor's federal income tax return.

c. The child does not reside with the obligor or in the insurer's service area. This section shall not be construed to require a health maintenance organization regulated under chapter 514B to provide any services or benefits for treatment outside of the geographic area described in its certificate of authority which would not be provided to a member outside of that geographic area pursuant to the terms of the health maintenance organization's contract.

2. An insurer of an obligor providing health care coverage to the child for which the obligor is legally responsible to provide support shall do all of the following:

a. Provide information to the obligee or other legal custodian of the child as necessary for the child to obtain benefits through the coverage of the insurer.

b. Allow the obligee or other legal custodian of the child, or the provider with the approval of the obligee or other legal custodian of the child, to submit claims for covered services without the approval of the obligor.

c. Make payment on a claim submitted in paragraph *"b"* directly to the obligee or other legal custodian of the child, the provider, or the state medical assistance agency for claims submitted by the obligee or other legal custodian of the child, by the provider with the approval of the obligee or other legal custodian of the child, or by the state medical assistance agency.

3. If an obligor is required by a court order or administrative order to provide health coverage for a child and the obligor is eligible for dependent health coverage, the insurer shall do all of the following:

a. Allow the obligor to enroll under dependent coverage a child who is eligible for coverage pursuant to the applicable terms and conditions of the health benefit plan and the standard enrollment guidelines of the insurer without regard to an enrollment season restriction.

b. Enroll a child who is eligible for coverage under the applicable terms and conditions of the health benefit plan and the standard enrollment guidelines of the insurer, without regard to any time of enrollment restriction, under dependent coverage upon application by the obligee or other legal custodian of the child or by the department of human services in the event an obligor required by a court order or administrative order fails to apply for coverage for the child.

c. Maintain coverage and not cancel the child's enrollment unless the insurer obtains satisfactory written evidence of any of the following:

(1) The court order or administrative order is no longer in effect.

(2) The child is eligible for or will enroll in comparable health coverage through an insurer which shall take effect not later than the effective date of the cancellation of enrollment of the original coverage.

(3) The employer has eliminated dependent health coverage for its employees.

(4) The obligor is no longer paying the required premium because the employer no longer owes the obligor compensation, or because the obligor's employment has terminated and the obligor has not elected to continue coverage.

4. A group health plan shall establish reasonable procedures to determine whether a child is covered under a qualified medical child support order issued pursuant to chapter 252E. The procedures shall be in writing, provide for prompt notice of each person specified in the medical child support order as eligible to receive benefits under the group health plan upon receipt by the plan of the medical child support order, and allow an obligee or other legal custodian of the child under chapter 252E to designate a representative for receipt of copies of notices in regard to the medical child support order that are sent to the obligee or other legal custodian of the child and the department of human services' child support recovery unit.

5. For purposes of this section, unless the context otherwise requires:

a. "Child" means a person, other than an obligee's spouse or former spouse, who is recognized under a qualified medical child support order as having a right to enrollment under a group health plan as the obligor's dependent.

b. "Court order" or *"administrative order"* means a ruling by a court or administrative agency in regard to the support an obligor shall provide to the obligor's child.

c. "Insurer" means an entity which offers a health benefit plan.

d. "Obligee" means an obligee as defined in section 252E.1.

e. "Obligor" means an obligor as defined in section 252E.1.

f. "Qualified medical child support order" means a child support order which creates or recognizes a child's right to receive health benefits for which the child is eligible under a group health benefit plan, describes or determines the type of coverage to be provided, specifies the length of time for which the order applies, and specifies the plan to which the order applies.

95 Acts, ch 185, §14

514C.10 Coverage for adopted child.

1. *Definitions.* For purposes of this section, unless the context otherwise requires:

a. "Child" means, with respect to an adoption or a placement for adoption of a child, an individual who has not attained age eighteen as of the date of the issuance of a final adoption decree, or upon an interlocutory adoption decree becoming a final adoption decree, as provided in chapter 600, or as of the date of the placement for adoption.

b. "Placement for adoption" means the assumption and retention of a legal obligation for the total or partial support of the child in anticipation of the adoption of the child. The child's placement with a person terminates upon the termination of such legal obligation.

2. *Coverage required.* A policy or contract providing for third-party payment or prepayment of health or medical expenses shall provide coverage benefits to a dependent child adopted by, or placed for adoption with, an insured or enrollee under the same terms and conditions as apply to a biological, dependent child of the insured or enrollee. The issuer of the policy or contract shall not restrict coverage under the policy or contract for a dependent child adopted by, or placed for adoption with, the insured or enrollee solely on the basis of a preexisting condition of such dependent child at the time that the child would otherwise become eligible for coverage under the plan, if the adoption or placement occurs while the insured or enrollee is eligible for coverage under the policy or contract. This section applies to the following classes of third-party payment provider contracts or policies delivered, issued for delivery, continued, or renewed in this state on or after July 1, 1995:

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

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

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

d. An individual or group Medicare supplemental policy, unless coverage pursuant to such policy is preempted by federal law.

95 Acts, ch 185, §15; 2017 Acts, ch 148, §62

514C.11 Services provided by licensed physician assistants and licensed advanced registered nurse practitioners.

1. Notwithstanding section 514C.6, a policy or contract providing for third-party payment or prepayment of health or medical expenses shall include a provision for the payment of necessary medical or surgical care and treatment provided by a physician assistant licensed pursuant to chapter 148C, or provided by an advanced registered nurse practitioner licensed pursuant to chapter 152 and performed within the scope of the license of the licensed physician assistant or the licensed advanced registered nurse practitioner if the policy or contract would pay for the care and treatment if the care and treatment were provided by a person engaged in the practice of medicine and surgery or osteopathic medicine and surgery under chapter 148. The policy or contract shall provide that policyholders and subscribers under the policy or contract may reject the coverage for services which may be provided by a licensed physician assistant or licensed advanced registered nurse practitioner if the coverage is rejected for all providers of similar services. A policy or contract subject to this section shall not impose a practice or supervision restriction which is inconsistent with or more restrictive than the restriction already imposed by law.

2. This section applies to services provided under a policy or contract delivered, issued for delivery, continued, or renewed in this state on or after July 1, 1996, and to an existing policy or contract, on the policy's or contract's anniversary or renewal date, or upon the expiration of the applicable collective bargaining contract, if any, whichever is later. This section does not apply to policyholders or subscribers eligible for coverage under Tit. XVIII of the federal Social Security Act or any similar coverage under a state or federal government plan.

3. For the purposes of this section, third-party payment or prepayment includes an individual or group policy of accident or health insurance or individual or group hospital or health care service contract issued pursuant to chapter 509, 514, or 514A, an individual or group health maintenance organization contract issued and regulated under chapter 514B, or a preferred provider organization contract regulated pursuant to chapter 514F.

4. Nothing in this section shall be interpreted to require an individual or group health maintenance organization or a preferred provider organization or arrangement to provide payment or prepayment for services provided by a licensed physician assistant or licensed advanced registered nurse practitioner unless the physician assistant's supervising physician, the physician-physician assistant team, the advanced registered nurse practitioner, or the advanced registered nurse practitioner's collaborating physician has entered into a contract or other agreement to provide services with the individual or group health maintenance organization or the preferred provider organization or arrangement.

96 Acts, ch 1169, §1; 2008 Acts, ch 1088, §130; 2017 Acts, ch 148, §63

514C.12 Postdelivery benefits and care.

1. Notwithstanding section 514C.6, a person who provides an individual or group policy of accident or health insurance or individual or group hospital or health care service contract issued pursuant to chapter 509, 509A, 514, or 514A or an individual or group health maintenance organization contract issued and regulated under chapter 514B, which is delivered, amended, or renewed on or after July 1, 1996, and which provides maternity benefits, which are not limited to complications of pregnancy, or newborn care benefits, shall not terminate inpatient benefits or require discharge of a mother or the newborn from a hospital following delivery earlier than determined to be medically appropriate by the attending physician after consultation with the mother and in accordance with guidelines adopted by rule by the commissioner. The guidelines adopted by rule shall be consistent with or may adopt by reference the guidelines for perinatal care established by the American academy of pediatrics and the American college of obstetricians and gynecologists which

provide that when complications are not present, the postpartum hospital stay ranges from a minimum of forty-eight hours for a vaginal delivery to a minimum of ninety-six hours for a cesarean birth, excluding the day of delivery. The guidelines adopted by rule by the commissioner shall also provide that in the event of a discharge from the hospital prior to the minimum stay established in the guidelines, a postdischarge follow-up visit shall be provided to the mother and newborn by providers competent in postpartum care and newborn assessment if determined medically appropriate as directed by the attending physician, in accordance with the guidelines.

2. When performing utilization review of inpatient hospital services related to maternity and newborn care, including but not limited to length of postdelivery stay and postdischarge follow-up care, any person who provides an individual or group policy of accident or health insurance or individual or group hospital or health care service contract issued pursuant to chapter 509, 509A, 514, or 514A, or an individual or group health maintenance organization contract issued and regulated under chapter 514B, shall use the guidelines adopted by rule by the commissioner, and shall not deselect, require additional documentation, require additional utilization review, terminate services to, reduce payment to, or in any manner provide a disincentive to an attending physician solely on the basis that the attending physician provided or directed the provision of services in compliance with the guidelines adopted by rule.

3. Preauthorization or precertification for a hospital stay or for a postdischarge follow-up visit in accordance with the guidelines adopted by rule by the commissioner shall not be required.

96 Acts, ch 1202, §1

514C.13 Group managed care health plans — requirements attached to limited provider network plan offers.

1. As used in this section, unless the context otherwise requires:

a. "Carrier" means an entity that provides health benefit plans in this state. *"Carrier"* includes an insurance company, group hospital or medical service corporation, health maintenance organization, multiple employer welfare arrangement, and any other person providing health benefit plans in this state subject to regulation by the commissioner of insurance.

b. "Health benefit plan" means a policy, certificate, or contract providing hospital or medical coverage, benefits, or services rendered by a health care provider. *"Health benefit plan"* does not include a group conversion plan, accident-only, specific-disease, short-term hospital or medical hospital confinement indemnity, credit, dental, vision, Medicare supplement, long-term care, or disability income insurance, coverage issued as a supplement to liability insurance, workers' compensation or similar insurance, or automobile medical payment insurance.

c. "Health care provider" means a hospital licensed pursuant to chapter 135B, a person licensed under chapter 148, 148C, 149, 151, or 154, or a person licensed as an advanced registered nurse practitioner under chapter 152.

d. "Indemnity plan" means a hospital or medical expense-incurred policy, certificate, or contract, major medical expense insurance, or hospital or medical service plan contract.

e. "Large employer" means a person actively engaged in business who, during at least fifty percent of the employer's working days during the preceding calendar year, employed more than fifty full-time equivalent employees.

f. "Limited provider network plan" means a managed care health plan which limits access to or coverage for services to selected health care providers who are under contract with the managed care health plan.

g. "Managed care health plan" means a health benefit plan that selects and contracts with health care providers; manages and coordinates health care delivery; monitors necessity, appropriateness, and quality of health care delivered by health care providers; and performs utilization review and cost control.

h. "Point of service plan option" means a provision in a managed care health plan that

permits insureds, enrollees, or subscribers access to health care from health care providers who have not contracted with the managed care health plan.

i. "Small employer" means a person actively engaged in business who, during at least fifty percent of the employer's working days during the preceding calendar year, employed at least one and not more than fifty full-time equivalent employees.

2. A carrier which offers to a small employer a limited provider network plan to provide health care services or benefits to the small employer's employees shall also offer to the small employer a point of service option to the limited provider network plan.

3. A carrier which offers to a large employer a limited provider network plan to provide health care services or benefits to the large employer's employees shall also offer to the large employer one or more of the following:

a. A point of service plan option to the limited provider network plan. The price of the point of service plan option shall be actuarially determined.

b. A managed care health plan that is not a limited provider network plan.

c. An indemnity plan.

4. A large employer that offers a limited provider network plan to its employees shall also offer to its employees one or more of the following:

a. A point of service plan option to the limited provider network plan.

b. A managed care health plan that is not a limited provider network plan.

c. An indemnity plan.

97 Acts, ch 88, §1; 2008 Acts, ch 1088, §131; 2011 Acts, ch 70, §27, 49; 2017 Acts, ch 148, §64 – 66

Referred to in §505.25, 514I.6

514C.14 Continuity of care — pregnancy.

1. Except as provided under subsection 2 or 3, a carrier, as defined in section 513B.2, or a plan established pursuant to chapter 509A for public employees, that terminates its contract with a participating health care provider, shall continue to provide coverage under the contract to a covered person in the second or third trimester of pregnancy for continued care from such health care provider. Such persons may continue to receive such treatment or care through postpartum care related to the child birth and delivery. Payment for covered benefits and benefit levels shall be according to the terms and conditions of the contract.

2. A covered person who makes an involuntary change in health plans may request that the new health plan cover the services of the covered person's physician specialist who is not a participating health care provider under the new health plan, if the covered person is in the second or third trimester of pregnancy. Continuation of such coverage shall continue through postpartum care related to the child birth and delivery. Payment for covered benefits and benefit levels shall be according to the terms and conditions of the new health plan contract.

3. A carrier or a plan established under chapter 509A, that terminates the contract of a participating health care provider for cause shall not be liable to pay for health care services provided by the health care provider to a covered person following the date of termination.

99 Acts, ch 41, §1; 2017 Acts, ch 148, §67; 2018 Acts, ch 1026, §157

Subsections 1 and 3 amended

514C.15 Treatment options.

A carrier, as defined in section 513B.2, or a plan established pursuant to chapter 509A for public employees, shall not prohibit a participating provider from, or penalize a participating provider for, doing either of the following:

1. Discussing treatment options with a covered individual, notwithstanding the carrier's or plan's position on such treatment option.

2. Advocating on behalf of a covered individual within a review or grievance process established by the carrier or chapter 509A plan, or established by a person contracting with the carrier or chapter 509A plan.

99 Acts, ch 41, §2; 2017 Acts, ch 148, §68; 2018 Acts, ch 1041, §103

Subsection 1 amended

514C.16 Emergency room services.

1. A carrier, as defined in section 513B.2, or a plan established pursuant to chapter 509A for public employees, which provides coverage for emergency services, is responsible for charges for emergency services provided to a covered individual, including services furnished outside any contractual provider network or preferred provider network. Coverage for emergency services is subject to the terms and conditions of the health benefit plan or contract.

2. Prior authorization for emergency services shall not be required. All services necessary to evaluate and stabilize an emergency medical condition shall be considered covered emergency services.

3. For purposes of this section, unless the context otherwise requires:

a. "Emergency medical condition" means a medical condition that manifests itself by symptoms of sufficient severity, including but not limited to severe pain, that an ordinarily prudent person, possessing average knowledge of medicine and health, could reasonably expect the absence of immediate medical attention to result in one of the following:

(1) Placing the health of the individual, or with respect to a pregnant woman, the health of the woman or her unborn child, in serious jeopardy.

(2) Serious impairment to bodily function.

(3) Serious dysfunction of a bodily organ or part.

b. "Emergency services" means covered inpatient and outpatient health care services that are furnished by a health care provider who is qualified to provide the services that are needed to evaluate or stabilize an emergency medical condition.

99 Acts, ch 41, §3; 2017 Acts, ch 148, §69

514C.17 Continuity of care — terminal illness.

1. Except as provided under subsection 2 or 3, if a carrier, as defined in section 513B.2, or a plan established pursuant to chapter 509A for public employees, terminates its contract with a participating health care provider, a covered individual who is undergoing a specified course of treatment for a terminal illness or a related condition, with the recommendation of the covered individual's treating physician licensed under chapter 148 may continue to receive coverage for treatment received from the covered individual's physician for the terminal illness or a related condition, for a period of up to ninety days. Payment for covered benefits and benefit levels shall be according to the terms and conditions of the contract.

2. A covered person who makes a change in health plans involuntarily may request that the new health plan cover services of the covered person's treating physician licensed under chapter 148 who is not a participating health care provider under the new health plan, if the covered person is undergoing a specified course of treatment for a terminal illness or a related condition. Continuation of such coverage shall continue for up to ninety days. Payment for covered benefits and benefit levels shall be according to the terms and conditions of the contract.

3. Notwithstanding subsections 1 and 2, a carrier or a plan established under chapter 509A which terminates the contract of a participating health care provider for cause shall not be required to cover health care services provided by the health care provider to a covered person following the date of termination.

99 Acts, ch 41, §4; 2008 Acts, ch 1088, §132; 2017 Acts, ch 148, §70

514C.18 Diabetes coverage.

1. Notwithstanding the uniformity of treatment requirements of section 514C.6, a policy or contract providing for third-party payment or prepayment of health or medical expenses shall provide coverage benefits for the cost associated with equipment, supplies, and self-management training and education for the treatment of all types of diabetes mellitus when prescribed by a physician licensed under chapter 148. Coverage benefits shall include coverage for the cost associated with all of the following:

a. Equipment and supplies.

b. Payment for diabetes self-management training and education only under all of the following conditions:

(1) The physician managing the individual's diabetic condition certifies that such services are needed under a comprehensive plan of care related to the individual's diabetic condition to ensure therapy compliance or to provide the individual with necessary skills and knowledge to participate in the management of the individual's condition.

(2) The diabetes self-management training and education program is certified by the Iowa department of public health. The department shall consult with the American diabetes association, Iowa affiliate, in developing the standards for certification of diabetes education programs that cover at least ten hours of initial outpatient diabetes self-management training within a continuous twelve-month period and up to two hours of follow-up training for each subsequent year for each individual diagnosed by a physician with any type of diabetes mellitus.

2. *a.* This section applies to the following classes of third-party payment provider contracts or policies delivered, issued for delivery, continued, or renewed in this state on or after July 1, 1999:

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

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

(3) An individual or group health maintenance organization contract regulated under chapter 514B.

(4) Any other entity engaged in the business of insurance, risk transfer, or risk retention, which is subject to the jurisdiction of the commissioner.

(5) A plan established pursuant to chapter 509A for public employees.

b. This section shall not apply to accident-only, specified disease, short-term hospital or medical, hospital confinement indemnity, credit, dental, vision, Medicare supplement, long-term care, basic hospital and medical-surgical expense coverage as defined by the commissioner, disability income insurance coverage, coverage issued as a supplement to liability insurance, workers' compensation or similar insurance, or automobile medical payment insurance.

99 Acts, ch 75, §1; 99 Acts, ch 208, §58; 2008 Acts, ch 1088, §133; 2009 Acts, ch 139, §1, 2; 2011 Acts, ch 70, §28; 2017 Acts, ch 148, §71

2009 amendment takes effect May 22, 2009, and applies to the classes of third-party payment provider contracts or policies that are delivered, issued for delivery, continued, or renewed on or after July 1, 2009; 2009 Acts, ch 139, §2

514C.19 Prescription contraceptive coverage.

1. Notwithstanding the uniformity of treatment requirements of section 514C.6, a group policy or contract providing for third-party payment or prepayment of health or medical expenses shall not do either of the following:

a. Exclude or restrict benefits for prescription contraceptive drugs or prescription contraceptive devices which prevent conception and which are approved by the United States food and drug administration, or generic equivalents approved as substitutable by the United States food and drug administration, if such policy or contract provides benefits for other outpatient prescription drugs or devices.

b. Exclude or restrict benefits for outpatient contraceptive services which are provided for the purpose of preventing conception if such policy or contract provides benefits for other outpatient services provided by a health care professional.

2. A person who provides a group policy or contract providing for third-party payment or prepayment of health or medical expenses which is subject to subsection 1 shall not do any of the following:

a. Deny to an individual eligibility, or continued eligibility, to enroll in or to renew coverage under the terms of the policy or contract because of the individual's use or potential use of such prescription contraceptive drugs or devices, or use or potential use of outpatient contraceptive services.

b. Provide a monetary payment or rebate to a covered individual to encourage such individual to accept less than the minimum benefits provided for under subsection 1.

c. Penalize or otherwise reduce or limit the reimbursement of a health care professional

because such professional prescribes contraceptive drugs or devices, or provides contraceptive services.

d. Provide incentives, monetary or otherwise, to a health care professional to induce such professional to withhold from a covered individual contraceptive drugs or devices, or contraceptive services.

3. This section shall not be construed to prevent a third-party payor from including deductibles, coinsurance, or copayments under the policy or contract, as follows:

a. A deductible, coinsurance, or copayment for benefits for prescription contraceptive drugs shall not be greater than such deductible, coinsurance, or copayment for any outpatient prescription drug for which coverage under the policy or contract is provided.

b. A deductible, coinsurance, or copayment for benefits for prescription contraceptive devices shall not be greater than such deductible, coinsurance, or copayment for any outpatient prescription device for which coverage under the policy or contract is provided.

c. A deductible, coinsurance, or copayment for benefits for outpatient contraceptive services shall not be greater than such deductible, coinsurance, or copayment for any outpatient health care services for which coverage under the policy or contract is provided.

4. This section shall not be construed to require a third-party payor under a policy or contract to provide benefits for experimental or investigational contraceptive drugs or devices, or experimental or investigational contraceptive services, except to the extent that such policy or contract provides coverage for other experimental or investigational outpatient prescription drugs or devices, or experimental or investigational outpatient health care services.

5. This section shall not be construed to limit or otherwise discourage the use of generic equivalent drugs approved by the United States food and drug administration, whenever available and appropriate. This section, when a brand name drug is requested by a covered individual and a suitable generic equivalent is available and appropriate, shall not be construed to prohibit a third-party payor from requiring the covered individual to pay a deductible, coinsurance, or copayment consistent with subsection 3, in addition to the difference of the cost of the brand name drug less the maximum covered amount for a generic equivalent.

6. A person who provides an individual policy or contract providing for third-party payment or prepayment of health or medical expenses shall make available a coverage provision that satisfies the requirements in subsections 1 through 5 in the same manner as such requirements are applicable to a group policy or contract under those subsections. The policy or contract shall provide that the individual policyholder may reject the coverage provision at the option of the policyholder.

7. *a.* This section applies to the following classes of third-party payment provider contracts or policies delivered, issued for delivery, continued, or renewed in this state on or after July 1, 2000:

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

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

(3) An individual or group health maintenance organization contract regulated under chapter 514B.

(4) Any other entity engaged in the business of insurance, risk transfer, or risk retention, which is subject to the jurisdiction of the commissioner.

(5) A plan established pursuant to chapter 509A for public employees.

b. This section shall not apply to accident-only, specified disease, short-term hospital or medical, hospital confinement indemnity, credit, dental, vision, Medicare supplement, long-term care, basic hospital and medical-surgical expense coverage as defined by the commissioner, disability income insurance coverage, coverage issued as a supplement to liability insurance, workers' compensation or similar insurance, or automobile medical payment insurance.

2000 Acts, ch 1120, §1; 2017 Acts, ch 148, §72

514C.20 Mandated coverage for dental care — anesthesia and certain hospital charges.

1. Notwithstanding section 514C.6, and subject to the terms and conditions of the policy or contract, a policy or contract providing for third-party payment or prepayment of health or medical expenses shall provide coverage for the administration of general anesthesia and hospital or ambulatory surgical center charges related to the provision of dental care services provided to any of the following covered individuals:

a. A child under five years of age upon a determination by a licensed dentist and the child's treating physician licensed pursuant to chapter 148, that such child requires necessary dental treatment in a hospital or ambulatory surgical center due to a dental condition or a developmental disability for which patient management in the dental office has proved to be ineffective.

b. Any individual upon a determination by a licensed dentist and the individual's treating physician licensed pursuant to chapter 148, that such individual has one or more medical conditions that would create significant or undue medical risk for the individual in the course of delivery of any necessary dental treatment or surgery if not rendered in a hospital or ambulatory surgical center.

2. Prior authorization of hospitalization or ambulatory surgical center for dental care procedures may be required in the same manner that prior authorization is required for hospitalization for other coverages under the contract or policy.

3. This section applies to the following classes of third-party payment provider contracts or policies delivered, issued for delivery, continued, or renewed in this state on or after July 1, 2000:

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

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

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

d. Any other entity engaged in the business of insurance, risk transfer, or risk retention, which is subject to the jurisdiction of the commissioner.

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

4. This section shall not apply to accident-only, specified disease, short-term hospital or medical, hospital confinement indemnity, credit, dental, vision, Medicare supplement, long-term care, basic hospital and medical-surgical expense coverage as defined by the commissioner, disability income insurance coverage, coverage issued as a supplement to liability insurance, workers' compensation or similar insurance, or automobile medical payment insurance.

2000 Acts, ch 1193, §1; 2008 Acts, ch 1088, §134; 2017 Acts, ch 148, §73

514C.21 Coverage for immunizations — mercury.

1. Third-party payment provider contracts or policies delivered, issued for delivery, continued, or renewed in this state on or after January 1, 2006, that provide reimbursement for immunizations shall provide reimbursement for immunizations containing no more than trace amounts of mercury at the acquisition cost rate for immunizations containing no more than trace amounts of mercury. For the purposes of this section, *"trace amounts"* means trace amounts as defined by the United States food and drug administration.

2. For the purposes of this section, *"third-party payment provider contracts or policies"* includes:

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

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

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

2004 Acts, ch 1159, §2; 2017 Acts, ch 148, §74

514C.22 Biologically based mental illness coverage.

1. Notwithstanding the uniformity of treatment requirements of section 514C.6, a group policy, contract, or plan providing for third-party payment or prepayment of health, medical, and surgical coverage benefits issued by a carrier, as defined in section 513B.2, shall provide coverage benefits for treatment of a biologically based mental illness if either of the following is satisfied:

a. The policy, contract, or plan is issued to an employer who on at least fifty percent of the employer's working days during the preceding calendar year employed more than fifty full-time equivalent employees. In determining the number of full-time equivalent employees of an employer, employers who are affiliated or who are able to file a consolidated tax return for purposes of state taxation shall be considered one employer.

b. The policy, contract, or plan is issued to a small employer as defined in section 513B.2, and such policy, contract, or plan provides coverage benefits for the treatment of mental illness.

2. Notwithstanding the uniformity of treatment requirements of section 514C.6, a plan established pursuant to chapter 509A for public employees shall provide coverage benefits for treatment of a biologically based mental illness.

3. For purposes of this section, *"biologically based mental illness"* means the following psychiatric illnesses:

a. Schizophrenia.
b. Bipolar disorders.
c. Major depressive disorders.
d. Schizo-affective disorders.
e. Obsessive-compulsive disorders.
f. Pervasive developmental disorders.
g. Autistic disorders.

4. The commissioner, by rule, shall define the biologically based mental illnesses identified in subsection 3. Definitions established by the commissioner shall be consistent with definitions provided in the most recent edition of the American psychiatric association's diagnostic and statistical manual of mental disorders, as such definitions may be amended from time to time. The commissioner may adopt the definitions provided in such manual by reference.

5. This section shall not apply to accident-only, specified disease, short-term hospital or medical, hospital confinement indemnity, credit, dental, vision, Medicare supplement, long-term care, basic hospital and medical-surgical expense coverage as defined by the commissioner, disability income insurance coverage, coverage issued as a supplement to liability insurance, workers' compensation or similar insurance, or automobile medical payment insurance, or individual accident and sickness policies issued to individuals or to individual members of a member association.

6. A carrier or plan established pursuant to chapter 509A may manage the benefits provided through common methods, including but not limited to providing payment of benefits or providing care and treatment under a capitated payment system, prospective reimbursement rate system, utilization control system, incentive system for the use of least restrictive and least costly levels of care, a preferred provider contract limiting choice of specific providers, or any other system, method, or organization designed to assure services are medically necessary and clinically appropriate.

7. *a.* A group policy, contract, or plan covered under this section shall not impose an aggregate annual or lifetime limit on biologically based mental illness coverage benefits unless the policy, contract, or plan imposes an aggregate annual or lifetime limit on substantially all health, medical, and surgical coverage benefits.

b. A group policy, contract, or plan covered under this section that imposes an aggregate annual or lifetime limit on substantially all health, medical, and surgical coverage benefits shall not impose an aggregate annual or lifetime limit on biologically based mental illness coverage benefits that is less than the aggregate annual or lifetime limit imposed on substantially all health, medical, and surgical coverage benefits.

8. A group policy, contract, or plan covered under this section shall at a minimum allow for

thirty inpatient days and fifty-two outpatient visits annually. The policy, contract, or plan may also include deductibles, coinsurance, or copayments, provided the amounts and extent of such deductibles, coinsurance, or copayments applicable to other health, medical, or surgical services coverage under the policy, contract, or plan are the same. It is not a violation of this section if the policy, contract, or plan excludes entirely from coverage benefits for the cost of providing the following:

a. Marital, family, educational, developmental, or training services.

b. Care that is substantially custodial in nature.

c. Services and supplies that are not medically necessary or clinically appropriate.

d. Experimental treatments.

9. This section applies to third-party payment provider policies or contracts and to plans established pursuant to chapter 509A that are delivered, issued for delivery, continued, or renewed in this state on or after January 1, 2006.

2005 Acts, ch 91, §1; 2017 Acts, ch 148, §75, 76

Referred to in §135H.3, 514C.28

514C.23 Human papilloma virus vaccinations — coverage.

1. Notwithstanding the uniformity of treatment requirements of section 514C.6, a contract, policy, or plan providing for third-party payment or prepayment of health or medical expenses that provides coverage benefits for any vaccination or immunization shall provide coverage benefits for a vaccination for human papilloma virus, including but not limited to the following classes of third-party payment provider contracts, policies, or plans delivered, issued for delivery, continued, or renewed in this state on or after January 1, 2009:

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

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

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

d. An individual or group Medicare supplemental policy, unless coverage pursuant to such policy is preempted by federal law.

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

2. This section shall not apply to accident-only, specified disease, short-term hospital or medical, hospital confinement indemnity, credit, dental, vision, long-term care, basic hospital and medical-surgical expense coverage as defined by the commissioner, disability income insurance coverage, coverage issued as a supplement to liability insurance, workers' compensation or similar insurance, or automobile medical payment insurance.

3. As used in this section, *"human papilloma virus"* means the human papilloma virus as defined by the centers for disease control and prevention of the United States department of health and human services.

4. The commissioner of insurance shall adopt rules pursuant to chapter 17A as necessary to administer this section.

2008 Acts, ch 1108, §1

514C.24 Cancer treatment — coverage.

1. Notwithstanding the uniformity of treatment requirements of section 514C.6, a contract, policy, or plan providing for third-party payment or prepayment for cancer treatment shall not discriminate between coverage benefits for prescribed, orally administered anticancer medication used to kill or slow the growth of cancerous cells and intravenously administered or injected cancer medications that are covered, regardless of formulation or benefit category determination by the contract, policy, or plan.

2. The provisions of this section shall apply to all of the following classes of third-party payment provider contracts, policies, or plans delivered, issued for delivery, continued, or renewed in this state on or after July 1, 2009:

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

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

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

d. An individual or group Medicare supplemental policy, unless coverage pursuant to such policy is preempted by federal law.

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

3. This section shall not apply to accident-only, specified disease, short-term hospital or medical, hospital confinement indemnity, credit, dental, vision, long-term care, basic hospital, and medical-surgical expense coverage as defined by the commissioner, disability income insurance coverage, coverage issued as a supplement to liability insurance, workers' compensation or similar insurance, or automobile medical payment insurance.

4. The commissioner of insurance shall adopt rules pursuant to chapter 17A as necessary to administer this section.

2009 Acts, ch 179, §183

514C.25 Coverage for prosthetic devices.

1. *a.* Notwithstanding the uniformity of treatment requirements of section 514C.6, a policy, contract, or plan providing for third-party payment or prepayment of health or medical expenses shall provide coverage benefits for medically necessary prosthetic devices when prescribed by a physician licensed under chapter 148. Such coverage benefits for medically necessary prosthetic devices shall provide coverage for medically necessary prosthetic devices that, at a minimum, equals the coverage and payment for medically necessary prosthetic devices provided under the most recent federal laws for health insurance for the aged and disabled pursuant to 42 U.S.C. §1395k, 13951, and 1395m, and 42 C.F.R. §410.100, 414.202, 414.210, and 414.228, as applicable.

b. For the purposes of this section, *"prosthetic device"* means an artificial limb device to replace, in whole or in part, an arm or leg.

2. *a.* This section applies to the following classes of third-party payment provider policies, contracts, or plans delivered, issued for delivery, continued, or renewed in this state on or after July 1, 2009:

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

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

(3) An individual or group health maintenance organization contract regulated under chapter 514B.

(4) A plan established pursuant to chapter 509A for public employees.

b. This section shall not apply to accident-only, specified disease, short-term hospital or medical, hospital confinement indemnity, credit, dental, vision, Medicare supplement, long-term care, basic hospital and medical-surgical expense coverage as defined by the commissioner, disability income insurance coverage, coverage issued as a supplement to liability insurance, workers' compensation or similar insurance, or automobile medical payment insurance.

3. Notwithstanding subsection 1, paragraph *"a"*, a policy, contract, or plan providing for third-party payment or prepayment of health or medical expenses that is issued for use in connection with a health savings account as authorized under Tit. XII of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, Pub. L. No. 108-173, may impose the same deductibles and out-of-pocket limits on the prosthetics coverage benefits required in this section that apply to substantially all health, medical, and surgical coverage benefits under the policy, contract, or plan.

2009 Acts, ch 89, §1; 2017 Acts, ch 148, §77

514C.26 Approved cancer clinical trials coverage.

1. *Definitions.* For purposes of this section, unless the context otherwise requires:

a. "Approved cancer clinical trial" means a scientific study of a new therapy for the

treatment of cancer in human beings that meets the requirements set forth in subsection 3 and consists of a scientific plan of treatment that includes specified goals, a rationale and background for the plan, criteria for patient selection, specific directions for administering therapy and monitoring patients, a definition of quantitative measures for determining treatment response, and methods for documenting and treating adverse reactions.

b. "Institutional review board" means a board, committee, or other group formally designated by an institution and approved by the national institutes of health, office for protection from research risks, to review, approve the initiation of, and conduct periodic review of biomedical research involving human subjects. *"Institutional review board"* means the same as "institutional review committee" as used in section 520(g) of the federal Food, Drug, and Cosmetic Act, as codified in 21 U.S.C. §301 et seq.

c. (1) *"Routine patient care costs"* means medically necessary services or treatments that are a benefit under a contract or policy providing for third-party payment or prepayment of health or medical expenses that would be covered if the patient were receiving standard cancer treatment.

(2) *"Routine patient care costs"* does not include any of the following:

(a) Costs of any treatments, procedures, drugs, devices, services, or items that are the subject of the approved cancer clinical trial or any other investigational treatments, procedures, drugs, devices, services, or items.

(b) Costs of nonhealth care services that the patient is required to receive as a result of participation in the approved cancer clinical trial.

(c) Costs associated with managing the research that is associated with the approved cancer clinical trial.

(d) Costs that would not be covered by the third-party payment provider if noninvestigational treatments were provided.

(e) Costs of any services, procedures, or tests provided solely to satisfy data collection and analysis needs that are not used in the direct clinical management of the patient participating in an approved cancer clinical trial.

(f) Costs paid for, or not charged for, by the approved cancer clinical trial providers.

(g) Costs for transportation, lodging, food, or other expenses for the patient, a family member, or a companion of the patient that are associated with travel to or from a facility where an approved cancer clinical trial is conducted.

(h) Costs for services, items, or drugs that are eligible for reimbursement from a source other than a patient's contract or policy providing for third-party payment or prepayment of health or medical expenses, including the sponsor of the approved cancer clinical trial.

(i) Costs associated with approved cancer clinical trials designed exclusively to test toxicity or disease pathophysiology.

(j) Costs of extra treatments, services, procedures, tests, or drugs that would not be performed or administered except for participation in the cancer clinical trial. Nothing in this subparagraph division shall limit payment for treatments, services, procedures, tests, or drugs that are otherwise a covered benefit under subparagraph (1).

d. "Therapeutic intent" means that a treatment is aimed at improving a patient's health outcome relative to either survival or quality of life.

2. *Coverage required.* Notwithstanding the uniformity of treatment requirements of section 514C.6, a policy or contract providing for third-party payment or prepayment of health or medical expenses shall provide coverage benefits for routine patient care costs incurred for cancer treatment in an approved cancer clinical trial to the same extent that such policy or contract provides coverage for treating any other sickness, injury, disease, or condition covered under the policy or contract, if the insured has been referred for such cancer treatment by two physicians who specialize in oncology and the cancer treatment is given pursuant to an approved cancer clinical trial that meets the criteria set forth in subsection 3. Services that are furnished without charge to a participant in the approved cancer clinical trial are not required to be covered as routine patient care costs pursuant to this section.

3. *Criteria.* Routine patient care costs for cancer treatment given pursuant to an

approved cancer clinical trial shall be covered pursuant to this section if all of the following requirements are met:

a. The treatment is provided with therapeutic intent and is provided pursuant to an approved cancer clinical trial that has been authorized or approved by one of the following:

(1) The national institutes of health.

(2) The United States food and drug administration.

(3) The United States department of defense.

(4) The United States department of veterans affairs.

b. The proposed treatment has been reviewed and approved by the applicable qualified institutional review board.

c. The available clinical or preclinical data indicate that the treatment that will be provided pursuant to the approved cancer clinical trial will be at least as effective as the standard therapy and is anticipated to constitute an improvement in therapeutic effectiveness for the treatment of the disease in question.

4. *Notice.* As soon as practical after the insured provides written consent to participate in an approved cancer clinical trial, the physician shall provide notice to the third-party payment provider of the insured's intent to participate in an approved cancer clinical trial. Failure to provide such notice to the third-party payment provider shall not be the basis for denying the coverage required under subsection 2.

5. *Applicability.*

a. This section applies to the following classes of third-party payment provider contracts or policies delivered, issued for delivery, continued, or renewed in this state on or after July 1, 2010:

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

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

(3) An individual or group health maintenance organization contract regulated under chapter 514B.

(4) Any other entity engaged in the business of insurance, risk transfer, or risk retention, which is subject to the jurisdiction of the commissioner.

(5) A plan established pursuant to chapter 509A for public employees.

b. This section shall not apply to accident-only, specified disease, short-term hospital or medical, hospital confinement indemnity, credit, dental, vision, Medicare supplement, long-term care, basic hospital and medical-surgical expense coverage as defined by the commissioner, disability income insurance coverage, coverage issued as a supplement to liability insurance, workers' compensation or similar insurance, or automobile medical payment insurance.

2010 Acts, ch 1013, §1; 2010 Acts, ch 1193, §61; 2017 Acts, ch 148, §78

514C.27 Mental illness and substance abuse treatment coverage for veterans.

1. Notwithstanding the uniformity of treatment requirements of section 514C.6, a group policy or contract providing for third-party payment or prepayment of health or medical expenses issued by a carrier, as defined in section 513B.2, shall provide coverage benefits to an insured who is a veteran for treatment of mental illness and substance abuse if either of the following is satisfied:

a. The policy or contract is issued to an employer who on at least fifty percent of the employer's working days during the preceding calendar year employed more than fifty full-time equivalent employees. In determining the number of full-time equivalent employees of an employer, employers who are affiliated or who are able to file a consolidated tax return for purposes of state taxation shall be considered one employer.

b. The policy or contract is issued to a small employer as defined in section 513B.2, and such policy or contract provides coverage benefits for the treatment of mental illness and substance abuse.

2. Notwithstanding the uniformity of treatment requirements of section 514C.6, a plan established pursuant to chapter 509A for public employees shall provide coverage benefits to

an insured who is a veteran for treatment of mental illness and substance abuse as defined in subsection 3.

3. For purposes of this section:

a. "Mental illness" means mental disorders as defined by the commissioner by rule.

b. "Substance abuse" means a pattern of pathological use of alcohol or a drug that causes impairment in social or occupational functioning, or that produces physiological dependency evidenced by physical tolerance or by physical symptoms when the alcohol or drug is withdrawn.

c. "Veteran" means the same as defined in section 35.1.

4. The commissioner, by rule, shall define *"mental illness"* consistent with definitions provided in the most recent edition of the American psychiatric association's diagnostic and statistical manual of mental disorders, as the definitions may be amended from time to time. The commissioner may adopt the definitions provided in such manual by reference.

5. This section shall not apply to accident-only, specified disease, short-term hospital or medical, hospital confinement indemnity, credit, dental, vision, Medicare supplement, long-term care, basic hospital and medical-surgical expense coverage as defined by the commissioner, disability income insurance coverage, coverage issued as a supplement to liability insurance, workers' compensation or similar insurance, or automobile medical payment insurance, or individual accident and sickness policies issued to individuals or to individual members of a member association.

6. A carrier or plan established pursuant to chapter 509A may manage the benefits provided through common methods, including but not limited to providing payment of benefits or providing care and treatment under a capitated payment system, prospective reimbursement rate system, utilization control system, incentive system for the use of least restrictive and least costly levels of care, a preferred provider contract limiting choice of specific providers, or any other system, method, or organization designed to assure services are medically necessary and clinically appropriate.

7. *a.* A group policy or contract or plan covered under this section shall not impose an aggregate annual or lifetime limit on mental illness or substance abuse coverage benefits unless the policy or contract or plan imposes an aggregate annual or lifetime limit on substantially all medical and surgical coverage benefits.

b. A group policy or contract or plan covered under this section that imposes an aggregate annual or lifetime limit on substantially all medical and surgical coverage benefits shall not impose an aggregate annual or lifetime limit on mental illness or substance abuse coverage benefits which is less than the aggregate annual or lifetime limit imposed on substantially all medical and surgical coverage benefits.

8. A group policy or contract or plan covered under this section shall at a minimum allow for thirty inpatient days and fifty-two outpatient visits annually. The policy or contract or plan may also include deductibles, coinsurance, or copayments, provided the amounts and extent of such deductibles, coinsurance, or copayments applicable to other medical or surgical services coverage under the policy or contract or plan are the same. It is not a violation of this section if the policy or contract or plan excludes entirely from coverage benefits for the cost of providing the following:

a. Care that is substantially custodial in nature.

b. Services and supplies that are not medically necessary or clinically appropriate.

c. Experimental treatments.

9. This section applies to third-party payment provider policies or contracts and plans established pursuant to chapter 509A delivered, issued for delivery, continued, or renewed in this state on or after January 1, 2011.

2010 Acts, ch 1121, §15; 2014 Acts, ch 1026, §143; 2016 Acts, ch 1011, §95; 2017 Acts, ch 148, §79, 80

514C.28 Autism spectrum disorders coverage.

1. Notwithstanding the uniformity of treatment requirements of section 514C.6, a group plan established pursuant to chapter 509A for employees of the state providing for third-party payment or prepayment of health, medical, and surgical coverage benefits

shall provide coverage benefits to covered individuals under twenty-one years of age for the diagnostic assessment of autism spectrum disorders and for the treatment of autism spectrum disorders.

2. As used in this section, unless the context otherwise requires:

a. "Applied behavioral analysis" means the design, implementation, and evaluation of environmental modifications, using behavioral stimuli and consequences, to produce socially significant improvement in human behavior or to prevent loss of attained skill or function, including the use of direct observation, measurement, and functional analysis of the relations between environment and behavior.

b. "Autism service provider" means a person, or group providing treatment of autism spectrum disorders. An autism service provider that provides treatment of autism spectrum disorders that includes applied behavioral analysis shall be certified as a behavior analyst by the behavior analyst certification board or shall be a health professional licensed under chapter 147.

c. "Autism spectrum disorders" means any of the pervasive developmental disorders including autistic disorder, Asperger's disorder, and pervasive developmental disorders not otherwise specified. The commissioner, by rule, shall define *"autism spectrum disorders"* consistent with definitions provided in the most recent edition of the American psychiatric association's diagnostic and statistical manual of mental disorders, as such definitions may be amended from time to time. The commissioner may adopt the definitions provided in such manual by reference.

d. "Diagnostic assessment of autism spectrum disorders" means medically necessary assessment, evaluations, or tests performed by a licensed physician, licensed physician assistant, licensed psychologist, or licensed registered nurse practitioner to diagnose whether an individual has an autism spectrum disorder.

e. "Pharmacy care" means medications prescribed by a licensed physician, licensed physician assistant, or licensed registered nurse practitioner and any assessment, evaluation, or test prescribed or ordered by a licensed physician, licensed physician assistant, or licensed registered nurse practitioner to determine the need for or effectiveness of such medications.

f. "Psychiatric care" means direct or consultative services provided by a licensed physician who specializes in psychiatry.

g. "Psychological care" means direct or consultative services provided by a licensed psychologist.

h. "Rehabilitative care" means professional services and treatment programs, including applied behavioral analysis, provided by an autism service provider to produce socially significant improvement in human behavior or to prevent loss of attained skill or function.

i. "Therapeutic care" means services provided by a licensed speech pathologist, licensed occupational therapist, or licensed physical therapist.

j. "Treatment of autism spectrum disorders" means treatment that is identified in a treatment plan and includes medically necessary pharmacy care, psychiatric care, psychological care, rehabilitative care, and therapeutic care that is one of the following:

(1) Prescribed, ordered, or provided by a licensed physician, licensed physician assistant, licensed psychologist, licensed social worker, or licensed registered nurse practitioner.

(2) Provided by an autism service provider.

(3) Provided by a person, entity, or group that works under the direction of an autism service provider.

k. "Treatment plan" means a plan for the treatment of autism spectrum disorders developed by a licensed physician or licensed psychologist pursuant to a comprehensive evaluation or reevaluation performed in consultation with the patient and the patient's representative.

3. Coverage is required pursuant to this section in a maximum benefit amount of not more than thirty-six thousand dollars per year but shall not be subject to any limits on the number of visits to an autism service provider for treatment of autism spectrum disorders. Beginning in 2014, the commissioner shall, on or before April 1 of each calendar year, publish an adjustment to the maximum benefit required equal to the percentage change in the United States department of labor consumer price index for all urban consumers in the

preceding year, and the published adjusted maximum benefit shall be applicable to group policies, contracts, or plans subject to this section that are issued or renewed on or after January 1 of the following calendar year. Payments made under a group plan subject to this section on behalf of a covered individual for treatment of a health condition unrelated to or distinguishable from the individual's autism spectrum disorder shall not be applied toward any maximum benefit established under this subsection.

4. Coverage required pursuant to this section shall be subject to copayment, deductible, and coinsurance provisions, and any other general exclusions or limitations of a group plan to the same extent as other medical or surgical services covered by the group plan.

5. Coverage required by this section shall be provided in coordination with coverage required for the treatment of autistic disorders pursuant to section 514C.22.

6. This section shall not be construed to limit benefits which are otherwise available to an individual under a group plan.

7. This section shall not be construed to require coverage by a group plan of any service solely based on inclusion of the service in an individualized education program. Consistent with federal or state law and upon consent of the parent or guardian of a covered individual, the treatment of autism spectrum disorders may be coordinated with any services included in an individualized education program. However, coverage for the treatment of autism spectrum disorders shall not be contingent upon coordination of services with an individualized education program.

8. This section shall not apply to accident-only, specified disease, short-term hospital or medical, hospital confinement indemnity, credit, dental, vision, Medicare supplement, long-term care, basic hospital and medical-surgical expense coverage as defined by the commissioner, disability income insurance coverage, coverage issued as a supplement to liability insurance, workers' compensation or similar insurance, or automobile medical payment insurance, or individual accident and sickness policies issued to individuals or to individual members of a member association.

9. A plan established pursuant to chapter 509A for employees of the state may manage the benefits provided through common methods including but not limited to providing payment of benefits or providing care and treatment under a capitated payment system, prospective reimbursement rate system, utilization control system, incentive system for the use of least restrictive and costly levels of care, a preferred provider contract limiting choice of specific providers, or any other system, method, or organization designed to assure services are medically necessary and clinically appropriate.

10. An insurer may review a treatment plan for treatment of autism spectrum disorders once every six months, subject to its utilization review requirements, including case management, concurrent review, and other managed care provisions. A more or less frequent review may be agreed upon by the insured and the licensed physician or licensed psychologist developing the treatment plan.

11. For the purposes of this section, the results of a diagnostic assessment of autism spectrum disorder shall be valid for a period of not less than twelve months, unless a licensed physician or licensed psychologist determines that a more frequent assessment is necessary.

12. The commissioner shall adopt rules pursuant to chapter 17A to implement and administer this section.

13. This section applies to plans established pursuant to chapter 509A for employees of the state that are delivered, issued for delivery, continued, or renewed in this state on or after January 1, 2011.

2010 Acts, ch 1193, §131
Referred to in §225D.1, 225D.2

514C.29 Services provided by a doctor of chiropractic.

1. Notwithstanding the uniformity of treatment requirements of section 514C.6, a policy, contract, or plan providing for third-party payment or prepayment of health or medical expenses shall not impose a copayment or coinsurance amount on an insured for services provided by a doctor of chiropractic licensed pursuant to chapter 151 that is greater than the copayment or coinsurance amount imposed on the insured for services provided by a person

engaged in the practice of medicine and surgery or osteopathic medicine and surgery under chapter 148 for the same or a similar diagnosed condition even if a different nomenclature is used to describe the condition for which the services are provided.

2. This section applies to the following classes of third-party payment provider policies, contracts, or plans delivered, issued for delivery, continued, or renewed in this state on or after July 1, 2012:

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

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

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

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

3. This section shall not apply to accident-only, specified disease, short-term hospital or medical, hospital confinement indemnity, credit, dental, vision, Medicare supplement, long-term care, basic hospital and medical-surgical expense coverage as defined by the commissioner, disability income insurance coverage, coverage issued as a supplement to liability insurance, workers' compensation or similar insurance, or automobile medical payment insurance.

2012 Acts, ch 1138, §36; 2017 Acts, ch 148, §81

514C.30 Services provided by a physical therapist, occupational therapist, or speech pathologist.

1. Notwithstanding the uniformity of treatment requirements of section 514C.6, a policy, contract, or plan providing for third-party payment or prepayment of health or medical expenses shall not impose a copayment or coinsurance amount on an insured for services provided by a physical therapist licensed pursuant to chapter 148A, by an occupational therapist licensed pursuant to chapter 148B, or by a speech pathologist licensed pursuant to chapter 154F that is greater than the copayment or coinsurance amount imposed on the insured for services provided by a person engaged in the practice of medicine and surgery or osteopathic medicine and surgery under chapter 148 for the same or a similar diagnosed condition even if a different nomenclature is used to describe the condition for which the services are provided.

2. This section applies to the following classes of third-party payment provider policies, contracts, or plans delivered, issued for delivery, continued, or renewed in this state on or after July 1, 2015:

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

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

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

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

3. This section shall not apply to accident-only, specified disease, short-term hospital or medical, hospital confinement indemnity, credit, dental, vision, Medicare supplement, long-term care, basic hospital and medical-surgical expense coverage as defined by the commissioner, disability income insurance coverage, coverage issued as a supplement to liability insurance, workers' compensation or similar insurance, or automobile medical payment insurance.

2015 Acts, ch 137, §101, 162, 163; 2017 Acts, ch 148, §82

514C.31 Applied behavior analysis for treatment of autism spectrum disorder — coverage.

1. Notwithstanding the uniformity of treatment requirements of section 514C.6, a group policy, contract, or plan providing for third-party payment or prepayment of health, medical, and surgical coverage benefits shall provide coverage benefits for applied behavior analysis

provided by a practitioner to covered individuals under nineteen years of age for the treatment of autism spectrum disorder pursuant to a treatment plan if the policy, contract, or plan is either of the following:

a. A policy, contract, or plan issued by a carrier, as defined in section 513B.2, to an employer who on at least fifty percent of the employer's working days during the preceding calendar year employed more than fifty full-time equivalent employees. In determining the number of full-time equivalent employees of an employer, employers who are affiliated or who are able to file a consolidated tax return for purposes of state taxation shall be considered one employer.

b. A plan established pursuant to chapter 509A for public employees other than employees of the state.

2. As used in this section, unless the context otherwise requires:

a. "Applied behavior analysis" means the design, implementation, and evaluation of environmental modifications, using behavioral stimuli and consequences, to produce socially significant improvement in human behavior, including the use of direct observation, measurement, and functional analysis of the relationship between environment and behavior.

b. "Autism spectrum disorder" means a complex neurodevelopmental medical disorder characterized by social impairment, communication difficulties, and restricted, repetitive, and stereotyped patterns of behavior.

c. "Practitioner" means any of the following:

(1) A physician licensed pursuant to chapter 148.

(2) A psychologist licensed pursuant to chapter 154B.

(3) A behavior analyst licensed pursuant to chapter 154D.

d. "Treatment plan" means a plan for the treatment of an autism spectrum disorder developed by a licensed physician or licensed psychologist after a comprehensive evaluation or reevaluation performed in a manner consistent with the most recent clinical report or recommendations of the American academy of pediatrics. *"Treatment plan"* includes supervisory services, subject to the provisions of subsection 5.

3. *a.* The coverage for applied behavior analysis required pursuant to this section shall provide an annual maximum benefit of not less than the following:

(1) For an individual through age six, thirty-six thousand dollars per year.

(2) For an individual age seven through age thirteen, twenty-five thousand dollars per year.

(3) For an individual age fourteen through age eighteen, twelve thousand five hundred dollars per year.

b. Payments made under a group policy, contract, or plan subject to this section on behalf of a covered individual for any treatment other than applied behavior analysis shall not be applied toward the maximum benefit established under this subsection.

4. Coverage required pursuant to this section may be subject to dollar limits, deductibles, copayments, or coinsurance provisions that apply to other medical and surgical services under the policy, contract, or plan, subject to the requirements of subsection 3.

5. Coverage required pursuant to this section may be subject to care management provisions of the applicable policy, contract, or plan, including prior authorization, prior approval, and limits on the number of visits a covered individual may make for applied behavior analysis.

6. A carrier or plan may request a review of a treatment plan for a covered individual not more than once every three months during the first year of the treatment plan and not more than once every six months during every year thereafter, unless the carrier or plan and the covered individual's treating physician or psychologist execute an agreement that a more frequent review is necessary. An agreement giving a carrier or plan the right to review the treatment plan of a covered individual more frequently applies only to a particular covered individual receiving applied behavior analysis and does not apply to other individuals receiving applied behavior analysis from a practitioner. The cost of conducting a review under this section shall be paid by the carrier or plan. A carrier or plan shall not change the provisions of a treatment plan until the completion of a review of the treatment plan.

7. This section shall not be construed to limit benefits which are otherwise available to an individual under a group policy, contract, or plan.

8. This section shall not be construed as affecting any obligation to provide services to an individual under an individualized family service plan, an individualized education program, or an individualized service plan.

9. This section shall not apply to accident-only, specified disease, short-term hospital or medical, hospital confinement indemnity, credit, dental, vision, Medicare supplement, long-term care, basic hospital and medical-surgical expense coverage as defined by the commissioner, disability income insurance coverage, coverage issued as a supplement to liability insurance, workers' compensation or similar insurance, or automobile medical payment insurance, or individual accident and sickness policies issued to individuals or to individual members of a member association.

10. This section applies to third-party provider payment contracts, policies, or plans specified in subsection 1, paragraph *"a"* or to plans established pursuant to chapter 509A for public employees other than employees of the state, that are delivered, issued for delivery, continued, or renewed in this state on or after January 1, 2018.

2017 Acts, ch 18, §4; 2017 Acts, ch 148, §103; 2018 Acts, ch 1106, §13, 14
Referred to in §225D.1, 225D.2
2018 amendment to subsection 2, paragraph c, subparagraph (3) takes effect January 1, 2019; 2018 Acts, ch 1106, §14
Subsection 2, paragraph c, subparagraph (3) amended

514C.32 Services provided by certain licensed master social workers, licensed mental health counselors, and licensed marital and family therapists.

1. Notwithstanding section 514C.6, a policy or contract providing for third-party payment or prepayment of health or medical expenses shall include a provision for the payment of necessary behavioral health services provided by any of the following:

a. A licensed master social worker who is licensed by the board of social work as a master social worker pursuant to section 154C.3, subsection 1, paragraph *"b"*, and who provides services under the supervision of an independent social worker licensed pursuant to section 154C.3, subsection 1, paragraph *"c"*.

b. A licensed mental health counselor or a licensed marital and family therapist who holds a temporary license to practice mental health counseling or marital and family therapy pursuant to section 154D.7, and who provides services under the supervision of a qualified supervisor as determined by the board of behavioral science by rule.

2. A policy or contract subject to this section shall not impose a practice or supervision restriction which is inconsistent with or more restrictive than the authority already granted by law, including the authority to provide supervision in person or remotely through electronic means as specified by rule of the applicable licensing board.

3. The requirements of this section apply to and supersede any conflicting requirements regarding services provided under a policy or contract, which is delivered, issued for delivery, continued, or renewed in this state on or after June 1, 2018, and apply to and supersede any conflicting requirements regarding services contained in an existing policy or contract on the policy's or contract's anniversary or renewal date, whichever is later.

4. For the purposes of this section, third-party payment or prepayment includes an individual or group policy of accident or health insurance or individual or group hospital or health care service contract issued pursuant to chapter 509, 514, or 514A, an individual or group health maintenance organization contract issued and regulated under chapter 514B, or a preferred provider organization contract regulated pursuant to chapter 514F.

5. Nothing in this section shall be interpreted to require an individual or group health maintenance organization or a preferred provider organization or arrangement to provide payment or prepayment for services provided by a licensed master social worker providing behavioral health services under the supervision of an independent social worker, or to a licensed mental health counselor or licensed marital and family therapist who holds a temporary license to practice mental health counseling or marital and family therapy providing behavioral health services under the supervision of a qualified supervisor, as specified in this section, unless the supervising independent social worker or the qualified supervisor, respectively, has entered into a contract or other agreement to provide behavioral

health services with the individual or group health maintenance organization or the preferred provider organization or arrangement.

2018 Acts, ch 1165, §137, 139
NEW section

514C.33 Services provided by provisionally licensed psychologists.

1. Notwithstanding section 514C.6, a policy or contract providing for third-party payment or prepayment of health or medical expenses shall include a provision for the payment of necessary behavioral health services provided by a person who holds a provisional license to practice psychology pursuant to section 154B.6, and who practices under the supervision of a supervisor who meets the qualifications determined by the board of psychology by rule.

2. A policy or contract subject to this section shall not impose a practice or supervision restriction which is inconsistent with or more restrictive than the authority already granted by law, including the authority to provide supervision in person or remotely through electronic means as specified by rule of the board of psychology.

3. The requirements of this section apply to and supersede any conflicting requirements regarding services provided under a policy or contract which is delivered, issued for delivery, continued, or renewed in this state on or after June 1, 2018, and apply to and supersede any conflicting requirements regarding services contained in an existing policy or contract on the policy's or contract's anniversary or renewal date, whichever is later.

4. For the purposes of this section, third-party payment or prepayment includes an individual or group policy of accident or health insurance or individual or group hospital or health care service contract issued pursuant to chapter 509, 514, or 514A, an individual or group health maintenance organization contract issued and regulated under chapter 514B, or a preferred provider organization contract regulated pursuant to chapter 514F.

5. Nothing in this section shall be interpreted to require an individual or group health maintenance organization or a preferred provider organization or arrangement to provide payment or prepayment for services provided by a provisionally licensed psychologist providing behavioral health services under the supervision of a supervisor as specified in this section, unless the supervisor has entered into a contract or other agreement to provide behavioral health services with the individual or group health maintenance organization or the preferred provider organization or arrangement.

2018 Acts, ch 1165, §138, 139
NEW section

514C.34 Health care services delivered by telehealth — coverage.

1. As used in this section, unless the context otherwise requires:

a. "Health care professional" means the same as defined in section 514J.102.

b. "Health care services" means the same as defined in section 514J.102 and includes services for mental health conditions, illnesses, injuries, or diseases.

c. "Telehealth" means the delivery of health care services through the use of interactive audio and video. *"Telehealth"* does not include the delivery of health care services through an audio-only telephone, electronic mail message, or facsimile transmission.

2. Notwithstanding the uniformity of treatment requirements of section 514C.6, a policy, contract, or plan providing for third-party payment or prepayment of health or medical expenses shall not discriminate between coverage benefits for health care services that are provided in person and the same health care services that are delivered through telehealth.

3. Health care services that are delivered by telehealth must be appropriate and delivered in accordance with applicable law and generally accepted health care practices and standards prevailing at the time the health care services are provided, including all rules adopted by the appropriate professional licensing board, pursuant to chapter 147, having oversight of the health care professional providing the health care services.

4. This section applies to the following classes of third-party payment provider policies, contracts, or plans delivered, issued for delivery, continued, or renewed in this state on or after January 1, 2019:

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

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

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

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

5. This section shall not apply to accident-only, specified disease, short-term hospital or medical, hospital confinement indemnity, credit, dental, vision, Medicare supplement, long-term care, basic hospital and medical-surgical expense coverage as defined by the commissioner, disability income insurance coverage, coverage issued as a supplement to liability insurance, workers' compensation or similar insurance, or automobile medical payment insurance.

6. The commissioner of insurance may adopt rules pursuant to chapter 17A as necessary to administer this section.

2018 Acts, ch 1055, §1
NEW section

CHAPTER 514D

ACCIDENT AND SICKNESS INSURANCE POLICIES

Referred to in §87.4, 296.7, 331.301, 364.4, 505.28, 505.29, 509.13, 514A.14, 669.14, 670.7

514D.1 Purpose.
514D.2 Definitions.
514D.3 Standards for policies established.
514D.4 Standards for benefits established.
514D.5 Disclosure, Medicare information, and advertising.
514D.6 Limitation on defenses.
514D.7 Exclusions.
514D.8 Title and effective date of chapter.
514D.9 Regulations regarding limitation on compensation.

514D.1 Purpose.

The purpose of this chapter is to provide reasonable standardization, simplification, and disclosure of the terms and coverages of individual accident and sickness insurance policies issued under chapter 514A and individual subscriber contracts issued under chapter 514, in order to facilitate public understanding and comparison and to eliminate provisions which may be misleading or unreasonably confusing in connection with the purchase of coverage or the settlement of claims.

[C81, §514D.1]

514D.2 Definitions.

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

1. *"Accident and sickness insurance"* means individual accident and sickness insurance within the meaning of section 514A.1. *"Accident and sickness insurance"* also means individual subscriber contracts for hospital service, or medical and surgical service, or individual pharmaceutical or optometric service issued under chapter 514, and for purposes of this chapter, corporations issuing contracts under chapter 514 are deemed to be engaged in the business of insurance.

2. *"Form"* means and includes policies, contracts, riders, endorsements and applications used in connection with the sale of accident and sickness insurance under chapter 514 or chapter 514A.

3. *"Medicare"* means the Health Insurance for the Aged Act, Tit. XVIII of the United States Social Security Act added by the amendment of 1965 as amended on or before July 1, 1980.

4. *"Policy"* means the entire contract between the insurer and the insured, including

the policy riders, endorsements, and the application, if attached, and includes individual subscriber contracts issued under chapter 514.

[C81, §514D.2]

2013 Acts, ch 90, §154

514D.3 Standards for policies established.

1. The commissioner shall issue rules to establish specific standards, including standards of full and fair disclosure, that set forth the manner, content, and required disclosure for the sale of policies of individual accident and sickness insurance and individual subscriber contracts which shall be in addition to and in accordance with applicable laws of this state, including but not limited to sections 514A.1 to 514A.12. These rules may include, but shall not be limited to, any of the following subjects:

a. Terms of renewability.
b. Initial and subsequent conditions of eligibility.
c. Nonduplication of coverage provisions.
d. Coverage of dependents.
e. Coverage of persons eligible for Medicare by reason of age.
f. Preexisting conditions.
g. Termination of insurance.
h. Probationary periods.
i. Limitations.
j. Exceptions.
k. Reductions.
l. Elimination periods.
m. Requirements for replacement.
n. Recurrent conditions.
o. The definition of terms, including but not limited to the following: Hospital, accident, sickness, injury, physician, accidental means, total disability, partial disability, nervous disorder, guaranteed renewable, and noncancelable.

2. The commissioner may issue rules with respect to policies of individual accident and sickness insurance and individual subscriber contracts that specify prohibited policies or subscriber contracts, or prohibited policy or contract provisions which the commissioner finds to be unjust, unfair, or unfairly discriminatory to the policyholder or any person insured under the policy or any beneficiary. This subsection does not authorize the commissioner to prohibit a policy or policy provision or subscriber contract or contract provision which is specifically authorized by statute.

3. A rule issued by the commissioner under this section shall not apply to a conversion policy issued pursuant to a contractual conversion privilege under a group or individual policy of accident and sickness insurance when such group or individual contract contains provisions that are inconsistent with the requirements of this chapter or any rule issued under this chapter.

4. A rule issued by the commissioner under this section shall not apply to policies being issued to employees or members being added to a franchise plan, as defined in section 509.14, which is in existence on the effective date of the rule.

[C81, §514D.3]

514D.4 Standards for benefits established.

1. The commissioner shall issue rules to establish minimum standards for benefits under each of the following categories of coverage contained in policies of individual accident and sickness insurance or subscriber contracts:

a. Basic hospital expense coverage.
b. Basic medical-surgical expense coverage.
c. Hospital confinement indemnity coverage.
d. Major medical expense coverage.
e. Disability income protection coverage.
f. Accident-only coverage.

g. Specified disease or specified accident coverage.

h. Medicare supplement coverage.

i. Limited benefit health coverage.

2. This section does not prohibit the issuance of a policy which combines two or more of the categories of coverage enumerated in paragraphs "*a*" to "*f*" of subsection 1. A category of coverage referred to in paragraph "*g*", "*h*" or "*i*" of subsection 1 shall not be combined in a policy or contract either with another category of coverage referred to in paragraph "*g*", "*h*" or "*i*" of subsection 1 or with a category of coverage referred to in any of paragraphs "*a*" to "*f*" of subsection 1 unless a rule issued by the commissioner specifically authorizes that combination of coverages.

3. The commissioner shall prescribe the method of identification of policies and contracts based upon coverages provided.

4. A policy of accident and sickness insurance or subscriber contract shall not be delivered or issued for delivery in this state unless the policy or contract meets the minimum standards prescribed under this section.

5. The commissioner may upon notice and hearing at any time after the initial filing or approval of any individual accident and sickness policy or subscriber contract form, withdraw approval or suspend further sale of the form if the benefits provided are unreasonable in relation to the premium charge. The commissioner shall establish reasonable and creditable anticipated minimum loss ratios for Medicare supplement and other accident and sickness insurance policies.

6. A rule issued by the commissioner under this section shall not apply to a conversion policy issued pursuant to a contractual conversion privilege under a group or individual policy of accident and sickness insurance when such group or individual contract contains provisions which are inconsistent with the requirements of this chapter or any rule issued under this chapter.

7. A rule issued by the commissioner under this section shall not apply to policies being issued to employees or members being added to a franchise plan, as defined in section 509.14, which is in existence on the effective date of the rule.

[C81, §514D.4; 81 Acts, ch 167, §2]

92 Acts, ch 1162, §34

Referred to in §508C.8, 514D.5

514D.5 Disclosure, Medicare information, and advertising.

1. Except as otherwise provided in subsection 3, in order to provide for full and fair disclosure in the sale of individual accident and sickness insurance policies or subscriber contracts a policy or contract shall not be delivered or issued for delivery in this state unless the outline of coverage described in subsection 2 either accompanies the policy or contract or is delivered to the applicant at the time application is made and unless an acknowledgment of receipt or certificate of delivery of the outline is provided the insurer. In the event the policy or contract is issued on a basis other than that applied for, the outline of coverage properly describing the policy or contract must accompany the policy or contract when it is delivered and must clearly state that it is not the policy or contract for which application was made.

2. *a.* The commissioner shall prescribe the format and content of the outline of coverage required by subsection 1. *"Format"* means style, arrangement, and overall appearance, including such items as the size, color, and prominence of type and the arrangement of text and captions. The outline of coverage shall include all of the following:

(1) A statement identifying the applicable category or categories of coverage provided by the policy or contract as prescribed in section 514D.4.

(2) A description of the principal benefits and coverage provided in the policy or contract.

(3) A statement of the exceptions, reductions, and limitations contained in the policy or contract.

(4) A statement of the renewal provisions including any reservation by the insurer of a right to change premiums.

(5) A statement that the outline is a summary of the policy or contract issued or applied

for and that the policy or contract should be consulted to determine governing contractual provisions.

b. If payment will not be made for services performed by a chiropractor acting within the scope of the chiropractor's license when those services would be compensable if performed by a medical doctor, then a statement that services performed by a chiropractor are not compensable shall be included in the outline of coverage.

3. The commissioner shall prescribe disclosure rules for Medicare supplement coverage which are determined to be in the public interest and which are designed to adequately inform the prospective insured of the need for and extent of coverage offered as Medicare supplement coverage. For Medicare supplement coverage, the outline of coverage required by subsection 2 shall be furnished to the prospective insured with the application form.

4. The commissioner shall further prescribe by rule a standard form for and the contents of an informational brochure for persons eligible for Medicare by reason of age, which is intended to improve the buyer's ability to select the most appropriate coverage and to improve the buyer's understanding of Medicare. Except in the case of direct response insurance policies, the commissioner may require by rule that this informational brochure be provided to prospective insureds eligible for Medicare concurrently with delivery of the outline of coverage. With respect to direct response insurance policies, the commissioner may require by rule that this brochure must be provided to prospective insureds eligible for Medicare by reason of age upon request, but not later than at the time of delivery of the policy or contract.

5. The commissioner shall adopt rules prohibiting the advertising of forms titled as "nursing home" forms or inferring coverage for custodial care in a nursing facility as defined in section 135C.1 unless such forms provide coverage for custodial care in a nursing facility as defined in section 135C.1.

[C81, §514D.5]

86 Acts, ch 1045, §2; 90 Acts, ch 1039, §17; 2003 Acts, ch 141, §15; 2012 Acts, ch 1023, §157

514D.6 Limitation on defenses.

Notwithstanding section 514A.3, subsection 1, paragraph *"b"*, subparagraph 2, or any contrary provision of chapter 514, if the issuer of the policy of accident and sickness insurance or subscriber contract elects to use a simplified application form, with or without a question as to the applicant's health at the time of application, but without any questions concerning the insured's health history or medical treatment history, the policy or contract must cover any loss occurring after twelve months from the date of issue of the policy or contract from any preexisting condition not specifically excluded from coverage by terms of the policy or contract, and, except as so provided, the policy or contract shall not include wording that would permit a defense based upon preexisting conditions.

[C81, §514D.6]

514D.7 Exclusions.

This chapter does not apply to any of the following:

1. A policy of credit accident and health or credit accident and sickness insurance.

2. A policy of accident and sickness insurance which is exempt from the provisions of sections 514A.1 to 514A.12 by virtue of an exemption set forth in section 514A.1 or 514A.8.

3. Any evidence of coverage issued to an enrollee of a health maintenance organization under chapter 514B.

[C81, §514D.7]

514D.8 Title and effective date of chapter.

This chapter may be cited as the *"Uniform Individual Accident and Health Insurance Minimum Standards Act"*. This chapter takes effect July 1, 1980. Rules issued by the commissioner of insurance pursuant to this chapter shall be subject to the provisions of chapter 17A, and all rules issued by the commissioner of insurance shall give the issuers of policies and contracts a reasonable time to achieve compliance.

[C81, §514D.8]

514D.9 Regulations regarding limitation on compensation.

The commissioner shall issue rules to establish minimum standards to assure fair and reasonable benefits, claim payment, marketing practices, and compensation arrangements and reporting practices for the following classes of policies:

1. Medicare supplement insurance.
2. Nursing home insurance.
3. Long-term care insurance.

90 Acts, ch 1234, §32

CHAPTER 514E

IOWA COMPREHENSIVE HEALTH INSURANCE ASSOCIATION

Referred to in §87.4, 296.7, 331.301, 364.4, 505.28, 505.29, 513C.3, 513C.5, 513C.10, 669.14, 670.7

514E.1 Definitions.
514E.2 Iowa comprehensive health insurance association.
514E.3 Health insurance trust fund — deposit of moneys. Repealed by 97 Acts, ch 103, §56.
514E.4 Association policy — coverage and benefit requirements — deductibles — coinsurance.
514E.5 Iowa choice health care coverage. Repealed by 2009 Acts, ch 118, §4, 5.
514E.6 Iowa choice health care coverage advisory council. Repealed by 2009 Acts, ch 118, §4, 5.
514E.7 Policies — eligible persons — dependent coverage — preexisting conditions.
514E.8 Policies — renewal provisions — election to continue coverage upon death of policyholder.
514E.9 Rules.
514E.10 Collective action — immunity.
514E.11 Notice of association policy.

514E.1 Definitions.

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

1. *"Association"* means the Iowa comprehensive health insurance association established by section 514E.2.
2. *"Association policy"* means an individual or group policy issued by the association that provides the coverage as set forth in the benefit plans adopted by the association's board of directors and approved by the commissioner.
3. *"Carrier"* means an insurer providing accident and sickness insurance under chapter 509, 514, 514A and includes a health maintenance organization established under chapter 514B if payments received by the health maintenance organization are considered premiums pursuant to section 514B.31 and are taxed under chapter 432. *"Carrier"* also includes a corporation which becomes a mutual insurer pursuant to section 514.23 and any other person as defined in section 4.1, subsection 20, who is or may become liable for the tax imposed by chapter 432.
4. *"Church plan"* means the same as defined in the federal Employee Retirement Income Security Act of 1974, 29 U.S.C. §3(33).
5. *"Commissioner"* means the commissioner of insurance.
6. *"Creditable coverage"* means health benefits or coverage provided to an individual under any of the following:

a. A group health plan.
b. Health insurance coverage.
c. Part A or Part B Medicare pursuant to Tit. XVIII of the federal Social Security Act.
d. Medicaid pursuant to Tit. XIX of the federal Social Security Act, other than coverage consisting solely of benefits under section 1928 of that Act.
e. 10 U.S.C. ch. 55.
f. A health or medical care program provided through the Indian health service or a tribal organization.

g. A state health benefits risk pool.

h. A health plan offered under 5 U.S.C. ch. 89.

i. A public health plan as defined under federal regulations.

j. A health benefit plan under section 5(e) of the federal Peace Corps Act, 22 U.S.C. §2504(e).

k. The hawk-i program authorized by chapter 514I.

7. *"Federally eligible individual"* means an individual who satisfies the following:

a. For whom, as of the date on which the individual seeks coverage under this chapter, the aggregate of the periods of creditable coverage is eighteen or more months with no more than a sixty-three day lapse of coverage, and whose most recent prior creditable coverage was under a group health plan, governmental plan, or church plan, or health insurance coverage offered in connection with any such plan.

b. Who is not eligible for coverage under a group health plan, Part A or Part B of Tit. XVIII of the federal Social Security Act, or a state plan under Tit. XIX of that Act, or any successor program, and does not have other health insurance coverage.

c. With respect to whom the most recent coverage within the coverage period described in paragraph *"a"* was not terminated based on a nonpayment of premiums or fraud.

d. If the individual had been offered the option of continuation coverage under a COBRA continuation provision or under a similar state program, and elected such coverage.

e. Who, if the individual elected continuation coverage as provided in paragraph *"d"*, has exhausted the continuation coverage under the provision or program.

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

8. *"Governmental plan"* means as defined under section 3(32) of the federal Employee Retirement Income Security Act of 1974 and any federal governmental plan.

9. *a.* *"Group health plan"* means an employee welfare benefit plan as defined in section 3(1) of the federal Employee Retirement Income Security Act of 1974, to the extent that the plan provides medical care including items and services paid for as medical care to employees or their dependents as defined under the terms of the plan directly or through insurance, reimbursement, or otherwise.

b. For purposes of this subsection, *"medical care"* means amounts paid for any of the following:

(1) The diagnosis, cure, mitigation, treatment, or prevention of disease, or amounts paid for the purpose of affecting a structure or function of the body.

(2) Transportation primarily for and essential to medical care referred to in subparagraph (1).

(3) Insurance covering medical care referred to in subparagraph (1) or (2).

c. For purposes of this chapter, the following apply:

(1) A plan, fund, or program established or maintained by a partnership which, but for this subsection, would not be an employee welfare benefit plan, shall be treated as an employee welfare benefit plan which is a group health plan to the extent that the plan, fund, or program provides medical care, including items and services paid for as medical care for present or former partners in the partnership or to the dependents of such partners, as defined under the terms of the plan, fund, or program, either directly or through insurance, reimbursement, or otherwise.

(2) With respect to a group health plan, the term *"employer"* includes a partnership with respect to a partner.

(3) With respect to a group health plan, the term *"participant"* includes the following:

(a) With respect to a group health plan maintained by a partnership, an individual who is a partner in the partnership.

(b) With respect to a group health plan maintained by a self-employed individual under which one or more of the self-employed individual's employees are participants, the self-employed individual, if that individual is, or may become, eligible to receive benefits under the plan or the individual's dependents may be eligible to receive benefits under the plan.

10. *"Health care services"* means services, the coverage of which is authorized under chapter 509, chapter 514, chapter 514A, or chapter 514B as limited by benefit plans established by the association's board of directors, with the approval of the commissioner and includes services for the purposes of preventing, alleviating, curing, or healing human illness, injury or physical disability.

11. *"Health insurance"* means accident and sickness insurance authorized by chapter 509, 514, or 514A.

12. *a. "Health insurance coverage"* means health insurance coverage offered to individuals, including group conversion coverage.

b. "Health insurance coverage" does not include any of the following:

(1) Coverage for accident-only, or disability income insurance.

(2) Coverage issued as a supplement to liability insurance.

(3) Liability insurance, including general liability insurance and automobile liability insurance.

(4) Workers' compensation or similar insurance.

(5) Automobile medical-payment insurance.

(6) Credit-only insurance.

(7) Coverage for on-site medical clinic care.

(8) Other similar insurance coverage, specified in federal regulations, under which benefits for medical care are secondary or incidental to other insurance coverage or benefits.

c. "Health insurance coverage" does not include benefits provided under a separate policy as follows:

(1) Limited-scope dental or vision benefits.

(2) Benefits for long-term care, nursing home care, home health care, or community-based care.

(3) Any other similar limited benefits as provided by rule of the commissioner.

d. "Health insurance coverage" does not include benefits offered as independent noncoordinated benefits as follows:

(1) Coverage only for a specified disease or illness.

(2) A hospital indemnity or other fixed indemnity insurance.

e. "Health insurance coverage" does not include Medicare supplemental health insurance as defined under section 1882(g)(1) of the federal Social Security Act, coverage supplemental to the coverage provided under 10 U.S.C. ch. 55 and similar supplemental coverage provided to coverage under group health insurance coverage.

13. *"Insured"* means an individual who is provided qualified comprehensive health insurance under an association policy, which policy may include dependents and other covered persons.

14. *"Involuntary termination"* includes but is not limited to termination of group conversion coverage or where benefits under a state or federal law providing for continuation of coverage upon termination of employment will cease or have ceased.

15. *"Medicaid"* means the federal-state assistance program established under Tit. XIX of the federal Social Security Act.

16. *"Medicare"* means the federal government health insurance program established under Tit. XVIII of the Social Security Act.

17. *"Policy"* means a contract, policy, or plan of health insurance.

18. *"Policy year"* means a consecutive twelve-month period during which a policy provides or obligates the carrier to provide health insurance.

19. *"Preexisting condition exclusion"*, with respect to coverage, means a limitation or exclusion of benefits relating to a condition based on the fact that the condition was present before the date of enrollment for such coverage, whether or not any medical advice, diagnosis, care, or treatment was recommended or received before such date.

86 Acts, ch 1156, §1; 89 Acts, ch 304, §1003; 97 Acts, ch 103, §42, 43; 98 Acts, ch 1100, §70; 2000 Acts, ch 1058, §47; 2001 Acts, ch 69, §23; 2002 Acts, ch 1111, §16; 2003 Acts, ch 108, §131; 2004 Acts, ch 1110, §40 – 43; 2004 Acts, ch 1158, §6 – 9; 2008 Acts, ch 1123, §25, 26; 2008 Acts, ch 1188, §17; 2009 Acts, ch 118, §2, 5; 2017 Acts, ch 148, §83, 84

Referred to in §514E.2

514E.2 Iowa comprehensive health insurance association.

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

a. All carriers providing health insurance or health care services in Iowa, whether on an individual or group basis, and all other insurers designated by the association's board of directors and approved by the commissioner shall be members of the association.

b. The association shall operate under a plan of operation established and approved under subsection 3 and shall exercise its powers through a board of directors established under this section.

2. *a.* The board of directors of the association shall consist of all of the following:

(1) Two members who shall be representatives of the two largest domestic carriers of individual health insurance in the state as of the calendar year ending December 31, 2000, based on earned premium standards.

(2) Three members who shall be representatives of the three largest carriers of health insurance in the state, based on earned premium standards, excluding Medicare supplement coverage premiums, that are not otherwise represented.

(3) Two members selected by the members of the association, one of whom shall be a representative from a corporation operating pursuant to chapter 514 on July 1, 1989, or any successor in interest, and one of whom shall be a representative of an insurer providing coverage pursuant to chapter 509 or 514A.

(4) Four public members selected by the governor.

(5) The commissioner or the commissioner's designee from the division of insurance.

(6) Four members of the general assembly, one of whom shall be appointed by the speaker of the house of representatives, one of whom shall be appointed by the minority leader of the house of representatives, one of whom shall be appointed by the president of the senate after consultation with the majority leader, and one of whom shall be appointed by the minority leader of the senate, who shall be ex officio, nonvoting members.

b. The composition of the board of directors shall be in compliance with sections 69.16 and 69.16A. The governor's appointees shall be chosen from a broad cross-section of the residents of this state.

c. Members of the board may be reimbursed from the moneys of the association for expenses incurred by them as members, but shall not be otherwise compensated by the association for their services.

3. The association shall submit to the commissioner a plan of operation for the association and any amendments necessary or suitable to assure the fair, reasonable, and equitable administration of the association. The plan of operation becomes effective upon approval in writing by the commissioner prior to the date on which the coverage under this chapter must be made available. After notice and hearing, the commissioner shall approve the plan of operation if the plan is determined to be suitable to assure the fair, reasonable, and equitable administration of the association, and provides for the sharing of association losses, if any, on an equitable and proportionate basis among the member carriers. If the association fails to submit a suitable plan of operation within one hundred eighty days after the appointment of the board of directors, or if at any later time the association fails to submit suitable amendments to the plan, the commissioner shall adopt, pursuant to chapter 17A, rules necessary to implement this section. The rules shall continue in force until modified by the commissioner or superseded by a plan submitted by the association and approved by the commissioner. In addition to other requirements, the plan of operation shall provide for all of the following:

a. The handling and accounting of assets and moneys of the association.

b. The amount and method of reimbursing members of the board.

c. Regular times and places for meeting of the board of directors.

d. Records to be kept of all financial transactions, and the annual fiscal reporting to the commissioner.

e. Procedures for selecting the board of directors and submitting the selections to the commissioner for approval.

f. The periodic advertising of the general availability of health insurance coverage from the association.

g. Additional provisions necessary or proper for the execution of the powers and duties of the association.

4. The plan of operation may provide that the powers and duties of the association may be delegated to a person who will perform functions similar to those of the association. A delegation under this section takes effect only upon the approval of both the board of directors and the commissioner. The commissioner shall not approve a delegation unless the protections afforded to the insured are substantially equivalent to or greater than those provided under this chapter.

5. The association has the general powers and authority enumerated by this subsection and executed in accordance with the plan of operation approved by the commissioner under subsection 3. The association has the general powers and authority granted under the laws of this state to carriers licensed to issue health insurance. In addition, the association may do any of the following:

a. Enter into contracts as necessary or proper to carry out this chapter.

b. Sue or be sued, including taking any legal action necessary or proper for recovery of any assessments for, on behalf of, or against participating carriers.

c. Take legal action necessary to avoid the payment of improper claims against the association or the coverage provided by or through the association.

d. Establish or utilize a medical review committee to determine the reasonably appropriate level and extent of health care services in each instance.

e. Establish appropriate rates, scales of rates, rate classifications, and rating adjustments, which rates shall not be unreasonable in relation to the coverage provided and the reasonable operations expenses of the association.

f. Pool risks among members.

g. Issue association policies on an indemnity or provision of service basis providing the coverage required by this chapter.

h. Administer separate pools, separate accounts, or other plans or arrangements considered appropriate for separate members or groups of members.

i. Operate and administer any combination of plans, pools, or other mechanisms considered appropriate to best accomplish the fair and equitable operation of the association.

j. Appoint from among members appropriate legal, actuarial, and other committees as necessary to provide technical assistance in the operation of the association, policy and other contract design, and any other functions within the authority of the association.

k. Hire independent consultants as necessary.

l. Develop a method of advising applicants of the availability of other coverages outside the association.

m. Include in its policies a provision providing for subrogation rights by the association in a case in which the association pays expenses on behalf of an individual who is injured or suffers a disease under circumstances creating a liability upon another person to pay damages to the extent of the expenses paid by the association but only to the extent the damages exceed the policy deductible and coinsurance amounts paid by the insured. The association may waive its subrogation rights if it determines that the exercise of the rights would be impractical, uneconomical, or would work a hardship on the insured.

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

to determine the rate or payment that would have been charged for benefits similar to those issued by the association.

7. *a.* Following the close of each calendar year, the association shall determine the net premiums and payments, the expenses of administration, and the incurred losses of the association for the year. The association shall certify the amount of any net loss for the preceding calendar year to the commissioner of insurance and director of revenue. Any loss shall be assessed by the association to all members in proportion to their respective shares of total health insurance premiums or payments for subscriber contracts received in Iowa during the second preceding calendar year, or with paid losses in the year, coinciding with or ending during the calendar year or on any other equitable basis as provided in the plan of operation. In sharing losses, the association may abate or defer in any part the assessment of a member, if, in the opinion of the board, payment of the assessment would endanger the ability of the member to fulfill its contractual obligations. The association may also provide for an initial or interim assessment against members of the association if necessary to assure the financial capability of the association to meet the incurred or estimated claims expenses or operating expenses of the association until the next calendar year is completed. Net gains, if any, must be held at interest to offset future losses or allocated to reduce future premiums.

b. For purposes of this subsection, *"total health insurance premiums"* and *"payments for subscriber contracts"* include, without limitation, premiums or other amounts paid to or received by a member for individual and group health plan care coverage provided under any chapter of the Code or Acts, and *"paid losses"* includes, without limitation, claims paid by a member operating on a self-funded basis for individual and group health plan care coverage provided under any chapter of the Code or Acts. For purposes of calculating and conducting the assessment, the association shall have the express authority to require members to report on an annual basis each member's total health insurance premiums and payments for subscriber contracts and paid losses. A member is liable for its share of the assessment calculated in accordance with this section regardless of whether it participates in the individual insurance market.

8. The association shall conduct periodic audits to assure the general accuracy of the financial data submitted to the association, and the association shall have an annual audit of its operations, made by an independent certified public accountant.

9. The association is subject to examination by the commissioner of insurance. Not later than April 30 of each year, the board of directors shall submit to the commissioner a financial report for the preceding calendar year in a form approved by the commissioner.

10. The association is subject to oversight by the legislative fiscal committee of the legislative council. Not later than April 30 of each year, the board of directors shall submit to the legislative fiscal committee a financial report for the preceding year in a form approved by the committee.

11. All policy forms issued by the association must be filed with and approved by the commissioner before their use.

12. The association is exempt from payment of all fees and all taxes levied by this state or any of its political subdivisions.

13. An insurer may offset an assessment made pursuant to this chapter against its premium tax liability pursuant to chapter 432 to the extent of twenty percent of the amount of the assessment for each of the five calendar years following the year in which the assessment was paid. If an insurer ceases doing business, all uncredited assessments may be credited against its premium tax liability for the year it ceases doing business.

86 Acts, ch 1156, §2; 89 Acts, ch 304, §1004 – 1006; 90 Acts, ch 1223, §28; 97 Acts, ch 103, §44 – 48; 2001 Acts, ch 125, §7; 2003 Acts, ch 145, §286; 2004 Acts, ch 1110, §44 – 46; 2004 Acts, ch 1158, §10 – 13, 21; 2005 Acts, ch 70, §14 – 16, 51; 2008 Acts, ch 1156, §50, 58; 2008 Acts, ch 1188, §18; 2009 Acts, ch 118, §3, 5; 2017 Acts, ch 148, §85, 86

Referred to in §513C.11, 514E.1

514E.3 Health insurance trust fund — deposit of moneys. Repealed by 97 Acts, ch 103, §56.

514E.4 Association policy — coverage and benefit requirements — deductibles — coinsurance.

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

86 Acts, ch 1156, §4; 90 Acts, ch 1039, §18; 2004 Acts, ch 1110, §47; 2004 Acts, ch 1158, §14

514E.5 Iowa choice health care coverage. Repealed by 2009 Acts, ch 118, §4, 5.

514E.6 Iowa choice health care coverage advisory council. Repealed by 2009 Acts, ch 118, §4, 5.

514E.7 Policies — eligible persons — dependent coverage — preexisting conditions.

1. *a.* An individual who is and continues to be a resident is eligible for plan coverage if evidence is provided of any of the following:

(1) A notice of rejection or refusal to issue substantially similar insurance for health reasons by one carrier.

(2) A refusal by a carrier to issue insurance except at a rate exceeding the plan rate.

(3) That the individual is a federally defined eligible individual.

(4) That the individual has a health condition that is established by the association's board of directors, with the approval of the commissioner, to be eligible for plan coverage.

(5) That the individual has coverage under a basic or standard health benefit plan under chapter 513C.

b. A rejection or refusal by a carrier offering only stoploss, excess of loss, or reinsurance coverage with respect to an applicant under paragraph *"a"*, subparagraphs (1) and (2), is not sufficient evidence for purposes of this subsection.

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

2. *a.* An association policy shall provide that coverage of a dependent unmarried person terminates when the person becomes nineteen years of age or, if the person is enrolled full time in an accredited educational institution, terminates at twenty-five years of age. The policy shall also provide in substance that attainment of the limiting age does not operate to terminate coverage when the person is and continues to be both of the following:

(1) Incapable of self-sustaining employment by reason of an intellectual disability or physical disability.

(2) Primarily dependent for support and maintenance upon the person in whose name the contract is issued.

b. Proof of incapacity and dependency must be furnished to the carrier within one hundred twenty days of the person's attainment of the limiting age, and subsequently as may be required by the carrier, but not more frequently than annually after the two-year period following the person's attainment of the limiting age.

3. An association policy that provides coverage for a family member of the person in whose name the contract is issued shall also provide, as to the family member's coverage, that the health insurance benefits applicable for children include the coverage required under section 514C.1.

4. *a.* A preexisting condition exclusion shall not apply to a federally defined eligible individual.

b. Plan coverage shall not impose any preexisting condition exclusion as follows:

(1) In the case of a child who is adopted or placed for adoption before attaining eighteen years of age and who, as of the last day of the thirty-day period beginning on the date of the adoption or placement for adoption, is covered under creditable coverage. This subparagraph shall not apply to coverage before the date of such adoption or placement for adoption.

(2) In the case of an individual who, as of the last day of the thirty-day period beginning with the date of birth, is covered under creditable coverage.

(3) Relating to pregnancy as a preexisting condition.

(4) In the case of an individual transferring to an association policy from a basic or standard health benefit plan under chapter 513C beginning on or after January 1, 2005.

c. Plan coverage shall exclude charges or expenses incurred during the first six months following the effective date of coverage for preexisting conditions. Such preexisting condition exclusions shall be waived to the extent that similar exclusions, if any, have been satisfied under any prior health insurance coverage which was involuntarily terminated, provided both of the following apply:

(1) Application for association coverage is made no later than sixty-three days following such involuntary termination and, in such case, coverage under the plan is effective from the date on which such prior coverage was terminated.

(2) The applicant is not eligible for continuation rights that would provide coverage substantially similar to plan coverage.

d. This subsection does not prohibit preexisting conditions coverage in an association policy that is more favorable to the insured than that specified in this subsection.

e. If the association policy contains a waiting period for preexisting conditions, an insured may retain any existing coverage the insured has under an insurance plan that has coverage equivalent to the association policy for the duration of the waiting period only.

5. An individual is not eligible for coverage by the association if any of the following apply:

a. The individual is at the time of application eligible for health care benefits under chapter 249A.

b. The individual has terminated coverage by the association within the past twelve months, except that this paragraph does not apply to an applicant who is a federally eligible individual.

c. The individual is an inmate of a public institution, except that this paragraph does not apply to an applicant who is a federally defined eligible individual.

d. The individual premiums are paid for or reimbursed under any government sponsored program or by any government agency or health care provider, except as an otherwise qualifying full-time employee, or dependent of the employee, of a government agency or health care provider.

e. The individual, on the effective date of the coverage applied for, has not been rejected for, already has, or will have coverage similar to an association policy as an insured or covered dependent. This paragraph does not apply to an applicant who is a federally eligible individual.

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

6. The association is not required to make plan coverage available to an individual who is covered or is eligible for any continued group coverage under Internal Revenue Code §4980B, the federal Employee Retirement Income Security Act of 1974, codified at 29 U.S.C. §1001 et seq., the federal Public Health Service Act of July 1, 1944, codified at 42 U.S.C. §201 et seq., or any continued group coverage required by the state. For purposes of this subsection, an individual who would have been eligible for such continuation of group coverage, but is not eligible solely because the individual or other responsible party failed to make the required election of coverage during the applicable time period, or terminated such coverage prior to the end of such applicable time period, shall be deemed to be eligible for such group coverage until the date on which the individual's continuing group coverage would have expired had an election been made or a termination not occurred.

86 Acts, ch 1156, §7; 90 Acts, ch 1163, §1 – 3; 96 Acts, ch 1129, §113; 97 Acts, ch 103, §52, 53; 98 Acts, ch 1100, §71; 2004 Acts, ch 1110, §48, 49; 2004 Acts, ch 1158, §15 – 17; 2005 Acts, ch 70, §17, 51; 2006 Acts, ch 1117, §64; 2008 Acts, ch 1123, §27; 2012 Acts, ch 1019, §136; 2017 Acts, ch 148, §87, 88

514E.8 Policies — renewal provisions — election to continue coverage upon death of policyholder.

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

to renew the coverage for an individual until the day the individual becomes eligible for Medicare coverage based on age, provided that any individual who is covered by an association policy and is eligible for Medicare coverage based on age prior to January 1, 2005, may continue to renew the coverage under the association policy.

2. The association shall not change the rates for association policies except on a class basis with a clear disclosure in the policy of the association's right to do so.

3. An association policy shall provide that upon the death of the individual in whose name the policy is issued, every other individual then covered under the contract may elect, within a period specified in the policy, to continue coverage under the same or a different policy until such time as the person would have ceased to be entitled to coverage had the individual in whose name the policy was issued lived.

86 Acts, ch 1156, §8; 2004 Acts, ch 1110, §50; 2004 Acts, ch 1158, §18; 2005 Acts, ch 70, §18, 51; 2006 Acts, ch 1030, §84

514E.9 Rules.

Pursuant to chapter 17A, the commissioner shall adopt rules to provide for disclosure by carriers of the availability of insurance coverage from the association, and to otherwise implement this chapter.

86 Acts, ch 1156, §9; 97 Acts, ch 103, §54; 2017 Acts, ch 148, §89

514E.10 Collective action — immunity.

Neither the participation by carriers or members in the association, the establishment of rates, forms, or procedures for coverage issued by the association, nor any joint or collective action required by this chapter shall be the basis of any legal civil action, or criminal liability against the association or members of it either jointly or separately.

86 Acts, ch 1156, §10

514E.11 Notice of association policy.

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

86 Acts, ch 1156, §11; 97 Acts, ch 103, §55; 2004 Acts, ch 1110, §51; 2004 Acts, ch 1158, §19; 2017 Acts, ch 148, §90

CHAPTER 514F

UTILIZATION AND COST CONTROL

Referred to in §87.4, 296.7, 331.301, 364.4, 505.28, 505.29, 514C.11, 514C.32, 514C.33, 514L.1, 669.14, 670.7

514F.1 Utilization and cost control review committees.
514F.2 Utilization and cost control.
514F.3 Preferred providers.
514F.4 Utilization review requirements.
514F.5 Experimental treatment review.
514F.6 Credentialing — retrospective payment.
514F.7 Use of step therapy protocols.

514F.1 Utilization and cost control review committees.

The licensing boards under chapters 148, 149, 151, and 152 shall establish utilization and cost control review committees of licensees under the respective chapters, selected from

licensees who have practiced in Iowa for at least the previous five years, or shall accredit and designate other utilization and cost control organizations as utilization and cost control committees under this section, for the purposes of utilization review of the appropriateness of levels of treatment and of giving opinions as to the reasonableness of charges for diagnostic or treatment services of licensees. Persons governed by the various chapters of Title XIII, subtitle 1, of the Code and self-insurers for health care benefits to employees may utilize the services of the utilization and cost control review committees upon the payment of a reasonable fee for the services, to be determined by the respective boards. The respective boards under chapters 148, 149, 151, and 152 shall adopt rules necessary and proper for the administration of this section pursuant to chapter 17A. It is the intent of this general assembly that conduct of the utilization and cost control review committees authorized under this section shall be exempt from challenge under federal or state antitrust laws or other similar laws in regulation of trade or commerce.

86 Acts, ch 1180, §10; 87 Acts, ch 115, §63; 88 Acts, ch 1199, §6; 89 Acts, ch 164, §6; 90 Acts, ch 1233, §32; 2007 Acts, ch 10, §177; 2008 Acts, ch 1088, §135

514F.2 Utilization and cost control.

Nothing contained in the chapters of Title XIII, subtitle 1, of the Code shall be construed to prohibit or discourage insurers, nonprofit service corporations, health maintenance organizations, or self-insurers for health care benefits to employees from providing payments of benefits or providing care and treatment under capitated payment systems, prospective reimbursement rate systems, utilization control systems, incentive systems for the use of least restrictive and least costly levels of care, preferred provider contracts limiting choice of specific provider, or other systems, methods or organizations designed to contain costs without sacrificing care or treatment outcome, provided these systems do not limit or make optional payment or reimbursement for health care services on a basis solely related to the license under or the practices authorized by chapter 151 or on a basis that is dependent upon a method of classification, categorization, or description based upon differences in terminology used by different licensees under the chapters of Title IV, subtitle 3, of the Code in describing human ailments or their diagnosis or treatment.

86 Acts, ch 1180, §10

514F.3 Preferred providers.

The commissioner of insurance shall adopt rules for preferred provider contracts and organizations, both those that limit choice of specific provider and those that do not. The rules adopted shall include, but not be limited to, the following subjects: preferred provider arrangements and participation requirements, health benefit plans, and civil penalties.

88 Acts, ch 1112, §604

514F.4 Utilization review requirements.

1. A third-party payor which provides health benefits to a covered individual residing in this state shall not conduct utilization review, either directly or indirectly, under a contract with a third-party who does not meet the requirements established for accreditation by the utilization review accreditation commission, national committee on quality assurance, or another national accreditation entity recognized and approved by the commissioner.

2. This section does not apply to any utilization review performed solely under contract with the federal government for review of patients eligible for services under any of the following:

a. Tit. XVIII of the federal Social Security Act.

b. The civilian health and medical program of the uniformed services.

c. Any other federal employee health benefit plan.

3. For purposes of this section, unless the context otherwise requires:

a. *"Third-party payor"* means:

(1) An insurer subject to chapter 509 or 514A.

(2) A health service corporation subject to chapter 514.

(3) A health maintenance organization subject to chapter 514B.

(4) A preferred provider arrangement.
(5) A multiple employer welfare arrangement.
(6) A third-party administrator.
(7) A fraternal benefit society.
(8) A plan established pursuant to chapter 509A for public employees.
(9) Any other benefit program providing payment, reimbursement, or indemnification for health care costs for an enrollee or an enrollee's eligible dependents.

b. "Utilization review" means a program or process by which an evaluation is made of the necessity, appropriateness, and efficiency of the use of health care services, procedures, or facilities given or proposed to be given to an individual within this state. Such evaluation does not apply to requests by an individual or provider for a clarification, guarantee, or statement of an individual's health insurance coverage or benefits provided under a health insurance policy, nor to claims adjudication. Unless it is specifically stated, verification of benefits, preauthorization, or a prospective or concurrent utilization review program or process shall not be construed as a guarantee or statement of insurance coverage or benefits for any individual under a health insurance policy.

99 Acts, ch 41, §5; 2010 Acts, ch 1061, §180

514F.5 Experimental treatment review.

1. A carrier, as defined in section 513B.2, or a plan established pursuant to chapter 509A for public employees, that limits coverage for experimental medical treatment, drugs, or devices, shall develop and implement a procedure to evaluate experimental medical treatments and shall submit a description of the procedure to the division of insurance. The procedure shall be in writing and must describe the process used to determine whether the carrier or chapter 509A plan will provide coverage for new medical technologies and new uses of existing technologies. The procedure, at a minimum, shall require a review of information from appropriate government regulatory agencies and published scientific literature concerning new medical technologies, new uses of existing technologies, and the use of external experts in making decisions. A carrier or chapter 509A plan shall include appropriately licensed or qualified professionals in the evaluation process. The procedure shall provide a process for a person covered under a plan or contract to request a review of a denial of coverage because the proposed treatment is experimental. A review of a particular treatment need not be reviewed more than once a year.

2. A carrier or chapter 509A plan that limits coverage for experimental treatment, drugs, or devices shall clearly disclose such limitations in a contract, policy, or certificate of coverage.

99 Acts, ch 41, §6; 2017 Acts, ch 148, §91

514F.6 Credentialing — retrospective payment.

1. The commissioner shall adopt rules to provide for the retrospective payment of clean claims for covered services provided by a physician, advanced registered nurse practitioner, or physician assistant during the credentialing period, once the physician, advanced registered nurse practitioner, or physician assistant is credentialed.

2. For purposes of this section:

a. "Advanced registered nurse practitioner" means a person currently licensed as a registered nurse under chapter 152 or 152E who is licensed by the board of nursing as an advanced registered nurse practitioner.

b. "Clean claim" means the same as defined in section 507B.4A, subsection 2, paragraph *"b"*.

c. "Credentialing" means a process through which a health insurer makes a determination based on criteria established by the health insurer concerning whether a physician, advanced registered nurse practitioner, or physician assistant is eligible to provide health care services to an insured and to receive reimbursement for the health care services provided under an agreement entered into between the physician, advanced registered nurse practitioner, or physician assistant and the health insurer.

d. "Credentialing period" means the time period between the health insurer's receipt of a

physician's, advanced registered nurse practitioner's, or physician assistant's application for credentialing and approval of that application by the health insurer.

e. "Physician" means a licensed doctor of medicine and surgery or a licensed doctor of osteopathic medicine and surgery.

f. "Physician assistant" means a person who is licensed to practice as a physician assistant under the supervision of one or more physicians.

2008 Acts, ch 1123, §28; 2010 Acts, ch 1121, §16; 2013 Acts, ch 90, §155; 2015 Acts, ch 56, §24

514F.7 Use of step therapy protocols.

1. *Definitions.* For the purposes of this section:

a. "Authorized representative" means the same as defined in section 514J.102.

b. "Clinical practice guidelines" means a systematically developed statement to assist health care professionals and covered persons in making decisions about appropriate health care for specific clinical circumstances and conditions.

c. "Clinical review criteria" means the same as defined in section 514J.102.

d. "Covered person" means the same as defined in section 514J.102.

e. "Health benefit plan" means the same as defined in section 514J.102.

f. "Health care professional" means the same as defined in section 514J.102.

g. "Health care services" means the same as defined in section 514J.102.

h. "Health carrier" means an entity subject to the insurance laws and regulations of this state, or subject to the jurisdiction of the commissioner, including an insurance company offering sickness and accident plans, a health maintenance organization, a nonprofit health service corporation, a plan established pursuant to chapter 509A for public employees, or any other entity providing a plan of health insurance, health care benefits, or health care services. *"Health carrier"* does not include a managed care organization as defined in 441 IAC 73.1 when the managed care organization is acting pursuant to a contract with the Iowa department of human services to provide services to Medicaid recipients.

i. "Pharmaceutical sample" means a unit of a prescription drug that is not intended to be sold and is intended to promote the sale of the drug.

j. "Step therapy override exception" means a step therapy protocol should be overridden in favor of coverage of the prescription drug selected by a health care professional within the applicable time frames and in compliance with the requirements specified in section 505.26, subsection 7, for a request for prior authorization of prescription drug benefits. This determination is based on a review of the covered person's or health care professional's request for an override, along with supporting rationale and documentation.

k. "Step therapy protocol" means a protocol or program that establishes a specific sequence in which prescription drugs for a specified medical condition and medically appropriate for a particular covered person are covered under a pharmacy or medical benefit by a health carrier, a health benefit plan, or a utilization review organization, including self-administered drugs and drugs administered by a health care professional.

l. "Utilization review" means a program or process by which an evaluation is made of the necessity, appropriateness, and efficiency of the use of health care services, procedures, or facilities given or proposed to be given to an individual. Such evaluation does not apply to requests by an individual or provider for a clarification, guarantee, or statement of an individual's health insurance coverage or benefits provided under a health benefit plan, nor to claims adjudication. Unless it is specifically stated, verification of benefits, preauthorization, or a prospective or concurrent utilization review program or process shall not be construed as a guarantee or statement of insurance coverage or benefits for any individual under a health benefit plan.

m. "Utilization review organization" means an entity that performs utilization review, other than a health carrier performing utilization review for its own health benefit plans.

2. *Establishment of step therapy protocols.* A health carrier, health benefit plan, or utilization review organization shall consider available recognized evidence-based and peer-reviewed clinical practice guidelines when establishing a step therapy protocol. Upon written request of a covered person, a health carrier, health benefit plan, or utilization review

organization shall provide any clinical review criteria applicable to a specific prescription drug covered by the health carrier, health benefit plan, or utilization review organization.

3. *Step therapy override exceptions process transparency.*

a. When coverage of a prescription drug for the treatment of any medical condition is restricted for use by a health carrier, health benefit plan, or utilization review organization through the use of a step therapy protocol, the covered person and the prescribing health care professional shall have access to a clear, readily accessible, and convenient process to request a step therapy override exception. A health carrier, health benefit plan, or utilization review organization may use its existing medical exceptions process to satisfy this requirement. The process used shall be easily accessible on the internet site of the health carrier, health benefit plan, or utilization review organization.

b. A step therapy override exception shall be approved by a health carrier, health benefit plan, or utilization review organization if any of the following circumstances apply:

(1) The prescription drug required under the step therapy protocol is contraindicated pursuant to the drug manufacturer's prescribing information for the drug or, due to a documented adverse event with a previous use or a documented medical condition, including a comorbid condition, is likely to do any of the following:

(a) Cause an adverse reaction to a covered person.

(b) Decrease the ability of a covered person to achieve or maintain reasonable functional ability in performing daily activities.

(c) Cause physical or mental harm to a covered person.

(2) The prescription drug required under the step therapy protocol is expected to be ineffective based on the known clinical characteristics of the covered person, such as the covered person's adherence to or compliance with the covered person's individual plan of care, and any of the following:

(a) The known characteristics of the prescription drug regimen as described in peer-reviewed literature or in the manufacturer's prescribing information for the drug.

(b) The health care professional's medical judgment based on clinical practice guidelines or peer-reviewed journals.

(c) The covered person's documented experience with the prescription drug regimen.

(3) The covered person has had a trial of a therapeutically equivalent dose of the prescription drug under the step therapy protocol while under the covered person's current or previous health benefit plan for a period of time to allow for a positive treatment outcome, and such prescription drug was discontinued by the covered person's health care professional due to lack of effectiveness.

(4) The covered person is currently receiving a positive therapeutic outcome on a prescription drug selected by the covered person's health care professional for the medical condition under consideration while under the covered person's current or previous health benefit plan. This subparagraph shall not be construed to encourage the use of a pharmaceutical sample for the sole purpose of meeting the requirements for a step therapy override exception.

c. Upon approval of a step therapy override exception, the health carrier, health benefit plan, or utilization review organization shall authorize coverage for the prescription drug selected by the covered person's prescribing health care professional if the prescription drug is a covered prescription drug under the covered person's health benefit plan.

d. A health carrier, health benefit plan, or utilization review organization shall make a determination to approve or deny a request for a step therapy override exception within the applicable time frames and in compliance with the requirements specified in section 505.26, subsection 7, for a request for prior authorization of prescription drug benefits.

e. If a request for a step therapy override exception is denied, the health carrier, health benefit plan, or utilization review organization shall provide the covered person or the covered person's authorized representative and the patient's prescribing health care professional with the reason for the denial and information regarding the procedure to request external review of the denial pursuant to chapter 514J. Any denial of a request for a step therapy override exception that is upheld on appeal shall be considered a final adverse determination for purposes of chapter 514J and is eligible for a request for external review

by a covered person or the covered person's authorized representative pursuant to chapter 514J.

4. *Limitations.* This section shall not be construed to do either of the following:

a. Prevent a health carrier, health benefit plan, or utilization review organization from requiring a covered person to try a prescription drug with the same generic name and demonstrated bioavailability or a biological product that is an interchangeable biological product pursuant to section 155A.32 prior to providing coverage for the equivalent branded prescription drug.

b. Prevent a health care professional from prescribing a prescription drug that is determined to be medically appropriate.

2017 Acts, ch 124, §1, 2; 2017 Acts, ch 148, §103

Section applies to health benefit plans that are delivered, issued for delivery, continued, or renewed in this state on or after January 1, 2018; 2017 Acts, ch 124, §2

CHAPTER 514G

LONG-TERM CARE INSURANCE ACT

Referred to in §87.4, 296.7, 331.301, 364.4, 505.28, 505.29, 669.14, 670.7

514G.1 through 514G.8 Repealed by 2008 Acts, ch 1175, §16.
514G.9 Reserved.
514G.10 Long-term care consumer guide. Repealed by 2008 Acts, ch 1175, §16.
514G.101 Title and purpose.
514G.102 Scope.
514G.103 Definitions.
514G.104 Extraterritorial jurisdiction — group long-term care insurance.
514G.105 Disclosure and performance standards for long-term care insurance.
514G.106 Incontestability period.
514G.107 Nonforfeiture benefits.
514G.108 Prompt payment of claims — requirements.
514G.109 Benefit trigger determinations — notice — appeals.
514G.110 Independent review of benefit trigger determinations.
514G.111 Authority to promulgate rules.
514G.112 Severability.
514G.113 Penalties.

514G.1 through 514G.8 Repealed by 2008 Acts, ch 1175, §16.

514G.9 Reserved.

514G.10 Long-term care consumer guide. Repealed by 2008 Acts, ch 1175, §16.

514G.101 Title and purpose.

This chapter may be known and cited as the *"Long-term Care Insurance Act"*. The purpose of this chapter is to promote the public interest, to promote the availability of long-term care insurance, to protect applicants for long-term care insurance from unfair or deceptive sales or enrollment practices, to establish standards for long-term care insurance, to facilitate public understanding and comparison of long-term care insurance policies, and to facilitate flexibility and innovation in the development of long-term care insurance coverage.

2008 Acts, ch 1175, §2

514G.102 Scope.

The requirements of this chapter apply to policies delivered or issued for delivery in this state on or after July 1, 2008. The requirements of this chapter related to independent review of benefit trigger determinations apply to all claims made on or after January 1, 2009. The requirements of this chapter related to prompt payment of claims and the payment of interest apply to all long-term care insurance policies. This chapter is not intended to supersede the obligations of entities subject to this chapter to comply with the substance of other applicable

insurance laws not in conflict with this chapter, except that laws and regulations designed and intended to apply to Medicare supplement insurance policies shall not be applied to long-term care insurance.

2008 Acts, ch 1175, §3; 2009 Acts, ch 145, §11, 55; 2015 Acts, ch 128, §21, 50, 51

514G.103 Definitions.

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

1. *"Activities of daily living"* means at least bathing, continence, dressing, eating, toileting, and transferring.

2. *"Applicant"* means either of the following:

a. In the case of an individual long-term care insurance policy, the person who seeks to contract for benefits.

b. In the case of a group long-term care insurance policy, the proposed certificate holder.

3. *"Benefit trigger"* means a contractual provision in a policy of long-term care insurance that conditions the payment of benefits on a determination of the insured's ability to perform activities of daily living and on cognitive impairment, or on other conditions of the insured as specified in the policy. For purposes of a qualified long-term care insurance contract, *"benefit trigger"* means a determination by a licensed health care practitioner that an insured is a chronically ill individual. For purposes of this definition, *"licensed health care practitioner"* means the same as defined in section 7702B(c)(4) of the Internal Revenue Code.

4. *"Certificate"* means any certificate issued under a group long-term care insurance policy, which policy has been delivered or issued for delivery in this state.

5. *"Chronically ill individual"* means the same as defined in section 7702B(c)(2) of the Internal Revenue Code.

6. *"Claim"* means a request for payment of benefits under an in-force long-term care insurance policy, regardless of whether the benefit claimed is covered under the policy or any terms or conditions of the policy have been met.

7. *"Cognitive impairment"* means a deficiency in a person's short-term or long-term memory; orientation as to person, place, and time; deductive or abstract reasoning; or judgment as it relates to safety awareness.

8. *"Commissioner"* means the commissioner of insurance.

9. *"Group long-term care insurance"* means a long-term care insurance policy that is delivered or issued for delivery in this state to any of the following:

a. One or more employers or labor organizations, or to a trust or to the trustee or trustees of a fund established, created, or maintained by one or more employers or labor organizations or a combination thereof, for the benefit of employees or former employees or a combination thereof, or for members or former members or a combination thereof, of the employers or labor organizations.

b. Any professional, trade, or occupational association for its members or former or retired members, or a combination thereof, if the association meets both of the following requirements:

(1) Is composed of individuals all of whom are or were actively engaged in the same profession, trade, or occupation.

(2) Has been maintained in good faith for purposes other than obtaining insurance.

c. (1) An association or associations, or to a trust or to the trustee or trustees of a fund established, created, or maintained for the benefit of members of one or more associations, which files evidence with the commissioner prior to advertising, marketing, or offering a policy within this state by the association or associations, or their insurer, that the following organizational requirements have been met:

(a) At the outset, there is a minimum of one hundred members of the association or associations.

(b) The association or associations have been organized and maintained in good faith for purposes other than that of obtaining insurance.

(c) The association or associations have been in active existence for at least one year at the time of filing.

(d) The association or associations have a constitution and bylaws that require all of the following:

(i) The association or associations have regular meetings, not less than annually, to further the purposes of the members.

(ii) Except for credit unions, the association or associations collect dues or solicit contributions from members.

(iii) The members have voting privileges and representation on a governing board and committees.

(2) Thirty days after the required evidentiary filings have been made, the association or associations shall be deemed to satisfy the organizational requirements, unless the commissioner makes a finding that the association or associations do not satisfy those requirements.

d. A group other than those described in paragraphs *"a"* through *"c"*, subject to a finding by the commissioner that all of the following are true:

(1) The issuance of the group policy is not contrary to the best interests of the public.

(2) The issuance of the group policy would result in economies of acquisition or administration.

(3) The benefits are reasonable in relation to the premiums charged.

10. *"Independent review entity"* means a review entity certified by the commissioner pursuant to section 514G.110, subsection 4.

11. *"Insurer"* means an entity qualified and licensed by the insurance division to transact the business of insurance in this state by a certificate issued pursuant to chapter 508, 512B, 514, or 514B.

12. *"Licensed health care professional"* means a qualified professional in an appropriate field for determining an insured's functional or cognitive impairment as it relates to the insured's specific diagnosis. Licensed health care professionals include but are not limited to physical therapists, occupational therapists, neurologists, physical medicine specialists, and rehabilitation medicine specialists.

13. *a.* *"Long-term care insurance"* means any insurance policy or rider advertised, marketed, offered, or designed to provide coverage for not less than twelve consecutive months for each covered person on an expense-incurred, indemnity, prepaid, or other basis, for one or more necessary or medically necessary diagnostic, preventive, therapeutic, rehabilitative, maintenance, or personal care services that are provided in a setting other than an acute care unit of a hospital. *"Long-term care insurance"* includes group and individual annuities and life insurance policies or riders that directly provide or supplement long-term care insurance. The term also includes a policy or rider that provides for payment of benefits based upon cognitive impairment or the loss of functional capacity. The term also includes a qualified long-term care insurance contract. Long-term care insurance may be issued by an insurer.

b. *"Long-term care insurance"* does not include any insurance policy that is offered primarily to provide basic Medicare supplement coverage, basic hospital expense coverage, basic medical-surgical expense coverage, hospital confinement indemnity coverage, major medical expense coverage, disability income or related asset-protection coverage, accident-only coverage, specified disease or specified accident coverage, or limited benefit health coverage. With regard to life insurance, *"long-term care insurance"* does not include life insurance policies that accelerate the death benefit specifically for one or more of the qualifying events of terminal illness, medical conditions requiring extraordinary medical intervention or permanent institutional confinement, and that provide the option of a lump-sum payment for those benefits, where neither the benefits nor the eligibility for the benefits is conditioned upon the receipt of long-term care.

c. Notwithstanding any other provision of this chapter, any product advertised, marketed, or offered as long-term care insurance shall be subject to the provisions of this chapter.

14. *"Policy"* means any policy, contract, subscriber agreement, rider, or endorsement delivered or issued for delivery in this state by an insurer; fraternal benefit society; nonprofit health, hospital, or medical service corporation; prepaid health plan; or health maintenance organization or any similar organization.

15. *"Preexisting condition"* means a condition for which medical advice or treatment was recommended by, or received from, a provider of health care services within six months preceding the effective date of coverage of an individual.

16. *"Qualified long-term care insurance contract"* or *"federally tax-qualified long-term care insurance contract"* means any of the following:

a. An individual or group insurance contract that meets the requirements of section 7702B(b) of the Internal Revenue Code, as follows:

(1) The only insurance protection provided under the contract is coverage of qualified long-term care services. A contract does not fail to satisfy the requirements of this subparagraph because payments are made on a per diem or other periodic basis without regard to the expenses incurred during the period to which the payments relate.

(2) The contract does not pay or reimburse expenses incurred for services or items to the extent that the expenses are reimbursable under Tit. XVIII of the federal Social Security Act, as amended, or would be reimbursable but for the application of a deductible or coinsurance amount. The requirements of this subparagraph do not apply to expenses that are reimbursable under Tit. XVIII of the federal Social Security Act only as a secondary payor. A contract does not fail to satisfy the requirements of this subparagraph because payments are made on a per diem or other periodic basis without regard to the expenses incurred during the period to which the payments relate.

(3) The contract is guaranteed renewable within the meaning of section 7702B(b)(1)(C) of the Internal Revenue Code.

(4) The contract does not provide for a cash surrender value or for other money that can be paid, assigned or pledged as collateral for a loan, or borrowed except as provided in subparagraph (5).

(5) All refunds of premiums and all policyholder dividends or similar accounts under the contract are to be applied as a reduction in future premiums or to increase future benefits, except that a refund in the event of the death of the insured or a complete surrender or cancellation of the contract shall not exceed the aggregate premiums paid under the contract.

(6) The contract meets the consumer protection provisions set forth in section 7702B(g) of the Internal Revenue Code.

b. The portion of a life insurance contract that provides long-term care insurance coverage by rider or as part of the contract and that satisfies the requirements of section 7702B(b) and (e) of the Internal Revenue Code.

2008 Acts, ch 1175, §4; 2012 Acts, ch 1023, §80
Referred to in §508C.8, 514G.104, 514G.105, 514G.107, 514G.110, 514H.1

514G.104 Extraterritorial jurisdiction — group long-term care insurance.

Group long-term care insurance coverage shall not be offered to a resident of this state under a group policy issued in another state unless either this state or another state with statutory and regulatory requirements for long-term care insurance that are substantially similar to those adopted in this state has made a determination that the group to which the policy is issued meets the requirements of section 514G.103, subsection 9, paragraph *"d"*.

2008 Acts, ch 1175, §5; 2009 Acts, ch 145, §12

514G.105 Disclosure and performance standards for long-term care insurance.

1. *Prohibited policy practices.* A long-term care insurance policy shall not:

a. Be canceled, nonrenewed, or otherwise terminated on the grounds of the age or deterioration of the mental or physical health of the insured individual or certificate holder.

b. Contain a provision establishing a new waiting period in the event that existing coverage is converted to or replaced by a new or other policy form within the same company, except with respect to an increase in benefits voluntarily selected by the insured individual, the certificate holder, or the group policyholder.

c. Provide coverage for skilled nursing care only, or provide significantly more coverage for skilled nursing care in a facility than coverage for lower levels of care.

2. *Preexisting conditions.*

a. A long-term care insurance policy or certificate, other than a policy or certificate

issued to a group as described in section 514G.103, subsection 9, shall not use a definition of "preexisting condition" that is more restrictive than the definition contained in section 514G.103, subsection 15.

b. A long-term care insurance policy or certificate, other than a policy or certificate issued to a group as described in section 514G.103, subsection 9, shall not exclude coverage for a loss or confinement that is the result of a preexisting condition unless the loss or confinement begins within six months following the effective date of coverage of an insured individual.

c. The commissioner may extend the limitation periods set forth in paragraphs *"a"* and *"b"* as to specific age group categories in specific policy forms upon finding that such an extension is in the best interest of the public.

d. The requirements of paragraph *"a"* do not prohibit an insurer from using an application form designed to elicit the complete health history of an applicant, and on the basis of the answers on that application, underwriting in accordance with that insurer's established underwriting standards. Unless otherwise provided in the policy or certificate, a preexisting condition, regardless of whether it is disclosed on the application, is not required to be covered until the waiting period described in paragraph *"b"* expires. A long-term care insurance policy or certificate shall not exclude, or use waivers or riders of any kind to exclude, limit, or reduce coverage or benefits for specifically named or described preexisting diseases or physical conditions beyond the waiting period described in paragraph *"b"*.

3. *Prior hospitalization or institutionalization.*

a. A long-term care insurance policy shall not be delivered or issued for delivery in this state if the policy does any of the following:

(1) Conditions eligibility for any benefits on a prior hospitalization requirement.

(2) Conditions eligibility for any benefits provided in an institutional care setting on the receipt of a higher level of institutional care.

(3) Conditions eligibility for any benefits other than waiver of premium, post-confinement, post-acute care, or recuperative benefits on a prior institutionalization requirement.

b. A long-term care insurance policy that contains post-confinement, post-acute care, or recuperative benefits shall contain, in a clearly visible, separate paragraph or the policy or certificate entitled "limitations or conditions on eligibility for benefits", a description of such limitations or conditions, including any required number of days of confinement.

c. A long-term care insurance policy or rider that conditions eligibility for noninstitutional benefits on the prior receipt of institutional care shall not require a prior institutional stay of more than thirty days.

d. A long-term care insurance policy or rider that provides benefits only following institutionalization shall not condition such benefits upon admission to a facility for the same or related conditions within a period of less than thirty days after discharge from the institution.

4. *Right to return — free look — refund.*

a. A long-term care insurance applicant shall have the right to return the long-term care insurance policy or certificate within thirty days of its delivery and to have the premium refunded if, after examination of the policy or certificate, the applicant is not satisfied for any reason.

b. A long-term care insurance policy or certificate delivered or issued for delivery in this state shall have a notice prominently displayed on the first page of the policy or certificate, or attached thereto, which states in substance that the applicant has the right to return the policy or certificate within thirty days of its delivery and to have the premium refunded if, after examination of the policy or certificate, other than a certificate issued pursuant to a policy issued to a group as described in section 514G.103, subsection 9, paragraph *"a"*, the applicant is not satisfied for any reason.

c. Any premium refund shall be made to the applicant within thirty days of the return.

5. *Denials — refund.* If an application is denied by an insurer, any premium refund shall be made to the applicant within thirty days of the denial.

6. *Outline of coverage.*

a. A written outline of coverage shall be delivered to a prospective applicant for long-term

care insurance at the time of the initial solicitation for coverage which prominently directs the attention of the applicant to the document and its purpose.

b. The commissioner shall prescribe, by rule, a standard format, including style, arrangement, and overall appearance, and content of the outline of coverage.

c. In the case of producer solicitations, a producer shall deliver the outline of coverage to a prospective applicant prior to the presentation of an application or enrollment form.

d. In the case of direct response solicitations, the outline of coverage shall be presented in conjunction with any application or enrollment form.

e. In the case of a policy issued to a group as described in section 514G.103, subsection 9, paragraph "*a*", an outline of coverage is not required to be delivered to the applicant, provided that the information described in subsection 7 of this section, paragraphs "*a*" through "*f*", is contained in other enrollment materials provided. Upon request, such other enrollment materials shall be made available to the commissioner.

7. *Contents of outline of coverage.* An outline of coverage of long-term care insurance shall include all of the following:

a. A description of the principal benefits and coverage provided in the policy.

b. A statement of the principal exclusions, reductions, and limitations contained in the policy.

c. A statement of the terms under which the policy or certificate, or both, may be continued in force or discontinued, including any reservation in the policy of a right to change the premium. Continuation or conversion provisions of group coverage shall be specifically described.

d. A statement that the outline of coverage is a summary of coverage only, not a contract of insurance, and that the policy or group master policy contains governing contractual provisions.

e. A description of the terms under which the policy or certificate may be returned and the premium refunded.

f. A brief description of the relationship of cost of care and benefits.

g. A statement that discloses to the policyholder or certificate holder whether the policy is intended to be a federally tax-qualified long-term care insurance contract under section 7702B(b) of the Internal Revenue Code.

8. *Contents of group certificate.* A certificate issued pursuant to a group long-term care insurance policy which policy is delivered or issued for delivery in this state shall include all of the following:

a. A description of the principal benefits and coverage provided in the policy.

b. A statement of the principal exclusions, reductions, and limitations contained in the policy.

c. A statement that the group master policy determines governing contractual provisions.

9. *Time for delivery.* If an application for a long-term care insurance policy or certificate is approved, the issuer shall deliver the policy or certificate of insurance to the applicant no later than thirty days after the date of approval.

10. *Individual life insurance — policy summary.*

a. A written policy summary shall accompany the delivery of an individual life insurance policy that provides long-term care benefits within the policy or by rider. In the case of direct response solicitations, the insurer shall deliver a policy summary upon the applicant's request or at the time of policy delivery, whichever occurs first.

b. A policy summary shall include all of the following:

(1) An explanation of how the long-term care benefit interacts with other components of the policy, including deductions from death benefits.

(2) An illustration of the amount of benefits, the length of benefits, and the guaranteed lifetime benefits if any, for each covered person.

(3) Any exclusions, reductions, or limitations on long-term care benefits.

(4) A statement that a long-term care inflation protection option required by 191 IAC 39.10 is not available under this policy.

(5) If applicable to the policy type, the summary shall also include all of the following:

(a) A disclosure of the effect of exercising other rights under the policy.

(b) A disclosure of guarantees related to long-term care costs of insurance charges.

(c) Current and projected maximum lifetime benefits.

c. The requirements of a policy summary set forth in paragraph *"b"* may be incorporated into the basic illustration required to be delivered in accordance with 191 IAC ch. 14, or into the life insurance policy summary required to be delivered in accordance with 191 IAC 15.4.

11. *Monthly report.* If a long-term care benefit, funded through a life insurance vehicle by the acceleration of the death benefit, is in benefit payment status, a monthly report shall be provided to the policyholder. The report shall include all of the following:

a. Any long-term care benefits paid out during the month.

b. An explanation of any changes in the policy, including but not limited to changes in death benefits or cash values due to long-term care benefits being paid out.

c. The amount of long-term care benefits existing or remaining.

12. *Claim denial.* If a claim made under a long-term care insurance policy is denied, the issuer, within sixty days of the date of receipt of a written request by the policyholder, certificate holder, or a representative thereof, shall provide a written explanation of the reasons for the denial, and shall make all information directly related to the denial available to the requestor.

13. *Compliance.* Any policy or rider advertised, marketed, or offered as long-term care insurance or nursing home insurance shall comply with the provisions of this chapter.

2008 Acts, ch 1175, §6; 2011 Acts, ch 34, §117; 2015 Acts, ch 29, §74

Referred to in §514H.1

514G.106 Incontestability period.

1. An insurer may rescind a long-term care insurance policy or certificate or deny an otherwise valid long-term care insurance claim if the policy or certificate has been in force for less than six months upon a showing of misrepresentation that is material to the insurer's acceptance for coverage.

2. An insurer may rescind a long-term care insurance policy or certificate or deny an otherwise valid long-term care insurance claim if the policy or certificate has been in force for at least six months but less than two years, upon a showing of misrepresentation that is both material to the acceptance for coverage and pertains to the condition for which benefits are sought.

3. An insurer shall not contest a long-term care insurance policy or certificate that has been in force for two or more years solely upon the grounds of misrepresentation. Such a policy or certificate may be contested only upon a showing that the insured knowingly and intentionally misrepresented relevant facts relating to the insured's health.

4. A long-term care insurance policy or certificate may be field-issued if the compensation paid to the field issuer is not based on the number of policies or certificates issued. For the purposes of this subsection, a *"field-issued"* policy means a policy or certificate issued by a producer or third-party administrator pursuant to the underwriting authority granted to the producer or third-party administrator by an insurer and using the insurer's underwriting guidelines.

5. An insurer that has paid benefits under a long-term care insurance policy or certificate shall not recover such benefit payments if the policy or certificate is rescinded.

6. The provisions of this section are applicable to life insurance policies or certificates that accelerate benefits for long-term care. However, if an insured dies, the remaining death benefits of a life insurance policy that accelerates benefits for long-term care are not governed by this section but by the provisions of section 508.28. In all other situations, this section shall apply to life insurance policies that accelerate benefits for long-term care.

2008 Acts, ch 1175, §7

514G.107 Nonforfeiture benefits.

1. Except as otherwise provided in subsection 2, a long-term care insurance policy or certificate shall not be delivered or issued for delivery in this state unless the policyholder or certificate holder has been offered the option of purchasing a policy or certificate that includes a nonforfeiture benefit. A nonforfeiture benefit may be offered in the form of a rider

that is attached to the policy or certificate. If the policyholder or certificate holder declines the nonforfeiture benefit, the insurer shall provide a contingent benefit upon lapse that is available for a specified period of time following a substantial increase in premium rates.

2. When a group long-term care insurance policy or certificate is delivered or issued for delivery in this state, an offer of benefits shall be made to the group policyholder that meets the requirements of subsection 1. However, if the policy is delivered or issued for delivery to a group as described in section 514G.103, subsection 9, paragraph *"d"*, that is not a continuing care retirement community or other similar entity, the offer of benefits shall be made to each proposed certificate holder.

3. The commissioner shall, by rule, specify the type or types of nonforfeiture benefits to be offered as part of long-term care insurance policies and certificates, the standards for such nonforfeiture benefits, and the standards for contingent benefit upon lapse including a specified period of time during which a contingent benefit upon lapse will be available and what constitutes a substantial premium rate increase that will trigger a contingent benefit upon lapse as provided in subsection 1.

2008 Acts, ch 1175, §8

514G.108 Prompt payment of claims — requirements.

1. An insurer providing long-term care insurance under this chapter and subject to state insurance regulation shall either accept and pay or deny a clean claim. For the purposes of this section, *"clean claim"* means a properly completed paper or electronic request for payment that contains all necessary information for the insurer to timely adjudicate and pay claims for long-term care benefits under the policy, does not involve coordination of benefits for third-party liability or subrogation, and does not involve the existence of particular circumstances requiring special treatment that prevents a prompt payment from being made.

2. The commissioner shall adopt rules establishing processes for timely adjudication and payment of claims for long-term care benefits by insurers.

3. Payment of a clean claim shall include interest at the rate of ten percent per annum when an insurer or other entity that administers or processes claims on behalf of the insurer fails to timely pay a clean claim.

2008 Acts, ch 1175, §9

514G.109 Benefit trigger determinations — notice — appeals.

1. *Notice.* When a long-term care insurer determines that the benefit trigger in an insured's long-term care insurance policy has not been met, the insurer shall provide a clear, written notice to the insured of all of the following:

a. The reason that the insurer determined that the insured's benefit trigger has not been met.

b. The insurer's internal appeal process provided under the insured's long-term care insurance policy.

c. The insured's right, after exhaustion of the insurer's internal appeal process, to have the benefit trigger determination reviewed under the independent review process set forth in section 514G.110.

2. *Internal appeal.*

a. An insured may request an internal appeal of a benefit trigger determination by sending a written request to the insurer, along with any additional supporting information, within sixty days after the insured receives the notice described in subsection 1. The internal appeal shall be considered by an individual or group of individuals designated by the insurer, provided that the individual or individuals making the internal appeal decision shall not be the same individual or individuals who made the initial benefit trigger determination. All internal appeals shall be completed and written notice of the internal appeal decision sent to the insured within sixty days of the insurer's receipt of all necessary information upon which a final determination can be made.

b. If the determination that the benefit trigger was not met is upheld upon internal appeal, the notice of the appeal decision shall describe additional internal appeal rights that are

offered by the insurer, if any. Nothing in this paragraph shall require an insurer to offer any internal appeal rights other than those described in paragraph *"a"*.

c. If the determination that the benefit trigger was not met is upheld after the internal appeal process has been exhausted and there is no new information not previously provided to the insurer for consideration, the insurer shall provide the insured with a written description of the insured's right to request an independent review of the benefit trigger determination.

3. *Receipt of notice.* Notices required by this section shall be deemed received within five days after the date of mailing.

2008 Acts, ch 1175, §10, 18
Referred to in §514G.110

514G.110 Independent review of benefit trigger determinations.

1. *Request.* An insured may file a written request for independent review of a benefit trigger determination with the commissioner after the internal appeal process has been exhausted. The request shall be filed within sixty days after the insured receives written notice of the insurer's internal appeal decision.

2. *Eligibility for review.* The commissioner shall certify that the request is eligible for independent review if all of the following criteria are satisfied:

a. The insured was covered by a long-term care insurance policy issued by the insurer at the time the benefit trigger determination was made.

b. The sole reason for requesting an independent review is to review the insurer's determination that the benefit trigger was not met.

c. The insured has exhausted all internal appeal procedures provided under the insured's long-term care insurance policy.

d. The written request for independent review was filed by the insured within sixty days from the date of receipt of the insurer's internal appeal decision.

3. *Notice of eligibility.* The commissioner shall provide written notice regarding eligibility of a request for independent review to the insured and the insurer within two business days from the date of receipt of the request.

a. If the commissioner decides that the request is not eligible for independent review, the written notice shall indicate the reasons for that decision.

b. If the commissioner certifies that the request is eligible for independent review, the insurer may appeal that certification by filing a written notice of appeal with the commissioner within three business days from the date of receipt of the notice of certification. If upon further review, the commissioner upholds the certification, the commissioner shall promptly notify the insured and the insurer in writing of the reasons for that decision.

4. *Qualifications of independent review entities.* The commissioner shall maintain a list of qualified independent review entities that are certified by the commissioner. Independent review entities shall be recertified by the commissioner every two years in order to remain on the list. In order to be certified, an independent review entity shall meet all of the following criteria:

a. Have on staff, or contract with, a qualified, licensed health care professional in an appropriate field for determining an insured's functional or cognitive impairment who can conduct an independent review.

(1) In order to be qualified, a licensed health care professional who is a physician shall hold a current certification by a recognized American medical specialty board in a specialty appropriate for determining an insured's functional or cognitive impairment.

(2) In order to be qualified, a licensed health care professional who is not a physician shall hold a current certification in the specialty in which that person is licensed, by a recognized American specialty board in a specialty appropriate for determining an insured's functional or cognitive impairment.

b. Ensure that any licensed health care professional who conducts an independent review has no history of disciplinary actions or sanctions, including but not limited to the loss of staff privileges or any participation restrictions taken or pending by any hospital or state or federal government regulatory agency.

c. Ensure that the independent review entity or any of its employees, agents, or licensed health care professionals utilized does not receive compensation of any type that is dependent on the outcome of a review.

d. Ensure that the independent review entity or any of its employees, agents, or licensed health care professionals utilized are not in any manner related to, employed by, or affiliated with the insured or with a person who previously provided medical care to the insured.

e. Ensure that an independent review entity or any of its employees, agents, or licensed health care professionals utilized is not a subsidiary of, or owned or controlled by, an insurer or by a trade association of insurers of which the insurer is a member.

f. Have a quality assurance program on file with the commissioner that ensures the timeliness and quality of reviews performed, the qualifications and independence of the licensed health care professionals who perform the reviews, and the confidentiality of the review process.

g. Have on staff or contract with a licensed health care practitioner, as defined in section 514G.103, subsection 3, who is qualified to certify that an individual is chronically ill for purposes of a qualified long-term care insurance contract.

5. *Independent review process.* The independent review process shall be conducted as follows:

a. Within three business days of receiving a notice from the commissioner of the certification of a request for independent review or receipt of a denial of an insurer's appeal from such a certification, the insurer shall do all of the following:

(1) Select an independent review entity from the list certified by the commissioner and notify the insured in writing of the name, address, and telephone number of the independent review entity selected. The independent review entity selected shall utilize a licensed health care professional with qualifications appropriate to the benefit trigger determination that is under review.

(2) Notify the independent review entity that it has been selected to conduct an independent review of a benefit trigger determination and provide sufficient descriptive information to enable the independent review entity to provide licensed health care professionals who will be qualified to conduct the review.

(3) Provide the commissioner with a copy of the notices sent to the insured and to the independent review entity selected.

b. Within three business days of receiving a notice from an insurer that it has been selected to conduct an independent review, the independent review entity shall do one of the following:

(1) Accept its selection as the independent review entity, designate a qualified licensed health care professional to perform the independent review, and provide notice of that designation to the insured and the insurer, including a brief description of the health care professional's qualifications and the reasons that person is qualified to determine whether the insured's benefit trigger has been met. A copy of this notice shall be sent to the commissioner via facsimile. The independent review entity is not required to disclose the name of the health care professional selected.

(2) Decline its selection as the independent review entity or, if the independent review entity does not have a licensed health care professional who is qualified to conduct the independent review available, request additional time from the commissioner to have a qualified licensed health care professional certified, and provide notice to the insured, the insurer, and the commissioner. The commissioner shall notify the review entity, the insured, and the insurer of how to proceed within three business days of receipt of such notice from the independent review entity.

c. An insured may object to the independent review entity selected by the insurer or to the licensed health care professional designated by the independent review entity to conduct the review by filing a notice of objection along with reasons for the objection, with the commissioner within ten days of receipt of a notice sent by the independent review entity pursuant to paragraph *"b"*. The commissioner shall consider the insured's objection and shall notify the insured, the insurer, and the independent review entity of the commissioner's decision to sustain or deny the objection within two business days of receipt of the objection.

d. Within five business days of receiving a notice from the independent review entity

accepting its selection or within five business days of receiving a denial of an objection to the review entity selected, whichever is later, the insured may submit any information or documentation in support of the insured's claim to both the independent review entity and the insurer.

e. Within fifteen days of receiving a notice from the independent review entity accepting its selection or within three business days of receipt of a denial of an objection to the independent review entity selected, whichever is later, an insurer shall do all of the following:

(1) Provide the independent review entity with any information submitted to the insurer by the insured in support of the insured's internal appeal of the insurer's benefit trigger determination.

(2) Provide the independent review entity with any other relevant documents used by the insurer in making its benefit trigger determination.

(3) Provide the insured and the commissioner with confirmation that the information required under subparagraphs (1) and (2) has been provided to the independent review entity, including the date the information was provided.

f. The independent review entity shall not commence its review until fifteen days after the selection of the independent review entity is final including the resolution of any objection made pursuant to paragraph "*c*". During this time period, the insurer may consider any information provided by the insured pursuant to paragraph "*d*" and overturn or affirm the insurer's benefit trigger determination based on such information. If the insurer overturns its benefit trigger determination, the independent review process shall immediately cease.

g. In conducting a review, the independent review entity shall consider only the information and documentation provided to the independent review entity pursuant to paragraphs "*d*" and "*e*".

h. The independent review entity shall submit its decision as soon as possible, but not later than thirty days from the date the independent review entity receives the information required under paragraphs "*d*" and "*e*", whichever is received later. The decision shall include a description of the basis for the decision and the date of the benefit trigger determination to which the decision relates. The independent review entity, for good cause, may request an extension of time from the commissioner to file its decision. A copy of the decision shall be mailed to the insured, the insurer, and the commissioner.

i. All medical records submitted for use by the independent review entity shall be maintained as confidential records as required by applicable state and federal laws. The commissioner shall keep all information obtained during the independent review process confidential pursuant to section 505.8, subsection 8, except that the commissioner may share some information obtained as provided under section 505.8, subsection 8, and as required by this chapter and rules adopted pursuant to this chapter.

j. If an insured dies before completion of the independent review, the review shall continue to completion if there is potential liability of an insurer to the estate of the insured or to a provider for rendering qualified long-term care services to the insured.

6. *Costs.* All reasonable fees and costs of the independent review entity incurred in conducting an independent review under this section shall be paid by the insurer.

7. *Immunity.* An independent review entity that conducts a review under this section is not liable for damages arising from determinations made during the review. Immunity does not apply to any act or omission made by an independent review entity in bad faith or that involves gross negligence.

8. *Effect of independent review decision.*

a. The review decision by the independent review entity conducting the review is binding on the insurer.

b. The independent review process set forth in this section shall not be considered a contested case under chapter 17A.

c. An insured may appeal the review decision by the independent review entity conducting the review by filing a petition for judicial review in the district court in the county in which the insured resides. The petition for judicial review shall be filed within fifteen business days after the issuance of the review decision. The petition shall name the insured as the petitioner and the insurer as the respondent. The petitioner shall not name the independent review entity

as a party. The commissioner shall not be named as a respondent unless the insured alleges action or inaction by the commissioner under the standards articulated under section 17A.19, subsection 10. Allegations made against the commissioner under section 17A.19, subsection 10, must be stated with particularity. The commissioner may, upon motion, intervene in a judicial review proceeding brought pursuant to this paragraph. The findings of fact by the independent review entity conducting the review are conclusive and binding on appeal.

d. An insurer shall not be subject to any penalties, sanctions, or damages for complying in good faith with a review decision rendered by an independent review entity pursuant to this section.

e. Nothing contained in this section or in section 514G.109 shall be construed to limit the right of an insurer to assert any rights an insurer may have under a long-term care insurance policy related to:

(1) An insured's misrepresentation.

(2) Changes in the insured's benefit eligibility.

(3) Terms, conditions, and exclusions contained in the policy, other than failure to meet the benefit trigger.

f. The requirements of this section and section 514G.109 are not applicable to a group long-term care insurance policy that is governed by the federal Employee Retirement Income Security Act of 1974, as codified at 29 U.S.C. §100 et seq.

g. The provisions of this section and section 514G.109 are in lieu of and supersede any other third-party review requirement contained in chapter 514J or in any other provision of law.

h. The insured may bring an action in the district court in the county in which the insured resides to enforce the review decision of the independent review entity conducting the review or the decision of the court on appeal.

9. *Receipt of notice.* Notice required by this section shall be deemed received within five days after the date of mailing.

2008 Acts, ch 1175, §11, 18; 2011 Acts, ch 34, §118; 2017 Acts, ch 105, §1

Referred to in §514G.103, 514G.109

514G.111 Authority to promulgate rules.

The commissioner may adopt rules pursuant to chapter 17A related to long-term care insurance and to the administration and enforcement of this chapter, including but not limited to the following:

1. Promoting adequate premiums and protecting policyholders in the event of substantial rate increases.

2. Establishing minimum standards for producer education, compensation, and testing; marketing practices; reporting practices; and penalties related to the sale of long-term care insurance in this state.

3. Establishing loss ratio standards for long-term care insurance policies with specific reference to such policies.

4. Providing standards for full and fair disclosure by setting forth the manner and content of disclosures required for the sale of long-term care insurance policies including terms of renewability; initial and subsequent conditions of eligibility; nonduplication of coverage provisions; coverage of dependents; effect of preexisting conditions; termination, continuation, or conversion of policies; probationary periods; limitations, exceptions, and reductions; elimination periods; requirements for replacement; recurrent conditions; and definitions of terms.

5. Requiring certain remedial actions necessitated by changes in the long-term care insurance market to provide fair and reasonable protections for long-term care insurance purchasers and beneficiaries.

6. Ensuring the prompt payment of clean claims.

7. Administering the independent review process of insurers' benefit trigger determinations.

2008 Acts, ch 1175, §12

514G.112 Severability.

If any provision of this chapter or the application of this chapter to any person or circumstance is for any reason held to be invalid, the remainder of the chapter and the application of the provision to other persons or circumstances shall not be affected.

2008 Acts, ch 1175, §13

514G.113 Penalties.

In addition to any other penalties provided by the laws of this state, any insurer or any producer found to have violated a provision of this chapter or any other requirement of this state relating to the regulation of long-term care insurance or the marketing of such insurance shall be subject to a fine of up to three times the amount of any commission paid for each policy involved in the violation, or up to ten thousand dollars, whichever is greater. A fine collected under this section shall be deposited as provided in section 505.7.

2008 Acts, ch 1175, §14; 2009 Acts, ch 181, §75

CHAPTER 514H

LONG-TERM CARE ASSET DISREGARD INCENTIVES

Referred to in §87.4, 249A.35, 296.7, 331.301, 364.4, 505.28, 505.29, 669.14, 670.7

514H.1 Definitions.
514H.2 Iowa long-term care asset disregard incentive program — establishment and administration.
514H.3 Eligibility.
514H.4 Insurer requirements.
514H.5 Asset disregard adjustment.
514H.6 Application of asset disregard to determination of individual's assets.
514H.7 Prior program — discontinuation of program.
514H.8 Reciprocal agreements to extend asset disregard.
514H.9 Rules.

514H.1 Definitions.

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

1. *"Deficit Reduction Act of 2005"* means section 6021(a)(1)(A) of Pub. L. No. 109-171 as it pertains to the expansion of state long-term care insurance partnership programs.

2. *"Long-term care facility"* means a facility licensed under chapter 135C or an assisted living program certified under chapter 231C.

3. *"Long-term care insurance"* means long-term care insurance as defined in section 514G.103 and regulated in section 514G.105.

4. *"Qualified long-term care insurance policy"* means a long-term care insurance contract that is issued by an insurer or other person who complies with section 514H.4.

5. *"Qualified long-term care services"* means qualified long-term care services as defined in section 7702B(c) of the Internal Revenue Code.

6. *"Qualified state long-term care insurance partnership"* means an approved state plan amendment, according to the Deficit Reduction Act of 2005 that provides for the disregard of any assets or resources in an amount equal to the insurance benefit payments that are made to or on behalf of an individual who is a beneficiary.

2005 Acts, ch 166, §2, 13; 2008 Acts, ch 1175, §15; 2009 Acts, ch 145, §13, 14

514H.2 Iowa long-term care asset disregard incentive program — establishment and administration.

1. The Iowa long-term care asset disregard incentive program is established to do all of the following:

a. Provide incentives for individuals to insure against the costs of providing for their long-term care needs.

b. Provide a mechanism for individuals to qualify for coverage of the costs of their

long-term care needs under the medical assistance program without first being required to substantially exhaust all their resources.

c. Assist in developing methods for increasing access to and the affordability of long-term care insurance.

d. Alleviate the financial burden on the state's medical assistance program by encouraging the pursuit of private initiatives.

2. The insurance division of the department of commerce shall administer the program in cooperation with the division responsible for medical services within the department of human services. Each agency shall take all necessary actions, including filing an appropriate medical assistance state plan amendment to the state Medicaid plan to take full advantage of the benefits and features of the Deficit Reduction Act of 2005.

2005 Acts, ch 166, §3, 13; 2009 Acts, ch 145, §15

514H.3 Eligibility.

An individual who is the beneficiary of a qualified long-term care insurance policy approved by the insurance division may be eligible for assistance under the medical assistance program using the asset disregard provisions pursuant to section 514H.5.

2005 Acts, ch 166, §4, 13; 2009 Acts, ch 145, §16
Referred to in §514H.5

514H.4 Insurer requirements.

An insurer or other person who wishes to issue a qualified long-term care insurance policy in Iowa shall conform with all policy guidelines as expressed in the Deficit Reduction Act of 2005 and in Iowa law and rules.

2005 Acts, ch 166, §5, 13; 2009 Acts, ch 145, §17
Referred to in §514H.1

514H.5 Asset disregard adjustment.

1. As used in this section, *"asset disregard"* means a one dollar increase in the amount of assets an individual who is the beneficiary of a qualified long-term care insurance policy and meets the requirements of section 514H.3 may retain under section 249A.35 for each one dollar of benefit paid out under the individual's qualified long-term care insurance policy for qualified long-term care services.

2. When the division responsible for medical services within the department of human services determines whether an individual is eligible for medical assistance under chapter 249A, the division shall make an asset disregard adjustment for any individual who meets the requirements of section 514H.3. The asset disregard shall be available after benefits of the qualified long-term care insurance policy have been applied to the cost of qualified long-term care services as required under this chapter.

2005 Acts, ch 166, §6, 13; 2009 Acts, ch 145, §18
Referred to in §249A.35, 514H.3, 514H.6, 514H.7, 514H.8

514H.6 Application of asset disregard to determination of individual's assets.

A public program administered by the state that provides long-term care services and bases eligibility upon the amount of the individual's assets shall apply the asset disregard under section 514H.5 in determining the amount of the individual's assets.

2005 Acts, ch 166, §7, 13

514H.7 Prior program — discontinuation of program.

1. If the Iowa long-term care asset disregard incentive program is discontinued, an individual who is covered by a qualified long-term care insurance policy prior to the date the program is discontinued is eligible to continue to receive an asset disregard as defined under section 514H.5.

2. An individual who is covered by a long-term care insurance policy under the long-term care asset preservation program established pursuant to chapter 249G, Code 2005, on or before November 17, 2005, is eligible to continue to receive the asset adjustment as defined under that chapter.

3. The insurance division, in cooperation with the department of human services, shall adopt rules to provide an asset disregard to individuals who are covered by a long-term care insurance policy prior to November 17, 2005, consistent with the Iowa long-term care asset disregard incentive program.

2005 Acts, ch 166, §8, 13; 2009 Acts, ch 145, §19

514H.8 Reciprocal agreements to extend asset disregard.

The division responsible for medical services within the department of human services may enter into reciprocal agreements with other states to extend the asset disregard under section 514H.5 to Iowa residents who had purchased or were covered by qualified long-term care insurance policies in other states.

2005 Acts, ch 166, §9, 13; 2009 Acts, ch 145, §20

514H.9 Rules.

The insurance division of the department of commerce in cooperation with the department of human services shall adopt rules pursuant to chapter 17A as necessary to administer this chapter.

2005 Acts, ch 166, §10, 13; 2009 Acts, ch 145, §21

CHAPTER 514I

HEALTHY AND WELL KIDS IN IOWA PROGRAM

Referred to in §87.4, 135.22B, 217.36, 252E.1, 252E.2A, 283A.2, 296.7, 331.301, 364.4, 432.13, 505.25, 505.28, 505.29, 509.3A, 513B.2, 513C.3, 514A.3B, 514E.1, 669.14, 670.7

514I.1 Intent of the general assembly.
514I.2 Definitions.
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514I.4 Director and department — duties — powers.
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514I.8A Hawk-i — all income-eligible children.
514I.9 Program benefits.
514I.10 Cost sharing.
514I.11 Hawk-i trust fund.
514I.12 Hawk-i expansion program. Repealed by 2009 Acts, ch 118, §41.

514I.1 Intent of the general assembly.

1. It is the intent of the general assembly to provide health care coverage to eligible children that improves access to preventive, diagnostic, and treatment health services which result in improved health status using in part resources made available from the passage of Tit. XXI of the federal Social Security Act.

2. It is the intent of the general assembly that the program be implemented and administered in compliance with Tit. XXI of the federal Social Security Act. If, as a condition of receiving federal funds for the program, federal law requires implementation and administration of the program in a manner not provided in this chapter, during a period when the general assembly is not in session, the department, with the approval of the hawk-i board, shall proceed to implement and administer those provisions, subject to review by the next regular session of the general assembly.

3. It is the intent of the general assembly, recognizing the importance of outreach to the successful utilization of the program by eligible children, that within the limitations of funding allowed for outreach and administration expenses, the maximum amount possible be used for outreach.

4. It is the intent of the general assembly that the hawk-i program be an integral part of the continuum of health insurance coverage and that the program be developed and implemented in such a manner as to facilitate movement of families between health insurance providers and to facilitate the transition of families to private sector health insurance coverage.

5. It is the intent of the general assembly that if federal reauthorization of the state children's health insurance program provides sufficient federal allocations to the state and authorization to cover such children as an option under the state children's health insurance program, the department shall expand coverage under the state children's health insurance program to cover children with family incomes at or below three hundred percent of the federal poverty level.

98 Acts, ch 1196, §2, 16; 2003 Acts, ch 108, §131; 2008 Acts, ch 1188, §5, 6; 2009 Acts, ch 118, §23

514I.2 Definitions.

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

1. *"Administrative contractor"* means the person with whom the department enters a contract to administer the hawk-i program under this chapter.

2. *"Benchmark benefit package"* means any of the following:

a. The standard blue cross/blue shield preferred provider option service benefit plan, described in and offered under 5 U.S.C. §8903(1).

b. A health benefits coverage plan that is offered and generally available to state employees in this state.

c. The plan of a health maintenance organization as defined in 42 U.S.C. §300e, with the largest insured commercial, nonmedical assistance enrollment of covered lives in the state.

3. *"Cost sharing"* means the payment of a premium or copayment as provided for by Tit. XXI of the federal Social Security Act and section 514I.10.

4. *"Department"* means the department of human services.

5. *"Director"* means the director of human services.

6. *"Eligible child"* means an individual who meets the criteria for participation in the program under section 514I.8.

7. *"Hawk-i board"* or *"board"* means the entity which adopts rules and establishes policy for, and directs the department regarding, the hawk-i program.

8. *"Hawk-i program"* or *"program"* means the healthy and well kids in Iowa program created in this chapter to provide health insurance coverage to eligible children.

9. *"Health insurance coverage"* means health insurance coverage as defined in 42 U.S.C. §300gg-91.

10. *"Participating insurer"* means any entity licensed by the division of insurance of the department of commerce to provide health insurance in Iowa that has contracted with the department to provide health insurance coverage to eligible children under this chapter.

11. *"Qualified child health plan"* or *"plan"* means health insurance coverage provided by a participating insurer under this chapter.

98 Acts, ch 1196, §3, 16; 2003 Acts, ch 108, §131; 2008 Acts, ch 1188, §7; 2009 Acts, ch 118, §24; 2014 Acts, ch 1092, §184; 2017 Acts, ch 148, §92

514I.3 Hawk-i program — established.

1. The hawk-i program, a statewide program designed to improve the health of children and to provide health insurance coverage to eligible children on a regional basis which complies with Tit. XXI of the federal Social Security Act, is established and shall be implemented January 1, 1999.

2. Health insurance coverage under the program shall be provided by participating insurers and through qualified child health plans.

3. The department of human services is designated to receive the state and federal funds appropriated or provided for the program, and to submit and maintain the state plan for the program, which is approved by the centers for Medicare and Medicaid services of the United States department of health and human services.

4. Nothing in this chapter shall be construed or is intended as, or shall imply, a grant of entitlement for services to persons who are eligible for participation in the program based upon eligibility consistent with the requirements of this chapter. Any state obligation to provide services pursuant to this chapter is limited to the extent of the funds appropriated or provided for this chapter.

5. Participating insurers under this chapter are not subject to the requirements of chapters 513B and 513C.

6. Health care coverage provided under this chapter in accordance with Tit. XXI of the federal Social Security Act shall be recognized as prior creditable coverage for the purposes of private individual and group health insurance coverage.

98 Acts, ch 1196, §4, 16; 2002 Acts, ch 1050, §45; 2003 Acts, ch 108, §131; 2009 Acts, ch 118, §25

514I.4 Director and department — duties — powers.

1. The director, with the approval of the hawk-i board, shall implement this chapter. The director shall do all of the following:

a. At least every six months, evaluate the scope of the program currently being provided under this chapter, project the probable cost of continuing the program, and compare the probable cost with the remaining balance of the state appropriation made for payment of assistance under this chapter during the current appropriation period. The director shall report the findings of the evaluation to the board and shall annually report findings to the governor and the general assembly by January 1.

b. Establish premiums to be paid to participating insurers for provision of health insurance coverage.

c. Contract with participating insurers to provide health insurance coverage under this chapter.

d. Recommend to the board proposed rules necessary to implement the program.

e. Recommend to the board individuals to serve as members of the clinical advisory committee.

2. *a.* The director, with the approval of the board, may contract with participating insurers to provide dental-only services.

b. The director, with the approval of the board, may contract with participating insurers to provide the supplemental dental-only coverage to otherwise eligible children who have private health care coverage as specified in the federal Children's Health Insurance Program Reauthorization Act of 2009, Pub. L. No. 111-3.

3. The director, with the concurrence of the board, shall enter into a contract with an administrative contractor. Such contract shall be entered into in accordance with the criteria established by the board.

4. The department may enter into contracts with other persons whereby the other person provides some or all of the functions, pursuant to rules adopted by the board, which are required of the director or the department under this section. All contracts entered into pursuant to this section shall be made available to the public.

5. The department shall do or shall provide for all of the following:

a. (1) Establish the family cost sharing amounts for children of families with incomes of one hundred fifty percent or more but not exceeding two hundred percent of the federal poverty level, of not less than ten dollars per individual and twenty dollars per family, if not otherwise prohibited by federal law, with the approval of the board.

(2) Establish for children of families with incomes exceeding two hundred percent but not exceeding three hundred percent of the federal poverty level, family cost sharing amounts, and graduated premiums based on a rationally developed sliding fee schedule, in accordance with federal law, with the approval of the board.

b. Perform annual, random reviews of enrollee applications to ensure compliance with program eligibility and enrollment policies. Quality assurance reports shall be made to the board and the department based upon the data maintained by the administrative contractor.

c. Perform other duties as determined by the department with the approval of the board.

98 Acts, ch 1196, §5, 16; 2003 Acts, ch 108, §131; 2003 Acts, ch 124, §1; 2003 Acts, ch 175, §38; 2009 Acts, ch 118, §26, 27; 2013 Acts, ch 138, §95

514I.5 Hawk-i board.

1. A hawk-i board for the hawk-i program is established. The board shall meet not less than six and not more than twelve times annually, for the purposes of establishing policy for,

directing the department on, and adopting rules for the program. The board shall consist of seven voting members and four ex officio, nonvoting members, including all of the following:

a. The commissioner of insurance, or the commissioner's designee.

b. The director of the department of education, or the director's designee.

c. The director of public health, or the director's designee.

d. Four public members appointed by the governor and subject to confirmation by the senate. The public members shall be members of the general public who have experience, knowledge, or expertise in the subject matter embraced within this chapter.

e. Two members of the senate and two members of the house of representatives, serving as ex officio, nonvoting members. The legislative members of the board shall be appointed one each by the majority leader of the senate, after consultation with the president of the senate, and by the minority leader of the senate, and by the speaker of the house of representatives, after consultation with the majority leader of the house of representatives, and by the minority leader of the house of representatives. Legislative members shall receive compensation pursuant to section 2.12.

2. A public member shall not have a conflict of interest with the administrative contractor.

3. Members appointed by the governor shall serve two-year staggered terms as designated by the governor, and legislative members of the board shall serve two-year terms. The filling of positions reserved for the public representatives, vacancies, membership terms, payment of compensation and expenses, and removal of the members are governed by chapter 69. Members of the board are entitled to receive reimbursement of actual expenses incurred in the discharge of their duties. Public members of the board are also eligible to receive compensation as provided in section 7E.6. A majority of the voting members constitutes a quorum and the affirmative vote of a majority of the voting members is necessary for any substantive action to be taken by the board. The members shall select a chairperson on an annual basis from among the membership of the board.

4. The board shall approve any contract entered into pursuant to this chapter. All contracts entered into pursuant to this chapter shall be made available to the public.

5. The department of human services shall act as support staff to the board.

6. The board may receive and accept grants, loans, or advances of funds from any person and may receive and accept from any source contributions of money, property, labor, or any other thing of value, to be held, used, and applied for the purposes of the program.

7. The hawk-i board shall do all of the following:

a. Develop the criteria to be included in a request for proposals for the selection of any administrative contractor for the program.

b. Define, in consultation with the department, the regions of the state for which plans are offered in a manner as to ensure access to services for all children participating in the program.

c. Approve the benefit package design, review the benefit package design on a periodic basis, and make necessary changes in the benefit design to reflect the results of the periodic reviews.

d. Develop, with the assistance of the department, an outreach plan, and provide for periodic assessment of the effectiveness of the outreach plan. The plan shall provide outreach to families of children likely to be eligible for assistance under the program, to inform them of the availability of and to assist the families in enrolling children in the program. The outreach efforts may include, but are not limited to, solicitation of cooperation from programs, agencies, and other persons who are likely to have contact with eligible children, including but not limited to those associated with the educational system, and the development of community plans for outreach and marketing. Other state agencies shall assist the department in data collection related to outreach efforts to potentially eligible children and their families.

e. In consultation with the clinical advisory committee, assess the initial health status of children participating in the program, establish a baseline for comparison purposes, and develop appropriate indicators to measure the subsequent health status of children participating in the program.

f. Review, in consultation with the department, and take necessary steps to improve

interaction between the program and other public and private programs which provide services to the population of eligible children.

g. By January 1, annually, prepare, with the assistance of the department, and submit a report to the governor, the general assembly, and the council on human services, concerning the board's activities, findings, and recommendations.

h. Solicit input from the public regarding the program and related issues and services.

i. Establish and consult with a clinical advisory committee to make recommendations to the board regarding the clinical aspects of the hawk-i program.

j. Prescribe the elements to be included in a health improvement program plan required to be developed by a participating insurer. The elements shall include but are not limited to health maintenance and prevention and health risk assessment.

k. Establish an advisory committee to make recommendations to the board and to the general assembly by January 1 annually concerning the provision of health insurance coverage to children with special health care needs. The committee shall include individuals with experience in, knowledge of, or expertise in this area. The recommendations shall address, but are not limited to, all of the following:

(1) The definition of the target population of children with special health care needs for the purposes of determining eligibility under the program.

(2) Eligibility options for and assessment of children with special health care needs for eligibility.

(3) Benefit options for children with special health care needs.

(4) Options for enrollment of children with special health care needs in and disenrollment of children with special health care needs from qualified child health plans utilizing a capitated fee form of payment.

(5) The appropriateness and quality of care for children with special health care needs.

(6) The coordination of health services provided for children with special health care needs under the program with services provided by other publicly funded programs.

l. Develop options and recommendations to allow children eligible for the hawk-i program to participate in qualified employer-sponsored health plans through a premium assistance program. The options and recommendations shall ensure reasonable alignment between the benefits and costs of the hawk-i program and the employer-sponsored health plans consistent with federal law. In addition, the board shall implement the premium assistance program options described under the federal Children's Health Insurance Program Reauthorization Act of 2009, Pub. L. No. 111-3, for the hawk-i program.

8. The hawk-i board, in consultation with the department of human services, shall adopt rules which address, but are not limited to addressing, all of the following:

a. Implementation and administration of the program.

b. Criteria for the selection of an administrative contractor for the program.

c. Qualifying standards for selecting participating insurers for the program.

d. The benefits to be included in a qualified child health plan which are those included in a benchmark or benchmark equivalent plan and which comply with Tit. XXI of the federal Social Security Act. Benefits covered shall include but are not limited to all of the following:

(1) Inpatient hospital services including medical, surgical, intensive care unit, mental health, and substance abuse services.

(2) Nursing care services including skilled nursing facility services.

(3) Outpatient hospital services including emergency room, surgery, lab, and x-ray services and other services.

(4) Physician services, including surgical and medical, and including office visits, newborn care, well-baby and well-child care, immunizations, urgent care, specialist care, allergy testing and treatment, mental health visits, and substance abuse visits.

(5) Ambulance services.

(6) Physical therapy.

(7) Speech therapy.

(8) Durable medical equipment.

(9) Home health care.

(10) Hospice services.

(11) Prescription drugs.
(12) Dental services including preventive services.
(13) Medically necessary hearing services.
(14) Vision services including corrective lenses.
(15) Translation and interpreter services as specified pursuant to the federal Children's Health Insurance Program Reauthorization Act of 2009, Pub. L. No. 111-3.
(16) Chiropractic services.
(17) Occupational therapy.

e. Presumptive eligibility criteria for the program. Beginning January 1, 2010, presumptive eligibility shall be provided for eligible children.

f. The amount of any cost sharing under the program which shall be assessed based on family income and which complies with federal law.

g. The reasons for disenrollment including, but not limited to, nonpayment of premiums, eligibility for medical assistance or other insurance coverage, admission to a public institution, relocation from the area, and change in income.

h. Conflict of interest provisions applicable to the administrative contractor and participating insurers, and between public members of the board and the administrative contractor and participating insurers.

i. Penalties for breach of contract or other violations of requirements or provisions under the program.

j. A mechanism for participating insurers to report any rebates received to the department.

k. The data to be maintained by the administrative contractor including data to be collected for the purposes of quality assurance reports.

l. The use of provider guidelines in assessing the well-being of children, which may include the use of the bright futures for infants, children, and adolescents program as developed by the federal maternal and child health bureau and the American academy of pediatrics guidelines for well-child care.

9. *a.* The hawk-i board may provide approval to the director to contract with participating insurers to provide dental-only services. In determining whether to provide such approval to the director, the board shall take into consideration the impact on the overall program of single source contracting for dental services.

b. The hawk-i board may provide approval to the director to contract with participating insurers to provide the supplemental dental-only coverage to otherwise eligible children who have private health care coverage as specified in the federal Children's Health Insurance Program Reauthorization Act of 2009, Pub. L. No. 111-3.

10. The hawk-i board shall monitor the capacity of Medicaid managed care organizations to specifically and appropriately address the unique needs of children and children's health delivery.

98 Acts, ch 1196, §6, 16; 99 Acts, ch 208, §38; 2002 Acts, ch 1175, §37; 2003 Acts, ch 108, §131; 2003 Acts, ch 124, §2 – 7; 2003 Acts, ch 175, §39; 2007 Acts, ch 218, §106; 2008 Acts, ch 1156, §51, 58; 2008 Acts, ch 1188, §8, 9; 2009 Acts, ch 118, §28 – 31; 2010 Acts, ch 1133, §1; 2011 Acts, ch 34, §119; 2011 Acts, ch 120, §11; 2013 Acts, ch 138, §96, 97; 2016 Acts, ch 1139, §104, 105
Referred to in §249A.4B
Confirmation, see §2.32

514I.6 Participating insurers.

Participating insurers shall meet the qualifying standards established by rule under this chapter and shall perform all of the following functions:

1. Provide plan cards and membership booklets to qualifying families.
2. Provide or reimburse accessible, quality medical or dental services.
3. Require that any plan provided by the participating insurer establishes and maintains a conflict management system that includes methods for both preventing and resolving disputes involving the health or dental care needs of eligible children, and a process for resolution of such disputes.

4. Provide the administrative contractor with all of the following information pertaining to the participating insurer's plan:

a. A list of providers of medical or dental services under the plan.

b. Information regarding plan rules relating to referrals to specialists.

c. Information regarding the plan's conflict management system.

d. Other information as directed by the board.

5. Submit a plan for a health improvement program to the department, for approval by the board.

6. Develop a plan for provider network development including criteria for access to pediatric subspecialty services.

7. Permit any chiropractor licensed under chapter 151 who is located in the geographic coverage area served by the plan and who agrees to abide by the plan's terms, conditions, reimbursement rates, and quality standards to serve as a participating provider in any plan offered to eligible children under this chapter, including but not limited to a limited provider network plan as defined in section 514C.13.

98 Acts, ch 1196, §7, 16; 2003 Acts, ch 108, §131; 2003 Acts, ch 124, §8; 2009 Acts, ch 118, §32, 33; 2010 Acts, ch 1133, §2

514I.7 Administrative contractor.

1. An administrative contractor shall be selected by the hawk-i board through a request for proposals process.

2. The administrative contractor shall do all of the following:

a. Determine eligibility for program enrollment as prescribed by federal law and regulation, using policies and procedures adopted by rule of the department pursuant to chapter 17A. The administrative contractor shall not enroll a child who has group health coverage, unless expressly authorized by such rules.

b. Enroll qualifying children in the program with maintenance of a supporting eligibility file or database.

c. Utilize the department's eligibility system to maintain eligibility files with pertinent eligibility determination and ongoing enrollment information including but not limited to data regarding beneficiaries, enrollment dates, disenrollments, and annual financial redeterminations.

d. Provide electronic access to the administrative contractor's database to the department.

e. Provide periodic reports to the department for administrative oversight and monitoring of federal requirements.

f. Perform annual financial reviews of eligibility for each beneficiary.

g. Collect and track monthly family premiums to assure that payments are current.

h. Notify each participating insurer of new program enrollees who are enrolled by the administrative contractor in that participating insurer's plan.

i. Verify the number of program enrollees with each participating insurer for determination of the amount of premiums to be paid to each participating insurer.

j. Maintain data for the purpose of quality assurance reports as required by rule of the board.

98 Acts, ch 1196, §8, 16; 99 Acts, ch 208, §39; 2003 Acts, ch 108, §131; 2003 Acts, ch 124, §9, 10; 2008 Acts, ch 1188, §10; 2009 Acts, ch 118, §34; 2013 Acts, ch 138, §98, 99

514I.8 Eligible child.

1. *a.* Effective July 1, 1998, and notwithstanding any medical assistance program eligibility criteria to the contrary, medical assistance shall be provided to, or on behalf of, an eligible child under the age of nineteen whose family income does not exceed one hundred thirty-three percent of the federal poverty level, as defined by the most recently revised poverty income guidelines published by the United States department of health and human services.

b. Effective July 1, 2000, and notwithstanding any medical assistance program eligibility criteria to the contrary, medical assistance shall be provided to, or on behalf of, an eligible infant whose family income does not exceed two hundred percent of the federal poverty level,

as defined by the most recently revised poverty income guidelines published by the United States department of health and human services.

c. Effective July 1, 2009, and notwithstanding any medical assistance program eligibility criteria to the contrary, medical assistance shall be provided to, or on behalf of, a pregnant woman or an eligible child who is an infant and whose family income is at or below three hundred percent of the federal poverty level, as defined by the most recently revised poverty income guidelines published by the United States department of health and human services.

2. A child may participate in the hawk-i program if the child meets all of the following criteria:

a. Is less than nineteen years of age.

b. Is a resident of this state.

c. Is a member of a family whose income does not exceed three hundred percent of the federal poverty level, as defined in 42 U.S.C. §9902(2), including any revision required by such section, and in accordance with the federal Children's Health Insurance Program Reauthorization Act of 2009, Pub. L. No. 111-3. The modified adjusted gross income methodology prescribed in section 2101 of the federal Patient Protection and Affordable Care Act, Pub. L. No. 111-148, shall be used to determine family income under this paragraph.

d. Is not eligible for medical assistance pursuant to chapter 249A.

e. Is not currently covered under a group health plan as defined in 42 U.S.C. §300gg-91(a)(1) unless allowed by rule of the board.

f. Is not a member of a family that is eligible for health benefits coverage under a state health benefits plan on the basis of a family member's employment with a public agency in this state.

g. Is not an inmate of a public institution or a patient in an institution for mental diseases.

3. In accordance with the rules adopted by the board, a child may be determined to be presumptively eligible for the program pending a final eligibility determination. Following final determination of eligibility, a child shall be eligible for a twelve-month period. At the end of the twelve-month period, a review of the circumstances of the child's family shall be conducted to establish eligibility and cost sharing for the subsequent twelve-month period. Pending such review of the circumstances of the child's family, the child shall continue to be eligible for and remain enrolled in the same plan if the family complies with requirements to provide information and verification of income, otherwise cooperates in the annual review process, and submits the completed review form and any information necessary to establish continued eligibility in a timely manner in accordance with administrative rules.

4. Once an eligible child is enrolled in a plan, the enrollee may request to change plans within ninety days of initial enrollment for any reason and at any time for cause, as defined in 42 C.F.R. §438.56(d)(2). Otherwise, an enrollee may change plan enrollment once a year on the enrollee's anniversary date.

98 Acts, ch 1196, §9, 16; 98 Acts, ch 1223, §34; 2000 Acts, ch 1221, §8, 9; 2003 Acts, ch 108, §131; 2003 Acts, ch 124, §11; 2008 Acts, ch 1188, §11; 2009 Acts, ch 118, §17, 35; 2013 Acts, ch 138, §100 – 103; 2014 Acts, ch 1092, §115; 2015 Acts, ch 137, §105, 162, 163

Referred to in §514I.2

514I.8A Hawk-i — all income-eligible children.

The department shall provide coverage to individuals under nineteen years of age who meet the income eligibility requirements for the hawk-i program and for whom federal financial participation is or becomes available for the cost of such coverage.

2009 Acts, ch 118, §14

514I.9 Program benefits.

1. The hawk-i board shall review the benefits package annually and shall determine additions to or deletions from the benefits package offered. The hawk-i board shall submit the recommendations to the general assembly for any amendment to the benefits package.

2. Benefits, in addition to those required by rule, may be provided to eligible children by a participating insurer if the benefits are provided at no additional cost to the state.

98 Acts, ch 1196, §10, 16; 2003 Acts, ch 108, §131; 2010 Acts, ch 1061, §180; 2013 Acts, ch 138, §104

514I.10 Cost sharing.

1. Cost sharing for eligible children whose family income is below one hundred fifty percent of the federal poverty level shall not exceed the standards permitted under 42 U.S.C. §1396o(a)(3) or §1396o(b)(1).

2. Cost sharing for eligible children whose family income equals one hundred fifty percent but does not exceed two hundred percent of the federal poverty level may include a premium or copayment amount which does not exceed five percent of the annual family income. The amount of any premium or the copayment amount shall be based on family income and size.

3. Cost sharing for an eligible child whose family income exceeds two hundred percent but does not exceed three hundred percent of the federal poverty level may include copayments and graduated premium amounts which do not exceed the limitations of federal law.

4. The payment to and acceptance by an automated case management system or the department of the premium required under this section shall not automatically confer initial or continuing program eligibility on an individual. A premium paid to and accepted through the department's premium payment process that is subsequently determined to be untimely or to have been paid on behalf of an individual ineligible for the program shall be refunded to the remitter in accordance with rules adopted by the department.

98 Acts, ch 1196, §11, 16; 2000 Acts, ch 1221, §10; 2003 Acts, ch 124, §12; 2008 Acts, ch 1014, §4; 2008 Acts, ch 1188, §12; 2009 Acts, ch 118, §36; 2014 Acts, ch 1026, §115

Referred to in §514I.2

514I.11 Hawk-i trust fund.

1. A hawk-i trust fund is created in the state treasury under the authority of the department of human services, in which all appropriations and other revenues of the program such as grants, contributions, and participant payments shall be deposited and used for the purposes of the program. The moneys in the fund shall not be considered revenue of the state, but rather shall be funds of the program.

2. The trust fund shall be separate from the general fund of the state and shall not be considered part of the general fund of the state. The moneys in the trust fund are not subject to section 8.33 and shall not be transferred, used, obligated, appropriated, or otherwise encumbered, except to provide for the purposes of this chapter and except as provided in subsection 4. Notwithstanding section 12C.7, subsection 2, interest or earnings on moneys deposited in the trust fund shall be credited to the trust fund.

3. Moneys in the fund are appropriated to the department and shall be used to offset any program costs.

4. The department may transfer moneys appropriated from the fund to be used for the purpose of expanding health care coverage to children under the medical assistance program.

5. The department shall provide periodic updates to the general assembly regarding expenditures from the fund.

99 Acts, ch 203, §52; 2003 Acts, ch 108, §131; 2005 Acts, ch 175, §124, 125; 2008 Acts, ch 1188, §13; 2009 Acts, ch 118, §37

514I.12 Hawk-i expansion program. Repealed by 2009 Acts, ch 118, §41.

CHAPTER 514J

EXTERNAL REVIEW OF HEALTH CARE COVERAGE DECISIONS

Referred to in §87.4, 296.7, 331.301, 364.4, 505.8, 505.26, 505.28, 505.29, 514F.7, 514G.110, 669.14, 670.7

514J.1 through 514J.15 Repealed by 2011 Acts, ch 101, §21.
514J.101 Purpose — applicability.
514J.102 Definitions.
514J.103 Applicability and scope.
514J.104 Notice of right to external review.
514J.105 Request for external review.
514J.106 Exhaustion of internal grievance process — exceptions — expedited external review request.
514J.107 External review — standard.
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514J.118 Severability.
514J.119 Penalties.
514J.120 Applicability.

514J.1 through 514J.15 Repealed by 2011 Acts, ch 101, §21.
Application of former sections 514J.1 through 514J.15 to requests for external review filed prior to July 1, 2011; 2011 Acts, ch 101, §22

514J.101 Purpose — applicability.

The purpose of this chapter is to provide uniform standards for the establishment and maintenance of external review procedures to assure that covered persons have the opportunity for an independent review of an adverse determination or final adverse determination made by a health carrier as required by the federal Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended by the federal Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152, which amends the Public Health Service Act and adopts, in part, new 42 U.S.C. §300gg-19, and to address issues which are unique to the external review process in this state.

2011 Acts, ch 101, §1

514J.102 Definitions.

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

1. *a. "Adverse determination"* means a determination by a health carrier that an admission, availability of care, continued stay, or other health care service, other than a dental care service, that is a covered benefit has been reviewed and, based upon the information provided, does not meet the health carrier's requirements for medical necessity, appropriateness, health care setting, level of care, or effectiveness, and the requested service or payment for the service is therefore denied, reduced, or terminated.

b. For the purposes of denial of a dental care service, "*adverse determination*" means a determination by a health carrier that a dental care service that is a covered benefit has been reviewed and, based upon the information provided, does not meet the health carrier's requirements for medical necessity, and the requested service or payment for the service is therefore denied, reduced, or terminated in whole or in part.

c. "Adverse determination" does not include a denial of coverage for a service or treatment specifically listed in plan or evidence of coverage documents as excluded from coverage.

2. *"Authorized representative"* means any of the following:

a. A person to whom a covered person has given express written consent to represent the covered person in an external review.

b. A person authorized by law to provide substituted consent for a covered person.

c. A family member of the covered person when the covered person is unable to provide consent.

d. The covered person's treating health care professional when the covered person is unable to provide consent.

3. *"Best evidence"* means evidence based on randomized clinical trials. If randomized clinical trials are not available, *"best evidence"* means evidence based on cohort studies or case-control studies. If randomized clinical trials, cohort studies, or case-control studies are not available, *"best evidence"* means evidence based on case-series studies. If none of these are available, *"best evidence"* means evidence based on expert opinion.

4. *"Case-control study"* means a retrospective evaluation of two groups of patients with different outcomes to determine which specific interventions the patients received.

5. *"Case-series study"* means an evaluation of a series of patients with a particular outcome, without the use of a control group.

6. *"Certification"* means a determination by a health carrier that an admission, availability of care, continued stay, or other health care service has been reviewed and, based on the information provided, satisfies the health carrier's requirements for medical necessity, appropriateness, health care setting, level of care, and effectiveness.

7. *"Clinical review criteria"* means the written screening procedures, decision abstracts, clinical protocols, and practice guidelines used by a health carrier to determine the necessity and appropriateness of health care services.

8. *"Cohort study"* means a prospective evaluation of two groups of patients with only one group of patients receiving a specific intervention.

9. *"Commissioner"* means the commissioner of insurance.

10. *"Covered benefits"* or *"benefits"* means those health care services to which a covered person is entitled under the terms of a health benefit plan.

11. *"Covered person"* means a policyholder, subscriber, enrollee, or other individual participating in a health benefit plan.

12. *"Dental care services"* means diagnostic, preventive, maintenance, and therapeutic dental care that is provided in accordance with chapter 153.

13. *"Disclose"* means to release, transfer, or otherwise divulge protected health information to any person other than the individual who is the subject of the protected health information.

14. *"Emergency medical condition"* means the sudden and, at the time, unexpected onset of a health condition or illness that requires immediate medical attention, where failure to provide medical attention would result in a serious impairment to bodily functions, serious dysfunction of a bodily organ or part, or would place the person's health in serious jeopardy.

15. *"Emergency services"* means health care items and services furnished or required to evaluate and treat an emergency medical condition.

16. *"Evidence-based standard"* means the conscientious, explicit, and judicious use of the current best evidence based on the overall systematic review of the research in making decisions about the care of individual patients.

17. *"Expert opinion"* means a belief or an interpretation by specialists with experience in a specific area about the scientific evidence pertaining to a particular service, intervention, or therapy.

18. *"Facility"* means an institution providing health care services or a health care setting, including but not limited to hospitals and other licensed inpatient centers, ambulatory surgical or treatment centers, skilled nursing centers, residential treatment centers, diagnostic, laboratory and imaging centers, and rehabilitation and other therapeutic health settings.

19. *"Final adverse determination"* means an adverse determination involving a covered benefit that has been upheld by a health carrier at the completion of the health carrier's internal grievance process.

20. *"Health benefit plan"* means a policy, contract, certificate, or agreement offered or issued by a health carrier to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services.

21. *"Health care professional"* means a physician or other health care practitioner licensed, accredited, registered, or certified to perform specified health care services consistent with state law.

22. *"Health care provider"* or *"provider"* means a health care professional or a facility.

23. *"Health care services"* means services for the diagnosis, prevention, treatment, cure, or relief of a health condition, illness, injury, or disease. *"Health care services"* includes dental care services.

24. *"Health carrier"* means an entity subject to the insurance laws and regulations of this state, or subject to the jurisdiction of the commissioner, including an insurance company offering sickness and accident plans, a health maintenance organization, a nonprofit health service corporation, a plan established pursuant to chapter 509A for public employees, or any other entity providing a plan of health insurance, health care benefits, or health care services.

25. *"Health information"* means information or data, whether oral or recorded in any form or medium, and personal facts or information about events or relationships that relates to any of the following:

a. The past, present, or future physical, mental, or behavioral health or condition of a covered person or a member of the covered person's family.

b. The provision of health care services to a covered person.

c. Payment to a health care provider for the provision of health care services to a covered person.

26. *"Independent review organization"* means an entity that conducts independent external reviews of adverse determinations and final adverse determinations.

27. *"Medical or scientific evidence"* means evidence found in any of the following sources:

a. Peer-reviewed scientific studies published in or accepted for publication by medical journals that meet nationally recognized requirements for scientific manuscripts and that submit most of their published articles for review by experts who are not part of the editorial staff.

b. Peer-reviewed medical literature, including literature relating to therapies reviewed and approved by a qualified institutional review board, biomedical compendia, and other medical literature that meet the criteria of the national institutes of health's national library of medicine for indexing in index medicus or medline, or of elsevier science ltd. for indexing in excerpta medicus or embase.

c. Medical journals recognized by the United States secretary of health and human services under section 1861(t)(2) of the federal Social Security Act.

d. The following standard reference compendia:

(1) American hospital formulary service drug information.

(2) Drug facts and comparisons.

(3) American dental association accepted dental therapeutics.

(4) United States pharmacopoeia drug information.

e. Findings, studies, or research conducted by or under the auspices of federal government agencies and nationally recognized federal research institutes, including any of the following:

(1) Federal agency for health care research and quality.

(2) National institutes of health.

(3) National cancer institute.

(4) National academy of sciences.

(5) Centers for Medicare and Medicaid services.

(6) Federal food and drug administration.

(7) Any national board recognized by the national institutes of health for the purpose of evaluating the medical value of health care services.

f. Any other medical or scientific evidence that is comparable to the sources listed in paragraphs *"a"* through *"e"*.

28. *"NAIC"* means the national association of insurance commissioners.

29. *"Person"* means an individual, a corporation, a partnership, an association, a joint venture, a joint stock company, a trust, an unincorporated organization, any similar entity, or any combination of the foregoing.

30. *"Protected health information"* means health information that meets either of the following descriptions:

a. Health information that identifies a covered person who is the subject of the information.

b. Health information with respect to which there is a reasonable basis to believe that the information could be used to identify a covered person.

31. *"Randomized clinical trial"* means a controlled, prospective study of patients that have been randomized into an experimental group and a control group at the beginning of the study with only the experimental group of patients receiving a specific intervention, which includes study of the groups for variables and anticipated outcomes over time.

2011 Acts, ch 101, §2; 2014 Acts, ch 1140, §108 – 110; 2017 Acts, ch 148, §93, 94
Referred to in §505.26, 510B.10, 514C.34, 514F.7

514J.103 Applicability and scope.

1. Except as provided in subsection 2, this chapter shall apply to all health carriers.

2. This chapter shall not apply to any of the following:

a. A policy or certificate that provides coverage only for a specified disease, specified accident or accident-only, credit, disability income, hospital indemnity, long-term care, vision care, or any other limited supplemental benefit.

b. A Medicare supplement policy of insurance, as defined by the commissioner by rule.

c. Coverage under a plan through Medicare, Medicaid, or the federal employees health benefits program, any coverage issued under 10 U.S.C. ch. 55, and any coverage issued as supplemental to that coverage.

d. Any coverage issued as supplemental to liability insurance.

e. Workers' compensation or similar insurance.

f. Automobile medical-payment insurance or any insurance under which benefits are payable with or without regard to fault, whether written on a group blanket or individual basis.

2011 Acts, ch 101, §3; 2014 Acts, ch 1140, §111
Application of former sections 514J.1 through 514J.15 to requests for external review filed prior to July 1, 2011; 2011 Acts, ch 101, §22

514J.104 Notice of right to external review.

1. A health carrier shall notify a covered person or the covered person's authorized representative, if known, in writing of the covered person's right to request an external review and include the appropriate statements and information set forth in this chapter at the time the health carrier sends written notice of a final adverse determination.

2. *a.* The notice shall include the following, or substantially equivalent, language:

> We have denied your request for the provision of or payment for a health care service or course of treatment. You may have the right to have our decision reviewed by health care professionals who have no association with us if our decision involved making a judgment as to the medical necessity, appropriateness, health care setting, level of care, or effectiveness of the health care service or treatment you requested by submitting a request for external review to the commissioner of insurance.

b. The notice shall include the current address and contact information for the commissioner as specified in administrative rule.

3. The health carrier shall include in the notice a statement informing the covered person or the covered person's authorized representative, if known, of the following:

a. If the covered person has a medical condition pursuant to which the time frame for completion of a standard external review would seriously jeopardize the life or health of the covered person or would jeopardize the covered person's ability to regain maximum function, the covered person or the covered person's authorized representative may file a request for an expedited external review.

b. If the final adverse determination concerns an admission, availability of care, continued stay, or health care service for which the covered person received emergency services, but has not been discharged from a facility, the covered person or the covered person's authorized representative may request an expedited external review.

c. If the final adverse determination concerns a denial of coverage based on a determination that the recommended or requested health care service or treatment is experimental or investigational as provided in section 514J.109, the covered person may file a request for external review pursuant to section 514J.109. In addition, if the covered person's treating health care professional certifies in writing that the recommended or requested health care service or treatment that is the subject of the recommendation or request would be significantly less effective if not promptly initiated, the covered person or the covered person's authorized representative may request an expedited external review pursuant to section 514J.109, subsection 18.

4. The health carrier shall include with the notice a copy of the descriptions of both the standard and expedited external review procedures the health carrier is required to provide pursuant to section 514J.116, highlighting the provisions in the external review procedures that give the covered person or the covered person's authorized representative the opportunity to submit additional information and including any forms used to process an external review.

5. The health carrier shall also include with the notice an authorization form, or other document approved by the commissioner that complies with the requirements of 45 C.F.R. §164.508 and with Tit. I of the federal Genetic Information Nondiscrimination Act of 2008, Pub. L. No. 110-233, 122 Stat. 881, by which the covered person or the covered person's authorized representative authorizes the health carrier and the covered person's treating health care provider to disclose protected health information, including medical records, concerning the covered person that is pertinent to the external review.

2011 Acts, ch 101, §4

514J.105 Request for external review.

A covered person or the covered person's authorized representative may make a request for an external review of a final adverse determination. Except for a request for an expedited external review, all requests for external review shall be made in writing to the commissioner. The commissioner may prescribe by rule the form and content of external review requests.

2011 Acts, ch 101, §5

514J.106 Exhaustion of internal grievance process — exceptions — expedited external review request.

1. Except as otherwise provided in this section, a request for an external review shall not be made until the covered person or the covered person's authorized representative has exhausted the health carrier's internal grievance process and received a final adverse determination.

2. A covered person or the covered person's authorized representative shall be considered to have exhausted the health carrier's internal grievance process if the covered person or the covered person's authorized representative has filed a grievance involving an adverse determination and, except to the extent the covered person or the covered person's authorized representative requested or agreed to a delay, has not received a written decision on the grievance from the health carrier within thirty days following the date the covered person or the covered person's authorized representative filed the grievance with the health carrier.

3. A covered person or the covered person's authorized representative may file a request for an expedited external review of an adverse determination without exhausting the health carrier's internal grievance process under either of the following circumstances:

a. The covered person has a medical condition pursuant to which the time frame for completion of an internal review of the grievance involving an adverse determination would seriously jeopardize the life or health of the covered person or would jeopardize the covered person's ability to regain maximum function as provided in section 514J.108.

b. The adverse determination involves a denial of coverage based on a determination that the recommended or requested health care service or treatment is experimental or investigational and the covered person's treating physician certifies in writing that the recommended or requested health care service or treatment that is the subject of the adverse

determination would be significantly less effective if not promptly initiated as provided in section 514J.109.

4. A request for an external review of an adverse determination may be made before the covered person or the covered person's authorized representative has exhausted the health carrier's internal grievance procedures whenever the health carrier agrees to waive the exhaustion requirement. If the requirement to exhaust the health carrier's internal grievance procedures is waived, the covered person or the covered person's authorized representative may file a request with the commissioner in writing for a standard external review.

2011 Acts, ch 101, §6
Referred to in §514J.107, 514J.109

514J.107 External review — standard.

1. A covered person or the covered person's authorized representative may file a written request for an external review with the commissioner within four months after any of the following events:

a. The date of receipt of a final adverse determination.

b. The failure of a health carrier to issue a written decision within thirty days following the date the covered person or the covered person's authorized representative filed a grievance involving an adverse determination as provided in section 514J.106, subsection 2.

c. The agreement of the health carrier to waive the requirement that the covered person or the covered person's authorized representative exhaust the health carrier's internal grievance procedures before filing a request for external review of an adverse determination as provided in section 514J.106, subsection 4.

2. Within one business day after the date of receipt of a request for external review, the commissioner shall send a copy of the request to the health carrier.

3. Within five business days following the date of receipt of the external review request from the commissioner, the health carrier shall complete a preliminary review of the request to determine whether:

a. The individual is or was a covered person under the health benefit plan at the time the health care service was recommended or requested.

b. The health care service that is the subject of the adverse determination or of the final adverse determination is a covered service under the covered person's health benefit plan, but for a determination by the health carrier that the health care service is not covered because it does not meet the health carrier's requirements for medical necessity, appropriateness, health care setting, level of care, or effectiveness.

c. The covered person or the covered person's authorized representative has exhausted the health carrier's internal grievance process, unless the covered person or the covered person's authorized representative is not required to exhaust the health carrier's internal grievance process pursuant to section 514J.106 or this section.

d. The covered person or the covered person's authorized representative has provided all the information and forms required to process an external review request.

4. Within one business day after completion of a preliminary review pursuant to subsection 3, the health carrier shall notify the commissioner and the covered person or the covered person's authorized representative in writing whether the request is complete and whether the request is eligible for external review.

a. If the health carrier determines that the request is not complete, the health carrier shall notify the covered person or the covered person's authorized representative and the commissioner in writing that the request is not complete and what information or materials are needed to make the request complete.

b. If the health carrier determines that the request is not eligible for external review, the health carrier shall issue a notice of initial determination in writing informing the covered person or the covered person's authorized representative and the commissioner of that determination and the reasons the request is not eligible for review. The health carrier shall also include a statement in the notice informing the covered person or the covered person's authorized representative that the health carrier's initial determination of ineligibility may be appealed to the commissioner.

5. The commissioner may specify by rule the form required for the health carrier's notice of initial determination and any supporting information to be included in the notice.

6. The commissioner may determine that a request is eligible for external review, notwithstanding a health carrier's initial determination that the request is not eligible, and refer the request for external review. In making this determination, the commissioner's decision shall be made in accordance with the terms of the covered person's health benefit plan and shall be subject to all applicable provisions of this chapter.

7. Within one business day after receipt of notice from a health carrier that a request for external review is eligible for external review or upon a determination by the commissioner that a request is eligible for external review, the commissioner shall do all of the following:

a. Assign an independent review organization from the list of approved independent review organizations maintained by the commissioner and notify the health carrier of the name of the assigned independent review organization. The assignment of an independent review organization shall be done on a random basis among those approved independent review organizations qualified to conduct the particular external review based on the nature of the health care service that is the subject of the adverse determination or final adverse determination and other circumstances, including conflict of interest concerns.

b. Notify the covered person or the covered person's authorized representative in writing that the request is eligible and has been accepted for external review including the name of the assigned independent review organization and that the covered person or the covered person's authorized representative may submit in writing to the independent review organization within five business days following receipt of such notice from the commissioner, additional information that the independent review organization shall consider when conducting the external review. The independent review organization may, in the organization's discretion, accept and consider additional information submitted by the covered person or the covered person's authorized representative after five business days.

8. Within five business days after receipt of notice from the commissioner pursuant to subsection 7, the health carrier shall provide to the independent review organization the documents and any information considered in making the adverse determination or final adverse determination. Failure by the health carrier to provide the documents and information within the time specified shall not delay the conduct of the external review.

9. If the health carrier fails to provide the documents and information within the time specified, the independent review organization may terminate the external review and make a decision to reverse the adverse determination or final adverse determination. Within one business day after making such a decision, the independent review organization shall notify the covered person or the covered person's authorized representative, the health carrier, and the commissioner of its decision.

10. The independent review organization shall review all of the information and documents received pursuant to subsection 8 and any other information submitted in writing to the independent review organization by the covered person or the covered person's authorized representative pursuant to subsection 7, paragraph "*b*". Upon receipt of any information submitted by the covered person or the covered person's authorized representative, the independent review organization shall, within one business day, forward the information to the health carrier. In reaching a decision the independent review organization is not bound by any decisions or conclusions reached during the health carrier's internal grievance process.

11. Upon receipt of information forwarded pursuant to subsection 10, a health carrier may reconsider its adverse determination or final adverse determination that is the subject of the external review.

a. Reconsideration by the health carrier of its determination shall not delay or terminate the external review. The external review shall only be terminated if the health carrier decides, upon completion of its reconsideration, to reverse its determination and provide coverage or payment for the health care service that is the subject of the adverse determination or final adverse determination.

b. Within one business day after making a decision to reverse its adverse determination or final adverse determination, the health carrier shall notify the covered person or the

covered person's authorized representative, the independent review organization, and the commissioner in writing of its decision. The independent review organization shall terminate the external review upon receipt of notice of the health carrier's decision to reverse its adverse determination or final adverse determination.

12. In addition to the documents and information provided to the independent review organization pursuant to this section, the independent review organization shall, to the extent the information or documents are available and the independent review organization considers them appropriate, consider the following in reaching a decision:

a. The covered person's pertinent medical records.

b. The treating health care professional's recommendation.

c. Consulting reports from appropriate health care professionals and other documents submitted by the health carrier, covered person, or the covered person's treating physician or other health care professional.

d. The terms of coverage under the covered person's health benefit plan with the health carrier, to ensure that the independent review organization's decision is not contrary to the terms of coverage under the covered person's health benefit plan with the health carrier.

e. The most appropriate practice guidelines, which shall include applicable evidence-based standards and may include any other practice guidelines developed by the federal government, national or professional medical societies, boards, and associations.

f. Any applicable clinical review criteria developed and used by the health carrier.

g. The opinion of the independent review organization's clinical reviewer after considering the information or documents described in paragraphs "*a*" through "*f*" to the extent the information or documents are available and the clinical reviewer considers them relevant.

13. *a.* Within forty-five days after the date of receipt of a request for an external review, the independent review organization shall provide written notice of its decision to uphold or reverse the adverse determination or final adverse determination of the health carrier to the covered person or the covered person's authorized representative, the health carrier, and the commissioner.

b. The independent review organization shall include in its decision all of the following:

(1) A general description of the reason for the request for external review.

(2) The date the independent review organization received the assignment from the commissioner to conduct the external review.

(3) The date the external review was conducted.

(4) The date of the decision.

(5) The principal reason or reasons for its decision, including what applicable evidence-based standards, if any, were a basis for its decision.

(6) The rationale for its decision.

(7) References to evidence or documentation, including evidence-based standards, considered in reaching its decision.

14. Upon receipt of notice of a decision reversing the adverse determination or final adverse determination of the health carrier, the health carrier shall immediately approve the coverage that was the subject of the determination.

2011 Acts, ch 101, §7; 2016 Acts, ch 1011, §96

Referred to in §514J.108

514J.108 External review — expedited.

1. Notwithstanding section 514J.107, a covered person or the covered person's authorized representative may make an oral or written request to the commissioner for an expedited external review at the time the covered person or the covered person's authorized representative receives any of the following:

a. An adverse determination that involves a medical condition of the covered person for which the time frame for completion of an internal review of a grievance involving an adverse determination would seriously jeopardize the life or health of the covered person or would jeopardize the covered person's ability to regain maximum function.

b. A final adverse determination that involves a medical condition where the time frame

for completion of a standard external review would seriously jeopardize the life or health of the covered person or would jeopardize the covered person's ability to regain maximum function.

c. A final adverse determination that concerns an admission, availability of care, continued stay, or health care service for which the covered person received emergency services, and the covered person has not been discharged from a facility.

2. *a.* Upon receipt of a request for an expedited external review, the commissioner shall immediately send written notice of the request to the health carrier.

b. Immediately upon receipt of notice of a request for expedited external review, the health carrier shall complete a preliminary review of the request to determine whether the request meets the eligibility requirements for external review set forth in section 514J.107, subsection 3, and this section.

c. The health carrier shall then immediately issue a notice of initial determination informing the commissioner and the covered person or the covered person's authorized representative of its eligibility determination including a statement informing the covered person or the covered person's authorized representative of the right to appeal that determination to the commissioner.

d. The commissioner may specify by rule the form required for the health carrier's notice of initial determination and any supporting information to be included in the notice.

3. The commissioner may determine that a request is eligible for expedited external review, notwithstanding a health carrier's initial determination that the request is not eligible. In making a determination, the commissioner's decision shall be made in accordance with the terms of the covered person's health benefit plan and shall be subject to all applicable provisions of this chapter. The commissioner shall make a determination pursuant to this subsection as expeditiously as possible.

4. *a.* Upon receipt of notice from a health carrier that a request is eligible for expedited external review or upon a determination by the commissioner that a request is eligible for expedited external review, the commissioner shall immediately assign an independent review organization from the list of approved independent review organizations maintained by the commissioner to conduct the expedited external review. The commissioner shall then immediately notify the health carrier and the covered person or the covered person's authorized representative of the name of the assigned independent review organization.

b. The assignment of an independent review organization shall be done on a random basis among those approved independent review organizations qualified to conduct the particular external review based on the nature of the health care service that is the subject of the adverse determination or final adverse determination and other circumstances, including conflict of interest concerns.

5. Upon receiving notice of the independent review organization assigned to conduct the expedited external review, the health carrier shall provide or transmit all necessary documents and information considered in making the adverse determination or final adverse determination to the independent review organization electronically or by telephone or facsimile or any other available expeditious method.

6. The independent review organization is not bound by any decisions or conclusions reached during the health carrier's internal grievance process. The independent review organization shall consider the documents and information provided by the health carrier, and to the extent the information or documents are available and the independent review organization considers them appropriate, shall consider the following in reaching a decision:

a. The covered person's pertinent medical records.

b. The treating health care professional's recommendation.

c. Consulting reports from appropriate health care professionals and other documents submitted by the health carrier, covered person or the covered person's authorized representative, or the covered person's treating physician or other health care professional.

d. The terms of coverage under the covered person's health benefit plan with the health carrier, to ensure that the independent review organization's decision is not contrary to the terms of coverage under the covered person's health benefit plan with the health carrier.

e. The most appropriate practice guidelines, which shall include applicable

evidence-based standards and may include any other practice guidelines developed by the federal government, national or professional medical societies, boards, and associations.

f. Any applicable clinical review criteria developed and used by the health carrier.

g. The opinion of the independent review organization's clinical reviewer after considering the information or documents described in paragraphs "*a*" through "*f*" to the extent the information or documents are available and the clinical reviewer considers them relevant.

7. *a.* As expeditiously as the covered person's medical condition or circumstances require, but in no event more than seventy-two hours after the date of receipt of an eligible request for expedited external review, the assigned independent review organization shall do all of the following:

(1) Make a decision to uphold or reverse the adverse determination or final adverse determination of the health carrier.

(2) Notify the covered person or the covered person's authorized representative, the health carrier, and the commissioner of its decision.

b. If the notice given by the independent review organization pursuant to paragraph "*a*" was not in writing, within forty-eight hours after providing that notice, the independent review organization shall provide written confirmation of the decision to the covered person or the covered person's authorized representative, the health carrier, and the commissioner that includes the information set forth in section 514J.107, subsection 13, paragraph "*b*".

c. Upon receipt of the notice of decision by an independent review organization pursuant to paragraph "*a*" reversing the adverse determination or final adverse determination, the health carrier shall immediately approve the coverage that was the subject of the adverse determination or final adverse determination.

2011 Acts, ch 101, §8; 2012 Acts, ch 1021, §99
Referred to in §514J.106, 514J.109

514J.109 External review of experimental or investigational treatment adverse determinations.

1. Within four months after the date of receipt of a notice of an adverse determination or final adverse determination that involves a denial of coverage based on a determination that the health care service or treatment recommended or requested is experimental or investigational, a covered person or the covered person's authorized representative may file a request for external review with the commissioner.

2. Within one business day after the date of receipt of the request, the commissioner shall notify the health carrier of the request.

3. Within five business days following the date of receipt of notice of a request for external review pursuant to this section, the health carrier shall complete a preliminary review of the request to determine whether:

a. The individual is or was a covered person under the health benefit plan at the time the health care service or treatment was recommended or requested.

b. The recommended or requested health care service or treatment that is the subject of the adverse determination or final adverse determination meets the following conditions:

(1) Is a covered benefit under the covered person's health benefit plan except for the health carrier's determination that the service or treatment is experimental or investigational for a particular medical condition.

(2) Is not explicitly listed as an excluded benefit under the covered person's health benefit plan with the health carrier.

c. The covered person's treating physician has certified that one of the following situations is applicable:

(1) Standard health care services or treatments have not been effective in improving the condition of the covered person.

(2) Standard health care services or treatments are not medically appropriate for the covered person.

(3) There is no available standard health care service or treatment covered by the health

carrier that is more beneficial than the recommended or requested health care service or treatment sought.

d. The covered person's treating physician has certified in writing one of the following:

(1) That the recommended or requested health care service or treatment that is the subject of the adverse determination or final adverse determination is likely to be more beneficial to the covered person, in the physician's opinion, than any available standard health care services or treatments.

(2) The physician is a licensed, board-certified, or board-eligible physician qualified to practice in the area of medicine appropriate to treat the covered person's condition, and that scientifically valid studies using accepted protocols demonstrate that the health care service or treatment recommended or requested that is the subject of the adverse determination or final adverse determination is likely to be more beneficial to the covered person than any available standard health care services or treatments.

e. The covered person or the covered person's authorized representative has exhausted the health carrier's internal grievance process, unless the covered person or the covered person's authorized representative is not required to exhaust the health carrier's internal grievance process pursuant to section 514J.106 or 514J.108.

f. The covered person or the covered person's authorized representative has provided all the information and forms required by the commissioner that are necessary to process an external review request pursuant to this section.

4. Within one business day after completion of the preliminary review pursuant to subsection 3, the health carrier shall notify the commissioner and the covered person or the covered person's authorized representative in writing whether the request is complete and whether the request is eligible for external review pursuant to this section. If the request is not complete, the health carrier shall notify the commissioner and the covered person or the covered person's authorized representative in writing and include in the notice what information or materials are needed to make the request complete. If the request is not eligible for external review, the health carrier shall notify the covered person or the covered person's authorized representative and the commissioner in writing and include in the notice the reasons for its ineligibility.

5. The commissioner may specify by rule the form required for the health carrier's notice of initial determination and any supporting information to be included in the notice. The notice of initial determination shall include a statement informing the covered person or the covered person's authorized representative that a health carrier's initial determination that the external review request is ineligible for review may be appealed to the commissioner.

6. The commissioner may determine that a request is eligible for external review pursuant to this section, notwithstanding a health carrier's initial determination that the request is ineligible, and require that it be referred for external review. In making this determination, the commissioner's decision shall be made in accordance with the terms of the covered person's health benefit plan and shall be subject to all applicable provisions of this chapter.

7. Within one business day after receipt of the notice from the health carrier that the external review request is eligible for external review or upon a determination by the commissioner that a request is eligible for external review, the commissioner shall do all of the following:

a. Assign an independent review organization from the list of approved independent review organizations maintained by the commissioner and notify the health carrier of the name of the assigned independent review organization.

b. Notify the covered person or the covered person's authorized representative in writing of the request's eligibility and acceptance for external review and the name of the assigned independent review organization and that the covered person or the covered person's authorized representative may submit in writing to the independent review organization, within five business days following the date of receipt of such notice, additional information that the independent review organization shall consider when conducting the external review. The independent review organization may, in the organization's discretion, accept

and consider additional information submitted by the covered person or the covered person's authorized representative after five business days.

8. Within one business day after receipt of the notice of assignment to conduct the external review, the assigned independent review organization shall select one or more clinical reviewers, as it determines is appropriate pursuant to subsection 9 to conduct the external review.

9. In selecting clinical reviewers, the independent review organization shall select physicians or other health care professionals who meet the minimum qualifications described in this chapter and, through clinical experience in the past three years, are experts in the treatment of the covered person's condition and knowledgeable about the recommended or requested health care service or treatment that is the subject of the adverse determination or the final adverse determination. Neither the covered person or the covered person's authorized representative nor the health carrier shall choose or control the choice of the clinical reviewers selected to conduct the external review.

10. Each clinical reviewer selected shall provide a written opinion to the independent review organization regarding whether the recommended or requested health care service or treatment should be covered. Each clinical reviewer shall review all of the information and documents received and any other information submitted in writing by the covered person or the covered person's authorized representative. In reaching an opinion, a clinical reviewer is not bound by any decisions or conclusions reached during the health carrier's internal grievance process.

11. Within five business days after receipt of notice of the assignment of the independent review organization, the health carrier shall provide to the independent review organization the documents and any information considered in making the adverse determination or the final adverse determination. Failure by the health carrier to provide the documents and information within the time specified shall not delay the conduct of the external review.

12. If the health carrier fails to provide the documents and information within the time specified, the independent review organization may terminate the external review and make a decision to reverse the adverse determination or final adverse determination. Within one business day after making such a decision, the independent review organization shall notify the covered person or the covered person's authorized representative, the health carrier, and the commissioner.

13. Within one business day after the receipt of any information submitted by the covered person or the covered person's authorized representative, the independent review organization shall forward the information to the health carrier. Upon receipt of the forwarded information, the health carrier may reconsider its adverse determination or final adverse determination that is the subject of the external review.

a. Reconsideration by the health carrier of its adverse determination or final adverse determination shall not delay or terminate the external review. The external review shall only be terminated if the health carrier decides, upon completion of its reconsideration, to reverse its determination and provide coverage or payment for the recommended or requested health care service or treatment that is the subject of the determination.

b. Within one business day after making a decision to reverse its determination, the health carrier shall notify the covered person or the covered person's authorized representative, the independent review organization, and the commissioner in writing of its decision. The independent review organization shall terminate the external review upon receipt of such notice from the health carrier.

14. *a.* Within twenty days after being selected to conduct the external review, each clinical reviewer shall provide an opinion to the assigned independent review organization regarding whether the recommended or requested health care service or treatment should be covered pursuant to this section.

b. Each clinical reviewer's opinion shall be in writing and include the following information:

(1) A description of the covered person's medical condition.

(2) A description of the indicators relevant to determining whether there is sufficient evidence to demonstrate that the recommended or requested health care service or treatment

is likely to be more beneficial to the covered person than any available standard health care services or treatments and that the adverse risks of the recommended or requested health care service or treatment would not be substantially increased over those of available standard health care services or treatments.

(3) A description and analysis of any medical or scientific evidence considered in reaching the opinion.

(4) A description and analysis of any applicable evidence-based standards.

(5) Information on whether the reviewer's rationale for the opinion is based on either of the factors described in subsection 15, paragraph *"e"*.

15. In addition to the documents and information provided, each clinical reviewer, to the extent the information or documents are available and the reviewer considers them appropriate, shall consider all of the following in reaching an opinion:

a. The covered person's pertinent medical records.

b. The treating physician's recommendation or request.

c. Consulting reports from appropriate health care professionals and other documents submitted by the health carrier, the covered person or the covered person's authorized representative, or the covered person's treating physician or other health care professional.

d. The terms of coverage under the covered person's health benefit plan with the health carrier to ensure that, but for the health carrier's determination that the recommended or requested health care service or treatment that is the subject of the opinion is experimental or investigational, the reviewer's opinion is not contrary to the terms of coverage under the covered person's health benefit plan with the health carrier.

e. Whether either of the following factors is applicable:

(1) The recommended or requested health care service or treatment has been approved by the federal food and drug administration, if applicable, for the condition.

(2) Medical or scientific evidence or evidence-based standards demonstrate that the expected benefits of the recommended or requested health care service or treatment is likely to be more beneficial to the covered person than any available standard health care service or treatment and the adverse risks of the recommended or requested health care service or treatment would not be substantially increased over those of available standard health care services or treatments.

16. *a.* If a majority of the clinical reviewers opine that the recommended or requested health care service or treatment should be covered, the independent review organization shall make a decision to reverse the health carrier's adverse determination or final adverse determination.

b. If a majority of the clinical reviewers opine that the recommended or requested health care service or treatment should not be covered, the independent review organization shall make a decision to uphold the health carrier's adverse determination or final adverse determination.

c. If the clinical reviewers are evenly split as to whether the recommended or requested health care service or treatment should be covered, the independent review organization shall obtain the opinion of an additional clinical reviewer in order for the independent review organization to make a decision based on the opinions of a majority of the clinical reviewers.

d. The additional clinical reviewer selected shall use the same information to reach an opinion as the clinical reviewers who have already submitted their opinions.

e. The selection of an additional clinical reviewer under this subsection shall not extend the time within which the assigned independent review organization is required to make a decision based on the opinions of the clinical reviewers for the external review.

17. Within twenty days after it receives the opinion of each clinical reviewer, the assigned independent review organization shall make a decision based on the opinions of the clinical reviewer or reviewers, to uphold or reverse the adverse determination or final adverse determination of the health carrier and provide written notice of the decision to the covered person or the covered person's authorized representative, the health carrier, and the commissioner.

18. *a.* A covered person or the covered person's authorized representative may make a written or oral request to the commissioner for an expedited external review of the adverse

determination or final adverse determination pursuant to this subsection if the covered person's treating physician certifies, in writing, that the recommended or requested health care service or treatment that is the subject of the request would be significantly less effective if not promptly initiated.

(1) Upon receipt of a request for an expedited external review pursuant to this subsection, the commissioner shall immediately notify the health carrier.

(2) Upon receipt of notice of the request for expedited external review, the health carrier shall immediately determine whether the request is eligible for external review as provided in subsection 3, paragraphs *"a"* through *"f"*, and shall immediately issue a notice of initial determination informing the commissioner and the covered person or the covered person's authorized representative of its eligibility determination. The notice of initial determination of eligibility issued by a health carrier shall include a statement informing the covered person or the covered person's authorized representative that the health carrier's initial determination that the external review request is ineligible for expedited external review may be appealed to the commissioner.

(3) The commissioner may determine that a request is eligible for external review, notwithstanding a health carrier's initial determination that the request is not eligible, and refer the request for external review. In making this determination, the commissioner's decision shall be made in accordance with the terms of the covered person's health benefit plan and shall be subject to all applicable provisions of this chapter.

b. (1) Upon receipt of the notice of initial determination that the request is eligible for expedited external review or upon a determination by the commissioner that the request is eligible for expedited external review, the commissioner shall immediately assign an independent review organization to conduct the expedited external review, from the list of approved independent review organizations maintained by the commissioner, and notify the health carrier of the name of the assigned independent review organization.

(2) Upon receipt of notice of the independent review organization assigned to conduct an expedited external review, the health carrier shall provide or transmit all necessary documents and information considered in making the adverse determination or final adverse determination to the independent review organization electronically or by telephone or facsimile or any other available expeditious method.

(3) A clinical reviewer or clinical reviewers shall be selected immediately by the independent review organization and shall provide an opinion orally or in writing to the assigned independent review organization as expeditiously as the covered person's medical condition or circumstances require, but in no event more than five calendar days after being selected. If the opinion provided was not in writing, within forty-eight hours following the date the opinion was provided, the clinical reviewer shall provide written confirmation of the opinion to the assigned independent review organization and include all required information in support of the opinion.

c. Within forty-eight hours after the date of receipt of the opinion of each clinical reviewer, the assigned independent review organization shall make a decision based on the opinions of the clinical reviewer or reviewers as to whether to reverse or uphold the adverse determination or final adverse determination and provide notice of the decision orally or in writing to the covered person or the covered person's authorized representative, the health carrier, and the commissioner. If the notice was provided orally, within forty-eight hours after the date of providing that notice, the independent review organization shall provide written confirmation of the decision to the covered person or the covered person's authorized representative, the health carrier, and the commissioner.

d. The independent review organization shall include in the notice of its decision all of the following:

(1) A general description of the reason for the request for an expedited external review.

(2) The written opinion of each clinical reviewer, including the recommendation of each clinical reviewer as to whether the recommended or requested health care service or treatment should be covered and the rationale for the reviewer's recommendation.

(3) The date the independent review organization was assigned by the commissioner to conduct the expedited external review.

(4) The date the expedited external review was conducted.
(5) The date of its decision.
(6) The principal reason or reasons for its decision.
(7) The rationale for its decision.

19. Upon receipt of notice of a decision of the independent review organization reversing an adverse determination or final adverse determination, the health carrier shall immediately approve coverage of the recommended or requested health care service or treatment that was the subject of the determination.

2011 Acts, ch 101, §9; 2011 Acts, ch 131, §71, 158
Referred to in §514J.104, 514J.106

514J.110 Effect of external review decision.

1. An external review decision pursuant to this chapter is binding on the health carrier except to the extent the health carrier has other remedies available under applicable Iowa law. The external review process shall not be considered a contested case under chapter 17A.

2. *a.* A covered person or the covered person's authorized representative may appeal the external review decision made by an independent review organization by filing a petition for judicial review either in Polk county district court or in the district court in the county in which the covered person resides. The petition for judicial review must be filed within fifteen business days after the issuance of the review decision. The petition shall name the covered person or the covered person's authorized representative, or the person's health care provider as the petitioner. The respondent shall be the health carrier. The petition shall not name the independent review organization as a party.

b. The commissioner shall not be named as a respondent unless the petitioner alleges action or inaction by the commissioner under the standards articulated in section 17A.19, subsection 10. Allegations against the commissioner under section 17A.19, subsection 10, shall be stated with particularity. The commissioner may, upon motion, intervene in the judicial review proceeding. The findings of fact by the independent review organization conducting the external review are conclusive and binding on appeal.

3. The health carrier shall follow and comply with the decision of the court on appeal. The health carrier or treating health care provider shall not be subject to any penalties, sanctions, or award of damages for following and complying in good faith with the external review decision of the independent review organization or the decision of the court on appeal.

4. The covered person or the covered person's authorized representative may bring an action in Polk county district court or in the district court in the county in which the covered person resides to enforce the external review decision of the independent review organization or the decision of the court on appeal.

5. A covered person or the covered person's authorized representative shall not file a subsequent request for external review involving any determination for which the covered person or the covered person's authorized representative has already received an external review decision.

6. If a covered person dies before the completion of the external review process, the process shall continue to completion if there is potential liability of a health carrier to the estate of the covered person.

7. *a.* If a covered person who has already received health care services under a health benefit plan requests external review of the plan's adverse determination or final adverse determination and changes to another health benefit plan before the external review process is completed, the health carrier whose coverage was in effect at the time the health care service was received is responsible for completing the external review process.

b. If a covered person who has not yet received health care services requests external review of a health benefit plan's adverse determination or final adverse determination and then changes to another plan prior to receipt of the health care services and completion of the external review process, the external review process shall begin anew with the

covered person's current health carrier. In this instance, the external review process shall be conducted as an expedited external review.

2011 Acts, ch 101, §10

514J.111 Approval of independent review organizations.

1. The commissioner shall approve applications submitted by independent review organizations to conduct external reviews under this chapter. The commissioner may retain an outside expert to perform reviews of such applications.

2. In order to be eligible for approval by the commissioner to conduct external reviews, an independent review organization shall meet all of the following requirements:

a. Be accredited by a nationally recognized private accrediting entity that the commissioner determines has independent review organization accreditation standards that are equivalent to or exceed the minimum qualifications for independent review organizations established in this chapter.

b. Submit an application in a form and format as directed by the commissioner.

c. Meet the minimum qualifications contained in section 514J.112.

3. The commissioner may approve independent review organizations that are not accredited by a nationally recognized private accrediting entity if there are no acceptable nationally recognized private accrediting entities providing independent review organization accreditation.

4. The commissioner shall develop an application form for initially approving and for reapproving independent review organizations to conduct external reviews.

5. The commissioner may charge an initial application fee and a renewal fee as specified by rule.

6. The approval of an independent review organization to conduct external reviews by the commissioner pursuant to this chapter is effective for two years, unless the commissioner determines that the independent review organization is not satisfying the minimum qualifications of this chapter. If the commissioner determines that an independent review organization has lost its accreditation or no longer satisfies the minimum requirements established under this chapter, the commissioner shall terminate approval of the independent review organization to conduct external reviews and remove the independent review organization from the list of independent review organizations approved to conduct external reviews that is maintained by the commissioner.

7. The commissioner shall maintain a list of currently approved independent review organizations.

2011 Acts, ch 101, §11

514J.112 Minimum qualifications for independent review organizations.

1. To be approved to conduct external reviews pursuant to this chapter, an independent review organization shall have and maintain written policies and procedures that govern all aspects of both the standard external review process and the expedited external review process and that include, at a minimum, all of the following:

a. A quality assurance mechanism that does all of the following:

(1) Ensures that external reviews are conducted within the specified time frames and that required notices are provided in a timely manner.

(2) Ensures the selection of qualified and impartial clinical reviewers to conduct external reviews on behalf of the independent review organization and suitable matching of reviewers to specific cases and that the independent review organization employs or contracts with an adequate number of clinical reviewers to meet this objective.

(3) Ensures the confidentiality of medical and treatment records and clinical review criteria.

(4) Establishes and maintains written procedures to ensure that the independent review organization is unbiased in addition to any other procedures required under this section.

(5) Ensures that any person employed by or under contract with the independent review organization adheres to the requirements of this chapter.

b. A toll-free telephone service to receive information related to external reviews

twenty-four hours a day, seven days a week, that is capable of accepting, recording, or providing appropriate instruction to incoming telephone callers outside normal business hours.

c. An agreement and a system to maintain required records and provide access to those records by the commissioner.

2. Each clinical reviewer assigned by an independent review organization to conduct external reviews shall be a physician or other appropriate health care professional who meets all of the following minimum qualifications:

a. Is an expert in the treatment of the covered person's medical condition that is the subject of the external review.

b. Is knowledgeable about the recommended or requested health care service or treatment through recent or current actual clinical experience treating patients with the same or similar medical condition as the covered person.

c. Holds a nonrestricted license in a state of the United States and, for physicians, a current certification by a recognized American medical specialty board in the area or areas appropriate to the subject of the external review.

d. Has no history of disciplinary actions or sanctions, including loss of staff privileges or participation restrictions, that have been taken or are pending by any hospital, governmental agency or unit, or regulatory body that raise a substantial question as to the clinical reviewer's physical, mental, or professional competence or moral character.

3. An independent review organization shall not own or control, be a subsidiary of, or in any way be owned or controlled by, or exercise control with, a health benefit plan, a national, state, or local trade association of health benefit plans, or a national, state, or local trade association of health care providers.

4. Neither the independent review organization selected to conduct an external review nor any clinical reviewer assigned by the independent organization to conduct an external review shall have a material professional, familial, or financial conflict of interest with any of the following:

a. The health carrier that is the subject of the external review.

b. The covered person whose health care service or treatment is the subject of the external review or the covered person's authorized representative.

c. Any officer, director, or management employee of the health carrier that is the subject of the external review.

d. The health care professional or the health care professional's medical group or independent practice association recommending the health care service or treatment that is the subject of the external review.

e. The facility at which the recommended health care service or treatment would be provided.

f. The developer or manufacturer of the principal drug, device, procedure, or other therapy being recommended for the covered person whose health care service treatment is the subject of the external review.

5. In determining whether an independent review organization or a clinical reviewer of the independent review organization has a material professional, familial, or financial conflict of interest as provided in subsection 4, the commissioner shall take into consideration situations where the independent review organization to be assigned to conduct an external review of a specified case or a clinical reviewer to be assigned by the independent review organization to conduct an external review of a specified case may have an apparent professional, familial, or financial relationship or connection with a person described in subsection 4, but the characteristics of that relationship or connection are such that they do not constitute a material professional, familial, or financial conflict of interest that would prohibit selection of the independent review organization or the clinical reviewer to conduct the external review.

6. *a.* An independent review organization that is accredited by a nationally recognized private accrediting entity that has independent review accreditation standards that the commissioner has determined are equivalent to or exceed the minimum qualifications of this section shall be presumed to be in compliance with the requirements of this section.

b. The commissioner shall initially and periodically review the standards of each nationally recognized private accrediting entity that provides accreditation to independent review organizations to determine whether the accrediting entity's standards are, and continue to be, equivalent to or exceed the minimum qualifications established under this section. The commissioner may accept a review of those standards conducted by the national association of insurance commissioners for the purpose of making a determination under this subsection.

c. Upon request, a nationally recognized private accrediting entity shall make its current independent review organization accreditation standards available to the commissioner or to the national association of insurance commissioners in order for the commissioner to determine if the accrediting entity's standards are equivalent to or exceed the minimum qualifications established under this section. The commissioner may exclude consideration of accreditation of independent review organizations by any private accrediting entity whose standards have not been reviewed by the national association of insurance commissioners.

2011 Acts, ch 101, §12
Referred to in §514J.111

514J.113 Immunity for independent review organizations.

An independent review organization, a clinical reviewer working on behalf of an independent review organization, or an employee, agent, or contractor of an independent review organization shall not be liable in damages to any person for any opinions rendered or acts or omissions performed within the scope of the duties of the organization, the clinical reviewer, or an employee, agent, or contractor of the organization under this chapter during, or upon completion of, an external review conducted pursuant to this chapter, unless the opinion was rendered or the act or omission was performed in bad faith or involved gross negligence.

2011 Acts, ch 101, §13

514J.114 External review reporting requirements.

1. *a.* An independent review organization assigned to conduct an external review shall maintain written records in the aggregate by state and by health carrier of all requests for external review for which it conducted an external review during a calendar year.

b. Each independent review organization required to maintain written records pursuant to this section shall submit to the commissioner, upon request, a report in the format specified by the commissioner. The report shall include in the aggregate by state and by health carrier all of the following:

(1) The total number of requests for external review assigned to the independent review organization.

(2) The average length of time for resolution of each request for external review assigned to the independent review organization.

(3) A summary of the types of coverages or cases for which an external review was requested, in the format required by the commissioner by rule.

(4) Any other information required by the commissioner.

c. The independent review organization shall retain the written records for at least three years.

2. *a.* Each health carrier shall maintain written records in the aggregate by state and by type of health benefit plan offered by the health carrier of all requests for external review that the health carrier receives notice of from the commissioner pursuant to this chapter.

b. Each health carrier required to maintain written records of requests for external review pursuant to this subsection shall submit to the commissioner, upon request, a report in the format specified by the commissioner. The report shall include in the aggregate by state and by type of health benefit plan offered all of the following:

(1) The total number of requests for external review of the health carrier's adverse determinations and final adverse determinations.

(2) Of the total number of requests for external review, the number of requests determined eligible for external review.

(3) The number of requests for external review resolved and, of those resolved, the number resolved upholding the adverse determination or final adverse determination of the health carrier and the number resolved reversing the adverse determination or final adverse determination of the health carrier.

(4) The number of external reviews that were terminated as the result of a reconsideration by the health carrier of its adverse determination or final adverse determination after the receipt of additional information from the covered person or the covered person's authorized representative.

(5) Any other information the commissioner may request or require.

c. The health carrier shall retain the written records for at least three years.

2011 Acts, ch 101, §14

514J.115 Expenses of external review.

The health carrier against which a request for a standard external review or an expedited external review is filed shall pay the costs of retaining an independent review organization to conduct the external review.

2011 Acts, ch 101, §15

514J.116 Disclosure requirements.

1. Each health carrier shall include a description of the external review procedures contained in this chapter in or attached to any policy, certificate, membership booklet, outline of coverage, or other evidence of coverage that is provided to a covered person. The description shall be in a format prescribed by the commissioner by rule.

2. The description required by subsection 1 shall include a statement that informs the covered person of the right of the covered person to file a request for an external review of an adverse determination or final adverse determination of the health carrier with the commissioner. The statement shall explain that external review is available when the adverse determination or final adverse determination involves an issue of medical necessity, appropriateness, health care setting, level of care, or effectiveness. The statement shall include the telephone number and address of the commissioner. The statement shall also inform the covered person that when filing a request for external review, the covered person will be required to authorize the release of any medical records of the covered person that may be required to be reviewed for the purpose of reaching a decision on the request for external review.

2011 Acts, ch 101, §16

Referred to in §514J.104, 514J.120

514J.117 Rulemaking authority.

The commissioner may adopt rules pursuant to chapter 17A to carry out the provisions of this chapter.

2011 Acts, ch 101, §17

514J.118 Severability.

If any provision of this chapter, or the application of the provision to any person or circumstance is held invalid, the remainder of the chapter, and the application of the provision to persons or circumstances other than those to which it is held invalid, shall not be affected.

2011 Acts, ch 101, §18

514J.119 Penalties.

A person who fails to comply with the provisions of this chapter or the rules adopted pursuant to this chapter is subject to the penalties provided under chapter 507B.

2011 Acts, ch 101, §19

514J.120 Applicability.

1. This chapter applies to all requests for external review filed on or after July 1, 2011.

2. Section 514J.116 applies to all health benefit plans delivered, issued for delivery, continued, or renewed in this state on or after July 1, 2011.

2011 Acts, ch 101, §20

Application of former sections 514J.1 through 514J.15 to requests for external review filed prior to July 1, 2011; 2011 Acts, ch 101, §22

CHAPTER 514K

HEALTH CARE PLAN INFORMATION

Referred to in §87.4, 296.7, 331.301, 364.4, 505.28, 505.29, 669.14, 670.7

514K.1 Health care plan disclosures — information to enrollees.
514K.2 Health carrier disclosures — public internet sites.

514K.1 Health care plan disclosures — information to enrollees.

1. A health maintenance organization or an insurer using a preferred provider arrangement shall provide to each of its enrollees at the time of enrollment, and shall make available to each prospective enrollee upon request, written information as required by rules adopted by the commissioner. The information required by rule shall include but not be limited to all of the following:

a. A description of the plan's benefits and exclusions.

b. Enrollee cost-sharing requirements.

c. A list of participating providers.

d. Disclosure of the existence of any drug formularies used and, upon request, information about the specific drugs included in the formulary.

e. An explanation for accessing emergency care services.

f. Any policies addressing investigational or experimental treatments.

g. The methodologies used to compensate providers.

h. Performance measures as determined by the commissioner and the director.

i. Information on how to access internal and external grievance procedures.

2. The commissioner shall annually publish a consumer guide providing a comparison by plan on performance measures, network composition, and other key information to enable consumers to better understand plan differences.

99 Acts, ch 41, §21; 2017 Acts, ch 148, §95, 96

514K.2 Health carrier disclosures — public internet sites.

1. A carrier that provides small group health coverage pursuant to chapter 513B or individual health coverage pursuant to chapter 513C and that offers for sale a policy, contract, or plan that covers the essential health benefits required pursuant to section 1302 of the federal Patient Protection and Affordable Care Act, Pub. L. No. 111-148, and its implementing regulations, shall provide to each of its enrollees at the time of enrollment, and shall make available to prospective enrollees and enrollees, insurance producers licensed under chapter 522B, and the general public, on the carrier's internet site, all of the following information in a clear and understandable form for use in comparing policies, contracts, and plans, and coverage and premiums:

a. Any items or services, including prescription drugs, that have a coinsurance requirement where the cost-sharing required depends on the cost of the item or service.

b. The specific prescription drugs available on the carrier's formulary, the specific prescription drugs covered when furnished by a physician or clinic, and any clinical prerequisites or prior authorization requirements for coverage of the drugs.

c. How medications will specifically be included in or excluded from the deductible, including a description of all out-of-pocket costs that may not apply to the deductible for a prescription drug.

2. A carrier that provides a summary of benefits and coverage to its enrollees in accordance with 26 C.F.R. §54.9815-2715, 29 C.F.R. §2590.715-2715, and 45 C.F.R. §147.200

is deemed to be in compliance with this section unless the commissioner of insurance determines that these federal regulations, or the successors to any of these federal regulations, fail to require the information required pursuant to this section in a clear and understandable form.

2016 Acts, ch 1122, §6, 14

Section is applicable to health insurance policies, contracts, or plans that are delivered, issued for delivery, continued, or renewed on or after January 1, 2017; 2016 Acts, ch 1122, §14

CHAPTER 514L

UNIFORM PRESCRIPTION DRUG INFORMATION CARD

Referred to in §87.4, 296.7, 331.301, 364.4, 505.28, 505.29, 669.14, 670.7

514L.1 Definitions.
514L.2 Uniform prescription drug information cards.
514L.3 Application — enforcement.

514L.1 Definitions.

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

1. *"Guide"* means the most recent national council for prescription drug programs pharmacy identification card implementation guide, or its successor.

2. *"Prescription drug"* means prescription drug as defined in section 155A.3 and includes a device as defined in section 155A.3.

3. *"Provider of third-party payment or prepayment of prescription drug expenses"* or *"provider"* means a provider of an individual or group policy of accident or health insurance or an individual or group hospital or health care service contract issued pursuant to chapter 509, 514, or 514A, a provider of a plan established pursuant to chapter 509A for public employees, a provider of an individual or group health maintenance organization contract issued and regulated under chapter 514B, a provider of a preferred provider contract issued pursuant to chapter 514F, a provider of a self-insured multiple employer welfare arrangement, and any other entity providing health insurance or health benefits which provide for payment or prepayment of prescription drug expenses coverage subject to state insurance regulation.

2001 Acts, ch 77, §1; 2017 Acts, ch 148, §97

514L.2 Uniform prescription drug information cards.

1. *a.* A provider of third-party payment or prepayment of prescription drug expenses, including the provider's agents or contractors and pharmacy benefits managers, that issues a card or other technology for claims processing and an administrator of the payor, excluding administrators of self-funded employer sponsored health benefit plans qualified under the federal Employee Retirement Income Security Act of 1974, shall issue to its insureds a card or other technology containing uniform prescription drug information. The commissioner of insurance shall adopt rules for the uniform prescription drug information card or technology applicable to those entities subject to regulation by the commissioner of insurance. The rules shall require at least both of the following regarding the card or technology:

(1) With respect to the information required, be consistent with the guide, except that the address of the pharmacy benefits manager shall not be required.

(2) With respect to the location of the information required, be substantially consistent with the guide.

b. Any information on the card shall be formatted and arranged in a manner that corresponds to the current content and format required by the provider for processing of claims.

2. A new uniform prescription drug information card or technology, as required pursuant to subsection 1, shall be issued by a provider of third-party payment or prepayment or

the provider's agents or contractors or pharmacy benefits managers upon enrollment and reissued upon any change in the insured's coverage that impacts data contained on the card or technology. The commissioner of insurance shall review the national council for prescription drug programs implementation guide or successor document on an ongoing basis to determine changes, and shall modify or adopt rules as determined appropriate.

3. The card or other technology may be used for any health insurance or health benefits coverage and nothing in this chapter shall require a provider to issue a separate card for prescription drug coverage if the card or other technology can accommodate the information necessary to process claims.

4. This chapter shall not apply to prescription drug coverage provided through or in conjunction with any of the following:

a. Accident-only or disability income insurance coverage.

b. Hospital confinement indemnity coverage.

c. Coverage issued as a supplement to liability insurance.

d. Basic hospital and medical-surgical expense coverage.

e. Liability insurance, including general liability insurance and automobile liability insurance.

f. Workers' compensation or similar insurance.

g. Automobile medical payment insurance.

h. Credit only insurance.

i. Coverage for on-site medical clinic care.

j. Dental or vision coverage.

k. Benefits for long-term care, nursing home care, or community-based care.

l. Short-term hospital, medical, or major medical coverage.

m. Medicare supplemental as defined pursuant to 42 U.S.C. §1395ss(g)(1), coverage supplemental to the coverage provided under 10 U.S.C. §1071 – 1109, and similar coverage that is supplemental to coverage under group health insurance coverage as defined by the commissioner of insurance.

n. Any other similar limited benefits as defined by the commissioner of insurance.

2001 Acts, ch 77, §2; 2017 Acts, ch 148, §98

514L.3 Application — enforcement.

1. A health insurance or health benefits policy or contract issued and delivered, amended, or renewed on or after July 1, 2003, shall comply with this chapter.

2. The commissioner of insurance shall enforce this chapter and shall adopt rules necessary to implement this chapter.

2001 Acts, ch 77, §3

CHAPTER 515

INSURANCE OTHER THAN LIFE

Referred to in §87.4, 235F.1, 296.7, 321H.3, 321N.4, 331.301, 364.4, 423.3, 490.902, 491.33, 505.28, 505.29, 506.14, 507.1, 508C.3, 509.5, 514A.1, 515B.1, 515B.2, 515B.9, 515C.10, 515F.32, 515G.1, 518.15, 518A.40, 519.9, 521.1, 521A.1, 521A.2, 521A.14, 521E.1, 521F.2, 521G.2, 521G.3, 522B.1, 533C.103, 535.8, 537.7103, 636.14, 636.16, 669.14, 670.7

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SUBCHAPTER I

INCORPORATION — RESTRICTIONS

515.1 Applicability.

Corporations formed for the purpose of insurance, other than life insurance, shall be governed by the provisions of chapter 490, chapter 491, or chapter 504, except as modified by the provisions of this chapter. The provisions of this chapter relative to insurance companies shall apply to all such companies, partnerships, associations, or individuals, except those associations governed by the provisions of chapter 518 or 518A, companies governed by the provisions of chapter 508 or 514, societies governed by the provisions of chapter 512B, and organizations governed by the provisions of chapter 514B, whether incorporated or not.

[C73, §1122; C97, §1684; C24, 27, 31, 35, 39, §**8896;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.1]

85 Acts, ch 239, §5; 89 Acts, ch 288, §192; 2004 Acts, ch 1049, §191; 2004 Acts, ch 1175, §393; 2008 Acts, ch 1074, §3

Referred to in §515.10

515.2 Articles — approval — bylaws.

The articles of incorporation, and any subsequent amendments, of an organization shall be filed with and approved by the commissioner of insurance before filing with the secretary of state. An organization shall file with the commissioner bylaws and subsequent amendments to the bylaws within thirty days of adoption of the bylaws and amendments.

[C73, §1122; C97, §1685; C24, 27, 31, 35, 39, §**8897;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.2]

2000 Acts, ch 1023, §27; 2009 Acts, ch 145, §22

Referred to in §515.10

515.3 Certificate — recording.

If the commissioner of insurance approves them, the commissioner shall so certify, and the articles with the certificates of approval shall be recorded in the office of the secretary of state as articles of other corporations are, who shall endorse thereon the secretary of state's certificate thereof, as is required in case of other corporations for pecuniary profit.

[C73, §1123; C97, §1686; C24, 27, 31, 35, 39, §**8898;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.3]

Recording, §491.5

515.4 Name.

If the commissioner of insurance finds the name of the company to be so similar to one already appropriated by a corporation of the same character as to be likely to mislead the public or to cause inconvenience, the commissioner shall refuse the commissioner's certificate to its articles on that ground.

[C73, §1122; C97, §1687; C24, 27, 31, 35, 39, §**8899;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.4]

515.5 Filing with commissioner.

The articles, when thus certified by the secretary of state as recorded in the secretary of state's office, or a copy thereof certified by the secretary of state as such, shall be filed in the office of the commissioner of insurance and remain therein.

[C73, §1123; C97, §1688; C24, 27, 31, 35, 39, §**8900;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.5]

515.6 Reserved.

515.7 Stock and mutual plan distinguished.

No company shall be organized to do business upon both stock and mutual plans; nor shall a company organized as a stock company do business upon the plan of a mutual company; nor shall a company organized upon the mutual plan do business or take risks upon the stock plan.

[C73, §1159; C97, §1690; C24, 27, 31, 35, 39, §**8902;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.7]

SUBCHAPTER II

STOCK COMPANIES

515.8 Paid-up capital and surplus required.

1. An insurance company other than a life insurance company shall not be incorporated to transact business upon the stock plan with less than five million dollars of capital and surplus, the entire amount of which shall be fully paid up in cash and invested as provided by law. An insurance company other than a life insurance company shall not increase its capital stock unless the amount of the increase is fully paid up in cash. An insurance company authorized to do business in Iowa that undergoes a change of control as defined under chapter 521A shall maintain the minimum capital and surplus requirements mandated by this section.

2. Notwithstanding subsection 1, an insurance company, other than a life insurance company, authorized to transact business under this chapter shall comply with the minimum capital requirements of this section or chapter 521E, whichever is greater.

[C73, §1124; C97, §1691; S13, §1783-e; C24, 27, 31, 35, 39, §**8903;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.8]

90 Acts, ch 1234, §33; 95 Acts, ch 185, §19; 96 Acts, ch 1046, §3; 98 Acts, ch 1057, §9

Referred to in §511.23, 515C.2

515.9 Reduction of capital or shares.

Any insurance company, other than life, may, upon the vote of a majority of its shares of stock represented at a meeting legally called for that purpose, reduce its capital stock and the number of shares thereof or the par value of the shares thereof, provided that the total amount of capital shall not be reduced to an amount less than the minimum required by law, but no part of its assets and property shall be distributed to its stockholders without the consent of the insurance commissioner.

[C27, 31, 35, §8903-b1; C39, §**8903.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.9]

Referred to in §511.23

515.10 Subscriptions of stock — applications.

After compliance by the incorporators with sections 515.1 and 515.2, the secretary of state shall certify the articles of incorporation to the commissioner of insurance. When the commissioner of insurance is satisfied that all provisions of law in relation to the promotion and organization of said corporation, including sections 506.4 to 506.6, have been complied with, the commissioner shall issue a certificate to that effect, and thereupon such corporation may open books for subscriptions to the stock of stock companies or if a mutual company take applications and receive premiums for insurance at such times and places as it may find convenient, and may keep such books open until the full amount required is subscribed or taken, or the time granted therefor has expired, or until an order is issued by the commissioner of insurance to desist for failure to comply with the provisions of law in reference thereto.

[C73, §1125; C97, §1694; C24, 27, 31, 35, 39, §**8917;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.25]

2007 Acts, ch 152, §2

CS2007, §515.10

Referred to in §511.23

515.11 Prohibited loans. Transferred to §515.23; 2015 Acts, ch 128, §52.

515.11A Transfer of stock.

Transfers of stock made by any stockholder or the stockholder's legal representative shall be subject to the provisions of chapters 491 and 492 relative to transfer of shares, and to such restrictions as the directors shall establish in their bylaws, except as hereinafter provided.

2008 Acts, ch 1074, §4

SUBCHAPTER III

MUTUAL COMPANIES

515.12 Mutual companies — conditions.

No mutual company shall issue policies or transact any business of insurance unless it shall hold a certificate of authority from the commissioner of insurance authorizing the transaction of such business, which certificate of authority shall not be issued until and unless the company shall comply with the following conditions:

1. It shall hold bona fide applications for insurance upon which it shall issue simultaneously, or it shall have in force, at least two hundred policies issued to at least two hundred members for the same kind of insurance upon not less than two hundred separate

risks, each within the maximum single risk described herein; provided that not more than one hundred members shall be required for employer's liability and workers' compensation insurance.

2. The maximum single risk shall not exceed twenty percent of the admitted assets, or three times the average risk, or one percent of the insurance in force, whichever is the greater, any reinsurance taking effect simultaneously with the policy being deducted in determining such maximum single risk.

3. It shall have collected a premium upon each application, which premium shall be held in cash or securities in which insurance companies are authorized to invest, which shall be equal, in case of fire insurance, to not less than twice the maximum single risk assumed subject to one fire nor less than ten thousand dollars; and in any other kind of insurance, to not less than five times the maximum single risk assumed; and, in case of employer's liability and workers' compensation insurance, to not less than fifty thousand dollars.

4. For the purpose of transacting employer's liability and workers' compensation insurance, the applications shall cover not less than one thousand five hundred employees, each such employee being considered a separate risk for determining the maximum single risk.

5. *a.* The mutual company shall have in cash or in securities in which insurance companies are authorized to invest, surplus in an amount not less than five million dollars. The surplus so required may be advanced in accordance with section 515.19. A mutual company authorized to do business in Iowa that undergoes a change of control as defined under chapter 521A shall maintain the minimum surplus requirements mandated by this section.

b. However, the surplus requirements do not apply to a company which establishes and maintains a guaranty fund as provided by section 515.20.

[C73, §1124; C97, §1692; C24, 27, 31, 35, 39, §**8906;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.12]

90 Acts, ch 1234, §36; 95 Acts, ch 185, §21; 2012 Acts, ch 1023, §157

Referred to in §515.12A, 515.13

515.12A Alternative minimum surplus levels.

A mutual company authorized to transact business under this chapter shall comply with the minimum surplus requirements of section 515.12 or chapter 521E, whichever is greater.

96 Acts, ch 1046, §7

515.13 Reservation.

None of the provisions of section 515.12, subsection 5, shall apply to any company heretofore organized and approved by the commissioner of insurance, but which had not completed its organization on May 28, 1937, nor shall section 515.12, subsection 5, apply to any company already licensed to issue policies.

[C39, §**8906.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.13]

2013 Acts, ch 30, §126

515.14 Membership in mutuals.

Any public or private corporation, board, or association in this state, or elsewhere, may make applications, enter into agreements for and hold policies in any such mutual insurance company. Any officer, stockholder, trustee, or local representative of any such corporation, board, association, or estate may be recognized as acting for, or on its behalf for the purpose of such membership, but shall not be personally liable upon such contract of insurance by reason of acting in such representative capacity. The right of any corporation organized under the laws of this state to participate as a member of any such mutual insurance company is hereby declared to be incidental to the purpose for which such corporation is organized and as much granted as the rights and powers expressly conferred.

[C73, §1124; C97, §1693; C24, 27, 31, 35, 39, §**8907;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.14]

515.15 Voting power.

Every policyholder of such mutual company shall be a member of the company and shall be entitled to one vote, and such member may vote in person or by proxy as may be provided in the bylaws.

[C24, 27, 31, 35, 39, §**8908;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.15]

515.16 Maximum premium.

The maximum premium payable by any member of a mutual company shall be expressed in the policy and in the application for the insurance. Such maximum may be a cash premium and an additional contingent premium not less than the cash premium, or may be solely a cash premium, which premium may be made payable in installments or regular assessments. No policy shall be issued for a cash premium without an additional contingent premium unless the company has a surplus which is not less in amount than the capital stock required, at the time of the organization of such mutual insurance company, of domestic stock insurance companies writing the same kind of insurance; but said surplus shall not be less than one hundred thousand dollars.

[C24, 27, 31, 35, 39, §**8909;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.16]

515.17 Unearned premiums.

Such mutual company shall maintain unearned premium and other reserves separately for each kind of insurance, upon the same basis as that required of domestic insurance companies transacting the same kind of insurance; provided that any reserve for losses or claims based upon the premium income shall be computed upon the net premium income, after deducting any so-called dividend or premium returned or credited to the member.

[C24, 27, 31, 35, 39, §**8910;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.17]

515.18 Assessments.

Any such mutual company not possessed of assets at least equal to the unearned premium reserve and other liabilities shall make an assessment upon its members liable to assessment to provide for such deficiency, such assessment to be against each member in proportion to such liability as expressed in the member's policy; provided the commissioner may by written order, relieve the company from an assessment or other proceedings to restore such assets during the time fixed in such order.

[C24, 27, 31, 35, 39, §**8911;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.18]

Referred to in §515.20

515.19 Advancement of funds.

Any director, officer, or member of any such mutual company, or any other person, may advance to such company, any sum or sums of money necessary for the purpose of its business, or to enable it to comply with any of the requirements of the law, and such moneys and such interest thereon as may have been agreed upon, not exceeding the maximum statutory rate of interest, shall not be a liability or claim against the company or any of its assets, except as herein provided, and upon approval of the commissioner of insurance may be repaid, but only out of the surplus earnings of such company. No commission or promotion expenses shall be paid in connection with the advance of any such money to the company. The amount of such advance shall be reported in each annual statement.

[C24, 27, 31, 35, 39, §**8912;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.19]

2013 Acts, ch 90, §156

Referred to in §515.12, 515.20

515.20 Guaranty capital.

A mutual company organized under this chapter may establish and maintain guaranty capital of at least fifty thousand dollars made up of multiples of ten thousand dollars, divided into shares of not less than fifty dollars each, to be invested as provided for the investment of insurance capital and funds by section 515.35. Guaranty shareholders shall be members of the corporation, and provision may be made for representation of the shareholders of the guaranty capital on the board of directors of the corporation. The representation

shall not exceed one-third of the membership of the board. Guaranty shareholders in a mutual company are subject to the same regulations of law relative to their right to vote as apply to its policyholders. The guaranty capital shall be applied to the payment of the legal obligations of the corporation only when the corporation has exhausted its assets in excess of the unearned premium reserve and other liabilities. If the guaranty capital is thus impaired, the directors may restore the whole, or any part of the capital, by assessment on the corporation's policyholders as provided for in section 515.18. By a legal vote of the policyholders of the corporation at any regular or special meeting of the policyholders of the corporation, the guaranty capital may be fully retired or may be reduced to an amount of not less than fifty thousand dollars, if the net surplus of the corporation together with the remaining guaranty capital is equal to or exceeds the amount of minimum assets required by this chapter for such companies, and if the commissioner of insurance consents to the action. Due notice of the proposed action on the part of the corporation shall be included in the notice given to policyholders and shareholders of any annual or special meeting and notice of the meeting shall also be given in accordance with the corporation's articles of incorporation. A company with guaranty capital, which has ceased to do business, shall not distribute among its shareholders or policyholders any part of its assets, or guaranty capital, until it has fully performed, or legally canceled, all of its policy obligations. Shareholders of the guaranty capital are entitled to interest on the par value of their shares at a rate to be fixed by the board of directors and approved by the commissioner, cumulative, payable semiannually, and payable only out of the surplus earnings of the company. However, the surplus account of the company shall not be reduced by the payment of the interest below the figure maintained at the time the guaranty capital was established. In addition, the interest payment shall not be made unless the surplus assets remaining after the payment of the interest at least equal the amount required by the statutes of Iowa to permit the corporation to continue in business. In the event of the dissolution and liquidation of a corporation having guaranty capital under this section, the shareholders of the capital are entitled, after the payment of all valid obligations of the company, to receive the par value of their respective shares, together with any unpaid interest on their shares, before there may be any distribution of the assets of the corporation among its policyholders. These provisions are in addition to and independent of the provisions contained in section 515.19.

[C35, §8912-f1; C39, §**8912.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.20]

86 Acts, ch 1038, §1; 87 Acts, ch 115, §64

Referred to in §515.12, 515G.1

515.21 Additional policy provisions.

Such mutual company may insert in any form of policy prescribed by the law of this state any additional provisions or conditions required by its plan of insurance if not inconsistent or in conflict with any law of this state.

[C24, 27, 31, 35, 39, §**8913;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.21]

515.22 Countersigning policies. Repealed by 98 Acts, ch 1057, §13.

SUBCHAPTER IV

GENERAL PROVISIONS

515.23 Prohibited loans.

Capital, surplus, funds, or other assets, or any part of any or all of the foregoing, shall not be directly or indirectly loaned to an officer, director, stockholder, or employee of a company or to a relative of an officer or director of a company.

[S13, §1783-e; C24, 27, 31, 35, 39, §**8905;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.11]

88 Acts, ch 1112, §401; 90 Acts, ch 1234, §35; 2015 Acts, ch 128, §50 – 52

C2016, §515.23

Referred to in §511.23

515.24 Tax — computation.

For the purpose of determining the basis of any tax upon the gross amount of premiums, or gross receipts from premiums, assessments, fees, and promissory obligations, now or hereafter imposed upon any fire or casualty insurance company under any law of this state, such gross amount or gross receipts shall consist of the gross written premiums or receipts for direct insurance, without including or deducting any amounts received or paid for reinsurance except that any company reinsuring windstorm or hail risks written by county mutual insurance associations shall be required to pay as a tax the applicable percent provided in section 432.1, calculated upon the gross amount of reinsurance premiums received upon such risks, but with such other deductions as provided by law, and in addition deducting any so-called dividend or return of savings or gains to policyholders; provided that as to any deposits or deposit premiums received by any such company, the taxable premiums shall be the portion of such deposits or deposit premiums earned during the year with such deductions therefrom as provided by law.

[C24, 27, 31, 35, 39, §**8916;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.24]

2002 Acts, ch 1119, §181; 2006 Acts, ch 1117, §66; 2017 Acts, ch 54, §60

515.25 Reserved.

515.26 Directors.

The affairs of a company organized as provided by this chapter shall be managed by a number of directors of not less than five nor more than twenty-one.

[C73, §1126; C97, §1695; C24, 27, 31, 35, 39, §**8918;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.26]

91 Acts, ch 213, §25; 99 Acts, ch 165, §12; 2013 Acts, ch 124, §16

515.27 Election.

The annual meetings for the election of directors shall be held at such time as the articles of incorporation or bylaws of the company provide; but if for any cause no election is held, or there is a failure to elect at any annual meeting, then a special meeting for that purpose shall be held on the call of a majority of the directors, or of those persons holding a majority of the stock, or of a majority of policyholders if a mutual company, by giving thirty days' notice thereof in some newspaper of general circulation in the county in which the principal office of the company is located.

[C73, §1127; C97, §1696; C24, 27, 31, 35, 39, §**8919;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.27]

515.28 Term of office.

The directors chosen at any such annual or special meeting shall continue in office until the next annual meeting, and until their successors are elected and have accepted.

[C73, §1127; C97, §1696; C24, 27, 31, 35, 39, §**8920;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.28]

515.29 Classification of directors.

A company may in its articles of incorporation provide that the board of directors be divided into classes holding for a term of not to exceed five years and providing for the election of the members of one class at each annual meeting.

[C24, 27, 31, 35, 39, §**8921;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.29]

96 Acts, ch 1045, §4

515.30 Election of officers.

The directors shall elect a president, a secretary, and such other officers as may be necessary for transacting the business of the company.

[C73, §1128, 1129; C97, §1697, 1698; C24, 27, 31, 35, 39, §**8922, 8923;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §515.30, 515.31; C77, 79, 81, §515.30]

515.31 Filling of vacancies.
The directors shall have authority to fill vacancies occurring on the board of directors, and shall fill vacancies of officers occurring between regular elections.
[C73, §1128; C97, §1697; C24, 27, 31, 35, 39, §**8922;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §515.30; C77, 79, 81, §515.31]

515.32 Bylaws.
It may adopt such bylaws and regulations not inconsistent with law as shall appear to them necessary for the regulation and conduct of the business.
[C73, §1129; C97, §1698; C24, 27, 31, 35, 39, §**8924;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.32]

515.33 Record and inspection.
The directors shall keep full and correct entries of their transactions, which shall at all times be open to the inspection of the stockholders if a stock company, or policyholders if a mutual company, and to the inspection of persons invested by law with the right thereof.
[C73, §1129; C97, §1698; C24, 27, 31, 35, 39, §**8925;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.33]

515.34 Reserved.

515.35 Investments.
1. *General considerations.* The following considerations apply in the interpretation of this section:
a. This section applies to the investments of insurance companies other than life insurance companies.
b. The purpose of this section is to protect and further the interests of policyholders, claimants, creditors, and the public by providing standards for the development and administration of programs for the investment of the assets of companies organized under this chapter. These standards, and the investment programs developed by companies, shall take into account the safety of the company's principal, investment yield and growth, stability in the value of the investment, and liquidity necessary to meet the company's expected business needs, and investment diversification.
c. Financial terms relating to insurance companies have the meanings assigned to them under statutory accounting methods. Financial terms relating to companies other than insurance companies have the meanings assigned to them under generally accepted accounting principles.
d. Investments shall be valued in accordance with the valuation procedures established by the national association of insurance commissioners, unless the commissioner requires or finds another method of valuation reasonable under the circumstances.
e. If an investment qualifies under more than one subsection, a company may elect to hold the investment under the subsection of its choice. This section does not prevent a company from electing to hold an investment under a subsection different from the one under which it previously held the investment.
2. *Definitions.* For purposes of this section:
a. *"Admitted assets"*, for purposes of computing percentage limitations on particular types of investments, means the assets which are authorized to be shown on the national association of insurance commissioner's annual statement blank as admitted assets as of the December 31 immediately preceding the date the company acquires the investment.
b. *"Capital and surplus"*, for purposes of computing percentage limitations on particular types of investments, means the capital and surplus that is authorized to be shown as capital and surplus on the national association of insurance commissioners' annual statement blank as of the December 31 immediately preceding the date the company acquires the investment.
c. *"Clearing corporation"* means as defined in section 554.8102.
d. *"Custodian bank"* means a bank or trust company that is supervised and examined

by state or federal authority having supervision over banks and is acting as custodian for a clearing corporation.

e. *"Issuer"* means as defined in section 554.8201.

f. *"Member bank"* means a national bank, state bank, or trust company which is a member of the United States federal reserve system.

g. *"National securities exchange"* means an exchange registered under section 6 of the Securities Exchange Act of 1934 or an exchange regulated under the laws of the Dominion of Canada.

h. *"Obligations"* includes bonds, notes, debentures, transportation equipment certificates, domestic repurchase agreements, and obligations for the payment of money not in default as to payments of principal and interest on the date of investment, which constitute general obligations of the issuer or payable only out of certain revenues or certain funds pledged or otherwise dedicated for payment of principal and interest on the obligations. A lease is an obligation if the lease is assigned to the insurer and is nonterminable by the lessee upon foreclosure of any lien upon the leased property, and if rental payments are sufficient to amortize the investment over the primary lease term.

3. *Investments in name of company or nominee and prohibitions.*

a. A company's investments shall be held in its own name or the name of its nominee, except as follows:

(1) Investments may be held in the name of a clearing corporation or of a custodian bank or in the name of the nominee of either on the following conditions:

(a) The clearing corporation, custodian bank, or nominee must be legally authorized to hold the particular investment for the account of others.

(b) When the investment is evidenced by a certificate and held in the name of a custodian bank or the nominee of a custodian bank, a written agreement shall provide that certificates so deposited shall at all times be kept separate and apart from other deposits with the depository, so that at all times they may be identified as belonging solely to the company making the deposit.

(c) If a clearing corporation is to act as depository, the investment may be merged or held in bulk in the name of the clearing corporation or its nominee with other investments deposited with the clearing corporation by any other person, if a written agreement between the clearing corporation and the company provides that adequate evidence of the deposit is to be obtained and retained by the company or a custodian bank.

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

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

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

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

(i) That the loan will be fully collateralized at all times during the term of the loan, and that the collateral will be adjusted as necessary each business day during the term of the loan

to maintain the required collateralization in the event of market value changes in the loaned securities or collateral.

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

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

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

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

(3) A company may participate through a member bank in the United States federal reserve book-entry system, and the records of the member bank shall at all times show that the investments are held for the company or for specific accounts of the company.

(4) An investment may consist of an individual interest in a pool of obligations or a fractional interest in a single obligation if the certificate of participation or interest or the confirmation of participation or interest in the investment is issued in the name of the company or the name of the custodian bank or the nominee of either and if the interest as evidenced by the certificate or confirmation is, if held by a custodian bank, kept separate and apart from the investments of others so that at all times the participation may be identified as belonging solely to the company making the investment.

(5) Transfers of ownership of investments held as described in paragraph "*a*", subparagraph (1), subparagraph division (c), and subparagraphs (3) and (4) may be evidenced by bookkeeping entry on the books of the issuer of the investment, its transfer or recording agent, or the clearing corporation without physical delivery of certificate, if any, evidencing the company's investment.

b. Except as provided in paragraph "*a*", subparagraph (5), if an investment is not evidenced by a certificate, adequate evidence of the company's investment shall be obtained from the issuer or its transfer or recording agent and retained by the company, a custodian bank, or clearing corporation. Adequate evidence, for purposes of this paragraph, means a written receipt or other verification issued by the depository or issuer or a custodian bank which shows that the investment is held for the company.

4. *Investments.* Except as otherwise permitted by this section, a company organized under this chapter may invest in the following and no other:

a. United States government obligations. Obligations issued or guaranteed by the United States or an agency or instrumentality of the United States. Bonds or other evidences of indebtedness issued, assumed, or guaranteed by the United States of America, or by any agency or instrumentality of the United States of America include investments in an open-end management investment company registered with the federal securities and exchange commission under the federal Investment Company Act of 1940, 15 U.S.C. §80a-1 et seq., and operated in accordance with 17 C.F.R. §270.2a-7, the portfolio of which is limited to the United States government obligations described in this paragraph "*a*", and which are included in the national association of insurance commissioners' securities valuation office's United States direct obligation – full faith and credit list.

b. Certain development bank obligations. Obligations issued or guaranteed by the international bank for reconstruction and development, the Asian development bank, the inter-American development bank, the export-import bank, the world bank, or any United States government-sponsored organization of which the United States is a member, if the principal and interest is payable in United States dollars. A company shall not invest more than five percent of its total admitted assets in the obligations of any one of these banks or organizations, and shall not invest more than a total of ten percent of its total admitted assets in the obligations authorized by this paragraph.

c. State obligations. Obligations issued or guaranteed by a state of the United States, or

a political subdivision of a state, or an instrumentality of a state or political subdivision of a state.

d. Canadian government obligations. Obligations issued or guaranteed by the Dominion of Canada, or by an agency or province of Canada, or by a political subdivision of a province, or by an instrumentality of any of those provinces or political subdivisions.

e. Corporate and business trust obligations. Obligations issued, assumed, or guaranteed by a corporation or business trust organized under the laws of the United States or a state of the United States, or the laws of Canada or a province of Canada, provided that a company shall not invest more than five percent of its admitted assets in the obligations of any one corporation or business trust. Aggregate investments in below investment grade bonds shall not exceed five percent of assets.

f. Stocks, limited partnership interests, and limited liability company interests.

(1) A company may invest in common stocks, common stock equivalents, mutual fund shares, securities convertible into common stocks or common stock equivalents, or preferred stocks issued or guaranteed by a corporation incorporated under the laws of the United States or a state of the United States, or the laws of Canada or a province of Canada.

(a) Stocks purchased under this section shall not exceed one hundred percent of capital and surplus. With the approval of the commissioner, a company may invest any amount in common stocks, preferred stocks, or other securities of one or more subsidiaries provided that after such investments the insurer's surplus as regards policyholders will be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs.

(b) A company shall not invest more than ten percent of its capital and surplus in the stocks of any one corporation.

(2) In addition to those investments permitted under subparagraph (1), a company may invest in or otherwise acquire and hold a limited partnership interest in any limited partnership formed under the laws of any state, commonwealth, or territory of the United States, or under the laws of the United States. A company may invest in or otherwise acquire and hold a member interest in any limited liability company formed under the laws of any state, commonwealth, or territory of the United States or under the laws of the United States. A limited partnership or limited liability company interest shall not be acquired if the investment, valued at cost, exceeds two percent of the capital and surplus of the company or if the investment, plus the book value on the date of the investment of all limited partnership or limited liability company interests then held by the company and held under the authority of this subparagraph, exceeds ten percent of the capital and surplus of the company. A limited partnership or limited liability company interest shall not be acquired under this subparagraph unless the limited partnership or limited liability company is audited annually by an independent auditor.

g. Real estate mortgages. Mortgages and other interest-bearing securities that are first liens upon real estate located within this state or any other state of the United States. However, a mortgage or other security does not qualify as an investment under this paragraph if at the date of acquisition the total indebtedness secured by the lien exceeds seventy-five percent of the value of the property that is subject to the lien. Improvements shall not be considered in estimating value unless the owner contracts to keep them insured during the life of the loan in one or more reliable fire insurance companies authorized to transact business in this state and for a sum at least equal to the excess of the loan above seventy-five percent of the value of the ground, exclusive of improvements, and unless this insurance is payable in case of loss to the company investing its funds as its interest may appear at the time of loss. For the purpose of this section, a lien upon real estate shall not be held or construed to be other than a first lien by reason of the fact that drainage or other improvement assessments have been levied against the real estate covered by the lien, whether or not the installment of the assessments have matured, but in determining the value of the real estate for loan purposes the amount of drainage or other assessment tax that is unpaid shall be first deducted.

h. Real estate.

(1) (a) Except as provided in subparagraphs (2), (3), and (4) of this paragraph, a company may acquire, hold, and convey real estate only as follows:

(i) Real estate mortgaged to it in good faith as security for loans previously contracted, or for moneys due.

(ii) Real estate conveyed to it in satisfaction of debts previously contracted in the course of its dealings.

(iii) Real estate purchased at sales on judgments, decrees, or mortgages obtained or made for debts previously contracted in the course of its dealings.

(iv) Real estate subject to a contract for deed under which the company holds the vendor's interest to secure the payments the vendee is required to make under the contract.

(b) All real estate specified in subparagraph division (a), subparagraph subdivisions (i), (ii), and (iii) shall be sold and disposed of within three years after the company acquires title to it, or within three years after the real estate ceases to be necessary for the accommodation of the company's business, and the company shall not hold any of those properties for a longer period unless the company elects to hold the property under another paragraph of this section, or unless the company procures a certificate from the commissioner of insurance that its interest will suffer materially by the forced sale of those properties and that the time for the sale is extended to the time the commissioner directs in the certificate.

(2) A company may acquire, hold, and convey real estate as required for the convenient accommodation and transaction of its business.

(3) A company may acquire real estate or an interest in real estate as an investment for the production of income, and may hold, improve, or otherwise develop, subdivide, lease, sell, and convey real estate so acquired directly or as a joint venture or through a limited or general partnership in which the company is a partner.

(4) A company may also acquire and hold real estate if the purpose of the acquisition is to enhance the sale value of real estate previously acquired and held by the company under this paragraph, and if the company expects the real estate so acquired to qualify under subparagraph (2) or (3) of this paragraph within three years after acquisition.

(5) A company may, after securing the written approval of the commissioner, acquire and hold real estate for the purpose of providing necessary living quarters for its employees. However, the company shall dispose of the real estate within three years after it has ceased to be necessary for that purpose unless the commissioner agrees to extend the holding period upon application by the company.

(6) A company shall not invest more than twenty-five percent of its total admitted assets in real estate. The cost of a parcel of real estate held for both the accommodation of business and for the production of income shall be allocated between the two uses annually. A company shall not invest more than ten percent of its total admitted assets in real estate held under subparagraph (3) of this paragraph.

(7) A company is not required to divest itself of real estate assets owned or contracted for prior to July 1, 1982, in order to comply with the limitations established under this paragraph.

i. Foreign investments. Obligations of and investments in foreign countries, as follows:

(1) A company may acquire and hold other investments in foreign countries that are required to be held as a condition of doing business in those countries, so long as such investments are of substantially the same types as those eligible for investment under this section.

(2) A company shall not invest more than two percent of its admitted assets in the stocks or stock equivalents of foreign corporations or business trusts, other than the stocks or stock equivalents of foreign corporations or business trusts incorporated or formed under the laws of Canada, and then only if the stocks or stock equivalents of such foreign corporations or business trusts are regularly traded on the New York, London, Paris, Zurich, Hong Kong, Toronto, or Tokyo stock exchange, or a similar exchange approved by the commissioner by rule or order.

(3) A company may invest in the obligations of a foreign government other than Canada or of a corporation incorporated under the laws of a foreign government other than Canada. Any such governmental obligation must be valid, legally authorized and issued, and on the date of acquisition have predominantly investment qualities and characteristics as provided by rule. Any such corporate obligation must on the date of acquisition have investment qualities and characteristics, and must not have speculative elements which are

predominant, as provided by rule. A company shall not invest more than two percent of its admitted assets in the obligations of a foreign government other than Canada and the United Kingdom. Investments in obligations of the United Kingdom are not eligible in excess of four percent of admitted assets. A company shall not invest more than two percent of its admitted assets in the obligations of a corporation incorporated under the laws of a foreign government other than a corporation incorporated under the laws of Canada.

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

j. Personal property under lease. Personal property for intended lease or rental by the company in the United States or Canada. A company shall not invest more than five percent of its admitted assets under this paragraph.

k. Collateral loans. Obligations secured by the pledge of an investment authorized by paragraphs *"a"* through *"j"*, subject to the following conditions:

(1) The pledged investment shall be legally assigned or delivered to the company.

(2) The pledged investment shall at the time of purchase have a market value of at least one hundred ten percent of the amount of the unpaid balance of the obligations.

(3) The company shall reserve the right to declare the obligation immediately due and payable if at any time after purchase the security depreciates to the point where the investment would not qualify under subparagraph (2) of this paragraph. However, additional qualifying security may be pledged to allow the investment to remain qualified.

l. Options transactions.

(1) A domestic fire and casualty company may only engage in the following transactions in options on an exchange and only when in accordance with the rules of the exchange on which the transactions take place:

(a) The sale of exchange-traded covered options.

(b) The purchase of exchange-traded covered options solely in closing purchase transactions.

(2) The commissioner shall adopt rules pursuant to chapter 17A regulating option sales under this subparagraph.

m. Venture capital funds. Shares or equity interests in venture capital funds which agree to invest an amount equal to at least fifty percent of the investments by a company in small businesses having their principal offices within this state and having either more than one-half of their assets within this state or more than one-half of their employees employed within this state. A company shall not invest more than five percent of its capital and surplus under this paragraph. For purposes of this paragraph, *"venture capital fund"* means a corporation, partnership, proprietorship, or other entity formed under the laws of the United States, or a state, district, or territory of the United States, whose principal business is or will be the making of investments in, and the provision of significant managerial assistance to, small businesses which meet the small business administration definition of small business. *"Equity interests"* means limited partnership interests and other equity interests in which liability is limited to the amount of the investment, but does not mean general partnership interests or other interests involving general liability. *"Venture capital fund"* includes an equity interest in the Iowa fund of funds as defined in section 15E.62 and an equity interest in an innovation fund as defined in section 15E.52.

n. Other investments.

(1) A company organized under this chapter may invest up to five percent of its admitted assets in securities or property of any kind, without restrictions or limitations except those imposed on business corporations in general.

(2) A company organized under this chapter may invest its assets in any additional forms not specifically included in paragraphs *"a"* through *"m"* and this paragraph when authorized by rules adopted by the commissioner.

5. *Rules.* The commissioner may adopt rules pursuant to chapter 17A to carry out the purposes and provisions of this section.

[C73, §1130, 1137; C97, §1699, 1703; S13, §1699; C24, 27, 31, 35, 39, §**8926, 8927;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.34, 515.35; 81 Acts, ch 169, §1; 82 Acts, ch 1051, §1]

85 Acts, ch 136, §2; 88 Acts, ch 1112, §402; 91 Acts, ch 26, §40; 96 Acts, ch 1138, §2, 84; 97 Acts, ch 186, §10; 98 Acts, ch 1014, §2; 99 Acts, ch 165, §13; 2001 Acts, ch 69, §29; 2003 Acts, ch 91, §34; 2004 Acts, ch 1110, §52 – 54; 2007 Acts, ch 137, §12; 2009 Acts, ch 41, §159 – 161; 2012 Acts, ch 1023, §120 – 122; 2013 Acts, ch 124, §17; 2014 Acts, ch 1092, §116, 117, 185; 2015 Acts, ch 128, §22, 50, 51

Referred to in §515.20, 518.14, 518A.12, 521G.6
Similar provisions, §511.8

515.36 Financial statements — mutual companies.

After complying with the requirements of the preceding sections of this chapter, the company shall file with the commissioner of insurance a satisfactory detailed statement showing the financial condition of the company, including all transactions had during its organization, together with a record of all moneys received and disbursed, a list of the stockholders, the amount of stock purchased by each, and the price paid. The incorporators or officers of such mutual company shall file the statement under oath required of stock companies.

[C73, §1131; C97, §1700; C24, 27, 31, 35, 39, §**8928, 8929;** C46, 50, 54, 58, 62, 66, §515.36, 515.37; C71, 73, 75, 77, 79, 81, §515.36]

515.37 Subsidiary companies.

Any insurance company incorporated in this state may organize, or acquire by purchase, in whole or in part, subsidiary insurance and investment companies in which it owns not less than fifty-one percent of the common stock, and, subject to the approval of the insurance commissioner and provided that no company invest an amount in excess of thirty percent of its capital and surplus in the stock of such subsidiary companies, may:

1. Invest funds from surplus for each purpose.
2. Make loans to such subsidiaries.
3. Permit all or part of its officers and directors to serve as officers or directors of any such subsidiary companies.

[C71, 73, 75, 77, 79, 81, §515.37]

515.38 Examination — certificate of compliance.

Such commissioner may appoint in writing some disinterested person to make an examination and if it shall be found that the capital or assets herein required of the company named, according to the nature of the business proposed to be transacted by such company, have been paid in, and are now possessed by it in money or such stock, bonds, and mortgages as are required by the preceding sections of this chapter, the commissioner shall so certify; but if the examination is made by another than the commissioner, the certificate shall be by that person, and under that person's oath.

[C73, §1131; C97, §1700; C24, 27, 31, 35, 39, §**8930;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.38]

515.39 Ownership of assets — oath.

The incorporators or officers of any such company, or proposed company, shall be required to state to the commissioner of insurance under oath that the capital or assets exhibited to the person making the examination are actually and in good faith the property of the company examined, and free and clear of any lien or claim on the part of any other person.

[C73, §1131; C97, §1700; C24, 27, 31, 35, 39, §**8931;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.39]

515.40 Form of certificate.

The certificate of examination of a mutual company shall be to the effect that it has received and has in its actual possession:

1. The cash premiums.
2. Actual contracts of insurance upon property, belonging to the signers thereof, and upon which the insurance applied for can properly be issued.
3. Other securities, as the case may be, to the extent and value hereinbefore required.

[C97, §1700; C24, 27, 31, 35, 39, §**8932;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.40]

515.41 Certificate of authority.

The certificate and statements above contemplated shall be filed in the division and the commissioner of insurance shall deliver to the company a copy of the report of the examination, in the event one is made, together with the commissioner's written permission for it to commence the business proposed in its articles of incorporation, which permission shall be its authority to commence business and issue policies.

[C73, §1131; C97, §1700; C24, 27, 31, 35, 39, §**8933;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.41]

515.42 Tenure of certificate — renewal — evidence.

A certificate of authority shall expire on the first day of June next succeeding its issue, and shall be renewed annually so long as such company shall transact business in accordance with the requirements of law; a copy of which certificate, when certified to by the commissioner of insurance, shall be admissible in evidence for or against a company with the same effect as the original. A company shall submit annually, on or before March 1, a completed application for renewal of its certificate of authority. A company that fails to timely file an application for renewal shall pay an administrative penalty of five hundred dollars to the treasurer of state for deposit as provided in section 505.7.

[C73, §1131; C97, §1700; C24, 27, 31, 35, 39, §**8934;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.42]

88 Acts, ch 1112, §107; 2006 Acts, ch 1117, §67; 2009 Acts, ch 181, §76

515.43 Reserved.

515.44 Dividends.

The directors or managers of a stock company, incorporated under the laws of this state shall make no dividends except from the earned profits arising from their business, which shall not include contributed capital or contributed surplus.

[C73, §1136; C97, §1702; C24, 27, 31, 35, 39, §**8936;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.44]

Referred to in §515.46

515.45 Reserve fund required. Repealed by 2000 Acts, ch 1023, §59, 60.

515.46 Forfeiture of certificate of authority.

Any dividend made contrary to the provisions of section 515.44 or rules adopted by the commissioner shall subject the company making it to forfeiture of its certificate of authority.

[C73, §1136; C97, §1702; C24, 27, 31, 35, 39, §**8938;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.46]

2000 Acts, ch 1023, §28, 60

515.47 Unearned premium reserve — computation. Repealed by 2000 Acts, ch 1023, §59, 60.

515.48 Kinds of insurance.

Any company organized under this chapter or authorized to do business in this state may:

1. *a.* Insure dwelling houses, stores and all kinds of buildings and household furniture, and other property against direct or indirect or consequential loss or damage, including loss of use or occupancy and the depreciation of property lost or damaged by fire, smoke, smudge, lightning and other electrical disturbances, collision, falls, wind, tornado, cyclone, volcanic eruptions, earthquake, hail, frost, snow, sleet, ice, weather or climatic conditions,

including excess or deficiency of moisture, flood, rain, or drought, rising of the waters of the ocean or its tributaries, bombardment invasion, insurrection, riot, strikes, labor disturbances, sabotage, civil war or commotion, military or usurped power, any order of a civil authority made to prevent the spread of a conflagration, epidemic or catastrophe, vandalism or malicious mischief, and by explosion whether fire ensues or not, except explosion on risks specified in subsection 6, provided, however, that there may be insured hereunder the following:

(1) Explosion of pressure vessels, not including steam boilers of more than fifteen pounds pressure, in buildings designed and used solely for residential purposes by not more than four families.

(2) Explosion of any kind originating outside of the insured building or outside of the building containing the property insured.

(3) Explosion of pressure vessels which do not contain steam or which are not operated with steam coils or steam jackets.

(4) Loss or damage by insects or disease to farm crops or products, and loss of rental value of land used in producing such crops or products.

(5) Accidental injury to sprinklers, pumps, water pipes, elevator tanks and cylinders, steam pipes and radiators, plumbing and its fixtures, ventilating, refrigerating, heating, lighting, or cooking apparatus, or their connections, or conduits or containers of any gas, fluid, or other substance.

(6) Loss or damage to property of the insured caused by the breakage or leakage or by water, hail, rain, sleet, or snow seeping or entering through water pipes, leaks, or openings in buildings.

(7) Loss of and damage to glass, including lettering and ornamentation thereon, and against loss or damage caused by the breakage of glass.

(8) Loss or damage caused by railroad equipment, motor vehicles, airplanes, seaplanes, dirigibles, or other aircraft.

(9) Risks under a multiple peril nonassessable policy reasonably related to the ownership, use or occupancy of a private dwelling or dwellings.

b. Loss by depreciation as herein referred to may include the cost of repair and replacement.

2. Insure the fidelity of persons holding places of private or public trust, or execute any bond or other obligation whenever the performance or refraining from any contract, act, duty or obligation is required or permitted by law to be made, given, or filed, including all bonds in criminal causes, and insure the maker, drawer, drawee, or endorser of checks, drafts, bills of exchange, or other commercial paper against loss by reason of any alteration of such instruments.

3. Insure the safekeeping of books, papers, moneys, stocks, bonds and all kinds of personal property from loss, damage or destruction from any cause, and receive them on deposit.

4. Insure against loss or damage by theft, injury, sickness, or death of animals and to furnish veterinary service.

5. *a.* Insure any person, the person's family or dependents, against bodily injury or death by accident, or against disability on account of sickness, or accident, including the granting of hospital, medical, surgical and sick care benefits, but such benefits shall not include the furnishing or replacing in kind of whole human blood or blood products of any kind; however, this provision shall not prohibit payments of indemnity for human blood or blood products. An insurer may contract with health care services providers and offer different levels of benefits to policyholders based upon the provider contracts.

b. Insure against legal liability, and against loss, damage, or expense incident to a claim of such liability, arising out of the death or injury of any person, or arising out of injury to the economic interests of any person as the result of error or negligence in rendering expert, fiduciary or professional service.

c. Insure against loss or damage to property caused by the accidental discharge or leakage of water from automatic sprinkler system and against loss or damage by water or other fluid or substance to any property resulting from the breakage or leakage of other apparatus or

of water pipes or other conduits or containers or resulting from casual water entering into cracks or openings in buildings or by seepage through building walls, but not including loss or damage resulting from flood; and including insurance against accidental injury of such sprinklers, pumps, apparatus, conduits or containers.

d. Insure against loss in consequence of accidents or casualties of any kind to employees, including workers' compensation, or to persons or property resulting from any act of an employee, or any accident or casualty to person or property, or both, occurring in or connected with the transaction of insured's business, or from the operation of any machinery connected therewith; or to persons or property for which loss the insured is legally liable including an obligation of the insurer to pay medical, hospital, surgical, funeral or other benefits irrespective of legal liability of insured.

e. Insure against liability for loss or expense arising or resulting from accidents occurring by reason of the ownership, maintenance, or use of automobiles or other conveyances including aircraft, resulting in personal injuries or death, or damage to property belonging to others, or both, and for damages to assured's own automobile or aircraft when sustained through collision with another object, and insure the assured's own automobile or aircraft against loss or damage, including the loss of use thereof, by fire, lightning, windstorm, tornado, cyclone, hail, burglary or theft, vandalism, malicious mischief, or the wrongful conversion, disposal, or concealment thereof, or any one or more of such hazards, whether said automobile or aircraft is held under conditional sale, contract, or subject to chattel mortgages.

f. Insure against loss of or damage to any property of the insured resulting from collision of any object with such property.

6. Insure against loss or injury to person or property, or both, and against loss of rents or use of buildings, and other property growing out of explosion or rupture of boilers, pipes, flywheels, engines, pressure containers, machinery, and similar apparatus of any kind including equipment used for creating, transmitting, or applying power, light, heat, steam, air conditioning or refrigeration.

7. Insure against loss or damage resulting from burglary or robbery, or attempt thereat, or larceny.

8. Insure or guarantee and indemnify merchants, traders, and those engaged in business and giving credit from loss and damage by reason of giving and extending credit to their customers and those dealing with them, which business shall be known as credit insurance.

a. Such insurance may cover losses, less a deduction of an agreed percentage, not to exceed ten percent, representing anticipated profits, and a further deduction not to exceed thirty-three and one-third percent, on losses on credits extended to risks who have inferior ratings, and less an agreed deduction for normal loss.

b. Such coinsurance percentages shall be deducted in advance of the agreed normal loss from the gross covered loss sustained by the insured.

9. Insure vessels, boats, cargoes, goods, merchandise, freights, specie, bullion, jewelry, jewels, profits, commissions, bank notes, bills of exchange, and other evidence of debt, bottomry, and respondentia interest and every insurance appertaining to or connected with any or all risks or perils of navigation, transit, or transportation, including war risks, on or under any seas or other waters, on land or in the air, or while being assembled, packed, crated, baled, compressed or similarly prepared for shipment or while awaiting the same or during any delays, storage, transshipment, or reshipment, incident thereto, including marine builder's risks; and for loss or damage for which the insured is legally liable to persons or property in connection with or appertaining to marine, inland marine, transit, or transportation insurance, including liability for loss of or damage arising out of or in connection with the construction, repair, maintenance, storage or use of the subject matter of such insurance; and insure against loss or damage to silverware, musical instruments, furs, garments, fine arts, precious stones, jewels, jewelry, gold, silver, and other precious metals or valuable items whether used in business, transportation, trade or otherwise; and insure automobiles, airplanes, seaplanes, dirigibles or other aircraft, whether stationary or being operated under their own power, which include all or any of the hazards of fire, explosion, transportation, collision, loss by legal liability for damage to property resulting from the

maintenance and use of automobiles, airplanes, seaplanes, dirigibles, or other aircraft, and loss by burglary or theft, vandalism, malicious mischief, or the wrongful conversion, disposal or concealment of automobiles whether held under conditional sale, contract, or subject to chattel mortgage, or any one or more of such hazards, including insurance against loss by reason of bodily injury to the person including medical, hospital and surgical expense irrespective of legal liability of insured.

10. Insure any additional risk not specifically included within any of the foregoing classes, which is a proper subject for insurance, is not prohibited by law or contrary to sound public policy, and which, after public notice and hearing, is specifically approved by the commissioner of insurance, except title insurance or insurance against loss or damage by reason of defective title, encumbrances or otherwise. When such additional kind of insurance is approved by the commissioner, the commissioner shall designate within which classification of risks provided for in section 515.49 it shall fall.

[C73, §1132; C97, §1709; S13, §1709; C24, 27, 31, 35, 39, §**8940;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.48]

85 Acts, ch 239, §6; 2012 Acts, ch 1023, §157; 2016 Acts, ch 1073, §148; 2017 Acts, ch 54, §61

Referred to in §321.1, 432.1, 432A.1, 508C.3, 517.1, 535.8, 811.3
Action on liability policy, chapter 516

515.49 Limitation on risks.

A company shall not expose itself to loss on any one risk or hazard to an amount exceeding ten percent of its surplus to policyholders unless one of the following applies:

1. The excess is reinsured in some other good and reliable company licensed to sell insurance in this state.

2. The excess is reinsured by a group of individual unincorporated insurers who are authorized to sell insurance in at least one state of the United States and who possess assets which are held in trust for the benefit of the American policyholders in the sum of not less than fifty million dollars, and a certificate of such reinsurance shall be furnished to the insured.

3. The excess is reinsured with a company which has, with respect to the ceding insurer, created a trust fund, made a deposit, or obtained letters of credit, on terms satisfactory to the commissioner.

[C73, §1132; C97, §1710; S13, §1710; C24, 27, 31, 35, 39, §**8941;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.49]

88 Acts, ch 1112, §403
Referred to in §515.48, 521.13

515.50 Loans — reinsurance. Repealed by 2007 Acts, ch 152, §84.

515.51 Policies — execution — requirements.

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

[C73, §1133; C97, §1712; C24, 27, 31, 35, 39, §**8943;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.51]

96 Acts, ch 1045, §5; 97 Acts, ch 186, §11; 2001 Acts, ch 69, §30

515.52 through 515.61 Repealed by 98 Acts, ch 1057, §13.

515.62 Transfer of stock. Repealed by 2008 Acts, ch 1074, §18. See §515.11A.

515.63 Annual statement.

The president or the vice president and secretary of each company organized or authorized to do business in the state shall annually on or before the first day of March of each year prepare under oath and file with the commissioner of insurance or a depository designated by the commissioner a full, true, and complete statement of the condition of such company on the last day of the preceding year, which shall exhibit the following items and facts:

1. The amount of capital stock of the company.
2. The names of the officers.
3. The name of the company and where located.
4. The amount of its capital stock paid up.
5. The property or assets held by the company, specifying:

a. The value of real estate owned by the company.

b. The amount of cash on hand and deposited in banks to the credit of the company, and in what bank deposited.

c. The amount of cash in the hands of agents and in the course of transmission.

d. The amount of loans secured by first mortgage on real estate, with the rate of interest thereon.

e. The amount of all other bonds and loans and how secured, with the rate of interest thereon.

f. The amount due the company on which judgment has been obtained.

g. The amount of bonds of the state, of the United States, of any county or municipal corporation of the state, and of any other bonds owned by the company, specifying the amount and number thereof, and par and market value of each kind.

h. The amount of bonds, stock, and other evidences of indebtedness held by such company as collateral security for loans, with amount loaned on each kind, and its par and market value.

i. The amount of assessments on stock and premium notes, paid and unpaid.

j. The amount of interest actually due and unpaid.

k. All other securities and their value.

l. The amount for which premium notes have been given on which policies have been issued.

6. Liabilities of such company, specifying:

a. Losses adjusted and due.

b. Losses adjusted and not due.

c. Losses unadjusted.

d. Losses in suspense and the cause thereof.

e. Losses resisted and in litigation.

f. Dividends in scrip or cash, specifying the amount of each, declared but not due.

g. Dividends declared and due.

h. The amount required to reinsure all outstanding risks on the basis of the unearned premium reserve as required by law.

i. The amount due banks or other creditors.

j. The amount of money borrowed and the security therefor.

k. All other claims against the company.

7. The income of the company during the previous year, specifying:

a. The amount received for premiums, exclusive of premium notes.

b. The amount of premium notes received.

c. The amount received for interest.

d. The amount received for assessments or calls on stock notes, or premium notes.

e. The amount received from all other sources.

8. The expenditures during the preceding year, specifying:

a. The amount of losses paid during said term, stating how much of the same accrued prior, and how much subsequent, to the date of the preceding statement, and the amount at which such losses were estimated in such statement.

b. The amount paid for dividends.

c. The amount paid for commissions, salaries, expenses, and other charges of agents, clerks, and other employees.

d. The amount paid for salaries, fees, and other charges of officers and directors.

e. The amount paid for local, state, national and other taxes and duties.

f. The amount paid for all other expenses, including printing, stationery, rents, furniture, or otherwise.

9. The largest amount insured in any one risk.

10. The amount of risks written during the year then ending.

11. The amount of risks in force having less than one year to run.

12. The amount of risks in force having more than one and not over three years to run.

13. The amount of risks having more than three years to run.

14. The dividends, if any, declared on premiums received for risks not terminated.

15. All other information as required by the national association of insurance commissioners' annual statement blank. The annual statement blank shall be prepared in accordance with instructions prescribed by the commissioner. All financial information reflected in the annual report shall be kept and prepared in accordance with accounting practices and procedures prescribed by the commissioner. The commissioner may adopt by reference the annual statement handbook and the accounting practices and procedures manual of the national association of insurance commissioners.

[C73, §1141; C97, §1714; C24, 27, 31, 35, 39, §**8945;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.63]

91 Acts, ch 26, §41; 2003 Acts, ch 91, §35; 2016 Acts, ch 1011, §97

Referred to in §515.146, 515H.2

515.64 Accident insurance — record. Repealed by 2008 Acts, ch 1074, §18.

515.65 Reserved.

515.66 Annual statement of foreign company.

The annual statement of foreign companies doing business in this state shall also show, in addition to the foregoing matters, the amount of losses incurred and premiums received in the state during the preceding period, so long as such company continues to do business in this state.

[C73, §1146; C97, §1716; C24, 27, 31, 35, 39, §**8948;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.66]

515.67 Inquiry by commissioner. Repealed by 2007 Acts, ch 152, §84.

515.68 Changes in forms of statements.

The commissioner may from time to time make changes in the forms of statements required by this chapter which seem to the commissioner best adapted to elicit from the companies a true exhibit of their condition in respect to the several points enumerated in this chapter.

[C73, §1157; C97, §1719; C24, 27, 31, 35, 39, §**8950;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.68]

85 Acts, ch 228, §7

515.68A Foreign companies — reinsurance.

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

97 Acts, ch 186, §12

515.69 Foreign companies — capital and surplus required.

1. A stock insurance company organized under or by the laws of any other state or foreign government for the purpose specified in this chapter, shall not, directly or indirectly, take risks or transact business of insurance in this state unless the company possesses the actual amount of capital and surplus required of any company organized pursuant to this chapter, or

if the company is a mutual insurance company, the actual amount of surplus required of any mutual insurance company organized pursuant to this chapter, exclusive of assets deposited in a state, territory, district, or country for the special benefit or security of those insured in that state, territory, district, or country.

2. Notwithstanding subsection 1, a stock insurance company authorized to transact business under this section shall comply with the minimum capital and surplus requirements of this section or chapter 521E, whichever is greater.

[C73, §1144; C97, §1721; SS15, §1721; C24, 27, 31, 35, 39, §**8951;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.69]

92 Acts, ch 1162, §36; 96 Acts, ch 1046, §5; 2013 Acts, ch 124, §18

Referred to in §515.143

515.70 Alien insurer defined.

1. An *"alien insurer"* is hereby defined to mean an insurance company incorporated or organized under the laws of any country other than the United States.

2. An alien insurer, with the approval of the commissioner, may be treated as a domestic insurer of this state in whole or in part. The approval of the commissioner may be based upon such factors as:

a. Maintenance of an appropriate trust account, surplus account, or other financial mechanism in this state.

b. Maintenance of all books and records of United States operations in this state.

c. Maintenance of a separate financial reporting system for its United States operations.

d. Any other provisions deemed necessary by the commissioner.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.70]

90 Acts, ch 1234, §37; 2012 Acts, ch 1023, §157

515.71 Deposit of securities — amount.

1. Every alien insurer authorized to transact business in this state shall at all times maintain a deposit with the commissioner of insurance in cash or in securities in which insurance companies are authorized to invest, of a sum equal to the greater of the reserve on all policies covering risks located in this state or one million dollars. The securities shall be approved, and the amount of the deposit shall be determined, by the commissioner. The commissioner, in the commissioner's discretion, may permit the withdrawal of interest earnings.

2. In lieu of the deposit provided in this section, an alien insurer may file with the commissioner a bond of equal amount executed by a licensed United States surety company, so conditioned for the protection of Iowa creditors and policyholders.

3. An alien insurer shall not be granted a certificate of authority to transact business in this state, or a renewal of the certificate, until such deposit is made, and the commissioner may revoke the certificate of authority of an alien insurer which fails to make the deposit within a reasonable period of time.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.71]

92 Acts, ch 1162, §37; 2000 Acts, ch 1023, §29, 60; 2018 Acts, ch 1041, §127

Code editor directive applied

515.72 Insolvency of company — procedure.

In the event of insolvency or receivership of any such alien insurer the title to the cash or securities so deposited shall vest in the commissioner of insurance for the use and benefit of the policies issued by said insurer and outstanding in this state, and in such event the commissioner shall be appointed receiver of said insurer by the district court, in and for Polk county, with the right, subject to the court's approval, to reinsure said policies in some insurance company or association authorized to do business in this state, or to liquidate said deposit for the sole benefit of the policies for which said deposit was made.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.72]

515.73 Additional statements — impaired capital.

Any company desiring to transact the business of insurance under this chapter shall also file with the commissioner a certified copy of its charter or deed of settlement, together with a statement under oath of the president or vice president or other chief officer and the secretary of the company for which they may act, stating the name of the company, the place where located, the amount of its capital, with a detailed statement of the facts and items required from companies organized under the laws of this state, and a copy of the last annual report, if any, made under any law of the state by which such company was incorporated; and no agent shall be allowed to transact business for any company whose capital is impaired by liabilities as specified in this chapter to the extent of twenty percent thereof, while such deficiency shall continue.

[C73, §1144; C97, §1722; C24, 27, 31, 35, 39, §**8954;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.75]

2007 Acts, ch 152, §6

CS2007, §515.73

2008 Acts, ch 1074, §5

515.74 Foreign mutual companies — surplus.

1. Any mutual insurance company organized outside of this state and authorized to transact the business of insurance on the mutual plan in any other state of the United States or in the District of Columbia, may be admitted to this state and authorized to transact herein any of the kinds of insurance authorized by its charter or articles of incorporation, when so permitted by the provisions of this chapter, with the powers and privileges and subject to the conditions and limitations specified in said chapter; provided, however, such company has complied with all the statutory provisions which require stock companies to file papers and to furnish information and to submit to examination, and is also solvent according to the requirements of this chapter and is possessed of a surplus safely invested as follows:

a. In case of a mutual company issuing policies for a cash premium without an additional contingent liability equal to or greater than the cash premium, the surplus shall be at least two million dollars.

b. In case of any other such mutual company issuing policies for a cash premium or payment with an additional contingent liability equal to or greater than the cash premium or payment, the surplus shall be such an amount as the commissioner of insurance of Iowa may require, but in no case less than three hundred thousand dollars, provided that the provisions of this section fixing a minimum surplus of three hundred thousand dollars shall not apply to companies now admitted to do business in Iowa; provided, further, that no such mutual company shall be authorized to transact compensation insurance without a surplus of at least three hundred thousand dollars unless all liability for each adjusted claim in this state, the payment of any part of which is deferred for more than one year, shall be provided for by a special deposit, in a trust company or a bank having fiduciary powers, located in this state, which shall be a trust fund applicable solely and exclusively to the payment of the compensation benefits for which such deposit is made, or shall be reinsured in an authorized stock company, or in an authorized mutual company with a surplus of at least three hundred thousand dollars.

2. Notwithstanding subsection 1, a mutual insurance company authorized to transact business under this section shall comply with the minimum surplus requirements of this section or chapter 521E, whichever is greater.

[C73, §1144; C97, §1723; C24, 27, 31, 35, 39, §**8955;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.76]

96 Acts, ch 1046, §6; 2007 Acts, ch 152, §7

CS2007, §515.74

515.75 Certificate to foreign company.

When a foreign company has fully complied with the requirements of law and become entitled to do business, the commissioner of insurance shall issue to the company a certificate of that fact, which certificate shall be renewed annually on the first day of June,

if the commissioner is satisfied that the capital, securities, and investments of the company remain unimpaired, and the company has complied with the provisions of law applicable to the company. However, the commissioner shall not grant or continue authority to transact insurance in this state to an insurer the management of which is found by the commissioner, after a hearing is provided, in which the commissioner shall establish and consider any prior criminal records or any other matters, to be untrustworthy or so lacking in insurance experience as to make the proposed operation hazardous to the insurance-buying public; or which, after a hearing is provided, the commissioner has good reason to believe is affiliated directly or indirectly through ownership, control, reinsurance transactions, or other insurance or business relations, with a person whose business operations are or have been marked, to the detriment of policyholders or stockholders or investors or creditors or of the public, by manipulation or dissipation of assets, or manipulation of accounts, or of reinsurance, or by similar injurious actions.

[C73, §1146; C97, §1724; C24, 27, 31, 35, 39, §**8956;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.77]

91 Acts, ch 213, §27; 2007 Acts, ch 152, §8

CS2007, §515.75

515.76 Commissioner as process agent.

Any company desiring to transact the business of insurance under this chapter shall file with the commissioner of insurance a power of attorney and a signed written instrument authorizing the commissioner to accept service of notice or process on behalf of such company that shall be as valid as if served upon the company according to the laws of this or any other state, and waiving all claim or right of error due to the filing of the power of attorney and the agreement regarding service of notice or process.

[C73, §1144; C97, §1722; C24, 27, 31, 35, 39, §**8952;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.73]

2003 Acts, ch 91, §36; 2007 Acts, ch 152, §4

CS2007, §515.76

515.77 Service of process.

Any notice or service of process made on the commissioner as agent for service of process shall be made as provided in section 505.30.

[C97, §1722; C24, 27, 31, 35, 39, §**8953;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.74]

92 Acts, ch 1162, §38; 99 Acts, ch 165, §14; 2007 Acts, ch 152, §5

CS2007, §515.77

2018 Acts, ch 1018, §8

Section amended

515.78 Foreign companies may become domestic.

1. An insurer which is organized under the laws of any state and has created or will create jobs in this state or which is an affiliate or subsidiary of a domestic insurer, and is admitted to do business in this state for the purpose of writing insurance authorized by this chapter may become a domestic insurer by complying with section 490.902 or 491.33 and with all of the requirements of law relative to the organization and licensing of a domestic insurer of the same type and by designating its principal place of business in this state may become a domestic corporation and be entitled to like certificates of its corporate existence and license to transact business in this state, and be subject in all respects to the authority and jurisdiction thereof.

2. The certificates of authority, agent's appointments and licenses, rates, and other items which are in existence at the time any insurer transfers its corporate domicile to this state, pursuant to this section, shall continue in full force and effect upon such transfer. For purposes of existing authorizations and all other corporate purposes, the insurer is deemed the same entity as it was prior to the transfer of its domicile. All outstanding policies of any transferring insurer shall remain in full force and effect and need not be endorsed as to any

new name of the company or its new location unless so ordered by the commissioner of insurance.

[81 Acts, ch 161, §2]
C83, §515.99
89 Acts, ch 288, §193; 2007 Acts, ch 152, §25
CS2007, §515.78
2011 Acts, ch 66, §2

515.79 Notes taken for insurance. Repealed by 2007 Acts, ch 152, §84.

515.80 through 515.90 Reserved.

515.91 False statement of assets. Repealed by 2007 Acts, ch 152, §84. See §507B.4.

515.92 Statement of capital and surplus. Repealed by 2007 Acts, ch 152, §84. See §507B.4.

515.93 Violations. Repealed by 2007 Acts, ch 152, §84.

515.94 through 515.99 Reserved.

SUBCHAPTER V

POLICY PROVISIONS AND RATES

515.100 Nature of organization entered on policy.

Every domestic and foreign insurance company organized and doing business under this chapter shall indicate upon the first page of every policy and renewal receipt that the policy is issued by a mutual company in case of a mutual company, and by a stock company in case of a stock company.

[C73, §1140; C97, §1689; S13, §1689; C24, 27, 31, 35, 39, §**8901;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.6]
2007 Acts, ch 152, §1
CS2007, §515.100

515.101 Conditions and stipulations invalidating policy — avoidance — pleadings — applicability.

1. Any condition or stipulation in an application, policy, or contract of insurance making the policy void before the loss occurs shall not prevent recovery on the policy by the insured, if the plaintiff shows that the failure to observe such provision or the violation thereof did not contribute to the loss.

2. Any such condition or stipulation in an application, policy, or contract of insurance that refers to any of the following shall not be changed or affected by the provisions of subsection 1:

a. Any other insurance, valid or invalid.

b. Vacancy of the insured premises.

c. The title or ownership of the property insured.

d. Liens or encumbrances on the property insured created by the voluntary act of the insured and within the insured's control.

e. Suspension or forfeiture of the policy during default or failure to pay any written obligation given to the insurance company for the premium.

f. The assignment or transfer of such policy of insurance before the loss occurs without the consent of the insurance company.

g. The removal of the property insured.

h. A change in the occupancy or use of the property insured, if such change or use makes the risk more hazardous.

i. Fraud, concealment, or misrepresentation of an insured.

3. Subsections 1 and 2 shall not be construed to change limitations or restrictions related to the pleading or proving of any defense by any insurance company to which the company is subject by law.

4. The provisions of subsections 1, 2, and 3 apply to all contracts of insurance on real and personal property.

[C97, §1743; S13, §1743; C24, 27, 31, 35, 39, §**8980;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.101]

2007 Acts, ch 152, §64; 2009 Acts, ch 145, §23

515.102 Forms of policies and endorsements — approval.

1. The form of all policies, and of applications, and of agreements or endorsements modifying the provisions of policies, and of all permits and riders used generally throughout the state, that are issued or proposed to be issued by any insurance company doing business in this state under the provisions of this chapter, shall first be examined and approved by the commissioner of insurance.

2. The commissioner, upon a determination that the examination required under subsection 1 is unnecessary to achieve the purpose of this section, may exempt either of the following:

a. Any specified person by order, or any class of persons by rule.

b. Any specified risk by order, or any line or kind of insurance, or subdivision of insurance, or any class of risk or combination of classes of risks by rule.

3. Forms of policies issued or proposed to be issued shall provide for the cancellation of the policy at the request of the insured upon equitable terms, and the return to the insured of any premium paid in excess of the customary short rates for the insurance up to the time of cancellation, or the release of the insured from any liability beyond such short rates, or for losses after the cancellation of the policy if the insurance is issued or proposed to be issued by a mutual company.

2007 Acts, ch 152, §65

Referred to in §515.109

515.103 Use of credit information — personal insurance.

1. *Definitions.* As used in this section unless the context otherwise requires:

a. "Adverse action" means a denial of issuance, cancellation, or refusal to renew, an increase in any charge for, or a reduction or other unfavorable change in the terms of coverage or amount of any personal insurance existing or applied for, or in connection with the underwriting of personal insurance.

b. "Affiliate" means any company that controls, is controlled by, or is under common control with another company.

c. "Applicant" means an individual who has applied to be covered by a personal insurance policy with an insurer.

d. "Consumer" means an insured whose credit information is used or whose insurance score is calculated in the underwriting or rating of a personal insurance policy or an applicant for such a personal insurance policy.

e. "Consumer reporting agency" means any person that, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information concerning consumers for the purpose of furnishing consumer credit reports to third parties.

f. "Credit information" means any information related to credit that is contained in or derived from a credit report, or provided in an application for personal insurance. Information that is not related to credit shall not be considered "credit information" regardless of whether the information is contained in or derived from a credit report or an application for credit or is used to calculate an insurance score.

g. "Credit report" means any written, oral, or other communication of information by a

consumer reporting agency that relates to a consumer's creditworthiness, credit standing, or credit capacity and that is used or expected to be used or is collected, in whole or in part, for the purpose of serving as a factor in determining personal insurance premiums, eligibility for personal insurance coverage, or tier placement.

h. "Insurance score" means a number or rating that is derived from an algorithm, computer application, model, or other process that is based in whole or in part on credit information for the purposes of predicting the future insurance loss exposure of a consumer.

i. "Insured" means an individual who is covered by a personal insurance policy.

j. "Personal insurance" means personal insurance and not commercial insurance and is limited to private passenger automobile, homeowners, farm owners, personal farm liability, motorcycle, mobile home owners, noncommercial dwelling fire, boat, personal watercraft, snowmobile, and recreational vehicle insurance policies, that are individually underwritten for personal, family, farm, or household use. No other type of insurance is included as personal insurance for the purposes of this section.

2. *Use of credit information.* An insurer authorized to do business in Iowa that uses credit information to underwrite or rate risks for a policy of personal insurance shall not do any of the following:

a. Use an insurance score that is calculated using income, gender, address, zip code, ethnic group, religion, marital status, race, or nationality of a consumer as a factor.

b. Deny issuance, cancel, or refuse to renew a policy of personal insurance solely on the basis of credit information, without consideration of any other applicable underwriting factors independent of credit information that are not otherwise prohibited under paragraph *"a"*.

c. Base a consumer's renewal rates for personal insurance solely on the basis of credit information, without consideration of any other applicable underwriting factors independent of credit information that are not otherwise prohibited under paragraph *"a"*.

d. Take adverse action against a consumer solely because the consumer does not have a credit card account, without consideration of any other applicable underwriting factors independent of credit information that are not otherwise prohibited under paragraph *"a"*.

e. Consider an absence of credit information or an inability to calculate an insurance score in underwriting or rating personal insurance unless the insurer does one of the following:

(1) Treats the consumer as if the consumer has neutral credit information, as defined by the insurer.

(2) Excludes the use of credit information as an underwriting factor and only uses other underwriting criteria.

f. Take adverse action against a consumer based on credit information, unless the insurer obtains and uses a credit report issued or an insurance score calculated within ninety days before the date a personal insurance policy is first written or a renewal is issued.

g. Use credit information unless not later than every thirty-six months following the last time that the insurer obtained current credit information for the insured, the insurer recalculates the insurance score or obtains an updated credit report for the insured. Regardless of the requirements of this paragraph:

(1) At annual renewal, upon the request of the consumer or the consumer's agent, the insurer shall re-underwrite and re-rate the personal insurance policy based upon a current credit report or insurance score. An insurer is not required to recalculate an insurance score or obtain a current credit report more than once in a twelve-month period.

(2) The insurer shall have the discretion to obtain current credit information for a consumer more frequently than every thirty-six months, if consistent with the insurer's underwriting guidelines.

(3) Notwithstanding subparagraph (1), an insurer is not required to obtain current credit information for a consumer if any of the following applies:

(a) The insurer is treating the consumer as otherwise approved by the commissioner of insurance.

(b) The consumer is in the most favorably priced tier of the insurer, within a group of affiliated insurers. However, the insurer shall have the discretion to obtain current credit information, if consistent with the insurer's underwriting guidelines.

(c) Credit information was not used for underwriting or rating the insured when the personal insurance policy was initially written. However, the insurer shall have the discretion to use current credit information for underwriting or rating the insured upon renewal of the policy, if consistent with the insurer's underwriting guidelines.

(d) The insurer reevaluates the insured beginning no later than thirty-six months after the personal insurance policy was initially written and thereafter, based on other underwriting or rating factors, excluding credit information.

h. Use any of the following as a negative factor in any insurance scoring methodology or in reviewing credit information for the purpose of underwriting or rating a personal insurance policy:

(1) Credit inquiries not initiated by the consumer or inquiries requested by the consumer for the consumer's own credit information.

(2) Inquiries relating to insurance coverage, if so identified on a consumer's credit report.

(3) Collection accounts with a medical industry code, if so identified on a consumer's credit report.

(4) Multiple lender inquiries, if coded by a consumer reporting agency on the consumer's credit report as being from the home mortgage industry and made within thirty days of one another, unless only one inquiry is considered.

(5) Multiple lender inquiries, if coded by a consumer reporting agency on the consumer's credit report as being from the automobile lending industry and made within thirty days of one another, unless only one inquiry is considered.

3. *Dispute resolution and error correction.* If it is determined through the dispute resolution process set forth under the federal Fair Credit Reporting Act, 15 U.S.C. §1681i(a)(5), that the credit information of a current insured is incorrect or incomplete and the insurer receives notice of such determination from either the consumer reporting agency or from the insured, the insurer shall re-underwrite and re-rate the insured within thirty days of receiving the notice. After re-underwriting or re-rating the insured, the insurer shall make any adjustments necessary, consistent with the insurer's underwriting and rating guidelines. If an insurer determines that an insured has overpaid the premium on a personal insurance policy, the insurer shall refund the amount of the overpayment to the insured, calculated for either the last twelve months of coverage or the actual policy period, whichever is shorter.

4. *Initial notification.*

a. If an insurer writing personal insurance uses credit information in underwriting or rating a consumer, the insurer or the insurer's agent shall disclose, either on the insurance application or at the time that the insurance application is taken, that the insurer may obtain credit information of the consumer in connection with the application. Such disclosure to a consumer shall either be written or provided in the same medium as the application for insurance. An insurer is not required to provide the disclosure statement required under this subsection to a consumer in connection with the renewal of a personal insurance policy if the consumer has previously been provided with such a disclosure statement.

b. An insurer that uses the following statement of disclosure shall be deemed to be in compliance with this subsection:

> In connection with this application for insurance, we may review your credit report or obtain or use a credit-based insurance score based on the information contained in that credit report. We may use a third party in connection with the development of your insurance score.

5. *Notification of adverse action.* If an insurer takes adverse action against a consumer based on credit information, the insurer shall do all of the following:

a. Provide notification to the consumer that adverse action has been taken, in accordance with the requirements of the federal Fair Credit Reporting Act, 15 U.S.C. §1681m(a).

b. Provide notification to the consumer explaining the reasons for the adverse action taken. Such notice shall give reasons for the adverse action taken in language that is sufficiently clear and specific so that a person can identify the basis for the insurer's decision to take adverse action. Such notification shall include a description of up to four factors

that were the primary influences for the adverse action taken. The use of generalized terms such as "poor credit history", "poor credit rating", or "poor insurance score" does not meet the explanation requirements of this paragraph. Standardized credit explanations that are provided by consumer reporting agencies or other third-party vendors are deemed to comply with this paragraph.

6. *Extraordinary life circumstances.*

a. An insurer authorized to do business in Iowa that uses credit information to underwrite or rate risks for a policy of personal insurance shall, on written request from a consumer, provide reasonable exceptions to the insurer's rates, rating classifications, company or tier placement, or underwriting rules or guidelines for a consumer who has experienced and whose credit information has been directly influenced by any of the following events:

(1) Catastrophic event, as declared by the federal or a state government.

(2) Serious illness or injury, or serious illness or injury to an immediate family member.

(3) Death of a spouse, child, or parent.

(4) Divorce or involuntary interruption of legally owed alimony or support payments.

(5) Identity theft.

(6) Temporary loss of employment for a period of three months or more, if such loss results from involuntary termination of employment.

(7) Military deployment overseas.

(8) Other events, as determined by the insurer.

b. If a consumer submits a request for an exception as set forth in paragraph "*a*", an insurer may, in its sole discretion, but is not required to, do any of the following:

(1) Require the consumer to provide reasonable written and independently verifiable documentation of the event.

(2) Require the consumer to demonstrate that the event had direct and meaningful impact on the consumer's credit information.

(3) Require such request to be made no more than sixty days from the date of the application for insurance or the policy renewal.

(4) Grant an exception despite the fact that the consumer did not provide the initial request for an exception in writing.

(5) Grant an exception where the consumer asks for consideration of repeated events or the insurer has considered this event previously.

c. An insurer is not out of compliance with any law or rules relating to underwriting, rating, or rate-filing as a result of granting an exception under this subsection. Nothing in this subsection shall be construed to provide a consumer or other insured with a cause of action that does not exist in the absence of this subsection.

d. An insurer shall provide notice to consumers that reasonable exceptions are available pursuant to this subsection and information about how the consumer may inquire further about such exceptions.

e. Within thirty days of the insurer's receipt of sufficient documentation of an event described in paragraph "*a*" from a consumer, the insurer shall inform the consumer of the outcome of the consumer's request for a reasonable exception. Such communication shall be in writing or provided to a consumer using the same medium as the request.

7. *Information filed with the commissioner of insurance.*

a. An insurer that uses insurance scores to underwrite and rate risks for personal insurance shall file the insurer's scoring models or other scoring processes with the commissioner of insurance. A third party may file scoring models on behalf of an insurer. Information filed with the commissioner that includes insurance scoring models may include information including loss experience that justifies the insurer's use of credit information.

b. Information filed with the commissioner of insurance pursuant to this subsection shall be considered a confidential record and be recognized and protected as a trade secret pursuant to section 22.7, subsection 3.

8. *Indemnification.* An insurer shall indemnify, defend, and hold harmless agents or producers of the insurer from and against all liability, fees, and costs, arising out of or relating to the actions, errors, or omissions of an agent or producer who obtains or uses credit information or insurance scores on behalf of an insurer, provided that the agent or

producer follows the instructions or procedures established by the insurer and complies with any applicable law or regulation. This subsection shall not be construed to provide a consumer or other insured with a cause of action that does not exist in the absence of this subsection.

9. *Consumer reporting agency — sale of credit information.*

a. A consumer reporting agency shall not provide or sell data or lists that include any information that was submitted, in whole or in part, in conjunction with an insurance inquiry about a consumer's credit information or a request for a credit report or insurance score. Such information includes, but is not limited to, the expiration dates of an insurance policy or any other information that can be used to identify the expiration date of a consumer's insurance policy or the terms and conditions of the consumer's insurance coverage.

b. This subsection does not apply to the provision of information, including data or lists, by a consumer reporting agency to the agent or producer from whom the information was received, to the insurer on whose behalf the agent or producer acted, or to the insurer's affiliates or holding companies.

c. This subsection shall not be construed to restrict an insurer from obtaining a claims history report or a motor vehicle report of a consumer.

10. *Severability.* If any subsection, paragraph, sentence, clause, phrase, or any other part of this section is declared invalid due to an interpretation of or a future change in the federal Fair Credit Reporting Act, the remaining subsections, paragraphs, sentences, clauses, phrases, or parts thereof shall be in no manner affected thereby but shall remain in full force and effect.

2004 Acts, ch 1039, §1; 2004 Acts, ch 1175, §341
C2005, §515.109A
2005 Acts, ch 3, §83, 84; 2007 Acts, ch 152, §28
CS2007, §515.103
2010 Acts, ch 1056, §1, 2; 2015 Acts, ch 30, §165

515.104 Coinsurance or contribution clause.

Contracts of insurance against loss or damage by fire or other perils may contain a coinsurance or contribution clause or clause having similar effect, provided the form setting up the terms of the same has been approved by the commissioner of insurance.

[C97, §1746; S13, §1746; C24, 27, 31, 35, 39, §**8990 – 8995, 8997;** C46, 50, 54, §515.111 – 515.116, 515.118; C58, 62, 66, 71, 73, 75, 77, 79, 81, §515.111]

2007 Acts, ch 152, §29
CS2007, §515.104

515.105 Agency relationship.

Any officer, insurance producer, or representative of an insurance company doing business in this state who may solicit insurance, procure applications, issue policies, adjust losses, or transact the business generally of such companies, shall be held to be the agent of such insurance company with authority to transact all business within the scope of the agency relationship, anything in the application, policy, contract, bylaws, or articles of incorporation of such company to the contrary notwithstanding.

[C97, §1750; C24, 27, 31, 35, 39, §**9004;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.125]

2001 Acts, ch 16, §9, 37; 2007 Acts, ch 152, §33
CS2007, §515.105
Referred to in §511.4
Applicable to life companies, §511.4

515.106 Limitation on termination of independent producers.

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

withdrawal of operations in the state by the insurance company. This section does not apply to insurance producers or a business entity whose contract with an insurer authorized to do business in this state contains a written provision expressly reserving to the insurer all right, title, and interest to the ownership or the use of insurance business written by such an insurance producer or business entity.

2002 Acts, ch 1111, §19
C2003, §515.125A
2007 Acts, ch 152, §34
CS2007, §515.106

515.107 Applicability to organizations and individuals. Repealed by 2008 Acts, ch 1074, §19. See §515.1.

515.108 Insurance in unauthorized companies.

No action shall be maintained in any court in the state upon any policy or contract of fire insurance issued upon any property situated in the state by any company, association, partnership, individual, or individuals that have not been authorized by the commissioner of insurance to transact such insurance business, unless it shall be shown that the insurer or insured, within six months after the issuing of such policy or contract of insurance, has paid into the state treasury two percent of the gross premium paid or agreed to be paid for such policy or contract of insurance.

[C97, §1758; C24, 27, 31, 35, 39, §**9016;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.137]

2007 Acts, ch 152, §43
CS2007, §515.108

515.109 Fire insurance contract — standard policy provisions — permissible variations.

1. The printed form of a policy of fire insurance as set forth in subsection 6 shall be known and designated as the "standard policy" to be used in the state of Iowa.

2. *Standard policy, additions, riders, and clauses.*

a. It shall be unlawful for any insurance company to issue any policy of fire insurance upon any property in this state except upon automobiles, airplanes, seaplanes, dirigibles, or other aircraft, farm crops until stored, marine and inland marine risks other or different from the standard form of fire insurance policy herein set forth.

b. There shall be printed at the head of said policy the name of the insurer or insurers issuing the policy; the location of the home office thereof; a statement whether said insurer or insurers are stock or mutual corporations or are reciprocal insurers; and subject to the approval of the commissioner of insurance, there may be added thereto such device or devices as the insurer or insurers issuing said policy shall desire. Provided, however, that any company organized under special charter provisions may so indicate upon its policy, and may add a statement of the plan under which it operates in this state.

c. The standard policy provided for herein need not be used for effecting reinsurance between insurers.

d. If the policy is issued by a mutual, cooperative, or reciprocal insurer having special regulations with respect to the payment by the policyholder of assessments, such regulations shall be printed upon the policy, and any such insurer may print upon the policy such regulations as may be required by its home state or appropriate to its form of organization.

3. Binders or other contracts for temporary insurance may be made and shall be deemed to include all the terms of such standard policy and all such applicable endorsements as may be designated in such contract of temporary insurance; except that the cancellation clause of such standard policy, and the clause thereof specifying the hour of the day at which the insurance shall commence, may be superseded by the express terms of such contract of temporary insurance.

4. Two or more insurers authorized to do in this state the business of fire insurance, may, with the approval of the commissioner of insurance, issue a combination standard form of policy which shall contain the following:

a. A provision substantially to the effect that the insurers executing such policy shall be severally liable for the full amount of any loss or damage, according to the terms of the policy, or for specified percentages or amounts thereof, aggregating the full amount of such insurance under such policy.

b. A provision substantially to the effect that service of process, or of any notice or proof of loss required by such policy, upon any of the insurers executing such policy, shall be deemed to be service upon all such insurers.

5. Appropriate forms of other contracts or endorsements, insuring against one or more of the perils incident to the ownership, use or occupancy of said property, other than fire and lightning, which the insurer is empowered to assume, may be used in connection with the standard policy. Such forms of other contracts or endorsements attached or printed thereon may contain provisions and stipulations inconsistent with the standard policy if applicable only to such other perils. The pages of the standard policy may be renumbered and rearranged to provide space for the listing of rates and premiums for coverages insured thereunder or under endorsements attached or printed thereon, and such other data as may be included for duplication on daily reports for office records. An insurer may issue a policy, either on an unspecified basis as to coverage or for an indivisible premium, which contains coverage against the peril of fire and substantial coverage against other perils, if such policy includes provisions with respect to the peril of fire which are the substantial equivalent of the minimum provisions of such standard policy, provided further the policy is complete as to all its terms of coverage without reference to any other document and is approved in accordance with section 515.102, subsections 1 and 2.

6. *a.* The form of the standard policy (with permission to substitute for the word "company" a more accurate descriptive term for the type of insurer) shall be as follows:

FIRST PAGE OF STANDARD FIRE POLICY

No. .....

(Space for insertion of name of company or companies issuing the policy and other matter permitted to be stated at the head of the policy.)

(Space for listing amounts of insurance, rates and premiums for the basic coverages insured under the standard form of policy and for additional coverages or perils insured under endorsements attached.)

IN CONSIDERATION OF THE PROVISIONS AND STIPULATIONS HEREIN OR ADDED HERETO AND OF ..... DOLLARS PREMIUM this company, for the term of ..... from the ..... day of ..... (month), ... (year), to the ..... day of ..... (month), ... (year), at noon, Standard Time, at location of property involved, to an amount not exceeding ..... Dollars, does insure ..... and legal representatives, to the extent of the actual cash value of the property at the time of loss, but not exceeding the amount which it would cost to repair or replace the property with material of like kind and quality within a reasonable time after such loss, without allowance for any increased cost of repair or reconstruction by reason of any ordinance or law regulating construction or repair, and without compensation for loss resulting from interruption of business or manufacture, nor in any event for more than the interest of the insured, against all DIRECT LOSS BY FIRE, LIGHTNING AND BY REMOVAL FROM PREMISES ENDANGERED BY THE PERILS INSURED AGAINST IN THIS POLICY, EXCEPT AS HEREINAFTER PROVIDED, to the property described hereinafter while located or contained as described in this policy, or pro rata for five days at each proper place to which

any of the property shall necessarily be removed for preservation from the perils insured against in this policy, but not elsewhere.

Assignment of this policy shall not be valid except with the written consent of this company. This policy is made and accepted subject to the foregoing provisions and stipulations and those hereinafter stated, which are hereby made a part of this policy, together with such other provisions, stipulations and agreements as may be added hereto, as provided in this policy.

IN WITNESS WHEREOF, this company has executed and attested these presents; but this policy shall not be valid unless countersigned by the duly authorized agent of this company at .....

....
Secretary. President.

Countersigned this .....
day of ..... (month), ... (year).

.....
Agent.

SECOND PAGE OF STANDARD FIRE POLICY

Concealment — fraud. This entire policy shall be void if, whether before or after a loss, an insured has willfully concealed or misrepresented any material fact or circumstance concerning this insurance or the subject thereof, or the interest of an insured therein, or in case of any fraud or false swearing by an insured relating thereto.

Uninsurable and excepted property. This policy shall not cover accounts, bills, currency, deeds, evidences of debt, money or securities; nor, unless specifically named hereon in writing, bullion or manuscripts.

Perils not included. This company shall not be liable for loss by fire or other perils insured against in this policy caused, directly or indirectly, by: (a) Enemy attack by armed forces, including action taken by military, naval or air forces in resisting an actual or an immediately impending enemy attack; (b) invasion; (c) insurrection; (d) rebellion; (e) revolution; (f) civil war; (g) usurped power; (h) order of any civil authority except acts of destruction at the time of and for the purpose of preventing the spread of fire, provided that such fire did not originate from any of the perils excluded by this policy; (i) neglect of an insured to use all reasonable means to save and preserve the property at and after a loss, or when the property is endangered by fire in neighboring premises; (j) nor shall this company be liable for loss by theft.

Other insurance. Other insurance may be prohibited or the amount of insurance may be limited by endorsement attached hereto.

Conditions suspending or restricting insurance. Unless otherwise provided in writing added hereto this company shall not be liable for loss occurring under any of the following circumstances:

[a] While the hazard is created or increased by any means within the control or knowledge of an insured.

[b] While a described building, whether intended for occupancy by owner or tenant, is vacant or unoccupied beyond a period of sixty consecutive days.

[c] As a result of explosion or riot, unless fire ensue, and in that event for loss by fire only.

Other perils or subjects. Any other peril to be insured against or subject of insurance to be covered in this policy shall be by endorsement in writing hereon or added hereto.

Added provisions. The extent of the application of insurance under this policy and of the contribution to be made by this company in case of loss, and any other provision or agreement not inconsistent with the provisions of this policy, may be provided for in writing added hereto, but no provision may be waived except such as by the terms of this policy is subject to change.

Waiver provisions. No permission affecting this insurance shall exist, or waiver of any provision be valid, unless granted herein or expressed in writing added hereto. No provision, stipulation or forfeiture shall be held to be waived by any requirement or proceeding on the part of this company relating to appraisal or to any examination provided for herein.

Cancellation of policy. This policy shall be canceled at any time at the request of the insured, in which case this company shall, upon demand and surrender of this policy, refund the excess of paid premium above the customary short rates for the expired time. This policy may be canceled at any time by this company by giving to the insured a five days' written notice of cancellation with or without tender of the excess of paid premium above the pro rata premium for the expired time, which excess, if not tendered, shall be refunded on demand. Notice of cancellation shall state that said excess premium (if not tendered) will be refunded on demand.

Mortgagee interests and obligations. If loss hereunder is made payable, in whole or in part, to a designated mortgagee not named herein as the insured, such interest in this policy may be canceled by giving to such mortgagee a ten days' written notice of cancellation.

If the insured fails to render proof of loss such mortgagee, upon notice, shall render proof of loss in the form herein specified within sixty days thereafter and shall be subject to the provisions hereof relating to appraisal and time of payment and of bringing suit. If this company shall claim that no liability existed as to the mortgagor or owner, it shall, to the extent of payment of loss to the mortgagee, be subrogated to all the mortgagee's rights of recovery, but without impairing mortgagee's right to sue; or it may pay off the mortgage debt and require an assignment thereof and of the mortgage. Other provisions relating to the interests and obligations of such mortgagee may be added hereto by agreement in writing.

Pro rata liability. This company shall not be liable for a greater proportion of any loss than the amount hereby insured shall bear to the whole insurance covering the property against the peril involved, whether collectible or not.

Requirements in case loss occurs. The insured shall give immediate written notice to this company of any loss, protect the property from further damage, forthwith separate the damaged and undamaged personal property, put it in the best possible order, furnish a complete inventory of the destroyed, damaged and undamaged property, showing in detail quantities, costs, actual cash value and amounts of loss claimed; AND WITHIN SIXTY DAYS AFTER THE LOSS, UNLESS SUCH TIME IS EXTENDED IN WRITING BY THIS COMPANY, THE INSURED SHALL RENDER TO THIS COMPANY A PROOF OF LOSS, signed and sworn to by the insured, stating the knowledge and belief of the insured as to the following: The time and origin of the loss, the interest

of the insured and of all others in the property, the actual cash value of each item thereof and the amount of loss thereto, all encumbrances thereon, all other contracts of insurance, whether valid or not, covering any of said property, any changes in the title, use, occupation, location, possession or exposures of said property since the issuing of this policy, by whom and for what purpose any building herein described and the several parts thereof were occupied at the time of loss and whether or not it then stood on leased ground, and shall furnish a copy of all the descriptions and schedules in all policies and, if required, verified plans and specifications of any building, fixtures or machinery destroyed or damaged. The insured, as often as may be reasonably required, shall exhibit to any person designated by this company all that remains of any property herein described, and submit to examinations under oath by any person named by this company, and subscribe the same; and, as often as may be reasonably required, shall produce for examination all books of account, bills, invoices and other vouchers, or certified copies thereof if originals be lost, at such reasonable time and place as may be designated by this company or its representative, and shall permit extracts and copies thereof to be made.

Appraisal. In case the insured and this company shall fail to agree as to the actual cash value or the amount of loss, then, on the written demand of either, each shall select a competent and disinterested appraiser and notify the other of the appraiser selected within twenty days of such demand. The appraisers shall first select a competent and disinterested umpire; and failing for fifteen days to agree upon such umpire, then, on request of the insured or this company, such umpire shall be selected by a judge of a court of record in the state in which the property covered is located. The appraisers shall then appraise the loss, stating separately actual cash value and loss to each item; and, failing to agree, shall submit their differences, only, to the umpire. An award in writing, so itemized, of any two when filed with this company shall determine the amount of actual cash value and loss. Each appraiser shall be paid by the party selecting the appraiser and the expenses of appraisal and umpire shall be paid by the parties equally.

Company's options. It shall be optional with this company to take all, or any part, of the property at the agreed or appraised value, and also to repair, rebuild or replace the property destroyed or damaged with other of like kind and quality within a reasonable time, on giving notice of its intention so to do within thirty days after the receipt of the proof of loss herein required.

Abandonment. There can be no abandonment to this company of any property.

When loss payable. The amount of loss for which this company may be liable shall be payable sixty days after proof of loss, as herein provided, is received by this company and ascertainment of the loss is made either by agreement between the insured and this company expressed in writing or by the filing with this company of an award as herein provided.

Suit. No suit or action on this policy for the recovery of any claim shall be sustainable in any court of law or equity unless all the requirements of this policy shall have been complied with, and

unless commenced within twelve months next after inception of the loss.

Subrogation. This company may require from the insured an assignment of all right of recovery against any party for loss to the extent that payment therefor is made by this company.

THIRD PAGE OF STANDARD FIRE POLICY
ATTACH FORM BELOW THIS LINE

FOURTH PAGE OF STANDARD FIRE POLICY
STANDARD FIRE INSURANCE POLICY

Expires . . . . . .
Property . . . . . .
Amount $ . . . . . Total Premium $ . . . . . .
Insured . . . . . .

SEE INSIDE OF POLICY FOR PERILS COVERED
NO.

(Space of approximately two (2) inches for use of Agent or Insurer.)

(Space of approximately two (2) inches for use of Agent or Insurer.)

b. It is important that the written portions of all policies covering the same property read exactly alike. If they do not, they should be made uniform at once.

[C97, §1743, 1744, 1746; S13, §1742-a, 1743, 1744, 1746, 1758-a, 1758-b; C24, §8979, 8982, 8983, 8986, 8996, 9017, 9018; C27, 31, 35, §8979, 8982, 8983, 8986, 8996, 9017, 9018, 9021-a1; C39, §**8979, 8982, 8983, 8986, 8996, 9017, 9018, 9021.1;** C46, §515.99, 515.103, 515.104, 515.107, 515.117, 515.138, 515.139, 515.143; C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.138]

2000 Acts, ch 1058, §56; 2005 Acts, ch 3, §85; 2005 Acts, ch 70, §19 – 21; 2007 Acts, ch 152, §44, 73

CS2007, §515.109

2012 Acts, ch 1023, §157; 2015 Acts, ch 29, §75, 76

Referred to in §515.110, 515.111, 515.112, 515.113

515.110 More favorable conditions.

Nothing contained in section 515.109 shall be so construed as to prohibit any insurance company not required by the statutes of Iowa to issue a standard form of policy, from embodying, with the approval of the commissioner of insurance, in any insurance contract issued by it, provisions or conditions which are more favorable to the insured than those authorized in said statutes.

[C24, 27, 31, 35, 39, §**8987;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.108]

2007 Acts, ch 152, §27, 66

CS2007, §515.110

515.111 Nuclear loss or damage excluded.

Insurers issuing the standard policy pursuant to section 515.109 are authorized to affix thereto or include therein a written statement that the policy does not cover loss or damage caused by nuclear reaction or nuclear radiation or radioactive contamination, all whether directly or indirectly resulting from an insured peril under said policy; provided, however, that nothing herein contained shall be construed to prohibit the attachment to any such policy of

an endorsement or endorsements specifically assuming coverage for loss or damage caused by nuclear reaction or nuclear radiation or radioactive contamination.

[C62, 66, 71, 73, 75, 77, 79, 81, §515.139]

2007 Acts, ch 152, §45, 74

CS2007, §515.111

515.112 Violations — status of policy.

It shall be unlawful for any insurance company, its officers or agents, or either of them, to violate any of the provisions of section 515.109 by issuing, delivering, or offering to issue or deliver any policy of fire insurance on property in this state other than the standard form as provided in statute, but any policy so issued or delivered shall, nevertheless, be binding upon the company issuing or delivering the policy. The company shall, until the payment of a penalty assessed by order after hearing, be disqualified from doing any insurance business in this state.

[S13, §1758-c; C24, 27, 31, 35, 39, §**9019;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.140]

2004 Acts, ch 1110, §57; 2007 Acts, ch 152, §46, 75

CS2007, §515.112

Referred to in §515.113

515.113 Existing statutes — waiver.

Nothing contained in sections 515.109 and 515.112, nor any provisions or conditions in the standard form of policy provided for in section 515.109, shall be deemed to repeal or in any way modify any existing statutes or to prevent any insurance company issuing such policy, from waiving any of the provisions or conditions contained therein, if the waiver of such provisions or conditions shall be in the interest of the insured.

[S13, §1758-d; C24, 27, 31, 35, 39, §**9020;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.141]

2007 Acts, ch 152, §47, 76

CS2007, §515.113

515.114 Policy — formal execution.

1. Every fire insurance company and association authorized to transact business in this state shall conduct its business in the name under which it is incorporated, and the policies issued by it shall be headed or entitled only by such name. There shall not appear on the face of the policy or on its filing back anything that would indicate that it is the obligation of any other than the company responsible for the payment of losses under the policy, though it is permissible to stamp or print on the bottom of the filing back the name or names of the department or general agency issuing the same, and the group of companies with which the company is financially affiliated.

2. Nothing contained in subsection 1 shall be construed to prevent any representative of an insurance company from advertising the representative's own individual business without specific mention of the name of the company or companies which the person may represent.

2007 Acts, ch 152, §67

515.115 Certificates of insurance — penalty.

1. As used in this section, unless the context otherwise requires:

a. "Certificate of insurance" means a document or instrument, regardless of how the document or instrument is titled or described, that is prepared or issued by an insurer or insurance producer as evidence of property and casualty insurance coverage. *"Certificate of insurance"* does not include a policy of insurance, insurance binder, policy endorsement, or automobile insurance identification or information card.

b. "Commercial real estate transaction" means a non-recourse commercial lending transaction in which the underlying property serves as the primary collateral securing the borrower's repayment of the loan and the borrower or any of the borrower's members, partners, or shareholders, or any person related to the borrower or the borrower's members,

partners, or shareholders, does not bear the economic risk of loss in the event of a payment default under the terms of the commercial lending transaction.

c. *"Insurance producer"* means a person required to be licensed pursuant to chapter 522B to sell, solicit, or negotiate property and casualty insurance.

d. *"Insurer"* means a property and casualty insurance company regulated under this chapter.

e. *"Person"* means the same as defined in section 4.1.

2. *a.* The commissioner of insurance shall prohibit the use of a certificate of insurance form if the form is either of the following:

(1) Unfair, misleading, or deceptive, or violates public policy.

(2) Violates any law, including any rule adopted by the commissioner of insurance pursuant to chapter 17A.

b. A certificate of insurance is not a policy of insurance and does not affirmatively or negatively amend, extend, or alter the coverage afforded by the policy to which the certificate of insurance makes reference. A certificate of insurance shall not confer on any person new or additional rights beyond what the referenced policy of insurance expressly provides.

c. Notwithstanding any provision of this chapter to the contrary, or any language on a certificate of insurance that states that the form is for "information only", a binder delivered together with a certificate of insurance in connection with a commercial real estate transaction shall be valid and may be relied upon by the borrower or by the borrower's lender as evidence of insurance, including in a private civil action or an administrative proceeding, until the delivery of the insurance policy to the borrower or the cancellation of the binder pursuant to section 515.125, 515.126, or 515.127.

3. *a.* A person shall not do any of the following:

(1) Prepare, issue, request, or require the issuance of a certificate of insurance that contains any false or misleading information concerning the policy of insurance to which the certificate of insurance makes reference.

(2) Prepare, issue, request, or require the issuance of a certificate of insurance that purports to affirmatively or negatively amend, extend, or alter the coverage provided by the policy of insurance to which the certificate of insurance makes reference.

b. A certificate of insurance shall not warrant that the policy of insurance referenced in the certificate of insurance complies with the insurance or indemnification requirements of a contract and the inclusion of a contract number or description within a certificate of insurance shall not be interpreted as warranting compliance with such requirements.

4. A person is entitled to notice of cancellation, nonrenewal, or material change concerning a policy of insurance or to any similar notice concerning a policy of insurance only if the person has such rights to notice under the terms of the policy of insurance or any endorsement to the policy of insurance. The terms and conditions of a person's right to notice are governed by the policy of insurance or the endorsement and shall not be altered by a certificate of insurance.

5. *a.* The provisions of this section are applicable to all certificates of insurance issued in connection with property, operations, or risks located in this state, regardless of where the policyholder, insurer, insurance producer, or person requesting or requiring the issuance of a certificate of insurance is located.

b. A certificate of insurance or any other document or correspondence prepared, issued, requested, or required in violation of this section is null and void.

6. The commissioner of insurance may do all of the following:

a. Examine and investigate the activities of any person that the commissioner reasonably believes has been or is engaged in an act or practice prohibited under this section.

b. Enforce the provisions of this section, including the authority to issue orders to cease and desist, and to impose a penalty in an amount of five hundred dollars per violation to be collected in the name of the state for deposit as provided in section 505.7.

c. Adopt rules pursuant to chapter 17A to administer this section.

2017 Acts, ch 51, §1 – 3

Section takes effect April 12, 2017, and applies to certificates of insurance prepared, issued, requested, or required beginning ninety days after that date; 2017 Acts, ch 51, §2, 3

515.116 through 515.119 Reserved.

515.120 through 515.122 Repealed by 2012 Acts, ch 1025, §21, 22. See chapter 515I.

515.123 and 515.124 Repealed by 2001 Acts, ch 16, §36, 37.

SUBCHAPTER VI

DUTIES OF INSURERS

515.125 Forfeiture of policies — notice.

1. Unless otherwise provided in section 515.127, 515.128, 515.129, 515.129A, 515.129B, or 515.129C, a policy or contract of insurance provided for in this chapter shall not be forfeited, suspended, or canceled except by notice to the insured as provided in this chapter. A notice of cancellation is not effective unless mailed or delivered by the insurer to the named insured at least thirty days before the effective date of cancellation or, where cancellation is for nonpayment of a premium, assessment, or installment provided for in the policy, or in a note or contract for the payment thereof, at least ten days prior to the date of cancellation. The notice may be made in person, or by sending by mail a letter addressed to the insured at the insured's address as given in or upon the policy, anything in the policy, application, or a separate agreement to the contrary notwithstanding.

2. An insurer shall not fail to renew a policy except by notice to the insured as provided in this chapter. A notice of intention not to renew is not effective unless mailed or delivered by the insurer to the named insured at least thirty days prior to the expiration date of the policy. A notice of intention not to renew is not required if the insured is transferred from an insurer to an insurance company admitted in Iowa which is an affiliate of, as defined in section 521A.1, the transferring insurer and all of the following conditions are met:

a. The transfer does not result in an interruption in coverage.

b. The rating of the affiliate from the A.M. Best company or a substitute rating service acceptable to the commissioner is the same or better than the rating of the transferring insurer.

c. The transfer results in the same or broader coverage.

d. Notice of the transfer is delivered to the insured or sent by first class mail to the insured's last known address not less than thirty days prior to the transfer. The notice required by this paragraph is not required in the event that the insured requests or consents to the transfer.

e. The notice of transfer provides the name and telephone number of the insured's insurance producer, agent, or agency, if any.

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

[C97, §1727; C24, 27, 31, 35, 39, §**8959;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.80]

87 Acts, ch 132, §3; 88 Acts, ch 1112, §404; 90 Acts, ch 1234, §38; 2002 Acts, ch 1111, §17; 2007 Acts, ch 152, §9, 58

CS2007, §515.125

2008 Acts, ch 1074, §9; 2010 Acts, ch 1121, §18; 2011 Acts, ch 70, §29; 2015 Acts, ch 128, §23, 50, 51

Referred to in §509B.5, 515.115, 515.126, 515D.7
Continuation rights and notice under group accident and health insurance, see §509B.5
See §515D.5, 515D.7

515.126 Cancellation of policy — notice to insured or mortgagee.

1. Unless otherwise provided in section 515.127, 515.128, 515.129, 515.129A, 515.129B, or 515.129C, at any time after the maturity of a premium, assessment, or installment provided for in the policy, or a note or contract for the payment thereof, or after the suspension, forfeiture, or cancellation of a policy or contract of insurance, the insured may pay to the company the

customary short rates and costs of action, if one has been commenced or judgment rendered thereon, and may, if the insured so elects, have the policy and all contracts or obligations connected with the policy, whether in judgment or otherwise, canceled, and all such policy and contracts shall be void; and in case of suspension, forfeiture, or cancellation of a policy or contract of insurance, the insured is not liable for a greater amount than the short rates earned at the date of the suspension, forfeiture, or cancellation and the costs of action provided for in this section.

2. If the policy is canceled by the insurance company, the insurer may retain only the pro rata premium, and if the initial cash premium, or any part of the premium, has not been paid, the policy may be canceled by the insurance company by giving notice to the insured as provided in section 515.125 and ten days' notice to the mortgagee, or other person to whom the policy is made payable, if any, without tendering any part of the premium, anything to the contrary in the policy notwithstanding.

[C97, §1728; S13, §1728; C24, 27, 31, 35, 39, §**8960;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.81]

87 Acts, ch 132, §4; 88 Acts, ch 1112, §405; 90 Acts, ch 1234, §39; 2007 Acts, ch 152, §10, 59

CS2007, §515.126

2011 Acts, ch 70, §30

Referred to in §515.115

See §515D.5, 515D.7

515.127 Cancellation of commercial lines policies or contracts.

1. A commercial line policy or contract of insurance, except a policy or contract for crop hail or multiperil crop insurance, which has not been previously renewed may be canceled by the insurer if it has been in effect for less than sixty days at the time notice of cancellation is mailed or delivered.

2. A commercial line policy or contract of insurance, except a policy or contract for crop hail or multiperil crop insurance, which has been renewed or which has been in effect for more than sixty days shall not be canceled unless at least one of the following conditions occurs:

a. Nonpayment of premium.

b. Misrepresentation or fraud made by or with the knowledge of the insured in obtaining the policy or contract, when renewing the policy or contract, or in presenting a claim under the policy or contract.

c. Actions by the insured which substantially change or increase the risk insured.

d. Determination by the commissioner that the continuation of the policy will jeopardize the insurer's solvency or will constitute a violation of the law of this or any other state.

e. The insured has acted in a manner which the insured knew or should have known was in violation or breach of a policy or contract term or condition.

3. A commercial line policy or contract of insurance, except a policy or contract for crop hail or multiperil crop insurance, may be canceled at any time if the insurer loses reinsurance coverage which provides coverage to the insurer for a significant portion of the underlying risk insured and if the commissioner determines that cancellation because of loss of reinsurance coverage is justified. In determining whether a cancellation because of loss of reinsurance coverage is justified, the commissioner shall consider all of the following factors:

a. The volatility of the premiums charged for reinsurance in the market.

b. The number of reinsurers in the market.

c. The variance in the premiums for reinsurance offered by the reinsurers in the market.

d. The attempt by the insurer to obtain alternate reinsurance.

e. Any other factors deemed necessary by the commissioner.

4. A commercial line policy or contract of insurance, except a policy or contract for crop hail or multiperil crop insurance, shall not be canceled except by notice to the insured as provided in this subsection. A notice of cancellation shall include the reason for cancellation of the policy or contract. A notice of cancellation is not effective unless mailed or delivered to the named insured and a loss payee at least ten days prior to the effective date of cancellation,

or if the cancellation is because of loss of reinsurance, at least thirty days prior to the effective date of cancellation. A post office department certificate of mailing to the named insured at the address shown in the policy or contract is proof of receipt of the mailing; however, such a certificate of mailing is not required if cancellation is for nonpayment of premium.

88 Acts, ch 1112, §406
C89, §515.81A
93 Acts, ch 88, §17; 2007 Acts, ch 152, §11
CS2007, §515.127
Referred to in §515.115, 515.125, 515.126, 515.129
See §515D.5, 515D.7

515.128 Nonrenewal of commercial lines policies or contracts.

1. An insurer shall not fail to renew a commercial line policy or contract of insurance except by notice to the named insured as provided in this section.

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

3. This section applies to all forms of commercial property and casualty insurance written pursuant to this chapter. It does not apply if the insurer has offered to renew or if the insured fails to pay a premium due or any advance premium required by the insurer for renewal. A notice of nonrenewal is not required if the insured is transferred from an insurer to an insurance company admitted in Iowa which is an affiliate of, as defined in section 521A.1, the transferring insurer and all of the following conditions are met:

a. The transfer does not result in an interruption in coverage.

b. The rating of the affiliate from the A.M. Best company or a substitute rating service acceptable to the commissioner is the same or better than the rating of the transferring insurer.

c. The transfer results in the same or broader coverage.

d. Notice of the transfer is delivered to the insured or sent by first class mail to the insured's last known address not less than forty-five days prior to the transfer. The notice required by this paragraph is not required in the event that the insured requests or consents to the transfer.

e. The notice of transfer provides the name and telephone number of the insured's insurance producer, agent, or agency, if any.

88 Acts, ch 1112, §407
C89, §515.81B
2002 Acts, ch 1111, §18; 2007 Acts, ch 152, §12
CS2007, §515.128
2013 Acts, ch 124, §19; 2015 Acts, ch 128, §24, 50, 51
Referred to in §515.125, 515.126, 515.129, 515D.7
See §515D.7

515.128A Material changes in commercial lines policies or contracts — notice required.

1. If an insurer has an increase in the premium rates of twenty-five percent or more, an increase in the deductible of twenty-five percent or more, or a material reduction in the limits or coverage of the policy or contract, the insurer shall notify the named insured by a letter of explanation of the changes by mail at least forty-five days prior to the expiration date of the policy or contract. However, a premium charge that is assessed after the beginning date of the policy or contract period for which the premium is due shall not be deemed a premium increase for the purposes of this section.

2. If the insurer fails to meet the notice requirements of this section, the named insured has the option of continuing the policy or contract for the remainder of the notice period plus an additional thirty days at the premium rate of the existing policy or contract. A post office

department certificate of mailing to the named insured at the address shown in the policy or contract is proof of receipt of the mailing.

2013 Acts, ch 124, §20

515.129 Cancellation or nonrenewal of commercial umbrella or excess policies or contracts.

1. As used in this section, "*umbrella or excess insurance policy*" means a commercial line policy or contract of insurance providing liability or property coverage over one or more underlying policies or over a specified amount of self-insured retention. Umbrella or excess insurance policy includes policies or contracts written over an umbrella or excess insurance policy or policies.

2. An umbrella or excess insurance policy which has not previously been renewed may be canceled by the insurer if it has been in effect for less than sixty days at the time notice of cancellation is mailed or delivered.

3. An umbrella or excess insurance policy which has been renewed or which has been in effect for sixty or more days shall not be canceled by the insurer, except as provided in section 515.127, subsections 2 and 3, unless notice has been mailed or delivered to the insured as required by this section or unless at least one of the following conditions occurs:

a. A material change in the limits, scope of coverage, or exclusions in one or more of the underlying policies.

b. Cancellation or nonrenewal of one or more of the underlying policies where the policies are not replaced without lapse.

c. A reduction in the financial rating or grade of one or more of the insurers insuring one or more of the underlying policies based on an evaluation by a recognized financial rating organization.

4. A notice of cancellation is not effective unless mailed by certified mail or delivered to the named insured and any loss payee at least ten days prior to the effective date of cancellation. A notice of cancellation shall include the reason for cancellation of the umbrella or excess insurance policy. A post office department certificate of mailing to the named insured at the address shown in the umbrella or excess policy is proof of receipt of the mailing; however, such a certificate of mailing is not required if cancellation is for nonpayment of premium.

5. An insurer shall not fail to renew an umbrella or excess insurance policy except by notice to the insured as provided in this section; however, an insurer may condition renewal of an umbrella or excess insurance policy upon requirements relating to the underlying policy or policies. If the requirements are not satisfied as of the expiration date of the umbrella or excess insurance policy, or thirty days after mailing or delivery of the notice, whichever is later, the conditional renewal notice shall be deemed to be an effective notice of nonrenewal. This subsection does not apply if the insurer has offered to renew or if the insured fails to pay a premium due or any advance premium required by the insurer for renewal.

6. A notice of nonrenewal is not effective unless mailed by certified mail or delivered to the named insured and any loss payee at least forty-five days prior to the expiration date of the umbrella or excess insurance policy. If the insurer fails to meet the notice requirements of this subsection the insured has the option of continuing the policy for the remainder of the notice period plus an additional thirty days at the premium rate of the existing umbrella or excess policy.

7. Sections 515.127 and 515.128 are not applicable to umbrella or excess insurance policies except as provided in subsection 3.

90 Acts, ch 1234, §40
C91, §515.81C
2007 Acts, ch 152, §13, 60
CS2007, §515.129
2008 Acts, ch 1074, §10
Referred to in §515.125, 515.126

515.129A Cancellation of personal lines policies or contracts.

1. After a personal lines policy or contract of insurance has been in effect for sixty days or

more, the policy or contract shall not be canceled except by notice to the insured as provided in this chapter.

2. Notice of cancellation of a personal lines policy or contract of insurance is not effective unless the cancellation is based on one or more of the following reasons:

a. Nonpayment of premium.

b. Failure to pay dues or fees where payment of dues or fees is a prerequisite to obtaining or continuing insurance coverage in force.

c. Discovery of fraud or material misrepresentation made by or with the knowledge of the named insured in obtaining, continuing, or presenting a claim under the policy.

d. Actions by the insured which substantially change or increase the risk insured.

e. The insured has acted in a manner which the insured knew or should have known was in violation or breach of a term or condition of the insurance policy or contract.

f. The occurrence of a change in the risk that substantially increases a hazard insured against after insurance coverage has been issued or renewed.

2010 Acts, ch 1121, §19; 2011 Acts, ch 70, §31
Referred to in §515.125, 515.126, 515D.5
See §515D.5

515.129B Nonrenewal of personal lines policies or contracts.

1. An insurer shall not refuse to renew a personal lines policy or contract of insurance unless at least thirty days before the end of the policy or contract period the insurer delivers, mails, or electronically transmits to the first named insured, at the last known address of the first named insured, written notice of the insurer's intention not to renew the policy or contract upon expiration of the current policy or contract period as provided in section 515.129C. Proof of such mailing, electronic transmission, or delivery to the first named insured's last known address shall be maintained by the insurer.

2. The notice of intention not to renew shall include or be accompanied by a written explanation of the insurer's specific reason or reasons for the nonrenewal.

3. The transfer of a policy between affiliates of an insurance company shall not be considered a nonrenewal.

2010 Acts, ch 1121, §20
Referred to in §515.125, 515.126, 515D.7
See §515D.7

515.129C Notice of renewal or nonrenewal of personal lines policies or contracts.

1. At least thirty days before the end of the policy or contract term, an insurer shall mail or deliver to the last known address of the first named insured a renewal policy or contract, an offer to renew the current policy or contract, or a notice of nonrenewal of the policy or contract. Information concerning the renewal policy or contract, the offer to renew the policy or contract, or the notice of nonrenewal of the policy or contract shall also be mailed, delivered, or transmitted electronically to the last known address of the producer of record of the policy or contract.

a. An offer to renew the policy or contract shall state the renewal premium and the date that the premium is due. The renewal premium shall be based on the known exposure as of the date of the offer to renew.

b. If the renewal premium is not received by the due date or the policy or contract expiration date, whichever is later, the policy or contract lapses.

2. If an insurer fails to comply with the notice requirements of this section, the policy or contract shall be extended on the same terms and conditions for another policy or contract term or until the effective date of similar insurance procured by the insured, whichever is earlier. The insurer may make continued coverage contingent upon the payment of premium.

3. Renewal of a policy or contract does not constitute a waiver or estoppel with respect to grounds for cancellation that existed before the effective date of the renewal.

2010 Acts, ch 1121, §21
Referred to in §515.125, 515.126, 515.129B, 515D.7
See §515D.7

515.130 Short rates.

The commissioner of insurance shall prepare and promulgate tables of the short rates provided for in section 515.132, for the various kinds and classes of insurance governed by the provisions of this chapter, which, when promulgated, shall be for the guidance of all companies covered in this chapter and shall be the rate to be given in any notice therein required. No company shall discriminate unfairly between like assureds in the rate or rates so provided.

[C97, §1729; C24, 27, 31, 35, 39, §**8961;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.82]
2007 Acts, ch 152, §14, 61; 2007 Acts, ch 215, §256
CS2007, §515.130
2008 Acts, ch 1074, §11

515.131 Policy restored.

At any time before cancellation of the policy for nonpayment of any premium, assessment, or installment provided for therein, or in any note or contract for the payment thereof, or after action commenced or judgment rendered thereon, the insured may pay to the insurer the full amount due, including court costs if any, and from the date of such payment, or the collection of the judgment, the policy shall revive and be in full force and effect, provided such payment is made during the term of the policy and before a loss occurs.

[C97, §1730; C24, 27, 31, 35, 39, §**8962;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.83]
2007 Acts, ch 152, §15
CS2007, §515.131

515.132 Right of insured to cancel.

No provision, stipulation, or agreement to the contrary in or independent of the policy or contract of insurance shall avoid or defeat the right of any insured to pay short rates and costs of action, if any, and have the policy and all contracts connected therewith, including judgments rendered thereon, canceled.

[C97, §1730; C24, 27, 31, 35, 39, §**8963;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.84]
2007 Acts, ch 152, §16
CS2007, §515.132
Referred to in §515.130

515.133 Copy of application — duty to provide.

All insurance companies or associations shall, upon the issue or renewal of any policy, provide to the insured, a true copy of any application or representation of the insured which, by the terms of such policy, is made a part of the policy, or of the contract of insurance, or referred to in the contract of insurance, or which may in any manner affect the validity of such policy.

[C97, §1741; C24, 27, 31, 35, 39, §**8974;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.94]
95 Acts, ch 185, §22; 2007 Acts, ch 152, §20
CS2007, §515.133
Referred to in §515.134
Similar provision, §511.33

515.134 Failure to attach — effect.

The omission so to do shall not render the policy invalid, but if any company or association neglects to comply with the requirements of section 515.133, the company or association shall forever be precluded from pleading, alleging, or proving any such application or representations, or any part thereof, or falsity thereof, or any parts thereof, in any action upon the policy, and the plaintiff in any such action shall not be required, in order to recover against the company or association, either to plead or prove such application or representation, but may do so at the plaintiff's option.

[C97, §1741; C24, 27, 31, 35, 39, §**8975;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.95]
2007 Acts, ch 152, §21, 62

CS2007, §515.134
2016 Acts, ch 1011, §98
Similar provision, §511.34

515.135 Presumption as to value. Repealed by 2011 Acts, ch 70, §48.

515.136 Value of building — liability.
An insurance company or association shall be liable for the actual cash value of the property insured at the date of the loss, unless such value exceeds the amount stated in the policy.
[C97, §1742; C24, 27, 31, 35, 39, §**8977;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.97]
2007 Acts, ch 152, §23
CS2007, §515.136
2013 Acts, ch 124, §21

515.137 Prima facie right of recovery.
In an action on such policy it shall only be necessary for the insured to prove the loss of the building insured, and that the insured has given the company or association notice in writing of such loss, accompanied by an affidavit stating the facts as to how the loss occurred, so far as they are within the insured's knowledge, and the extent of the loss.
[C97, §1742; C24, 27, 31, 35, 39, §**8978;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.98]
2007 Acts, ch 152, §24, 63
CS2007, §515.137
Similar provisions, §511.35, 514A.3, 518A.19

515.138 Notice of loss of or damage to personal property by hail.
In case of loss or damage to growing crops by hail, notice of such loss or damage must be given to the company by the insured by mailing a certified mail letter within ten days from the time such loss or damage occurs.
[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.100]
2007 Acts, ch 152, §26
CS2007, §515.138
2008 Acts, ch 1074, §12

515.139 Demolition reserve on fire and casualty claims on property.
1. An insurer shall reserve ten thousand dollars or ten percent, whichever amount is greater, of the payment for damages to the property excluding personal property on which the insurer has issued a fire and casualty insurance policy as demolition cost reserve if the following are applicable:
a. The property is located within the corporate limits of a city.
b. The damage to the property renders it uninhabitable or unfit for the purpose for which it was intended, without repair.
c. Proof of loss has been submitted by the policyholder for a sum in excess of seventy-five percent of the face value of the policy covering the building or other insured structure.
2. An insurer which has received a proof of loss in excess of seventy-five percent of the face value of the policy covering a building or other insured structure, shall notify the city council of the city within which the property is located. The notice shall be made by certified mail within five working days after receipt of the proof of loss.
3. The city shall release all interest in the demolition cost reserve within one hundred eighty days after receiving notice of the existence of the demolition cost reserve unless the city has instituted legal proceedings for the demolition of the building or other insured structure, and has notified the insurer in writing of the institution of the legal proceedings. Failure of the city to notify the insurer of the legal proceedings terminates the city's claim to any proceeds from the reserve.
4. A reserve for demolition costs is no longer required if either of the following is true:
a. The insurer has received notice from both the insured and the city council that the

insured has completed repairs to the property or has completed demolition of the property in compliance with all applicable statutes and local ordinances.

b. The city has failed to notify the insurer as provided under subsection 3.

5. If the city has instituted legal proceedings, undertaken emergency action, or is required to demolish the damaged property at city expense, the city shall present to the insurer costs incurred, since the date of the fire or other occurrence, including but not limited to legal costs, engineering costs, and demolition costs related directly to the enforcement of any local ordinance, and the insurer shall compensate the city for the incurred costs up to the amount in the demolition cost reserve. Any amount left from the demolition cost reserve after the cost of demolition of the property is paid to the city shall be paid to the insured if the insured is entitled to the remaining proceeds under the policy.

6. The insurer is not liable for any amount in excess of the limits of liability set out by the policy.

7. Insurers complying with this section or attempting in good faith to comply with this section shall be immune from civil and criminal liability.

88 Acts, ch 1176, §1
C89, §515.150
89 Acts, ch 16, §1; 91 Acts, ch 59, §1; 92 Acts, ch 1163, §100; 2007 Acts, ch 152, §50
CS2007, §515.139

SUBCHAPTER VII

VIOLATIONS — INVESTIGATIONS — FEES — PENALTIES

515.140 Unlawful combinations — exceptions.

It shall be unlawful for two or more insurance companies doing business in this state, or for the officers, agents, or employees of such companies, to make or enter into any combination or agreement relating to the rates to be charged for insurance, the amount of commissions to be allowed agents for procuring the same, or the manner of transacting the insurance business within this state, but any number of insurance companies may appoint the same person or persons, who shall be residents of the state of Iowa, as their common agent or agents for the purpose of filing, in the manner prescribed by the insurance commissioner of Iowa, the forms of policies and of all permits and riders used generally throughout the state, as required by the laws of this state to be examined and approved by the said commissioner.

[C97, §1754; C24, 27, 31, 35, 39, §**9010;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.131]

2007 Acts, ch 152, §38
CS2007, §515.140
Referred to in §515.141, 515.145, 515A.19

515.141 Examination of officers and employees.

1. The commissioner of insurance is authorized to issue a subpoena for examination under oath, to any officer, agent, or employee of any company suspected of violating any of the provisions of section 515.140.

2. Upon the filing of a written, verified complaint with the commissioner by two or more residents of this state alleging that a company has violated section 515.140, the commissioner shall issue a subpoena for examination under oath to any officer, agent, or employee of the company.

[C97, §1755; C24, 27, 31, 35, 39, §**9012;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.133]

2003 Acts, ch 91, §38; 2007 Acts, ch 152, §39, 69
CS2007, §515.141
2008 Acts, ch 1074, §13
Referred to in §515.153

515.142 Transfers pending investigation.

Any transfer of the stock of any company organized under this chapter, made pending any investigation, shall not release the party making the transfer from any liability for losses which may have accrued previous to such transfer.

[C73, §1151; C97, §1734; C24, 27, 31, 35, 39, §**8967;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.88]

2007 Acts, ch 152, §17

CS2007, §515.142

2008 Acts, ch 1074, §14

515.143 Revocation of certificate of foreign company.

The commissioner of insurance may examine the condition and affairs of any insurance company, as provided for in this chapter, doing business in this state, not organized under its laws, or cause such examination to be made by a person appointed by the commissioner having no interest in any insurance company; and if it appears to the commissioner's satisfaction that the affairs of a company are in an unsound condition or that a company has failed to maintain the capital and surplus required by section 515.69, the commissioner shall revoke or suspend the certificates granted in its behalf.

[C73, §1152; C97, §1735; C24, 27, 31, 35, 39, §**8968;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.89]

91 Acts, ch 213, §28; 2007 Acts, ch 152, §18

CS2007, §515.143

515.144 Suspension and summary suspension.

The commissioner may do one or more of the following:

1. For a violation of Title XIII, subtitle 1, after a hearing provided pursuant to chapter 17A, order the suspension of the license or authority to transact the business of insurance within the state.

2. Upon three days' notice, if the commissioner has reason to believe that there is imminent substantial risk to an insurer's solvency, order the insurer to appear before the commissioner and show cause why its license or authority to do insurance business within the state should not be suspended. At the hearing to show cause, the commissioner may summarily suspend the license or authority of the insurer to do business within the state.

3. Summarily order an insurer to cease and desist from a violation, anticipated violation, or suspected violation of chapter 507B, 510, or 513A, if a hearing is provided pursuant to chapter 17A within thirty days of the summary cease and desist order.

91 Acts, ch 213, §29

CS91, §515.90

2007 Acts, ch 152, §19

CS2007, §515.144

515.145 Revocation of authority.

If upon any examination, or upon information obtained from any witness produced or examined, the commissioner determines that a company has violated section 515.140, or if any officer, agent, or employee fails to appear or submit to examination after receiving a subpoena, the commissioner shall promptly issue an order revoking the authority of the company to transact business within this state, and the company shall not be permitted to do the business of insurance in this state for one year.

[C97, §1755; C24, 27, 31, 35, 39, §**9013;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.134]

2003 Acts, ch 91, §39; 2007 Acts, ch 152, §40, 70

CS2007, §515.145

2008 Acts, ch 1074, §15

Referred to in §515.152, 515.153

515.146 Certificate refused — administrative penalty.

The commissioner of insurance shall withhold the commissioner's certificate or permission of authority to do business from a company neglecting or failing to comply with this chapter. In addition, a company organized or authorized under this chapter which fails to file the annual statement referred to in section 515.63 in the time required shall pay and forfeit an administrative penalty in an amount of five hundred dollars to be collected in the name of the state for deposit as provided in section 505.7. The company's right to transact further new business in this state shall immediately cease until the company has fully complied with this chapter. The commissioner may give notice to a company which has failed to file within the time required that the company is in violation of this section and, if the company fails to file the evidence of investment and statement within ten days of the date of the notice, the company shall forfeit and pay the additional sum of one hundred dollars for each day the failure continues, to be paid to the treasurer of state for deposit as provided in section 505.7.

[C97, §1715; C24, 27, 31, 35, 39, §**8947;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.65]

85 Acts, ch 228, §6; 91 Acts, ch 213, §26; 2007 Acts, ch 152, §3

CS2007, §515.146

2008 Acts, ch 1074, §16; 2009 Acts, ch 181, §78

515.147 Fees.

Fees shall be paid to the commissioner of insurance for deposit as provided in section 505.7 as follows:

1. For filing an application to do business, including all documents submitted in connection with the application, by a foreign or domestic company, or for filing an application for renewed authority, fifty dollars.
2. For issuing to a foreign or domestic company a certificate of authority to do business or a renewed certificate of authority, fifty dollars.
3. For filing amended articles of incorporation, fifty dollars.
4. For issuing an amended certificate of authority, twenty-five dollars.
5. For affixing the official seal to any paper filed with the division, ten dollars.

[C73, §1153; C97, §1752; S13, §1752; C24, 27, 31, 35, 39, §**9007;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.128; 82 Acts, ch 1003, §7]

88 Acts, ch 1112, §304; 2007 Acts, ch 152, §36

CS2007, §515.147

2009 Acts, ch 181, §79

Deposit of fees, §12.10

515.148 Expenses of examination.

The necessary expenses of any examination of any insurance company made or ordered to be made by the commissioner of insurance under this chapter shall be certified to by the commissioner, and paid on the commissioner's requisition by the company so examined; and in case of failure of the company to make such payment, the commissioner shall suspend such company from doing business in this state until such expenses are paid. If such expenses are not paid by the company, they shall be audited by the director of the department of administrative services and paid out of the state treasury.

[C73, §1156; C97, §1753; C24, 27, 31, 35, 39, §**9008;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.129]

2003 Acts, ch 145, §286; 2007 Acts, ch 152, §37

CS2007, §515.148

515.149 Compliance with law.

An insurance company organized under this chapter, or doing business in this state, or any foreign or alien company doing business in this state, shall conform to the provisions of this chapter and all other laws of this state applicable to the insurance company.

[C73, §1147; C97, §1747; C24, 27, 31, 35, 39, §**8998;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.119]

91 Acts, ch 26, §42; 91 Acts, ch 258, §59; 2007 Acts, ch 152, §30

CS2007, §515.149

515.150 Violations.

It shall be unlawful for any officer, manager, or agent of any insurance company or association who, with knowledge that it is doing business in an unlawful manner, or is insolvent, to solicit or receive applications for insurance with the company or association, or to do any other act or thing toward procuring or receiving any new business for such company or association.

[C73, §1147; C97, §1747; C24, 27, 31, 35, 39, §**8999;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.120]

2004 Acts, ch 1110, §55; 2007 Acts, ch 152, §31

CS2007, §515.150

515.151 Officers punished.

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

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

2. Any officer or person doing or attempting to do business in this state for any insurance company organized either within or without this state.

[C73, §1147; C97, §1748; C24, 27, 31, 35, 39, §**9000;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.121]

2004 Acts, ch 1110, §56; 2007 Acts, ch 152, §32

CS2007, §515.151

515.152 Judicial review.

Judicial review of the actions of the commissioner of insurance may be sought in accordance with the terms of the Iowa administrative procedure Act, chapter 17A, upon filing with the clerk of court a good and sufficient bond for the payment of all costs adjudged against the petitioner. Notwithstanding the terms of chapter 17A, petitions for judicial review may be filed in the district court of the county where the decision of the commissioner, pursuant to section 515.145, was made.

[C97, §1756; C24, 27, 31, 35, 39, §**9014;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.135]

2003 Acts, ch 44, §114; 2007 Acts, ch 152, §41, 71

CS2007, §515.152

Referred to in §515.153

Presumption of approval of bonds, §636.10

515.153 Incrimination.

The statements and declarations made or testimony given by any officer, agent, or employee in the investigation before the commissioner of insurance, or upon the hearing on the petition for judicial review, as provided in sections 515.141, 515.145, and 515.152, shall not be used against the person making the same in any criminal prosecution against the person.

[C97, §1757; C24, 27, 31, 35, 39, §**9015;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.136]

2007 Acts, ch 152, §42, 72

CS2007, §515.153

2008 Acts, ch 1074, §17

CHAPTER 515A

WORKERS' COMPENSATION LIABILITY INSURANCE RATES

Referred to in §87.4, 296.7, 331.301, 364.4, 505.28, 505.29, 518B.7, 669.14, 670.7

515A.1 Purpose of chapter.
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515A.20 through 515A.25 Transferred to §515F.20 through 515F.25; 90 Acts, ch 1234, §77.

515A.1 Purpose of chapter.

The purpose of this chapter is to promote the public welfare by regulating insurance rates to the end that they shall not be excessive, inadequate or unfairly discriminatory, and to authorize and regulate cooperative action among insurers in rate making and in other matters within the scope of this chapter. Nothing in this chapter is intended to prohibit or discourage reasonable competition, or to prohibit, or encourage except to the extent necessary to accomplish the aforementioned purpose, uniformity in insurance rates, rating systems, rating plans or practices. This chapter shall be liberally interpreted to carry into effect the provisions of this section.

[C50, 54, 58, 62, §515A.1, 515B.1; C66, 71, 73, 75, 77, 79, 81, §515A.1]

515A.2 Definitions — scope of chapter.

1. As used in this chapter:

a. *"Insurance"* means workers' compensation liability insurance.

b. *"Insurer"* means an insurer which issues a policy of workers' compensation liability insurance.

c. *"Policy"* means a policy of workers' compensation liability insurance.

d. *"Rate"* means a rate for workers' compensation liability insurance.

e. *"Rating organization"* means a workers' compensation rating organization licensed pursuant to this chapter.

f. *"Rate filing"* means a rate filing by a rating organization or an insurer.

g. *"Schedule rating plan"* means a rating plan by which an insurer increases or decreases workers' compensation rates to reflect the individual risk characteristics of the subject of the insurance.

2. This chapter applies only to workers' compensation liability insurance.

[C50, 54, 58, 62, §515A.2, 515B.2; C66, 71, 73, 75, 77, 79, 81, §515A.2]
90 Acts, ch 1234, §43; 2008 Acts, ch 1123, §29
Referred to in §515A.15

515A.3 Making of rates.

1. Rates shall be made in accordance with the following provisions:

a. Rates shall not be excessive, inadequate, or unfairly discriminatory.

b. Due consideration shall be given to past and prospective loss experience within and outside this state; to catastrophe hazards; to a reasonable margin for underwriting profit and contingencies; to dividends, savings, or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members, or subscribers; to past and prospective expenses

both countrywide and those specially applicable to this state; and to all other relevant factors within and outside this state.

c. The systems of expense provisions included in the rates for use by any insurer or group of insurers may differ from those of other insurers or group of insurers to reflect the requirements of the operating methods of any such insurer or group of insurers with respect to any kind of insurance, or with respect to any subdivision or combination thereof for which subdivision or combination separate expense provisions are applicable.

d. Risks may be grouped by classifications for the establishment of rates and minimum premiums. Classification rates may be modified to produce rates for individual risks in accordance with rating plans which establish standards for measuring variations in hazards or expense provisions, or both. Such standards may measure any differences among risks that can be demonstrated to have a probable effect upon losses or expenses.

2. Except to the extent necessary to meet the provisions of paragraph *"a"* of subsection 1 of this section, uniformity among insurers in any matters within the scope of this section is neither required nor prohibited.

[C50, 54, 58, 62, §515A.3, 515B.3; C66, 71, 73, 75, 77, 79, 81, §515A.3]

2008 Acts, ch 1123, §30

Referred to in §515A.4, 515A.7, 515A.8, 515A.13

515A.4 Rate filings.

1. *a.* Every insurer shall file with the commissioner every manual, minimum, class rate, rating schedule or rating plan and every other rating rule, and every modification of any of the foregoing which it proposes to use. Every such filing shall state the proposed effective date thereof, and shall indicate the character and extent of the coverage contemplated.

b. When a filing is not accompanied by the information upon which the insurer supports such filing, and the commissioner does not have sufficient information to determine whether such filing meets the requirements of this chapter, the commissioner shall require such insurer to furnish the information upon which it supports such filing and in such event the waiting period shall commence as of the date such information is furnished. Until the required information is furnished, the filing shall not be deemed complete or available for use by the insurer.

c. The information furnished in support of a filing may include the experience or judgment of the insurer or rating organization making the filing, its interpretation of any statistical data it relies upon, the experience of other insurers or rating organizations, or any other relevant factors. When a filing is deemed complete, the filing and any supporting information shall be open to public inspection.

2. An insurer may satisfy its obligation to make such filings by becoming a member of, or a subscriber to, a licensed rating organization which makes such filings, and by authorizing the commissioner to accept such filings on its behalf; provided that nothing contained in this chapter shall be construed as requiring any insurer to become a member of or a subscriber to any rating organization.

3. The commissioner shall review filings as soon as reasonably possible after they have been made in order to determine whether they meet the requirements of this chapter.

4. Each complete filing shall be on file for a waiting period of thirty days before it becomes effective, which period may be extended by the commissioner for an additional period not to exceed fifteen days if the commissioner gives written notice within the waiting period to the insurer or rating organization which made the filing that the commissioner needs additional time for the consideration of the filing. Upon written application by the insurer or rating organization, the commissioner may authorize a filing which the commissioner has reviewed to become effective before the expiration of the waiting period or any extension of the period. A filing shall be deemed to meet the requirements of this chapter unless disapproved by the commissioner before the expiration of the waiting period or an extension of the waiting period.

5. Under such rules and regulations as the commissioner shall adopt the commissioner may, by written order, suspend or modify the requirement of filing as to any kind of insurance, subdivision, or combination thereof, or as to classes of risks, the rates for which cannot

practicably be filed before they are used. Such order, rules, and regulations shall be made known to insurers and rating organizations affected thereby. The commissioner may make such examination as the commissioner may deem advisable to ascertain whether any rates affected by such order meet the standards set forth in section 515A.3, subsection 1, paragraph *"b"*.

6. Upon the written application of the insured, stating the insured's reasons therefor, filed with and approved by the commissioner a rate in excess of that provided by a filing otherwise applicable may be used on any specific risk.

7. No insurer shall make or issue a contract or policy except in accordance with the filings which are in effect for the insurer as provided in this chapter or in accordance with subsection 5 or 6.

8. If a hearing is requested pursuant to section 515A.6, subsection 7, a filing shall not take effect until thirty days after formal approval is given by the commissioner.

[C50, 54, 58, 62, §515A.4, 515B.4; C66, 71, 73, 75, 77, 79, 81, §515A.4]

87 Acts, ch 132, §5; 92 Acts, ch 1162, §39; 93 Acts, ch 88, §20; 2008 Acts, ch 1123, §31; 2015 Acts, ch 29, §77

Referred to in §515A.5

515A.5 Disapproval of filings.

1. If within the waiting period or any extension thereof as provided in section 515A.4, subsection 4, the commissioner finds that a filing does not meet the requirements of this chapter, the commissioner shall send to the insurer or rating organization which made such filing, written notice in a printed or electronic format of disapproval of such filing specifying therein in what respects the commissioner finds such filing fails to meet the requirements of this chapter and stating that such filing shall not become effective.

2. At any time subsequent to the applicable review period provided for in subsection 1, the commissioner may hold a hearing to determine whether a filing meets the requirements of this chapter. The commissioner shall provide notice of a hearing not less than ten days prior to the hearing to every insurer and rating organization which made the filing, specifying the matters to be considered at the hearing. If the commissioner finds that a filing does not meet the requirements of this chapter, the commissioner shall issue an order specifying in what respects the commissioner finds that the filing fails to meet the requirements of this chapter, and stating when, within a reasonable period thereafter, the filing shall be deemed no longer effective. Copies of the order shall be sent to every insurer and rating organization which made the filing. The order shall not affect any contract or policy made or issued prior to the expiration of the period set forth in the order.

3. *a.* Any person or organization aggrieved with respect to any filing which is in effect may make written application to the commissioner for a hearing thereon, provided, however, that the insurer or rating organization that made or uses the filing shall not be authorized to proceed under this subsection. Such application shall specify the grounds to be relied upon by the applicant and such application must show that the person or organization making such application has a specific economic interest affected by the filing. If the commissioner finds that the application is made in good faith, that the applicant has a specific economic interest, that the applicant would be so aggrieved if the applicant's grounds are established, and that such grounds otherwise justify holding such a hearing, the commissioner shall within thirty days after receipt of such application hold a hearing, upon not less than ten days' written notice to the applicant and to every insurer and rating organization which made the filing. No rating or advisory organization shall have any status under this chapter to make application for a hearing on any filing made by an insurer with the commissioner.

b. If, after such hearing, the commissioner finds that the filing does not meet the requirements of this chapter, the commissioner shall issue an order specifying in what respects the commissioner finds that such filing fails to meet the requirements of this chapter, and stating when, within a reasonable period thereafter, such filing shall be deemed no longer effective. Copies of the order shall be sent to the applicant and to every such insurer and rating organization. The order shall not affect any contract or policy made or issued prior to the expiration of the period set forth in the order.

4. No filing shall be disapproved if the rates thereby produced meet the requirements of this chapter.

[C50, 54, 58, 62, §515A.5, 515B.5; C66, 71, 73, 75, 77, 79, 81, §515A.5]

2008 Acts, ch 1123, §32

515A.6 Rating organizations.

1. *a.* A corporation, an unincorporated association, a partnership, or an individual, whether located within or outside this state, may make application to the commissioner for a license as a rating organization for such kinds of insurance, or subdivision or class of risk or a part or combination thereof as are specified in its application and shall file with the application all of the following:

(1) A copy of its constitution, its articles of agreement or association or its certificate of incorporation, and of its bylaws, rules and regulations governing the conduct of its business.

(2) A list of its members and subscribers.

(3) The name and address of a resident of this state upon whom notices or orders of the commissioner or process affecting such rating organization may be served.

(4) A statement of its qualifications as a rating organization.

b. If the commissioner finds that the applicant is competent, trustworthy, and otherwise qualified to act as a rating organization and that its constitution, articles of agreement or association or certificate of incorporation, and its bylaws, rules and regulations governing the conduct of its business conform to the requirements of law, the commissioner shall issue a license specifying the kinds of insurance, or subdivisions or classes of risks or parts or combinations thereof for which the applicant is authorized to act as a rating organization. Every such application shall be granted or denied in whole or in part by the commissioner within sixty days of the date of its filing with the commissioner.

c. Licenses issued pursuant to this section shall remain in effect for three years unless sooner suspended or revoked by the commissioner. The fee for the license shall be one hundred dollars.

d. Licenses issued pursuant to this section may be suspended or revoked by the commissioner, after hearing upon notice, in the event the rating organization ceases to meet the requirements of this subsection.

e. Every rating organization shall notify the commissioner promptly of every change in any of the following:

(1) Its constitution, its articles of agreement or association, or its certificate of incorporation, and its bylaws, rules and regulations governing the conduct of its business.

(2) Its list of members and subscribers.

(3) The name and address of the resident of this state designated by it upon whom notices or orders of the commissioner or process affecting such rating organization may be served.

2. Subject to rules and regulations which have been approved by the commissioner as reasonable, each rating organization shall permit any insurer, not a member, to be a subscriber to its rating services for any kind of insurance, subdivision, or class of risk or a part or combination thereof for which it is authorized to act as a rating organization. Notice of proposed changes in such rules and regulations shall be given to subscribers. Each rating organization shall furnish its rating services without discrimination to its members and subscribers. The reasonableness of any rule or regulation in its application to subscribers, or the refusal of any rating organization to admit an insurer as a subscriber, shall, at the request of any subscriber or any such insurer, be reviewed by the commissioner at a hearing held upon at least ten days' written notice to such rating organization and to such subscriber or insurer. If the commissioner finds that such rule or regulation is unreasonable in its application to subscribers, the commissioner shall order that such rule or regulation shall not be applicable to subscribers. If the rating organization fails to grant or reject an insurer's application for subscribership within thirty days after it was made, the insurer may request a review by the commissioner as if the application had been rejected. If the commissioner finds that the insurer has been refused admittance to the rating organization as a subscriber without justification, the commissioner shall order the rating organization to admit the

insurer as a subscriber. If the commissioner finds that the action of the rating organization was justified the commissioner shall make an order affirming its action.

3. No rating organization shall adopt any rule the effect of which would be to prohibit or regulate the payment of dividends, savings or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members or subscribers.

4. Cooperation among rating organizations or among rating organizations and insurers in rate making or in other matters within the scope of this chapter is hereby authorized, provided the filings resulting from such cooperation are subject to all the provisions of this chapter which are applicable to filings generally. The commissioner may review such cooperative activities and practices and if, after a hearing, the commissioner finds that any such activity or practices is unfair or unreasonable or otherwise inconsistent with the provisions of this chapter, the commissioner may issue a written order specifying in what respects such activity or practice is unfair or unreasonable or otherwise inconsistent with the provisions of this chapter, and requiring the discontinuance of such activity or practice.

5. Any rating organization may provide for the examination of policies, daily reports, binders, renewal certificates, endorsements or other evidences of insurance, or the cancellation thereof, and may make reasonable rules governing their submission. Such rules shall contain a provision that in the event any insurer does not within sixty days furnish satisfactory evidence to the rating organization of the correction of any error or omission previously called to its attention by the rating organization, it shall be the duty of the rating organization to notify the commissioner thereof. All information so submitted for examination shall be confidential.

6. Any rating organization may subscribe for or purchase actuarial, technical or other services, and such services shall be available to all members and subscribers without discrimination.

7. Notwithstanding any other provision of the Code, the commissioner of insurance shall provide for a hearing in a proceeding involving a workers' compensation insurance rate filing by a licensed rating organization in accordance with the provisions of this subsection and rules promulgated by the commissioner of insurance pursuant to chapter 17A. Except as otherwise provided herein, the provisions of this subsection shall not be subject to the requirements of chapter 17A. The procedures for such hearing shall be as follows:

a. The commissioner shall provide notice of the filing of the proposed rates at least thirty days before the effective date of the proposed rates by publishing a notice on the internet site of the insurance division of the department of commerce.

b. A public hearing shall be held on the proposed rates by the commissioner of insurance if within fifteen days of the date of publication a workers' compensation policyholder or an established organization with one or more workers' compensation policyholders among its members files a written demand with the commissioner of insurance for a hearing on the proposed rates.

c. The commissioner of insurance shall hold the hearing within twenty days after receipt of the written demand for a hearing and shall give not less than ten days written notice of the time and place of the hearing to the person or association filing the demand, to the rating organization, and to any other person requesting such notice.

d. At any such hearing, the rating organization shall bear the burden of proof to support the proposed rates by a preponderance of the evidence. The person or association requesting the hearing, and any other person admitted as a party to the proceeding, shall be given the opportunity to respond and introduce evidence and arguments on all the issues involved.

e. Within fifteen days after the start of the hearing, the commissioner of insurance will approve or disapprove the proposed rates and specify the reasons therefor. The commissioner of insurance may suspend or postpone the effective date of the proposed rates pending the hearing and written decision thereon.

f. Judicial review of the decision of the commissioner of insurance on such rates may be sought in accordance with the provisions of chapter 17A.

g. Absent a request for a hearing as provided in paragraph "*b*", the commissioner shall issue an order approving or disapproving the proposed rates.

h. The waiting period for a workers' compensation insurance rate filing shall commence no earlier than the date that notice of the insurance rate filing is published.

[C50, 54, 58, 62, §515A.6, 515B.6; C66, 71, 73, 75, 77, 79, 81, §515A.6]

2006 Acts, ch 1117, §69; 2007 Acts, ch 22, §89; 2008 Acts, ch 1123, §33 – 35; 2013 Acts, ch 90, §257

Referred to in §515A.4, 515A.12

515A.7 Uniform rating plans and deviations.

1. *a.* Every insurer shall adhere to the filings made on its behalf by a rating organization except that any such insurer may file a deviation from the class rates, schedules, rating plans, or rules, or a combination thereof for approval by the commissioner. The deviation filed shall specify the basis for the modification and a copy shall also be sent simultaneously to such rating organization. In considering the deviation filed, the commissioner shall give consideration to the available statistics and the principles for rate making as provided in section 515A.3. The commissioner shall approve the deviation filed for such insurer if the commissioner finds it to be justified and it shall thereupon become effective. The commissioner shall disapprove the deviation filed if the commissioner finds that the deviation does not meet the requirements of this chapter.

b. A deviation may be filed for approval by the commissioner as follows:

(1) An insurer may file for approval by the commissioner of a uniform percentage rate deviation to be applied to the class rates of the rating organization's filing subject to limitations as set forth by the commissioner by rule. A rate deviation from the approved class rates of a rating organization shall not cause the rate charged a policyholder to exceed the approved assigned risk rates.

(2) A rating organization or insurer may offer retrospective plans in policies which generate at least one hundred thousand dollars in annual countrywide premiums on workers' compensation liability insurance.

(3) An insurer may offer large deductible programs on policies which generate at least one hundred thousand dollars in annual countrywide premiums on workers' compensation liability insurance. The minimum large deductible which may be offered is twenty-five thousand dollars, which may be applied to indemnity and medical losses.

(4) An insurer may offer small deductible programs with deductibles in a range of up to ten thousand dollars and which apply only to medical losses. Losses shall be reported on a net basis in accordance with the statistical plan filed by a rating organization.

(5) An insurer may adopt a schedule rating plan providing for credits or debits in an amount not exceeding the maximum modification allowed as set forth by the commissioner by rule. This amount shall be in addition to the permitted deviations set forth in subparagraphs (1) through (4).

(6) The commissioner may authorize other types of deviations by rule when there is no approved rate, schedule, rating plan, or rule applicable to the deviation filed, on file with the insurance division for a rating organization.

2. The commissioner may adopt rules pursuant to chapter 17A to limit deviations and maximum schedule or rating plan modifications.

3. All dividends shall be paid based upon loss sensitivity. Dividends are deemed a return of profit to insureds. Accordingly, dividends shall not be guaranteed by an insurer without regard to profits. Dividends may be offered in conjunction with deviated rates or with scheduled rates or in combination therewith. For the purposes of this subsection, "*loss sensitivity*" means the profitability of the policyholder individually or as a member of a homogenous group.

[C50, 54, 58, 62, §515A.7, 515B.7; C66, 71, 73, 75, 77, 79, 81, §515A.7]

2008 Acts, ch 1123, §36, 57; 2013 Acts, ch 124, §22

515A.8 Appeal by member or subscriber.

1. Any member or subscriber to a rating organization may appeal to the commissioner from the action or decision of such rating organization in approving or rejecting any proposed change in or addition to the filings of such rating organization and the commissioner shall,

after a hearing held upon not less than ten days' written notice to the appellant, and to such rating organization, issue an order approving the action or decision of such rating organization or directing it to give further consideration to such proposal, or, if such appeal is from the action or decision of the rating organization in rejecting a proposed addition to its filings, the commissioner may, in the event the commissioner finds that such action or decision was unreasonable, issue an order directing the rating organization to make an addition to its filings, on behalf of its members and subscribers, in a manner consistent with the findings, within a reasonable time after the issuance of such order.

2. If such appeal is based upon the failure of the rating organization to make a filing on behalf of such member or subscriber, which is based on a system of expense provisions which differs, in accordance with the right granted in section 515A.3, subsection 1, paragraph *"c"*, from the system of expense provisions included in a filing made by the rating organization, the commissioner shall, if the commissioner grants the appeal, order the rating organization to make the requested filing for use by the appellant. In deciding such appeal the commissioner shall apply the standards set forth in section 515A.3.

[C50, 54, 58, 62, §515A.8, 515B.8; C66, 71, 73, 75, 77, 79, 81, §515A.8]

2008 Acts, ch 1123, §37; 2015 Acts, ch 29, §78

515A.9 Information to be furnished insureds — hearings and appeals of insureds.

Every rating organization and every insurer which makes its own rate shall, within a reasonable time after receiving written request therefor and upon payment of such reasonable charge as it may make, furnish to any insured affected by a rate made by it, or to the authorized representative of such insured, all pertinent information as to such rate. Every rating organization and every insurer which makes its own rates shall provide within this state reasonable means whereby any person aggrieved by the application of its rating system may be heard, in person or by the person's authorized representative, on the person's written request to review the manner in which such rating system has been applied in connection with the insurance afforded the person. Such review of the manner in which a rating system has been applied is not a contested case under chapter 17A. If the rating organization or insurer fails to grant or reject such request within thirty days after it is made, the applicant may proceed in the same manner as if the application had been rejected. Any party affected by the action of such rating organization or such insurer on such request may, within thirty days after written notice of such action, appeal to the commissioner, who, after a hearing held upon not less than ten days' written notice to the appellant and to such rating organization or insurer, may affirm or reverse such action. Such appeal to the commissioner of the manner in which a rating system has been applied is not a contested case under chapter 17A.

[C50, 54, 58, 62, §515A.9, 515B.9; C66, 71, 73, 75, 77, 79, 81, §515A.9]

2006 Acts, ch 1117, §70; 2007 Acts, ch 22, §90

515A.10 Advisory organizations.

1. Every group, association or other organization of insurers, whether located within or outside of this state, which assists insurers which make their own filings or rating organizations in rate making, by the collection and furnishing of loss or expense statistics, or by the submission of recommendations, but which does not make filings under this chapter, shall be known as an advisory organization.

2. Every advisory organization shall file with the commissioner all of the following:

a. A copy of its constitution, its articles of agreement or association or its certificate of incorporation and of its bylaws, rules and regulations governing its activities.

b. A list of its members.

c. The name and address of a resident of this state upon whom notices or orders of the commissioner or process issued at the commissioner's direction may be served.

d. An agreement that the commissioner may examine such advisory organization in accordance with the provisions of section 515A.12.

3. If, after a hearing, the commissioner finds that the furnishing of such information or assistance involves any act or practice which is unfair or unreasonable or otherwise

inconsistent with the provisions of this chapter, the commissioner may issue a written order specifying in what respects such act or practice is unfair or unreasonable or otherwise inconsistent with the provisions of this chapter, and requiring the discontinuance of such act or practice.

4. No insurer which makes its own filings nor any rating organization shall support its filings by statistics or adopt rate making recommendations, furnished to it by an advisory organization which has not complied with this section or with an order of the commissioner involving such statistics or recommendations issued under subsection 3 of this section. If the commissioner finds such insurer or rating organization to be in violation of this subsection the commissioner may issue an order requiring the discontinuance of such violation.

[C50, 54, 58, 62, §515A.10, 515B.10; C66, 71, 73, 75, 77, 79, 81, §515A.10]
2006 Acts, ch 1117, §71
Referred to in §515A.12

515A.11 Joint underwriting or joint reinsurance.

1. Every group, association or other organization of insurers which engages in joint underwriting or joint reinsurance, shall be subject to regulation with respect thereto as herein provided, subject, however, with respect to joint underwriting, to all other provisions of this chapter and, with respect to joint reinsurance, to sections 515A.12 and 515A.16 to 515A.19.

2. If, after a hearing, the commissioner finds that any activity or practice of any such group, association or other organization is unfair or unreasonable or otherwise inconsistent with the provisions of this chapter, the commissioner may issue a written order specifying in what respects such activity or practice is unfair or unreasonable or otherwise inconsistent with the provisions of this chapter, and requiring the discontinuance of such activity or practice.

[C50, 54, 58, 62, §515A.11, 515B.11; C66, 71, 73, 75, 77, 79, 81, §515A.11]
Referred to in §515A.12

515A.12 Examinations.

The commissioner shall, at least once in five years, make or cause to be made an examination of each rating organization licensed in this state as provided in section 515A.6 and the commissioner may, as often as the commissioner may deem it expedient, make or cause to be made an examination of each advisory organization referred to in section 515A.10 and of each group, association or other organization referred to in section 515A.11. The reasonable costs of any such examination shall be paid by the rating organization, advisory organization or group, association or other organization examined upon presentation to it of a detailed account of such costs. The officers, manager, agents and employees of such rating organization, advisory organization, or group, association or other organization may be examined at any time under oath and shall exhibit all books, records, accounts, documents, or agreements governing its method of operation. In lieu of any such examination the commissioner may accept the report of an examination made by the insurance supervisory official of another state, pursuant to the laws of such state.

[C50, 54, 58, 62, §515A.12, 515B.12; C66, 71, 73, 75, 77, 79, 81, §515A.12]
Referred to in §515A.10, 515A.11

515A.13 Rate administration.

1. The commissioner shall promulgate reasonable rules and statistical plans, reasonably adapted to each of the rating systems on file with the commissioner, which may be modified from time to time and which shall be used thereafter by each insurer in the recording and reporting of its loss and countrywide expense experience, in order that the experience of all insurers may be made available at least annually in such form and detail as may be necessary to aid the commissioner in determining whether rating systems comply with the standards set forth in section 515A.3. Such rules and plans may also provide for the recording and reporting of expense experience items which are specially applicable to this state and are not susceptible of determination by a prorating of countywide expense experience. In promulgating such rules and plans, the commissioner shall give due consideration to

the rating systems on file and, in order that such rules and plans may be as uniform as is practicable among the several states, to the rules and to the form of the plans used for such rating systems in other states. No insurer shall be required to record or report its loss experience on a classification basis that is inconsistent with the rating system filed by it. The commissioner may designate one or more rating organizations or other agencies to assist in gathering such experience and making compilations thereof, and such compilations shall be made available, subject to reasonable rules promulgated by the commissioner, to insurers and rating organizations.

2. Reasonable rules and plans may be promulgated by the commissioner for the interchange of data necessary for the application of rating plans.

3. In order to further uniform administration of rate regulatory laws, the commissioner and every insurer and rating organization may exchange information and experience data with insurance supervisory officials, insurers, and rating organizations in other states and may consult with them with respect to rate making and the application of rating systems.

4. The commissioner may make reasonable rules necessary to effect the purposes of this chapter.

5. A person other than the commissioner or the commissioner's designee shall not release to another person, other than to the servicing insurer of the policy or to the commissioner or the commissioner's designee, experience, payroll, loss data, expiration date of a policy, or classification information without the prior written approval of the policyholder. A violation of this section shall be considered an unfair trade practice pursuant to chapter 507B.

[C50, 54, 58, 62, §515A.13, 515B.13; C66, 71, 73, 75, 77, 79, 81, §515A.13]

94 Acts, ch 1176, §13; 2008 Acts, ch 1123, §38

515A.14 False or misleading information.

No person or organization shall willfully withhold information from, or knowingly give false or misleading information to, the commissioner, any statistical agency designated by the commissioner, any rating organization, or any insurer, which will affect the rates or premiums chargeable under this chapter. A violation of this section shall subject the one guilty of such violation to the penalties provided in section 515A.17.

[C50, 54, 58, 62, §515A.14, 515B.14; C66, 71, 73, 75, 77, 79, 81, §515A.14]

515A.15 Assigned risks.

Agreements shall be made among insurers with respect to the equitable apportionment among them of insurance which may be afforded applicants who are in good faith entitled to but who are unable to procure such insurance through ordinary methods and such insurers may agree among themselves on the use of reasonable rate modifications for such insurance, the agreements and rate modifications to be subject to the approval of the commissioner.

For purposes of this section, *"insurer"* includes, in addition to insurers defined pursuant to section 515A.2, a self-insurance association formed on or after July 1, 1995, pursuant to section 87.4 except for an association comprised of cities or counties, or both, or an association comprised of community colleges as defined in section 260C.2, which have entered into an agreement pursuant to chapter 28E for the purpose of establishing a self-insured program for the payment of workers' compensation benefits.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515A.15]

95 Acts, ch 185, §24

Referred to in §87.4

515A.15A Deductible policies in workers' compensation.

The commissioner may enter an order under section 515A.18 to assure availability within this state of a policy under this chapter which provides as part of the policy, or as an endorsement to the policy, an option for a deductible related to benefits payable under a policy issued pursuant to this chapter. The order may make provisions for changes in experience ratings, premium surcharges, or any other modification, as a result of issuance of a policy, or of an endorsement to the policy, pursuant to the order. Under an order entered pursuant to this section, the commissioner shall provide that if the policyholder selects a

deductible option, the insured employer is liable for all of the amount of the deductible for benefits paid for each compensable claim of an employee under the policy.

92 Acts, ch 1053, §1

515A.15B Applicants unable to procure insurance through ordinary methods.

An agreement among licensed insurers to offer workers' compensation insurance for applicants unable to procure workers' compensation insurance through ordinary methods shall be administered by a rating organization licensed under this chapter.

98 Acts, ch 1057, §10

515A.16 Premiums.

An agent shall not knowingly charge, demand, or receive a premium for any policy of insurance except in accordance with the provisions of this chapter.

[C50, 54, 58, 62, §515A.16, 515B.15; C66, 71, 73, 75, 77, 79, 81, §515A.16]

93 Acts, ch 88, §21

Referred to in §515A.11

515A.17 Penalties.

1. The commissioner may, if the commissioner finds that any person or organization has violated any provision of this chapter, impose a penalty of not more than one thousand dollars for each such violation, but if the commissioner finds such violation to be willful the commissioner may impose a penalty of not more than five thousand dollars for each such violation. Such penalties may be in addition to any other penalty provided by law. A penalty collected under this subsection shall be deposited as provided in section 505.7.

2. The commissioner may suspend the license of any rating organization or insurer which fails to comply with an order of the commissioner within the time limited by such order, or any extension thereof which the commissioner may grant. The commissioner shall not suspend the license of any rating organization or insurer for failure to comply with an order until the time prescribed for an appeal therefrom has expired or if an appeal has been taken, until such order has been affirmed. The commissioner may determine when a suspension of license shall become effective and it shall remain in effect for the period fixed by the commissioner, unless the commissioner modifies or rescinds such suspension, or until the order upon which such suspension is based is modified, rescinded, or reversed.

3. A penalty shall not be imposed and a license shall not be suspended or revoked except upon a written order of the commissioner, stating the commissioner's findings, made after a hearing held upon not less than ten days' written notice to such person or organization specifying the alleged violation.

[C50, 54, 58, 62, §515A.17, 515B.16; C66, 71, 73, 75, 77, 79, 81, §515A.17]

2008 Acts, ch 1123, §39; 2009 Acts, ch 181, §80

Referred to in §515A.11, 515A.14

515A.18 Hearing procedure and judicial review.

1. Any person, insurer or rating organization to which the commissioner has directed an order made without a hearing may, within thirty days after notice to it of such order, make written request to the commissioner for a hearing thereon. The commissioner shall hear such party or parties within twenty days after receipt of such request and shall give not less than ten days' written notice of the time and place of the hearing. Within fifteen days after such hearing the commissioner shall affirm, reverse or modify the previous action, specifying the commissioner's reasons therefor. Pending such hearing and decision thereon the commissioner may suspend or postpone the effective date of the commissioner's previous action.

2. Nothing contained in this chapter shall require the observance at any hearing of formal rules of pleading or evidence.

3. *a.* Judicial review of the actions of the commissioner may be sought in accordance with the terms of the Iowa administrative procedure Act, chapter 17A.

b. The court shall determine whether the filing of the petition for such writ shall operate as a stay of any such order or decision of the commissioner. The court may, in disposing

of the issue before it, modify, affirm or reverse the order or decision of the commissioner in whole or in part.

[C50, 54, 58, 62, §515A.18, 515B.17; C66, 71, 73, 75, 77, 79, 81, §515A.18]

2003 Acts, ch 44, §114; 2012 Acts, ch 1023, §157

Referred to in §515A.11, 515A.15A

515A.19 Laws affected.

Compliance with this chapter shall not be deemed to be a violation of section 515.140.

[C50, 54, 58, 62, §515A.19, 515B.18; C66, 71, 73, 75, 77, 79, 81, §515A.19]

2007 Acts, ch 152, §78

Referred to in §515A.11

515A.19A Rules.

The commissioner may adopt rules pursuant to chapter 17A as necessary and convenient to administer this chapter.

2008 Acts, ch 1123, §40

515A.20 through 515A.25 Transferred to §515F.20 through 515F.25; 90 Acts, ch 1234, §77.

CHAPTER 515B

INSURANCE GUARANTY ASSOCIATION

Referred to in §87.4, 296.7, 331.301, 364.4, 455G.15, 505.28, 505.29, 507C.2, 669.14, 670.7

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515B.26 Title.

515B.1 Scope.

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

1. Life, annuity, health, or disability insurance.
2. Mortgage guaranty, financial guaranty, residual value, or other forms of insurance offering protection against investment risks.
3. Fidelity or surety bonds, or any other bonding obligations.
4. Credit insurance, vendors' single interest insurance, or collateral protection insurance or any similar insurance protecting the interests of a creditor arising out of a creditor-debtor transaction.
5. Insurance warranties or service contracts, including insurance that provides for the repair, replacement, or service of goods or property, or indemnification for repair, replacement, or service, for the operational or structural failure of the goods or property due to a defect in materials, workmanship, or normal wear and tear, or provides reimbursement for the liability incurred by the issuer of agreements or service contracts that provide such benefits.

6. Title insurance.
7. Ocean marine insurance.
8. A transaction or combination of transactions between a person, including affiliates of such person, and an insurer, including affiliates of such insurer, which involves the transfer of investment or credit risk unaccompanied by transfer of insurance risk.
9. Insurance provided by, guaranteed by, or reinsured by government.

[C71, 73, 75, 77, 79, 81, §515B.1]

86 Acts, ch 1184, §2; 88 Acts, ch 1112, §504; 97 Acts, ch 186, §13; 2001 Acts, ch 69, §31; 2009 Acts, ch 145, §24

515B.2 Definitions.

As used in this chapter unless the context otherwise requires:

1. *"Association"* means the Iowa insurance guaranty association created pursuant to section 515B.3.

2. *"Claimant"* means an insured making a first party claim or any person instituting a liability claim against the insured of an insolvent insurer. *"Claimant"* does not include a person who is an affiliate of an insolvent insurer.

3. *"Commissioner"* means the commissioner of insurance of this state.

4. *a. "Covered claim"* means an unpaid claim, including one for unearned premiums, which arises out of and is within the coverage and is subject to the applicable limits of an insurance policy to which this chapter applies issued by an insurer, if such insurer becomes an insolvent insurer after July 1, 1970, and one of the following conditions exists:

(1) The claimant or insured is a resident of this state at the time of the insured event. Other than an individual, the residence of the claimant or insured is the state in which its principal place of business is located.

(2) The claim is a first party claim by an insured for damage to property permanently located in this state.

b. (1) *"Covered claim"* does not include any amount as follows:

(a) That is due any reinsurer, insurer, insurance pool, underwriting association, or other group assuming insurance risks, as subrogation, contribution, or indemnity recoveries, or otherwise.

(b) That constitutes the portion of a claim that is within an insured's deductible or self-insured retention.

(c) That is a claim for unearned premium calculated on a retrospective basis, experience-rated plan, or premium subject to adjustment after termination of the policy.

(d) That is a fee or other amount relating to goods or services sought by or on behalf of an attorney, adjuster, witness, or other provider of goods or services retained by the insolvent insurer or by an insured prior to the date the insurer was declared insolvent.

(e) That is a fine, penalty, interest, or punitive or exemplary damages.

(f) That is a fee or other amount sought by or on behalf of any attorney, adjuster, witness, or other provider of goods or services retained by the insured or claimant in connection with the assertion of any claim, covered or otherwise, against the association.

(g) That is a claim filed with the association or a liquidator for protection afforded under the insured's policy or contract for incurred but not reported losses or expenses.

(h) That constitutes a claim under a policy issued by an insolvent insurer with a deductible or self-insured retention of two hundred thousand dollars or more. However, such a claim shall be considered a covered claim, if as of the deadline set for the filing of claims against the insolvent insurer of its liquidator, the insured is a debtor under 11 U.S.C. §701 et seq.

(i) That would otherwise be a covered claim, but is an obligation to or on behalf of a person who has a net worth greater than that allowed by the guarantee fund law of the state of residence of the person, and which state has denied coverage to that person on that basis.

(j) That is an obligation owed to or on behalf of an affiliate of, as defined in section 521A.1, an insolvent insurer.

(2) Notwithstanding the subparagraph divisions of subparagraph (1), a person is not prevented from presenting a noncovered claim to the insolvent insurer or its liquidator, but the noncovered claim shall not be asserted against any other person, including the person

to whom benefits were paid or the insured of the insolvent insurer, except to the extent that the claim is outside the coverage of the policy issued by the insolvent insurer.

5. *"Insurer"* means an insurer licensed to transact insurance business in this state under either chapter 515 or chapter 520, either at the time the policy was issued or when the insured event occurred. It does not include county or state mutual insurance associations licensed under chapter 518 or chapter 518A, or fraternal benefit societies, orders, or associations licensed under chapter 512B, or corporations operating nonprofit service plans under chapter 514, or life insurance companies or life, accident, or health associations licensed under chapter 508, or those professions under chapter 519.

6. *"Insolvent insurer"* means an insurer against which a final order of liquidation with a finding of insolvency has been entered on or after July 1, 1980, by a court of competent jurisdiction of this state or of the state of the insurer's domicile.

7. *"Liquidator"* means a receiver as defined in section 507C.2, or a comparable person appointed by the courts of the domiciliary state of a foreign insurer.

8. *"Net direct written premiums"* means direct gross premiums written in this state on insurance policies to which this chapter applies, less return premiums and dividends paid or credited to policyholders on such direct business. Such term does not include premiums on contracts between insurers or reinsurers.

9. *"Person"* means any individual, corporation, partnership, association, or voluntary organization.

[C71, 73, 75, 77, 79, 81, §515B.2; 82 Acts, ch 1137, §2]

86 Acts, ch 1184, §3 – 5; 88 Acts, ch 1112, §505, 506; 89 Acts, ch 83, §74; 91 Acts, ch 26, §43; 93 Acts, ch 88, §22; 97 Acts, ch 186, §14; 2000 Acts, ch 1023, §30; 2001 Acts, ch 24, §55; 2003 Acts, ch 91, §40; 2005 Acts, ch 70, §22; 2009 Acts, ch 145, §25; 2010 Acts, ch 1063, §23 – 25

Referred to in §515B.3

515B.3 Creation of the association.

There is created a nonprofit unincorporated legal entity to be known as the Iowa insurance guaranty association. All insurers as defined in section 515B.2, subsection 5 shall be and remain members of the association as a condition of their authority to transact insurance in this state. The association shall perform its functions under a plan of operation established and approved pursuant to section 515B.6 and shall exercise its powers through a board of directors established under section 515B.4. Except as otherwise provided in such plan of operation, annual or special meetings of members of the association may be held on call as directed by the association's board of directors or by the commissioner of insurance, upon not less than ten days' written notice by ordinary mail to each member at the member's principal office as shown by the records in the commissioner's office, specifying the time and place, and in the case of a special meeting, the purpose of the meeting. Members may vote in person or by proxy and ten members present in person or by proxy shall constitute a quorum for the transaction of any business.

[C71, 73, 75, 77, 79, 81, §515B.3]

Referred to in §515B.2

515B.4 Board of directors.

1. The board of directors of the association shall consist of not less than five nor more than nine persons serving terms as established in the plan of operation. The members of the board shall be selected by member insurers subject to the approval of the commissioner. Vacancies on the board shall be filled for the remaining period of the term by majority vote of the remaining directors, subject to the approval of the commissioner.

2. In approving selections to the board the commissioner shall consider among other things whether all member insurers are fairly represented.

3. Members of the board may be reimbursed from the assets of the association for expenses incurred by them as members of the board of directors.

[C71, 73, 75, 77, 79, 81, §515B.4]

2018 Acts, ch 1041, §127

Referred to in §515B.3, 515B.6

Code editor directive applied

515B.5 Duties and powers of the association.

1. The association shall:

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

(1) The full amount of a covered claim for benefits under a workers' compensation insurance coverage.

(2) An amount in excess of one hundred dollars but not exceeding ten thousand dollars per policy for a covered claim for the return of unearned premium.

(3) An amount not exceeding the lesser of the policy limits or five hundred thousand dollars per claim for all covered claims for all damages arising out of any one or series of accidents, occurrences, or incidents, regardless of the number of persons making claims or the number of applicable policies.

b. Be obligated to pay covered claims subject to a limitation as established by the rights, duties, and obligations under the policy of the insolvent insurer. However, the association is not obligated to pay a claimant an amount in excess of the obligation under the policy of the insolvent insurer, regardless of whether such claim is based on contract or tort.

c. (1) Assess member insurers amounts necessary to pay the obligations of the association under paragraph *"a"* of this subsection subsequent to an insolvency, the expenses of handling covered claims subsequent to an insolvency, the cost of examinations under section 515B.10, and other expenses authorized by this chapter. The assessment of each member insurer shall be in the proportion that the net direct written premiums of the member insurer for the preceding calendar year bear to the net direct written premiums of all member insurers for the preceding calendar year. Each member insurer shall be notified of the assessment not later than thirty days before it is due. No member insurer may be assessed in any year an amount greater than two percent of that member insurer's net direct written premiums for the preceding calendar year. If the maximum assessment, together with the other assets of the association, does not provide in any one year an amount sufficient to make all necessary payments, the funds available shall be prorated and the unpaid portion shall be paid as soon as funds become available. The association may exempt or defer, in whole or in part, the assessment of any member insurer if the assessment would cause the member insurer's financial statement to reflect amounts of capital or surplus less than the minimum amounts required for a certificate of authority by any jurisdiction in which the member insurer is authorized to transact insurance. Each member insurer serving as a servicing facility pursuant to this section may set off against any assessment, authorized payments made on covered claims and expenses incurred in the payment of such claims by the member insurer. In addition, the association shall have the authority to levy an administrative assessment of not more than fifty dollars per year per member insurer on a non pro rata basis, which assessment shall be credited against any future insolvency assessment. Such assessment shall be used to pay authorized expenses not directly attributable to any particular insolvency or insolvent insurer. All overdue and unpaid assessments shall draw interest at the rate of seven percent per annum.

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

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

binding on the association. The association shall have the right to appoint or substitute legal counsel retained to defend insureds on covered claims.

e. Notify such persons as the commissioner directs under section 515B.7, subsection 2, paragraph *"a"*.

f. Process claims through its employees or through one or more member insurers or other persons designated as servicing facilities. Designation of a servicing facility is subject to the approval of the commissioner, but such designation may be declined by a member insurer.

g. Reimburse each servicing facility for obligations of the association paid by the facility and for expenses incurred by the facility while handling claims on behalf of the association, and pay the other expenses of the association authorized by this chapter.

2. The association may:

a. Appear in, defend, and appeal any action on a claim brought against the association.

b. Employ or retain persons necessary to handle claims and perform other duties of the association.

c. Borrow funds necessary to effect the purposes of this chapter in accord with the plan of operation.

d. Sue or be sued.

e. Negotiate and become a party to contracts necessary to carry out the purpose of this chapter.

f. Perform such other acts necessary or proper to effectuate the purposes of this chapter.

g. The board of directors, in its discretion, may from time to time refund excess amounts to member insurers that are not needed for current or projected liabilities of a particular insolvency. The amount of each refund is equal to the net direct written premiums of the member insurer for the preceding calendar year divided by the net written premiums of all member insurers for the preceding calendar year, multiplied by the total amount to be refunded to all members. Any assessments or refunds of any member insurer in amounts not to exceed twenty-five dollars may, at the discretion of the board of directors, be waived.

h. Request that all future payments of workers' compensation weekly benefits, medical expenses, or other payments under chapter 85, 85A, 85B, 86, or 87 be commuted to a present lump sum and upon the payment of which, either to the claimant or to a licensed insurer for purchase of an annuity or other periodic payment plan for the benefit of the claimant, the employer and the association shall be discharged from all further liability for the workers' compensation claim. Notwithstanding the provisions of section 85.45, any future payment of medical expenses, weekly compensation benefits, or other payment by the association under this chapter pursuant to chapter 85, 85A, 85B, 86, or 87, is deemed an undue expense, hardship, or inconvenience upon the employer for purposes of a full commutation pursuant to section 85.45, subsection 1, paragraph *"b"*, and the workers' compensation commissioner shall fix the lump sum of the probable future medical expenses and weekly compensation benefits capitalized at their present value upon the basis of interest at the rate provided in section 535.3 for court judgments and decrees.

[C71, 73, 75, 77, 79, 81, §515B.5; 82 Acts, ch 1051, §2]

86 Acts, ch 1184, §6; 88 Acts, ch 1112, §507; 91 Acts, ch 26, §44; 92 Acts, ch 1162, §40, 41; 97 Acts, ch 186, §15, 16; 98 Acts, ch 1061, §11; 2001 Acts, ch 69, §32; 2002 Acts, ch 1111, §20, 21; 2008 Acts, ch 1032, §200; 2010 Acts, ch 1063, §26; 2012 Acts, ch 1023, §157

Referred to in §515B.6, 515B.9

515B.6 Plan of operation.

1. *a.* The association shall submit a plan of operation to the commissioner, together with any amendments necessary or suitable to assure the fair, reasonable, and equitable administration of the association. The plan of operation and any amendments shall become effective upon approval in writing by the commissioner.

b. If the association fails to submit a suitable plan of operation within ninety days following the effective date of this chapter or if at any time thereafter the association fails to submit suitable amendments to the plan, the commissioner shall, after notice and opportunity for hearing, adopt and promulgate reasonable rules necessary or advisable to effectuate the provisions of this chapter. Such rules shall continue in force until modified

by the commissioner or superseded by a plan submitted by the association and approved by the commissioner.

2. All member insurers shall comply with the plan of operation.

3. The plan of operation shall:

a. Establish the procedures for performance of all the duties and powers of the association under section 515B.5.

b. Establish procedures for managing assets of the association.

c. Establish the amount and method of reimbursing members of the board of directors under section 515B.4.

d. Establish procedures by which claims may be filed with the association and establish acceptable forms of proof of covered claims. Notice of claims to the receiver or liquidator of the insolvent insurer shall be deemed notice to the association or its agent and a list of such claims shall be periodically submitted to the association or similar organization in another state by the receiver or liquidator.

e. Establish regular places and times for meetings of the board of directors.

f. Establish procedures for keeping records of all financial transactions of the association, its agents, and the board of directors.

g. Provide that any member insurer aggrieved by any final action or decision of the association may appeal to the commissioner within thirty days after the action or decision.

h. Establish procedures for submission to the commissioner of selections for the board of directors.

i. Contain additional provisions necessary or proper for the execution of the duties and powers of the association.

4. The plan of operation may provide that any or all duties and powers of the association, except those under section 515B.5, subsection 1, paragraph "*c*", and section 515B.5, subsection 2, paragraph "*c*", are delegated to a person which performs or will perform functions similar to those of this association in two or more states. Such person shall be reimbursed as a servicing facility and shall be paid for performance of any other functions of the association. A delegation under this subsection shall take effect only with the approval of both the board of directors and the commissioner, and may be made only to a person which extends protection not substantially less favorable and effective than that provided by this chapter.

[C71, 73, 75, 77, 79, 81, §515B.6]

2012 Acts, ch 1023, §157

Referred to in §515B.3

515B.7 Duties and powers of the commissioner.

1. The commissioner shall:

a. Notify the association of the existence of an insolvent insurer not later than three days after the commissioner receives notice of the determination of the insolvency.

b. Upon request of the board of directors, provide the association with a statement of the net direct written premiums of each member insurer.

2. The commissioner may:

a. Require that the association notify the insureds of the insolvent insurer and any other interested parties of the determination of insolvency and of their rights under this chapter. Such notification shall be by mail at their last known address, but if sufficient information for notification by mail is not available, notice by publication in a newspaper of general circulation is sufficient.

b. Suspend or revoke, after notice and opportunity for hearing, the certificate of authority to transact insurance in this state of any member insurer which fails to pay an assessment when due or fails to comply with the plan of operation. As an alternative, the commissioner may levy a fine on any member insurer which fails to pay an assessment when due. Such fine shall not exceed five percent of the unpaid assessment per month, except that no fine shall be less than one hundred dollars per month.

c. Revoke the designation of any servicing facility if the commissioner finds claims are being processed unsatisfactorily.

3. Judicial review of actions of the commissioner may be sought in accordance with the terms of the Iowa administrative procedure Act, chapter 17A.

[C71, 73, 75, 77, 79, 81, §515B.7]

2003 Acts, ch 44, §114

Referred to in §515B.5

515B.8 Effect of paid claims.

1. Any person recovering under this chapter shall be deemed to have assigned the person's rights under the policy to the association to the extent of the person's recovery from the association. Every insured or claimant seeking the protection of this chapter shall cooperate with the association to the same extent as such person would have been required to cooperate with the insolvent insurer. The association shall have no cause of action against the insured of the insolvent insurer for any sums it has paid out except causes of action the insolvent insurer would have had if the sums had been paid by the insolvent insurer.

2. The association and any similar entity in another state shall be recognized as claimants in the liquidation of an insolvent insurer for any amounts paid by them on covered claim obligations as determined under this chapter or under similar law in another state, and shall receive dividends and any other distributions at the priority set forth under the applicable liquidation law. The receiver, liquidator, or statutory successor of an insolvent insurer shall be bound by determinations of covered claim eligibility under this chapter and by settlements of covered claims made by the association or a similar organization in another state. The court having jurisdiction shall grant such claims priority equal to that which the claimant would have been entitled in the absence of this chapter against the assets of the insolvent insurer. The expenses of the association or similar organization in handling claims shall be accorded the same priority as the liquidator's expenses.

3. The association shall periodically file with the receiver or liquidator of the insolvent insurer statements of the covered claims paid by the association and estimates of anticipated claims on the association, which statements shall preserve the rights of the association against the assets of the insolvent insurer.

[C71, 73, 75, 77, 79, 81, §515B.8]

97 Acts, ch 186, §17; 2003 Acts, ch 91, §41

515B.9 Nonduplication of recovery.

1. *a.* Any person having a claim under an insurance policy, and the claim under such other policy alleges the same damages or arises from the same facts, injury, or loss that gives rise to a covered claim against the association, shall be required to first exhaust all coverage provided by that policy, whether such coverage is on a primary, excess, or pro rata basis and any obligation of the association shall not be considered other insurance.

(1) Any amount payable on a covered claim shall be reduced by the full applicable limits of such other insurance policy and the association shall receive full credit for such limits or where there are no applicable limits, the claim shall be reduced by the total recovery.

(2) A policy providing liability coverage to a person who may be jointly and severally liable with, or a joint tortfeasor with, the person covered under the policy of the insolvent insurer shall be first exhausted before any claim is made against the association and the association shall receive credit for the same as provided above.

b. For purposes of this section, an insurance policy means a policy issued by an insurance company, whether or not a member insurer, which policy insures any of the types of risks insured by an insurance company authorized to write insurance under chapter 515, 516A, or 520, or comparable statutes of another state, except those types of risks set forth in chapters 508 and 514.

2. A person having a claim which may be recovered under more than one insurance guaranty association or its equivalent shall seek recovery first from the association of the place of residence of the insured. However, if the claim is a first party claim for damage to property with a permanent location, recovery shall be first sought from the association of the location of the property. If the claim is a workers' compensation claim, recovery shall be first sought from the association of the residence of the claimant. Any sums recovered

from any other guaranty association or equivalent organization shall be subtracted from the maximum liability of the association under section 515B.5, subsection 1, paragraph *"a"*.

[C71, 73, 75, 77, 79, 81, §515B.9]

86 Acts, ch 1184, §7; 88 Acts, ch 1112, §508; 91 Acts, ch 26, §45; 2003 Acts, ch 91, §42; 2012 Acts, ch 1023, §123

515B.10 Prevention of insolvencies.

1. *a.* To aid in the detection and prevention of insurer insolvencies the board of directors, upon majority vote, may do either of the following:

(1) Make recommendations to the commissioner for the detection and prevention of insurer insolvencies.

(2) Respond to a request by the commissioner to discuss and make recommendations regarding the status of member insurers whose financial condition may be hazardous to policyholders or the public.

b. At the conclusion of a domestic insurer insolvency, the board of directors may prepare a report based on the information available to the association on the history and causes of the insolvency. The report may be submitted to the commissioner.

2. Recommendations and reports made pursuant to subsection 1, paragraph *"a"*, subparagraph (2), are not public records under chapter 22.

[C71, 73, 75, 77, 79, 81, §515B.10]

86 Acts, ch 1184, §8

Referred to in §22.7(22), 515B.5

515B.11 Examination of the association.

The association is subject to examination and regulation by the commissioner. The board of directors shall submit, not later than March 30 of each year, a financial report for the preceding calendar year in a form approved by the commissioner.

[C71, 73, 75, 77, 79, 81, §515B.11]

515B.12 Tax exemption.

The association is exempt from payment of all fees and all taxes levied by this state or any of its subdivisions, except taxes levied on property.

[C71, 73, 75, 77, 79, 81, §515B.12]

89 Acts, ch 296, §73

515B.13 Recognition of assessments in rates.

The rates and premiums charged for insurance policies to which this chapter applies shall include amounts sufficient to recoup a sum equal to the amounts paid to the association by the member insurer less any amounts returned to the member insurer by the association, and such rates shall not be deemed excessive as a result of containing such recoupment allowances.

[C71, 73, 75, 77, 79, 81, §515B.13]

515B.14 Immunity.

There shall be no liability on the part of, and no cause of action of any nature shall arise against a member insurer, the association or its agents or employees, the board of directors or any person serving as an alternate or substitute representative of any director, or the commissioner or the commissioner's representatives, for any action taken or any failure to act by them in the performance of their duties and powers under this chapter.

[C71, 73, 75, 77, 79, 81, §515B.14]

2010 Acts, ch 1063, §27

515B.15 Stay of proceedings.

All proceedings to which the insolvent insurer is a party or in which it is obligated to defend a party shall be stayed from the date of the insolvency to and including the date set as the deadline for the filing of claims against the insolvent insurer or its receiver. However, upon

application, the court having jurisdiction of the receivership, may lengthen or shorten the period, either as to all claims or as to any particular claim. The association may, at the option of the association, waive such stay as to specific cases involving covered claims.

As to any covered claims based on the default of an insurer who is or who becomes insolvent, or based on the failure of an insurer to defend an insured, the association, on its own behalf or on behalf of the insured, is entitled to set the default aside and defend such claim on its merits.

[C71, 73, 75, 77, 79, 81, §515B.15]

92 Acts, ch 1162, §42; 97 Acts, ch 186, §18

515B.16 Actions against the association.

Any action against the association shall be brought against the association in the association's own name. The Polk county district court shall have exclusive jurisdiction and venue of such actions. Service of the original notice in actions against the association may be made on any officer of the association or upon the commissioner of insurance on behalf of the association. The commissioner shall promptly transmit any notice so served upon the commissioner to the association. Any action against the association shall be commenced within three years after the date of the order of liquidation.

[C73, 75, 77, 79, 81, §515B.16]

97 Acts, ch 186, §19; 2001 Acts, ch 69, §33; 2003 Acts, ch 91, §43

515B.17 Timely filing of claims.

Notwithstanding any other provision of this chapter, a covered claim shall not include any claim filed with the association after twenty-four months from the date of the order of liquidation or after the final date set by the court for the filing of claims against the insolvent insurer or its receiver, whichever occurs first.

[C77, 79, 81, §515B.17]

93 Acts, ch 88, §23; 2005 Acts, ch 70, §23

515B.18 Prohibited advertising.

A person shall not advertise or publish, in connection with the sale of an insurance policy, that claims under the insurance policy are subject to this chapter or will be paid by the Iowa insurance guaranty association.

88 Acts, ch 1112, §509

515B.19 Coordination among guaranty associations.

1. The association may join one or more organizations of other state associations of similar purpose, to further the purposes and administer the powers and duties of the association. The association may designate one or more of these organizations to act as a liaison for the association and, to the extent the association authorizes, to bind the association in agreements or settlements with receivers of insolvent insurance companies or their designated representatives.

2. The association, in cooperation with other obligated or potentially obligated guaranty associations or their designated representatives, shall make all reasonable efforts to coordinate and cooperate with receivers or their designated representatives, in the most efficient and uniform manner, including the use of uniform data standards as promulgated or approved by the national association of insurance commissioners.

2010 Acts, ch 1063, §28

515B.20 through 515B.24 Reserved.

515B.25 Early access to assets. Repealed by 97 Acts, ch 186, §27.

515B.26 Title.

This chapter shall be known and may be cited as the *"Iowa Insurance Guaranty Association Act"*.

[C71, §515B.16; C73, 75, §515B.17; C77, 79, 81, §515B.18]

CHAPTER 515C

MORTGAGE GUARANTY INSURANCE

Referred to in §87.4, 296.7, 331.301, 364.4, 505.28, 505.29, 507.1, 669.14, 670.7

515C.1 Definition.
515C.2 Eligibility for insurance.
515C.3 Bases for computations.
515C.4 Contingency reserve.
515C.5 Limit of outstanding liability.
515C.6 Determination of loss reserves.
515C.7 Rate-making provisions.
515C.8 Policy forms approved.
515C.9 Restrictions on advertising.
515C.10 Law applicable.
515C.11 Mortgages secured by first lien on real estate.

515C.1 Definition.

"Mortgage guaranty insurance" means insurance against financial loss by reason of nonpayment of principal, interest and other sums agreed to be paid under the terms of any note or bond or other evidence of indebtedness secured by a mortgage, deed of trust, or other instrument constituting a lien or charge on real estate or on an owner-occupied manufactured or mobile home.

[C66, 71, 73, 75, 77, 79, 81, §515C.1]

95 Acts, ch 67, §37; 2001 Acts, ch 153, §15; 2001 Acts, ch 176, §80

515C.2 Eligibility for insurance.

Eligibility for mortgage guaranty insurers shall be as follows:

1. An insurer, in order to qualify for writing mortgage guaranty insurance, must have the same surplus to policyholders as that required of a multiple line company by section 515.8.
2. An insurer transacting any class of insurance other than mortgage guaranty insurance is not eligible for the issuance of a certificate of authority to transact mortgage guaranty insurance in this state, nor the renewal thereof.
3. A foreign or alien insurer writing mortgage guaranty insurance shall not be eligible for the issuance of a certificate of authority in Iowa unless it has demonstrated a satisfactory operating experience in its state of domicile.

[C66, 71, 73, 75, 77, 79, 81, §515C.2]

2012 Acts, ch 1021, §100

515C.3 Bases for computations.

The unearned premium reserve shall be computed pursuant to rules adopted by the commissioner of insurance.

[C66, 71, 73, 75, 77, 79, 81, §515C.3]

2000 Acts, ch 1023, §31, 60

515C.4 Contingency reserve.

For the protection of the people of this state and for the purpose of protecting against the effect of adverse economic cycles, the company shall establish a contingency reserve. The company shall annually contribute fifty percent of the earned premiums to this reserve. The earned premiums so reserved may be released annually after the period of time required by the commissioner, provided that said time shall not be less than one hundred twenty months. However, subject to the approval of the commissioner, this reserve may be available only for loss payments, when the loss ratio (incurred losses to premiums earned) exceeds twenty

percent. This amount so used shall reduce the next subsequent annual release to surplus from the established contingency reserve.

[C66, 71, 73, 75, 77, 79, 81, §515C.4]

515C.5 Limit of outstanding liability.

1. Unless a request to suspend the requirements of this section is granted by the commissioner as set forth in subsection 2, a mortgage guaranty insurer shall not at any time have outstanding a total liability, net of reinsurance, in excess of twenty-five times its capital, unassigned funds, and contingency reserve. A mortgage guaranty insurer shall not insure loans secured by properties in a single housing tract or in a contiguous tract which is not separated by more than one-half mile in excess of ten percent of its capital, unassigned funds, and contingency reserve. Coverage may be provided only if the properties in such tract are residential buildings, buildings designed for occupancy by not more than four families, or owner-occupied mobile homes.

2. Upon request of a mortgage guaranty insurer, the commissioner may suspend the requirements contained in subsection 1 for such time and under such conditions as the commissioner may order. The commissioner may adopt rules as necessary relating to the consideration of such requests for suspension of those requirements.

[C66, 71, 73, 75, 77, 79, 81, §515C.5]

2010 Acts, ch 1121, §22

Referred to in §515C.11

515C.6 Determination of loss reserves.

The case basis method shall be used to determine the loss reserves, which shall include a reserve for claims reported and unpaid and a reserve for claims incurred but not reported.

[C66, 71, 73, 75, 77, 79, 81, §515C.6]

515C.7 Rate-making provisions.

Mortgage guaranty insurance shall be subject to the provisions of chapter 515F, for the purposes of rate making.

[C66, 71, 73, 75, 77, 79, 81, §515C.7]

93 Acts, ch 88, §24

515C.8 Policy forms approved.

All policy forms and endorsements shall be filed with and be subject to the approval of the commissioner of insurance. With respect to owner-occupied single family dwellings and owner-occupied mobile homes, the mortgage insurance policy shall provide that the borrower shall not be liable to the insurance company for any deficiency arising from a foreclosure sale.

[C66, 71, 73, 75, 77, 79, 81, §515C.8]

515C.9 Restrictions on advertising.

No bank, savings association, insurance company, or other lending institution, any of whose authorized real estate securities are insured by mortgage guaranty insurance companies, may state in any brochure, pamphlet, report, or any form of advertising that the real estate loans of the bank, savings association, insurance company, or other lending institution are “insured loans” unless the brochure, pamphlet, report, or advertising also clearly states that the loans are insured by private insurers and the names of the private insurers are given and shall not make any such statement at all unless such insurance is by an insurer authorized to write this coverage in this state.

[C66, 71, 73, 75, 77, 79, 81, §515C.9]

2012 Acts, ch 1017, §99

515C.10 Law applicable.

All companies writing insurance as authorized by this chapter shall, in addition to the provisions herein, comply with and be subject to all of the provisions of chapter 515 not inconsistent herewith.

[C66, 71, 73, 75, 77, 79, 81, §515C.10]

515C.11 Mortgages secured by first lien on real estate.

A mortgage guaranty insurer in addition to coverage provided under section 515C.5 may insure mortgages secured by first lien upon improved real estate which is used for commercial purposes, except for those types of commercial properties specifically excluded by the commissioner of insurance.

[C71, 73, 75, 77, 79, 81, §515C.11]

CHAPTER 515D

AUTOMOBILE INSURANCE CANCELLATION CONTROL

Referred to in §87.4, 296.7, 331.301, 364.4, 505.8, 505.28, 505.29, 669.14, 670.7

515D.1	Title.	515D.8	Duplicate coverage.
515D.2	Definitions.	515D.9	Renewal not a waiver or estoppel.
515D.3	When not applicable.	515D.10	Hearing before commissioner.
515D.4	Notice of cancellation — reasons.	515D.11	Insured told of alternate coverage.
515D.5	Delivery of notice.	515D.12	Immunity of liability.
515D.6	Prohibited reasons.		
515D.7	Notice of intent.		

515D.1 Title.

This chapter shall be known as the *"Iowa Automobile Insurance Cancellation Control Act"*.

[C71, 73, 75, 77, 79, 81, §515D.1]

515D.2 Definitions.

As used in this chapter, unless otherwise required by the context:

1. *"Policy"* means an automobile insurance policy providing bodily injury liability, property damage liability, medical payments, uninsured motorist coverage, physical damage coverage, or any combination thereof, delivered or issued for delivery in this state, insuring a single individual or one or more related individuals resident in the same household, as named insured, and insuring vehicles of the following types only:

a. Motor vehicles of the private passenger or station wagon type which are not used as public conveyances nor rented to others.

b. Any other four-wheel motor vehicles with a load capacity of one thousand five hundred pounds or less which are not used in the business or profession of the insured.

2. *"Renewal"* or *"to renew"* means the issuance and delivery by an insurer of a policy replacing at the end of the previous policy term a policy previously issued and delivered by the same insurer, or the issuance and delivery of a certificate or notice extending the coverage of the policy beyond its original term.

a. Any renewal policy, other than a replacement policy for an unfinished term, with a term of six months or less shall be considered written, for the purposes of this chapter, for a term of six months.

b. Any policy written for a term longer than one year or with no fixed expiration date shall be considered written for successive policy terms of one year.

3. *"Nonpayment of premium"* means failure of the named insured to discharge when due any of the named insured's obligations in connection with the payment of premiums on the

policy, or any installment of a premium, whether the premium is payable directly to the insurer or its agent or indirectly under any premium finance plan or extension of credit.

[C71, 73, 75, 77, 79, 81, §515D.2]

2012 Acts, ch 1023, §157

515D.3 When not applicable.

This chapter shall not apply to any policy:

1. Issued under an automobile assigned risk plan.

2. Covering garage, automobile sales agency, repair shop, service station, or public parking place operation hazards.

3. Insuring more than four automobiles.

4. Issued principally to cover personal or premises liability of an insured even though such insurance may also provide some incidental coverage for liability arising out of the ownership, maintenance, or use of a motor vehicle on the premises of such insured or on the ways immediately adjoining the premises.

[C71, 73, 75, 77, 79, 81, §515D.3]

515D.4 Notice of cancellation — reasons.

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

a. Nonpayment of premium.

b. Nonpayment of dues to an association or organization other than an insurance association or organization, where payment of dues is a prerequisite to obtaining or continuing insurance in force and the dues payment requirement was in effect prior to January 1, 1969.

c. Fraud or material misrepresentation affecting the policy or the presentation of a claim.

d. Violation of terms or conditions of the policy.

e. Any reason permitted in subsection 2 for exclusion of a person from the policy.

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

a. The named insured or any operator who either resides in the same household or customarily operates an automobile insured under the policy has that person's driver's license suspended or revoked during the policy term or, if the policy is a renewal, during its term or the one hundred eighty days immediately preceding its effective date.

b. The named insured or any operator who either resides in the same household or customarily operates an automobile insured under the policy has during the term of the policy engaged in a competitive speed contest while operating an automobile insured under the policy.

c. The named insured or any operator who either resides in the same household or customarily operates an automobile insured under the policy, during the thirty-six months immediately preceding the notice of cancellation or nonrenewal, has been convicted of or forfeited bail for any of the following:

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

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

(3) A violation of section 321.261.

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

4. During the policy period, a modification of automobile physical damage coverage, other than coverage for loss caused by collision, where provision is made for the application of a

deductible amount not exceeding one hundred dollars, shall not be deemed a cancellation of the coverage or of the policy.

[C71, 73, 75, 77, 79, 81, §515D.4]

96 Acts, ch 1045, §6; 97 Acts, ch 186, §20; 2002 Acts, ch 1111, §22

Referred to in §515D.5

515D.5 Delivery of notice.

1. *a.* Notwithstanding the provisions of section 515.129A, a notice of cancellation of a policy shall not be effective unless mailed or delivered by the insurer to the named insured at least thirty days prior to the effective date of cancellation, or, where the cancellation is for nonpayment of premium notwithstanding the provisions of section 515.129A, at least ten days prior to the date of cancellation. A post office department certificate of mailing to the named insured at the address shown in the policy shall be proof of receipt of such mailing. Unless the reason accompanies the notice of cancellation, the notice shall state that upon written request of the named insured, mailed or delivered to the insurer not less than fifteen days prior to the date of cancellation, the insurer will state the reason for cancellation together with notification of the right to a hearing before the commissioner within fifteen days as provided in this chapter.

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

2. A notice of exclusion of a person under a policy pursuant to section 515D.4, is not effective unless written notice is mailed or delivered to the named insured at least twenty days prior to the effective date of the exclusion. The written notice shall state the reason for the exclusion, together with notification of the right to a hearing before the commissioner pursuant to section 515D.10 within fifteen days of receipt or delivery of a statement of reason as provided in this section.

[C71, 73, 75, 77, 79, 81, §515D.5]

88 Acts, ch 1112, §601; 97 Acts, ch 186, §21; 2003 Acts, ch 91, §44; 2007 Acts, ch 152, §79; 2011 Acts, ch 70, §32

515D.6 Prohibited reasons.

No insurer shall refuse to renew a policy solely because of age, residence, sex, race, color, creed, or occupation of an insured.

No insurer shall require a physical examination of a policyholder as a condition for renewal solely on the basis of age or other arbitrary reason. In the event that an insurer requires a physical examination of a policyholder, the burden of proof in establishing reasonable and sufficient grounds for such requirement shall rest with the insurer and the expenses incident to such examination shall be borne by the insurer.

[C71, 73, 75, 77, 79, 81, §515D.6]

515D.7 Notice of intent.

1. Notwithstanding the provisions of sections 515.125, 515.128, 515.129B, and 515.129C, an insurer shall not fail to renew a policy except by notice to the insured as provided in this chapter. A notice of intention not to renew shall not be effective unless mailed or delivered by the insurer to the named insured at least thirty days prior to the expiration date of the policy. A post office department certificate of mailing to the named insured at the address shown in the policy shall be proof of receipt of such mailing. Unless the reason accompanies the notice of intent not to renew, the notice shall state that, upon written request of the named insured, mailed or delivered to the insurer not less than thirty days prior to the expiration date of the policy, the insurer will state the reason for nonrenewal.

2. When the reason does not accompany the notice of intent not to renew, the insurer shall, upon receipt of a timely request by the named insured, state in writing the reason for nonrenewal, together with notification of the right to a hearing before the commissioner

within fifteen days as provided herein. A statement of reason shall be mailed or delivered to the named insured within ten days after receipt of a request.

3. This section shall not apply:

a. If the insurer has manifested its willingness to renew.

b. If the insured fails to pay any premium due or any advance premium required by the insurer for renewal.

c. If the insured is transferred from an insurer to an affiliate for future coverage as a result of a merger, acquisition, or company restructuring and if the transfer results in the same or broader coverage.

[C71, 73, 75, 77, 79, 81, §515D.7]

88 Acts, ch 1112, §602; 2002 Acts, ch 1111, §23; 2007 Acts, ch 152, §80; 2011 Acts, ch 70, §33

Referred to in §515D.8

515D.8 Duplicate coverage.

If an insured obtains a second policy which provides equal or more extensive coverage for any vehicle designated in both policies, the first policy's coverage of such vehicle may be terminated by failure to renew as of the effective time and date of the second policy, whether or not the first policy insurer complies with all provisions of section 515D.7.

[C71, 73, 75, 77, 79, 81, §515D.8]

515D.9 Renewal not a waiver or estoppel.

Renewal of a policy shall not constitute a waiver or estoppel with respect to grounds for cancellation which existed before the effective date of renewal.

[C71, 73, 75, 77, 79, 81, §515D.9]

515D.10 Hearing before commissioner.

Any named insured who has received a statement of reason for cancellation, or of reason for an insurer's intent not to renew a policy, may, within fifteen days of the receipt or delivery of a statement of reason, request a hearing before the commissioner of insurance. The purpose of this hearing shall be limited to establishing the existence of the proof or evidence used by the insurer in its reason for cancellation or intent not to renew. The burden of proof of the reason for cancellation or intent not to renew shall be upon the insurer. Other than the sharing of information required by this chapter and the rules adopted pursuant to the provisions of this chapter, the commissioner shall keep confidential the information obtained from the insured or in the hearing process, pursuant to section 505.8, subsection 8. The commissioner of insurance shall adopt rules for carrying out the provisions of this section.

[C71, 73, 75, 77, 79, 81, §515D.10]

2003 Acts, ch 91, §45

Referred to in §515D.5

515D.11 Insured told of alternate coverage.

When automobile bodily injury and property damage liability coverage is canceled or not renewed, other than for nonpayment of premium, the insurer shall notify the named insured of the insured's possible eligibility for automobile liability insurance through the Iowa automobile insurance plan. Such notice shall accompany the notice of cancellation or intent not to renew.

[C71, 73, 75, 77, 79, 81, §515D.11]

515D.12 Immunity of liability.

There shall be no liability on the part of, and no cause of action of any nature shall arise against the commissioner of insurance or any employee of the division or against any insurer, its authorized representatives, its agents, its employees, or against any firm, person, or corporation furnishing to the insurer information as to reasons for cancellation or intent not to renew, for any statement made by any of them in any written notice of cancellation or notice of intent not to renew or in any other communication, oral or written, specifying the reasons for cancellation or intent not to renew, or for any information provided or evidence

submitted at any hearings conducted in connection with reasons for cancellation or intent not to renew.

[C71, 73, 75, 77, 79, 81, §515D.12]

CHAPTER 515E

RISK RETENTION GROUPS AND PURCHASING GROUPS

Referred to in §87.4, 296.7, 331.301, 364.4, 505.28, 505.29, 510A.2, 515I.2, 521A.1, 669.14, 670.7

515E.1	Purpose — federal Act defined.	515E.7	Purchasing groups exemptions.
515E.2	Definitions.	515E.8	Purchasing groups — requirements.
515E.3	Risk retention groups organized in this state.	515E.9	Purchasing group restrictions.
515E.3A	Foreign risk retention group may become domestic.	515E.10	Commissioner's administrative and procedural authority.
515E.4	Risk retention groups not organized in this state.	515E.11	Penalties.
515E.5	Compulsory associations.	515E.12	License required for agents and brokers.
515E.6	Countersignatures not required. Repealed by 98 Acts, ch 1057, §13.	515E.13	Effect of federal district court orders.
		515E.14	Rules.

515E.1 Purpose — federal Act defined.

The purpose of this chapter is to regulate the formation and operation in this state of risk retention groups formed pursuant to the Product Liability Risk Retention Act of 1981, 15 U.S.C. §3901 et seq., or the Risk Retention Amendments of 1986, Pub. L. No. 99-563. As used in this chapter, *"federal Act"* means the Product Liability Risk Retention Act of 1981 as amended.

88 Acts, ch 1111, §2
Section not amended; headnote revised

515E.2 Definitions.

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

1. *"Commissioner"* means the commissioner of insurance or the commissioner, director, superintendent of insurance, or similar public official, in any other state.

2. *a. "Completed operations liability"* means liability arising out of the installation, maintenance, or repair of any product at a site which is not owned or controlled by either of the following:

(1) A person who performs that work.

(2) A person who hires an independent contractor to perform that work.

b. However, liability for activities which are completed or abandoned before the date of the occurrence giving rise to the liability is included.

3. *"Domicile"*, for purposes of determining the state in which a purchasing group is domiciled, means either of the following:

a. For a corporation, the state in which the purchasing group is incorporated.

b. For an unincorporated entity, the state of its principal place of business.

4. *"Hazardous financial condition"* means a risk retention group not yet financially impaired or insolvent, which, based on its present or reasonably anticipated financial condition, is unlikely to be able to do one of the following:

a. Meet obligations to policyholders with respect to known claims and reasonably anticipated claims.

b. Pay other obligations in the normal course of business.

5. *"Insurance"* means primary insurance, excess insurance, reinsurance, surplus lines insurance, and any other arrangement for shifting and distributing risk which is determined to be insurance under the laws of this state.

6. *a. "Liability"* means legal liability for damages, including costs of defense, legal costs

and fees, and other claims expenses, because of injuries to other persons, damage to their property, or other damage or loss to other persons resulting from or arising out of either of the following:

(1) A business, whether profit or nonprofit, trade, product, services, including professional services, premises, or operations.

(2) An activity of a state or local government, or an agency or political subdivision of state or local government.

b. "*Liability*" does not include personal risk liability and an employer's liability with respect to its employees other than an employer's legal liability under the federal Employers' Liability Act, 45 U.S.C. §51 et seq.

7. "*Personal risk liability*" means liability for damages because of injury to a person, damage to property, or other loss or damage resulting from personal, familial, or household responsibilities or activities, rather than from responsibilities or activities referred to in subsection 6, paragraph "*a*", subparagraphs (1) and (2).

8. "*Plan of operation or a feasibility study*" means an analysis which presents the expected activities and results of a risk retention group including, at a minimum, all of the following:

a. Information sufficient to verify that its members are engaged in businesses or activities similar or related with respect to the liability to which such members are exposed by virtue of any related, similar, or common business, trade, product, services, premises, or operations.

b. For each state in which it intends to operate, the coverages, deductibles, coverage limits, rates, and rating classification systems for each line of insurance the group intends to offer.

c. Historical and expected loss experience of the proposed members and national experience of similar exposures.

d. Pro forma financial statements and projections.

e. Appropriate opinions by a qualified, independent casualty actuary, including a determination of minimum premium or participation levels required to commence operations and to prevent a hazardous financial condition.

f. Identification of management, underwriting and claim procedures, marketing methods, managerial oversight methods, investment policies, and reinsurance agreements.

g. Identification of each state in which the risk retention group has obtained, or sought to obtain, a charter and license, and a description of its status in each such state.

h. Other matters prescribed by the commissioner for liability insurance companies of the state in which the risk retention group is chartered or authorized by its insurance laws.

9. "*Product liability*" means liability for damages because of personal injury, death, emotional harm, consequential economic damage, or property damage, including damages resulting from the loss of use of property, arising out of the manufacture, design, importation, distribution, packaging, labeling, lease, or sale of a product, but does not include the liability of a person for those damages if the product involved was in the possession of the person when the incident giving rise to the claim occurred.

10. "*Purchasing group*" means a group to which all of the following apply:

a. It has as one of its purposes the purchase of liability insurance on a group basis.

b. It purchases such insurance only for its group members and only to cover their similar or related liability exposure, as described in paragraph "*c*".

c. It is composed of members whose businesses or activities are similar or related with respect to the liability to which members are exposed by virtue of any related, similar, or common business, trade, product, services, premises, or operations.

d. It is domiciled in any state.

11. "*Risk retention group*" means a corporation or other limited liability association formed under the laws of any state, Bermuda, or the Cayman Islands and to which all of the following apply:

a. Its primary activity consists of assuming and spreading all, or any portion, of the liability exposure of its group members.

b. It is organized for the primary purpose of conducting the activity described under paragraph "*a*".

c. One of the following applies:

(1) It is chartered and licensed as a liability insurance company and authorized to engage in the business of insurance under the laws of any state.

(2) Before January 1, 1985, it was chartered or licensed and authorized to engage in the business of insurance under the laws of Bermuda or the Cayman Islands and, before that date, had certified to the commissioner of at least one state that it satisfied the capitalization requirements of that state, except that any such group is a risk retention group only if it has been engaged in business continuously since that date and only for the purpose of continuing to provide insurance to cover product liability or completed operations liability, as those terms were defined in the Product Liability Risk Retention Act of 1981, 15 U.S.C. §3901, before the date of the enactment of the Risk Retention Amendments of 1986, Pub. L. No. 99-563.

d. It does not exclude any person from membership in the group solely to provide for members of the group a competitive advantage over such a person.

e. One of the following applies:

(1) It has as its members only persons who have an ownership interest in the group, and as its owners only persons who are members and are provided insurance by the risk retention group.

(2) It has as its sole member and sole owner an organization which is owned by persons who are provided insurance by the risk retention group.

(3) It has as its sole owner an organization which has as its members only persons who comprise the membership of the risk retention group, and the organization members are the only persons who comprise the membership of the risk retention group and who are provided insurance by the group.

f. Its members are engaged in businesses or activities similar or related with respect to the liability to which the members are exposed by virtue of a related, similar, or common business trade, product, services, premises, or operations.

g. Its activities do not include the provision of insurance other than the following:

(1) Liability insurance for assuming and spreading all or any portion of the liability of its group members.

(2) Reinsurance with respect to the liability of any other risk retention group, or any members of another such group, which is engaged in businesses or activities so that the group or member meets the requirement described in paragraph *"f"* from membership in the risk retention group which provides the reinsurance.

h. Its name includes the phrase "risk retention group".

12. *"State"* means a state of the United States or the District of Columbia.

88 Acts, ch 1111, §3; 2012 Acts, ch 1023, §124
Referred to in §515E.4, 515E.8

515E.3 Risk retention groups organized in this state.

1. To be organized as a risk retention group in this state, the group must be organized and licensed as a liability insurance company authorized by the insurance laws of this state. Except as provided elsewhere in this chapter, a risk retention group organized in this state must comply with all of the laws, rules, and requirements applicable to a liability insurer organized in this state. Additionally, a risk retention group organized in this state must comply with section 515E.4. These requirements do not exempt a risk retention group from a duty imposed by any other law or rule of the state. Before it may offer insurance in any state, a risk retention group shall also submit for approval to the commissioner of insurance of this state a plan of operation or a feasibility study, and revisions of the plan or study within ten days of any change. The name under which a risk retention group may be chartered and licensed shall be a brief description of its membership followed by the phrase "risk retention group" and, unless its membership consists solely of insurers, shall not include the terms "insurance", "mutual", "reciprocal", or any similar term. A risk retention group chartered in this state shall file with the division and the national association of insurance commissioners an annual statement blank prepared in accordance with instructions prescribed by the commissioner. All financial information reflected in the annual statement shall be kept and prepared in accordance with accounting practices and procedures prescribed by the commissioner. The commissioner may adopt by reference the annual statement handbook

and the accounting practices and procedures manual of the national association of insurance commissioners.

2. A risk retention group organized in this state shall file in the office of the commissioner a power of attorney and an agreement in writing that service of process in any action or proceeding against the society may be made on the commissioner and shall be of the same legal force and validity as if made upon the society, and that the authority shall continue in force so long as any liability remains outstanding in this state. Copies of the power of attorney, certified by the commissioner, shall be deemed sufficient evidence of the appointment and shall be admitted in evidence with the same force and effect as the original. Service of process made on the commissioner as the attorney for service of process shall be made as provided in section 505.30.

88 Acts, ch 1111, §4; 92 Acts, ch 1162, §43; 2003 Acts, ch 91, §46; 2018 Acts, ch 1018, §9
Referred to in §515E.4
Section amended and unnumbered paragraphs 1 and 2 editorially numbered as subsections 1 and 2

515E.3A Foreign risk retention group may become domestic.

1. A risk retention group that is organized under the laws of any other state for the purpose of writing insurance, as authorized by this chapter, may redomesticate to this state by doing all of the following:

a. Complying with section 490.902.

b. Complying with all of the requirements of law relative to the organization and licensing of a domestic risk retention group and the capital and surplus requirement set forth in subsection 4.

c. Designating its principal place of business in this state.

2. A risk retention group that meets the requirements of subsection 1 shall be entitled to a certificate of its corporate existence and a license to transact business in this state, and be subject in all respects to the authority and jurisdiction of this state.

3. The certificate of authority, producer appointments and licenses, rates, and other items which are in existence at the time a risk retention group transfers its corporate domicile to this state pursuant to this section shall continue in full force and effect upon such transfer. For purposes of existing authorizations and all other corporate purposes, the risk retention group is deemed to be the same entity as it was prior to the transfer of its domicile. All outstanding policies of any transferring risk retention group shall remain in full force and effect.

4. A risk retention group redomesticating to this state pursuant to this chapter shall comply with the minimum capital and surplus requirements of chapter 521E or five million dollars, whichever is greater. If the risk retention group's prior domestic regulator allowed the use of letters of credit to meet that regulator's surplus requirements, the risk retention group may continue to use the letters of credit to meet this state's minimum surplus requirements for up to five years from the date of redomestication in this state. The risk retention group shall eliminate a minimum of twenty percent of the letters of credit being used each year based upon the aggregate amount of letters of credit being used to meet surplus requirements at the time of redomestication in this state.

5. Letters of credit used by a risk retention group to meet surplus requirements shall be clean, irrevocable, and unconditionally issued or confirmed by a qualified United States financial institution as defined in section 521B.104, subsection 2. The beneficiary of each letter of credit being used shall be the commissioner.

6. If a risk retention group redomesticating to this state fails to comply with the provisions of this section, the commissioner shall take action as prescribed in chapter 507C.

7. The commissioner shall adopt rules pursuant to chapter 17A to implement this section.

2006 Acts, ch 1117, §72; 2013 Acts, ch 39, §10, 11

515E.4 Risk retention groups not organized in this state.

Risk retention groups chartered in other states and seeking to do business as a risk retention group in this state must observe and abide by the laws of this state as provided in this section. However, a risk retention group failing to qualify under the definitional requirement of the federal Act, will not benefit from this exemption from state law. The commissioner, therefore,

may apply any of the laws that otherwise may be preempted by the federal Act because the nonexempt group will not qualify for the preemption.

1. *Notice of operations and designation of commissioner as agent.* Before offering insurance in this state, a risk retention group shall submit to the commissioner all of the following:

a. A statement identifying the state or states in which the risk retention group is chartered and licensed as a liability insurance company, date of chartering, its principal place of business, and other information, including information on its membership, as the commissioner of this state requires to verify that the risk retention group is qualified under section 515E.2, subsection 11.

b. A copy of its plan of operations or a feasibility study and revisions of the plan or study submitted to its state of domicile. However, the provision relating to the submission of a plan of operation or a feasibility study does not apply with respect to a line or classification of liability insurance which was defined in the Product Liability Risk Retention Act of 1981 before October 27, 1986, and was offered before that date by a risk retention group which had been organized and operating for not less than three years before that date.

c. A statement of registration which designates the commissioner as its agent for the purpose of receiving service of legal documents or process for which a filing fee set by the commissioner shall be paid.

d. The risk retention group shall submit a copy of any revision to its plan of operation or feasibility study required by section 515E.3 at the same time that such revision is submitted to the commissioner of its chartering state.

2. *Financial condition.* A risk retention group doing business in this state shall submit to the commissioner all of the following:

a. A copy of the group's financial statement submitted to its state of domicile, which shall be certified by an independent public accountant and contain a statement of opinion on loss and loss adjustment expense reserves made by a member of the American academy of actuaries or a qualified loss reserve specialist under criteria established by the national association of insurance commissioners.

b. A copy of each examination of the risk retention group as certified by the commissioner or public official conducting the examination.

c. Upon request by the commissioner, a copy of any audit performed with respect to the risk retention group.

d. Information required to verify its continuing qualification as a risk retention group under section 515E.2, subsection 11.

3. *Taxation.*

a. Premiums paid for coverages within this state to risk retention groups are subject to taxation as provided in section 432.5.

b. To the extent agents or brokers are used, they shall report and pay the taxes for the premiums for risks which they have placed with or on behalf of a risk retention group not chartered in this state.

c. To the extent agents or brokers are not used or fail to pay the tax, each risk retention group shall pay the tax for risks insured within the state. Each risk retention group shall report all premiums paid to it for risks insured within the state.

4. *Compliance with unfair claim settlement practices law.* A risk retention group, its agents, and representatives, shall comply with the unfair claim settlement practices law in section 507B.4, subsection 3, paragraph *"j"*.

5. *Deceptive, false, or fraudulent practices.* A risk retention group shall comply with sections 507B.3 and 507B.4 regarding deceptive, false, or fraudulent acts or practices. However, if the commissioner seeks an injunction regarding such conduct, the injunction must be obtained from a court of competent jurisdiction.

6. *Examination regarding financial condition.* A risk retention group shall submit to an examination by the commissioner to determine its financial condition if the commissioner of the jurisdiction in which the group is chartered has not initiated an examination or does not initiate an examination within sixty days after a request by the commissioner of this state. Any such examination shall be coordinated to avoid unjustified repetition and conducted

in an expeditious manner and in accordance with the national association of insurance commissioners' examiner handbook.

7. *Notice to purchasers.* Every application form for insurance from a risk retention agency and every policy issued by a risk retention group shall contain in ten point type on the front page and the declaration page, the following notice:

NOTICE

This policy is issued by your risk retention group. Your risk retention group may not be subject to all of the insurance laws and regulations of your state. State insurance insolvency guaranty funds are not available for your risk retention group.

8. *Prohibited acts regarding solicitation or sale.* The following acts by a risk retention group are prohibited:

a. The solicitation or sale of insurance by a risk retention group to a person who is not eligible for membership in the group.

b. The solicitation or sale of insurance by, or operation of, a risk retention group that is in a hazardous financial condition or is financially impaired.

9. *Prohibition against ownership by an insurance company.* A risk retention group shall not be allowed to do business in this state if an insurance company is directly or indirectly a member or owner of the risk retention group, other than in the case of a risk retention group all of whose members are insurance companies.

10. *Prohibited coverage.* A risk retention group shall not offer insurance policy coverage prohibited by law or declared unlawful by the highest court of this state.

11. *Delinquency proceedings.* A risk retention group not chartered in this state and doing business in this state shall comply with a lawful order issued in a voluntary dissolution proceeding or in a delinquency proceeding commenced by a state insurance commissioner if there has been a finding of financial impairment after an examination under subsection 6.

88 Acts, ch 1111, §5; 2011 Acts, ch 25, §63; 2012 Acts, ch 1023, §125, 154
Referred to in §515E.3

515E.5 Compulsory associations.

A risk retention group shall not join or contribute financially to an insurance insolvency guaranty fund, or similar mechanism, in this state, nor shall a risk retention group, or its insureds, receive any benefit from an insurance insolvency guaranty fund, or similar mechanism, in this state, for claims arising out of the operations of the risk retention group.

88 Acts, ch 1111, §6

515E.6 Countersignatures not required. Repealed by 98 Acts, ch 1057, §13.

515E.7 Purchasing groups exemptions.

A purchasing group which meets the criteria established under the federal Act is exempt from any law of this state relating to the creation of groups for the purchase of insurance, the prohibition of group purchasing, or any law that would discriminate against a purchasing group or its members. An insurer is exempt from any law of this state which prohibits providing, or offering to provide, to a purchasing group or its members advantages based on their loss and expense experience not afforded to other persons with respect to rates, policy forms, coverages, or other matters. A purchasing group is subject to all other applicable laws.

88 Acts, ch 1111, §8; 98 Acts, ch 1057, §11

515E.8 Purchasing groups — requirements.

1. A purchasing group which intends to do business in this state shall, prior to doing business, furnish notice to the commissioner which notice shall include all of the following:

a. The state in which the group is domiciled and all states in which the group does or intends to do business.

b. The lines and classifications of liability insurance which the purchasing group intends to purchase.

c. The insurance company from which the group intends to purchase its insurance and the domicile of that company.

d. The principal place of business of the group.

e. The method by which, and the person or persons, if any, through whom insurance will be offered to its members whose risks are resident or located in this state.

f. Other information as required by the commissioner to verify that the purchasing group is qualified under section 515E.2, subsection 10.

g. The commissioner may require the notice to be in a form prescribed by the national association of insurance commissioners.

2. A purchasing group, within ten days of any changes in any of the items set forth in subsection 1, shall notify the commissioner of the changes.

3. The purchasing group shall register with and designate the commissioner as its agent solely for the purpose of receiving service of legal documents or process, for which a filing fee determined by the commissioner shall be paid, except that the requirements do not apply in the case of a purchasing group to which all of the following apply:

a. It was domiciled before April 2, 1986, and is domiciled on and after October 27, 1986, in any state of the United States.

b. Before and since October 27, 1986, it purchased insurance from an insurance carrier licensed in any state.

c. It was a purchasing group under the requirements of the Product Liability Risk Retention Act of 1981 before October 27, 1986.

d. It does not purchase insurance that was not authorized for purposes of an exemption under that Act, as in effect before October 27, 1986.

88 Acts, ch 1111, §9; 92 Acts, ch 1162, §44

515E.9 Purchasing group restrictions.

A purchasing group shall not purchase insurance from an insurer not admitted in this state unless the purchase is effected through a duly licensed insurance producer acting pursuant to chapter 515I.

88 Acts, ch 1111, §10; 90 Acts, ch 1234, §44; 2007 Acts, ch 152, §81; 2012 Acts, ch 1025, §19, 22

515E.10 Commissioner's administrative and procedural authority.

1. The commissioner may make use of any of the powers established under the laws of this state to enforce the laws of this state so long as those powers are not specifically preempted by the federal Act, including but not limited to, the commissioner's authority to investigate, issue subpoenas, conduct depositions and hearings, issue orders, impose penalties, and seek injunctive relief. With regard to an investigation, administrative proceeding, or litigation, the commissioner may rely on the procedural law and rules of the state.

2. A risk retention group or purchasing group operating under this chapter shall be considered a person for purposes of chapter 507B.

88 Acts, ch 1111, §11; 93 Acts, ch 88, §25

Section not amended; unnumbered paragraphs 1 and 2 editorially renumbered as subsections 1 and 2

515E.11 Penalties.

A risk retention group which violates a provision of this chapter is subject to fines and penalties applicable to licensed insurers generally, including revocation of the group's license and of the right to do business in this state.

88 Acts, ch 1111, §12

515E.12 License required for agents and brokers.

A person acting, or offering to act, as an agent or broker for a risk retention group or purchasing group, which solicits members, sells or procures insurance coverage, purchases coverage for its members located within the state, or otherwise does business in this state shall, before commencing any such activity, obtain a license from the commissioner.

88 Acts, ch 1111, §13

515E.13 Effect of federal district court orders.

An order issued by a district court of the United States enjoining a risk retention group from soliciting or selling insurance, or operating, in any state, or in all states, or in any territory or possession of the United States, upon a finding that such a group is in a hazardous or impaired financial condition, is enforceable in the courts of this state.

88 Acts, ch 1111, §14

515E.14 Rules.

The commissioner may establish and from time to time amend rules relating to risk retention groups as necessary or desirable to carry out the provisions of this chapter.

88 Acts, ch 1111, §15

CHAPTER 515F

CASUALTY INSURANCE

Referred to in §87.4, 296.7, 331.301, 364.4, 505.28, 505.29, 515C.7, 669.14, 670.7

SUBCHAPTER I

REGULATION OF RATES

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SUBCHAPTER I

REGULATION OF RATES

515F.1 Purpose of chapter.

1. The purpose of this chapter is to promote the public welfare by regulating insurance rates so they are not excessive, inadequate, or unfairly discriminatory, and to authorize and regulate limited cooperative action among insurers in ratemaking-related activities and in other matters within the scope of this chapter. This chapter is not intended to:

a. Prohibit or discourage reasonable competition.

b. Prohibit or encourage, except to the extent necessary to accomplish its purpose, uniformity in rating systems, rating plans, or practices.

2. This chapter shall be liberally interpreted to carry into effect the provisions of this section.

90 Acts, ch 1234, §45
Referred to in §515F.23

515F.2 Definitions.

1. *"Advisory organization"* means an entity, including its affiliates or subsidiaries, which either has two or more member insurers or is controlled either directly or indirectly by two or more insurers, and which assists insurers in ratemaking-related activities such as enumerated in sections 515F.10 and 515F.11. Two or more insurers having a common ownership or operating in this state under common management or control constitute a single insurer for purposes of this definition.

2. *"Commercial risk"* means any kind of risk which is not a personal risk.

3. *"Developed losses"* means losses, including loss adjustment expenses, adjusted, using standard actuarial techniques, to eliminate the effect of differences between current payment or reserve estimates and those needed to provide actual ultimate loss, including loss adjustment expense, payments.

4. *"Expenses"* means that portion of a rate attributable to acquisition, field supervision, collection expenses, general expenses, taxes, licenses, and fees.

5. *"Joint underwriting"* means a voluntary arrangement established on an ad hoc basis to provide insurance coverage for a commercial risk pursuant to which two or more insurers jointly contract with the insured at a price and under policy terms agreed upon between the insurers.

6. *"Loss trending"* means a procedure for projecting developed losses to the average date of loss for the period during which the policies are to be effective.

7. *"Personal risk"* means insurance covering homeowners, tenants, private passenger nonfleet automobiles, and mobile homes, and other property and casualty insurance for personal, family, or household needs.

8. *"Pool"* means a voluntary arrangement, established on an ongoing basis, pursuant to which two or more insurers participate in the sharing of risks on a predetermined basis. The pool may operate through an association, syndicate, or other pooling agreement.

9. *"Prospective loss costs"* means that portion of a rate that does not include provisions for expenses (other than loss adjustment expenses) or profit, and is based on historical aggregate losses and loss adjustment expenses adjusted through development to their ultimate value and projected through trending to a future point in time.

10. *"Rate"* means the cost of insurance per exposure unit whether expressed as a single number or as a prospective loss cost with an adjustment to account for the treatment of expenses, profit, and individual insurer variation in loss experience, prior to any application of individual risk variations based on loss or expense considerations, and does not include minimum premium.

11. *"Residual market mechanism"* means an arrangement, either voluntary or mandated by law, involving participation by insurers in the equitable apportionment among them of insurance which may be offered to applicants who are unable to obtain insurance through ordinary methods.

12. *"Supplementary rating information"* includes a manual or plan of rates, classification, rating schedule, minimum premium, policy fee, rating rule, underwriting rule, statistical plan, and any other similar information needed to determine the applicable rate in effect or to be in effect.

13. *"Supporting information"* means the experience and judgment of the filer and the experience or data of other insurers or advisory organizations relied upon by the filer, the interpretation of any other data relied upon by the filer, descriptions of methods used in making the rates, and any other information required by the commissioner to be filed.

90 Acts, ch 1234, §46; 2018 Acts, ch 1041, §104
Referred to in §515F.23
Subsection 3 amended

515F.3 Scope of chapter.

1. This chapter applies to all forms of casualty insurance, including fidelity, surety, and guaranty bonds, including but not limited to all forms of fire and inland marine insurance, and to any combination of any of the foregoing, on risks or operations located in this state.

2. Except as otherwise provided in specific subchapters of this chapter, this chapter does not apply to:

a. Reinsurance, other than statutorily authorized joint reinsurance mechanisms to the extent stated in section 515F.13.

b. Accident and health insurance.

c. Insurance of vessels or craft, their cargoes, marine builders' risks, marine protection and indemnity, or other risks commonly insured under marine, excluding inland marine insurance, as determined by the commissioner.

d. Workers' compensation insurance.

e. Surplus lines insurance.

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

90 Acts, ch 1234, §47; 2000 Acts, ch 1023, §32; 2002 Acts, ch 1111, §24; 2003 Acts, ch 119, §10, 11; 2012 Acts, ch 1023, §157; 2017 Acts, ch 54, §76

Referred to in §515F.21, 515F.23

515F.4 Rate standards.

Rates shall be made in accordance with the following:

1. Rates shall not be excessive, inadequate, or unfairly discriminatory.

2. Due consideration may be given to past and prospective loss experience within and outside this state; to the conflagration and catastrophe hazards; to a reasonable margin for profit and contingencies; to dividends, savings, or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members, or subscribers; to past and prospective expenses both within and outside this state; and to all other relevant factors within and outside this state; and in the case of fire insurance rates, consideration shall be given to the experience of the fire insurance business during a period of not less than the most recent five-year period for which experience data is available.

3. Risks may be grouped by classifications for the establishment of rates and minimum premiums. Classification rates may be modified to produce rates for individual risks in accordance with rating plans which establish standards for measuring variations in hazards or expense provisions, or both. Standards may measure any differences among risks that can be demonstrated to have a probable effect upon losses or expenses. A risk classification, however, shall not be based upon race, creed, national origin, or the religion of the insured.

4. The expense provisions included in the rates to be used by an insurer shall reflect to the extent possible the operating methods of the insurer and its anticipated expenses.

5. The rates may contain a provision for contingencies and an allowance permitting a reasonable profit. In determining the reasonableness of the profit, consideration shall be given to investment income attributable to unearned premium and loss reserves.

90 Acts, ch 1234, §48; 2006 Acts, ch 1117, §73

Referred to in §515F.5, 515F.15, 515F.23, 515F.24, 515F.25

515F.4A Reasonableness of benefits in relation to premium charged.

Benefits provided by credit personal property insurance shall be reasonable in relation to the premium charged. This requirement is satisfied if the premium rate charged develops or may reasonably be expected to develop a loss ratio of not less than fifty percent or such lower loss ratio as designated by the commissioner to afford a reasonable allowance for actual and expected loss experience including a reasonable catastrophe provision, general and administrative expenses, reasonable acquisition expenses, reasonable creditor compensation, investment income, premium taxes, licenses, fees, assessments, and reasonable insurer profit.

2001 Acts, ch 69, §34, 39

Referred to in §515F.23

515F.5 Rate filings.

1. *a.* An insurer shall file with the commissioner, except as to inland marine risks which are not written according to manual rates or rating plans, every manual, minimum premium, class rate, rating schedule, rating plan, and every other rating rule, and every modification of any of the foregoing which it proposes to use. A filing shall state its proposed effective date, and shall indicate the character and extent of the coverage contemplated.

b. An insurer shall file or incorporate by reference to material which has been approved by the commissioner, at the same time as the filing of the rate, all supplementary rating and supporting information to be used in support of or in conjunction with a rate. The information furnished in support of a filing may include or consist of a reference to any of the following:

(1) The experience or judgment of the insurer or rating information filed by the advisory organization on behalf of the insurer as permitted by section 515F.11.

(2) An interpretation of any statistical data the insurer relies upon.

(3) The experience of other insurers or rating advisory organizations.

(4) Any other relevant factors. A filing and any supporting information shall be open to public inspection after the filing becomes effective.

c. When a filing is not accompanied by the information upon which the insurer supports the filing, the commissioner may require the insurer to furnish the supporting information and the waiting period commences on the date the information is furnished. Until the required information is furnished, the filing shall not be deemed complete or filed or available for use by the insurer. If the requested information is not furnished within a reasonable time period, the filing may be returned to the insurer as not filed and not available for use.

d. After reviewing an insurer's filing, the commissioner may require that the insurer's rates be based upon the insurer's own loss and expense information. If an insurer's loss or allocated loss adjustment expense information is not actuarially credible, as determined by the commissioner, the insurer may supplement its experience with information filed with the commissioner by an advisory organization.

e. Insurers using the services of an advisory organization shall, at the request of the commissioner, provide with a rate filing, a description of the rationale for that use, including its own information and method of using the advisory organization's information.

2. The commissioner shall review filings as soon as reasonably possible after they have been made in order to determine whether they meet the requirements of this chapter.

3. Subject to the exception in subsection 4, a filing shall be on file for a waiting period of thirty days before it becomes effective, which period may be extended by the commissioner for an additional period not to exceed fifteen days if written notice is given within the waiting period to the insurer or advisory organization which made the filing that additional time is needed for the consideration of the filing. Upon written application by the insurer, the commissioner may authorize a filing which has been reviewed to become effective before the expiration of the waiting period or an extension of the waiting period. A filing is deemed to meet the requirements of this chapter unless disapproved by the commissioner within the waiting period or an extension of the waiting period.

4. Under rules adopted under chapter 17A, the commissioner may, by written order, suspend or modify the requirement of filing as to any kind of insurance, or subdivision or combination of insurance, or as to classes of risks, which are unnecessary to achieve the purposes of this chapter and the rates for which cannot practicably be filed before they are used. The commissioner may make an examination as the commissioner deems advisable to ascertain whether rates affected by the order meet the standards set forth in section 515F.4.

5. Upon the written application of the insured stating the insured's reasons, filed with and approved by the commissioner, a rate in excess of that provided by a filing otherwise applicable may be used on a specific risk.

6. An insurer shall not make or issue a contract or policy except in accordance with the filings which have been approved and are in effect for the insurer as provided in this chapter. This subsection does not apply to contracts or policies for inland marine risks as to which filings are not required.

90 Acts, ch 1234, §49; 92 Acts, ch 1162, §45; 95 Acts, ch 185, §25; 2012 Acts, ch 1023, §157

Referred to in §515F.6, 515F.12, 515F.23, 515F.24, 515F.25

515F.5A Collateral insurance and forced placement.

1. The commissioner shall review all collateral insurance forms and rates to assure that the rates are not excessive in comparison to the benefits provided to consumers.

2. The commissioner may adopt by rule procedures and restrictions to protect consumers from abusive practices in forced placement or collateral insurance. Rules may include, but are not limited to, the following:

a. Notice requirements, to assure that consumers have an opportunity to exercise reasonable choice in the placement, of a collateral insurance policy.

b. A prohibition or limitation on the receipt of a sales commission or other fee by the person making a forced placement, or the person's employer.

3. For purposes of this section, unless the context otherwise requires:

a. "Collateral insurance" means an insurance policy solely or primarily intended to provide security for a loan or to insure collateral for a loan.

b. "Forced placement" means the purchase of an insurance policy by a third person when the law or a contract obligates another person to pay the insurance premium.

92 Acts, ch 1162, §13
Referred to in §515F.23

515F.6 Disapproval of filings.

1. If, within the waiting period or any extension of it as provided in section 515F.5, subsection 3, the commissioner finds that a filing does not meet the requirements of this chapter, written notice of disapproval shall be sent to the insurer or advisory organization which made the filing, specifying in what respects the filing fails to meet the requirements of this chapter and stating that the filing shall not become effective. If a filing is disapproved by the commissioner, the insurer or advisory organization, may request a hearing on the disapproval within thirty days. The insurer bears the burden of proving compliance with the standards established by this chapter.

2. If, at any time after a rate has been approved, the commissioner finds that the rate no longer meets the requirements of this chapter, the commissioner may order the discontinuance of use of the rate. The order of discontinuance may be issued only after a hearing with at least ten days' prior notice for all insurers affected by the order. The order must be in writing and state the grounds for the order. The order shall state when, within a reasonable period after the order is issued, the order of discontinuance shall be effective. The order shall not affect a contract or policy made or issued prior to the expiration of the period set forth in the order.

3. An insured which is aggrieved with respect to a filing which is in effect may make written application to the commissioner for a hearing on that filing. The application shall specify the grounds to be relied upon by the applicant. If the commissioner finds that the application is made in good faith, that the applicant would be so aggrieved if the applicant's grounds are established, and that the grounds otherwise justify holding a hearing, a hearing shall be held within thirty days after receipt of the application, upon not less than ten days' written notice to the applicant and to every insurer and advisory organization which made that filing.

4. If, after hearing, the commissioner finds that the filing does not meet the requirements of this chapter, the commissioner shall issue an order specifying in what respects the filing fails to meet the requirements of this chapter, and stating when, within a reasonable period after the order is issued, the filing shall no longer be in effect. Copies of the order shall be sent to the applicant and to every insurer and advisory organization which made that filing. The order shall not affect a contract or policy made or issued prior to the expiration of the period set forth in the order.

90 Acts, ch 1234, §50; 2012 Acts, ch 1023, §126
Referred to in §515F.12, 515F.23

515F.7 Information to be furnished insureds — hearings and appeals of insureds.

An insurer shall, within a reasonable time after receiving written request and upon payment of reasonable charges set by the commissioner, furnish to an insured affected by a rate made

by the insurer, or to the authorized representative of the insured, all pertinent information as to the rate. An insurer shall provide within this state reasonable means for the insured aggrieved by the application of its rating system to be heard, in person or by the insured's authorized representative, on written request to review the manner in which the rating system has been applied in connection with the insurance afforded the insured. If the insurer fails to grant or reject a request for hearing and review within thirty days after it is made, the applicant may proceed in the same manner as if the application had been rejected. The insured affected by the action of the insurer on a request may, within thirty days after written notice of the action, appeal to the commissioner, who, after a hearing held upon not less than ten days' written notice to the appellant and to the insurer, may affirm or reverse the action.

90 Acts, ch 1234, §51
Referred to in §515F.23

515F.8 Licensing advisory organizations.

1. *License required.* An advisory organization shall not provide a service relating to the rates of insurance subject to this chapter, and an insurer shall not utilize the services of an advisory organization for such purposes unless the advisory organization has obtained a license under subsection 3.

2. *Availability of services.* An advisory organization shall not refuse to supply any services for which it is licensed in this state to an insurer authorized to do business in this state and offering to pay the fair and usual compensation for the services.

3. *Licensing.*

a. Application. An advisory organization applying for a license shall include with its application all of the following:

(1) A copy of its constitution, charter, articles of organization, agreement, association, or incorporation, and a copy of its bylaws, plan of operation, and any other rules or regulations governing the conduct of its business.

(2) A list of its members and subscribers.

(3) The name and address of one or more residents of this state upon whom notices, process affecting it, or orders of the commissioner may be served.

(4) A statement showing its technical qualifications for acting in the capacity for which it seeks a license.

(5) A biography of the ownership and management of the organization.

(6) Any other relevant information and documents that the commissioner may require.

b. Change of circumstances. An advisory organization which has applied for a license shall notify the commissioner of every material change in the facts or in the documents on which its application was based. An amendment to a document filed under this section shall be filed at least thirty days before it becomes effective.

c. Granting of license. If the commissioner finds that the applicant and the natural persons through whom it acts are competent, trustworthy, and technically qualified to provide the services proposed, and that all requirements of the law are met, the commissioner shall issue a license specifying the authorized activity of the applicant. The commissioner shall not issue a license if the proposed activity would tend to create a monopoly or to substantially lessen the competition in any market.

d. Duration. A license issued under this section shall remain in effect for one year unless the license is suspended or revoked. The commissioner may, at any time after hearing, revoke or suspend the license of an advisory organization which does not comply with the requirements and standards of this chapter.

90 Acts, ch 1234, §52
Referred to in §515F.14, 515F.23

515F.9 Insurers and advisory organizations — prohibited activity.

1. An insurer or advisory organization shall not:

a. Attempt to monopolize, or combine or conspire with any other person to monopolize, an insurance market.

b. Engage in a boycott, on a concerted basis, of an insurance market.

2. *a.* An insurer shall not agree with any other insurer or with an advisory organization to mandate adherence to or to mandate use of a rate, rating plan, rating schedule, rating rule, policy or bond form, rate classification, rate territory, underwriting rule, survey, inspection, or similar material, except as needed to develop statistical plans permitted by section 515F.11, subsection 1. The fact that two or more insurers, whether or not members or subscribers of an advisory organization, use consistently or intermittently, the same rates, rating plans, rating schedules, rating rules, policy or bond forms, rate classifications, rate territories, underwriting rules, surveys or inspections or similar materials is not sufficient in itself to support a finding that an agreement exists.

b. Two or more insurers having a common ownership or operating in this state under common management or control may act in concert between or among themselves with respect to any matters pertaining to those activities authorized in this chapter as if they constituted a single insurer.

3. An insurer or advisory organization shall not make an arrangement with any other insurer, advisory organization, or other person which has the purpose or effect of restraining trade unreasonably or of substantially lessening competition in the business of insurance.

90 Acts, ch 1234, §53
Referred to in §515F.13, 515F.23

515F.10 Advisory organizations — prohibited activity.

In addition to the other prohibitions contained in this chapter, except as specifically permitted under section 515F.11, an advisory organization shall not compile or distribute recommendations relating to rates that include profit or expenses, other than loss adjustment expenses.

90 Acts, ch 1234, §54
Referred to in §515F.2, 515F.23

515F.11 Advisory organizations — permitted activity.

An advisory organization, in addition to other activities not prohibited, may, on behalf of its members and subscribers, do any or all of the following:

1. Develop statistical plans including territorial and class definitions.
2. Collect statistical data from members, subscribers, or any other source.
3. Prepare and distribute prospective loss costs.
4. Prepare and distribute factors, calculations, or formulas pertaining to classifications, territories, increased limits, and other variables.
5. Prepare and distribute manuals of rating rules and rating schedules that do not include final rates, expense provisions, profit provisions, or minimum premiums.
6. Distribute information that is required or directed to be filed with the commissioner.
7. Conduct research and on-site inspections in order to prepare classifications of public fire defenses.
8. Consult with public officials regarding public fire protection as it would affect members, subscribers, and others.
9. Conduct research and collect statistics in order to discover, identify, and classify information relating to causes or prevention of losses.
10. Prepare policy forms and endorsements and consult with members, subscribers, and others relative to their use and application.
11. Conduct research and on-site inspections for the purpose of providing risk information relating to individual structures.
12. Collect, compile, and distribute past and current prices of individual insurers and publish such information.
13. File final rates, at the direction of the commissioner, for residual market mechanisms.
14. Collect, compile, and distribute historical expense information.
15. Furnish any other services, as approved or directed by the commissioner, related to those enumerated in this section.

90 Acts, ch 1234, §55
Referred to in §515F.2, 515F.5, 515F.9, 515F.10, 515F.23

515F.12 Advisory organizations — filing requirements.

An advisory organization shall file with the commissioner for approval all prospective loss costs and all supplementary rating information and every change or amendment or modification of any of the foregoing proposed for use in this state. The filings are subject to sections 515F.5 and 515F.6 and other provisions of this chapter relating to filings made by insurers.

90 Acts, ch 1234, §56
Referred to in §515F.23

515F.13 Pool and residual market activities.

1. *Authorization.* Notwithstanding section 515F.9, rating organizations, advisory organizations, and insurers participating in joint underwriting, joint reinsurance pools, or residual market mechanisms may in connection with such activity act in cooperation with each other in the making of rates, rating systems, policy forms, underwriting rules, surveys, inspections, and investigations, the furnishing of loss and expense statistics or other information, or carrying on research. Joint underwriting, joint reinsurance pools, and residual market mechanisms shall not be deemed advisory organizations.

2. *Regulation.*

a. Except to the extent modified by this section, insurers, and joint underwriting, joint reinsurance pool, and residual market mechanism activities are subject to the other provisions of this chapter.

b. If, after hearing, the commissioner finds that an activity or practice of an insurer participating in joint underwriting or a pool is unfair, is unreasonable, will tend to lessen competition in a market, or is otherwise inconsistent with the provisions or purposes of this chapter, the commissioner may issue a written order and require the discontinuance of that activity or practice.

c. A pool shall file with the commissioner a copy of its constitution; its articles of incorporation, agreement, or association; its bylaws, rules, and regulations governing its activities; its members; the name and address of a resident of this state upon whom notices or orders of the commissioner or process may be served; and any changes in amendments or changes in the foregoing.

d. (1) A residual market mechanism, or plan or agreement to implement such a mechanism, and any changes or amendments thereto, shall be submitted in writing to the commissioner for consideration and approval, together with information as reasonably required by the commissioner. The commissioner shall only approve agreements found to contemplate both of the following:

(a) The use of rates which meet the standards prescribed by this chapter.

(b) Activities and practices that are not unfair, unreasonable, or otherwise inconsistent with this chapter.

(2) At any time after the agreements are in effect, the commissioner may review the practices and activities of the adherents to the agreements and if, after a hearing, the commissioner finds that any such practice or activity is unfair or unreasonable, or is otherwise inconsistent with this chapter, the commissioner may issue a written order to the parties and either require the discontinuance of the acts or revoke approval of the agreement.

90 Acts, ch 1234, §57; 2012 Acts, ch 1023, §157
Referred to in §515F.3, 515F.14, 515F.23

515F.14 Examinations.

The commissioner may, as often as deemed expedient, make or cause to be made an examination of each advisory organization referred to in section 515F.8 and of each group, association, or other organization referred to in section 515F.13. The reasonable costs of an examination shall be paid by the advisory organization or group, association, or other organization examined. The officers, manager, agents, and employees of the advisory organization, or group, association, or other organization may be examined at any time under oath and shall exhibit all books, records, accounts, documents, or agreements governing its method of operation. In lieu of an examination, the commissioner may accept

the report of an examination made by the insurance supervisory official of another state, pursuant to the laws of that state.

90 Acts, ch 1234, §58
Referred to in §515F.23

515F.15 Rate administration.

1. *Recording and reporting of loss and expense experience.*

a. The commissioner may adopt reasonable rules for use by companies to record and report to the commissioner their rates and other information determined by the commissioner to be necessary or appropriate for the administration of this chapter and the effectuation of its purposes.

b. The commissioner may adopt reasonable rules and statistical plans, which shall then be used by each insurer in the recording and reporting of its loss and expense experience, in order that the experience of all insurers may be made available at least annually in the form and detail necessary to aid the commissioner in determining whether rating systems comply with the standards set forth in section 515F.4. The commissioner may designate one or more advisory organizations or other agencies to assist in gathering the experience and making compilations, and the compilations shall be public documents.

2. *Interchange of rating plan data.* Reasonable rules and plans may be adopted by the commissioner for the interchange of data necessary for the application of rating plans.

3. *Consultation with other states.* In order to further uniform administration of rate regulatory laws, the commissioner and every insurer and advisory organization may exchange information and experience data with insurance supervisory officials, insurers, and advisory organizations in other states and may consult with them with respect to the application of rating systems.

4. *Rules.* The commissioner may make reasonable rules necessary, including definitions of the rate standards contained in section 515F.4, to effect the purposes of this chapter.

90 Acts, ch 1234, §59
Referred to in §515F.23

515F.16 False or misleading information.

A person, including an insurer, or advisory organization, shall not willfully withhold information which will affect the rates or premiums chargeable under this chapter from, or knowingly give false or misleading information to, the commissioner, a statistical agency designated by the commissioner, an advisory organization, or an insurer. A violation of this section subjects the one guilty of the violation to the penalties provided in section 515F.19.

90 Acts, ch 1234, §60
Referred to in §507B.4, 515F.23

515F.17 Assigned risks.

Agreements may be made among insurers with respect to the equitable apportionment among them of insurance which may be afforded applicants who are in good faith entitled to, but who are unable to procure, the insurance through ordinary methods, and the insurers may agree among themselves on the use of reasonable rate modifications for such insurance, the agreements and rate modifications to be subject to the approval of the commissioner.

90 Acts, ch 1234, §61
Referred to in §515F.23

515F.18 Exemptions.

The commissioner may, upon the commissioner's own initiative or upon request of any person, by rule, exempt a market from any or all of the provisions of this chapter, if and to the extent that the exemption is necessary to achieve the purposes of this chapter.

90 Acts, ch 1234, §62
Referred to in §515F.23

515F.19 Penalties.

1. The commissioner may, upon a finding that a person or organization has violated a provision of this chapter, impose a civil penalty of not more than ten thousand dollars for

each violation, but if the violation is found to be willful, a penalty of not more than twenty-five thousand dollars may be imposed for each violation.

a. The civil penalties may be in addition to any other penalty provided by law.

b. For purposes of this section, an insurer using a rate for which the insurer has failed to file the rate, supplementary rate information, underwriting rules or guides, or supporting information as required by this chapter, has committed a separate violation for each day the failure continues.

2. *a.* The commissioner may suspend or revoke the license of an advisory organization or insurer which fails to comply with an order of the commissioner within the time limit set by the order, or an extension of the order.

b. The commissioner may determine when a suspension of license becomes effective and it shall remain in effect for the period fixed by the commissioner, unless the commissioner modifies or rescinds the suspension, or until the order upon which the suspension is based is modified, rescinded, or reversed.

3. A penalty shall not be imposed and a license shall not be suspended or revoked except upon a written order of the commissioner stating the commissioner's findings, made after hearing.

4. A penalty collected under this section shall be deposited as provided in section 505.7.

90 Acts, ch 1234, §63; 2009 Acts, ch 181, §81

Referred to in §515F.16, 515F.23

SUBCHAPTER II

RATE FILINGS IN COMPETITIVE MARKETS

515F.20 Definitions.

As used in sections 515F.21 through 515F.25 unless the context otherwise requires:

1. *"Competitive market"* means a market for which an order is in effect pursuant to section 515F.22 that a reasonable degree of competition does exist.

2. *"Market"* means the interaction between buyers and sellers consisting of a product market component and a geographic market component. A product market component consists of identical or readily substitutable products including, but not limited to, consideration of coverage, policy terms, rate classifications, and underwriting. A geographic component is a geographical area in which buyers have a reasonable degree of access to the insurance product through sales outlets or other marketing mechanisms.

3. *"Noncompetitive market"* means a market which has not been found to be competitive pursuant to section 515F.22.

87 Acts, ch 132, §6
CS87, §515A.20
90 Acts, ch 1234, §77
C91, §515F.20

Referred to in §515F.21

515F.21 Scope of application.

Section 515F.20 and sections 515F.22 through 515F.25 apply to all forms of casualty insurance except joint underwriting and joint reinsurance, assigned risks, and those excluded by section 515F.3.

87 Acts, ch 132, §7
CS87, §515A.21
90 Acts, ch 1234, §65, 77
C91, §515F.21

Referred to in §515F.20

515F.22 Competitive market.

1. A noncompetitive market is presumed to exist unless the commissioner determines after a hearing that a reasonable degree of competition exists in the market and the

commissioner issues an order to that effect. Such an order shall not become effective until sixty days after the date of the order and shall expire not later than one year thereafter unless the commissioner renews the order. Any affected insurer or insured may petition for a hearing on the renewal of an order relating to competitive status.

2. In determining whether a reasonable degree of competition exists, the commissioner shall consider relevant factors of workable competition pertaining to the market structure, market performance, and market conduct, and the practical opportunities available to consumers in the market to obtain pricing and other consumer information and to compare and obtain insurance from competing insurers. Such factors may include, but are not limited to, the following:

a. The size and number of insurers actually engaged in the market.

b. The profitability for insurers generally in the market segment and whether that profitability is unreasonably high.

c. The price variance on premiums offered in the market.

d. The availability of consumer information concerning the product and sales outlets or other sales mechanisms.

e. The efforts of insurers to provide consumer information.

f. Consumer complaints regarding the market generally.

87 Acts, ch 132, §8
CS87, §515A.22
90 Acts, ch 1234, §77
C91, §515F.22
Referred to in §515F.20, 515F.21

515F.23 Noncompetitive market.

Unless the commissioner has determined a market to be competitive, the provisions of sections 515F.1 through 515F.19 apply.

87 Acts, ch 132, §9
CS87, §515A.23
90 Acts, ch 1234, §66, 77
C91, §515F.23
Referred to in §515F.20, 515F.21

515F.24 Filing of rates in a competitive market.

1. Subject to the inland marine exception specified in section 515F.5, subsection 1, a competitive filing shall become effective when filed and shall be deemed to meet the requirements of section 515F.4 as long as the filing remains in effect unless it is disapproved upon review by the commissioner.

2. In a competitive market, every insurer shall file with the commissioner all rates and supplementary rate information which are used in this state. The rates and supplementary rate information shall be filed not later than fifteen days after the effective date of the rates.

3. In a competitive market, if the commissioner finds that an insurer's rates require closer supervision because of the insurer's financial condition or unfairly discriminatory rating practices, the insurer shall file with the commissioner at least thirty days prior to the effective date of the rates all the rates and supplementary rate information and supporting information as prescribed by the commissioner. Upon application by the filer, the commissioner may authorize an earlier effective date.

87 Acts, ch 132, §10
CS87, §515A.24
90 Acts, ch 1234, §67, 77
C91, §515F.24
Referred to in §515F.20, 515F.21

515F.25 Disapproval of a rate filing in a competitive market.

1. If the commissioner believes that an insurer's rate filing in a competitive market violates the requirements of sections 515F.4 and 515F.5, the commissioner may require the insurer to file supporting information. If after reviewing the supporting information the commissioner

continues to believe that the filing violates sections 515F.4 and 515F.5, the commissioner shall notify the insurer of the insurer's right to petition for a hearing on any subsequent order relating to the filing.

2. The commissioner may disapprove prefiled rates that have not become effective. However, the commissioner shall notify the insurer whose rates have been disapproved of the insurer's right to petition for a hearing on the disapproval within thirty days after the disapproval.

3. If the commissioner disapproves a filing in a competitive market, the commissioner shall issue an order specifying the reasons the filing fails to meet the requirements of sections 515F.4 and 515F.5. For rates in effect at the time of disapproval, the commissioner shall inform the insurer within a reasonable period of time the date when further use of the rates for policies or contracts of insurance is prohibited. The order shall be issued within thirty days of disapproval, or within thirty days of a hearing on the disapproval if a hearing is held. The order may include a provision for premium adjustment for the period after the effective date of the order for policies or contracts in effect on the date of the order.

4. Whenever an insurer has filed no legally effective rates as a result of the commissioner's disapproval of a filing, the commissioner shall on request of the insurer work with the insurer to develop interim rates for the insurer that are sufficient to protect the interest of all parties and the commissioner may order that a specified portion of the premium be placed in an escrow account approved by the commissioner. When new rates become legally effective, the commissioner shall order the escrowed funds or any overcharge in the interim rates to be distributed appropriately. The commissioner may waive distribution if the commissioner determines that the amount involved would not warrant such action.

87 Acts, ch 132, §11
CS87, §515A.25
90 Acts, ch 1234, §68, 77
C91, §515F.25
Referred to in §515F.20, 515F.21

515F.26 through 515F.29 Reserved.

SUBCHAPTER III

FAIR ACCESS TO INSURANCE REQUIREMENTS PLAN

515F.30 Short title.

This subchapter may be cited as the *"Fair Access to Insurance Requirements Plan Act"*, or the *"FAIR Plan Act"*.

2003 Acts, ch 119, §1, 11; 2017 Acts, ch 54, §76

515F.31 Purpose.

The purposes of this subchapter include all of the following:

1. To make basic property insurance available to qualified applicants with the least possible administrative detail and expense.

2. To establish a plan, an industry placement facility, and a joint reinsurance association for the equitable distribution and placement of risks among insurers.

3. To utilize fully the voluntary insurance market as a source of essential property insurance.

4. To encourage the delivery of basic property insurance at the most reasonable cost possible, provided that insurance pricing by the FAIR plan is actuarially self-supporting and does not actively compete with insurance pricing in the voluntary insurance market.

2003 Acts, ch 119, §2, 11; 2017 Acts, ch 54, §76

515F.32 Definitions.

1. *"Basic property insurance"* means insurance against direct loss to property as defined in the standard fire policy and extended coverage, vandalism, and malicious mischief

endorsements; homeowners insurance; and such other coverage or classes of insurance as may be added to the FAIR plan by the commissioner. *"Basic property insurance"* does not include any of the following:

a. Automobile insurance.

b. Inland marine insurance.

2. *"FAIR plan"* means the plan to assure fair access to insurance requirements established pursuant to section 515F.33.

3. *"Insurer"* includes all companies or associations licensed to transact insurance business in this state under chapters 515, 518, and 518A, and companies or associations admitted or seeking to be admitted to do business in this state under any of those chapters, notwithstanding any provision of the Code to the contrary.

2003 Acts, ch 119, §3, 11; 2004 Acts, ch 1101, §74

515F.33 FAIR plan established.

The FAIR plan to assure fair access to insurance requirements is established. The plan shall operate subject to the provisions and conditions of this subchapter.

2003 Acts, ch 119, §4, 11; 2017 Acts, ch 54, §76

Referred to in §515F.32

515F.34 Membership.

1. Eligibility for membership in the FAIR plan and its underwriting association requires all of the following:

a. The insurer must be licensed to write property insurance in this state.

b. The insurer is engaged in writing property insurance in this state, including the property insurance components of multiperil on a direct basis.

2. Each insurer that meets the eligibility requirements in subsection 1 shall be required to do all of the following:

a. Automatically subscribe to the articles of agreement for the FAIR plan and the underwriting association as a prerequisite to authority to transact property insurance business in this state.

b. Become and remain a member both of the FAIR plan and the underwriting association.

c. Comply with the requirements of the FAIR plan and the underwriting association as a condition of the insurer's authority to transact property insurance business in this state.

2003 Acts, ch 119, §5, 11

515F.35 Status of plan.

1. The FAIR plan is not and shall not be deemed a department, unit, agency, or instrumentality of the state.

2. All debts, claims, obligations, and liabilities incurred by the FAIR plan shall be the debts, claims, obligations, and liabilities of the FAIR plan only, and are not the debts or pledges of credit of the state, or the state's agencies, instrumentalities, officers, or employees.

3. The moneys of the FAIR plan are not part of the general fund of the state, and the state shall not budget for or provide general fund appropriations to the plan.

4. The records, reports, and communications of the FAIR plan, the governing committee, the committees of the FAIR plan, and their representatives, producers, and employees are not public records.

2003 Acts, ch 119, §6, 11

515F.36 Administration.

1. A governing committee shall administer the FAIR plan, subject to the supervision of the commissioner. The FAIR plan shall be operated by a manager appointed by the committee.

2. The committee shall consist of seven members.

a. Five of the members shall be elected to the committee, with one member from each of the following:

(1) American insurance association.

(2) Property casualty insurers association of America.

(3) Iowa insurance institute.
(4) Mutual insurance association of Iowa.
(5) Independent insurance agents of Iowa.

b. Two of the members shall be elected to the committee by other insurer members of the plan.

3. Not more than one insurer in a group under the same management or ownership shall serve on the committee at the same time.

4. The plan of operation and articles of association shall make provision for an underwriting association having authority on behalf of its members to cause to be issued property insurance policies, to reinsure in whole or in part any such policies, and to cede any such reinsurance. The plan of operation and articles of association shall provide, among other things, for the perils to be covered, limits of coverage, geographical area of coverage, compensation and commissions, assessments of members, the sharing of expenses, income, and losses on an equitable basis, cumulative weighted voting for the governing committee of the association, the administration of the FAIR plan, and any other matter necessary or convenient for the purpose of assuring fair access to insurance requirements.

2003 Acts, ch 119, §7, 11; 2004 Acts, ch 1101, §75; 2005 Acts, ch 70, §24

515F.37 Rules.

The commissioner shall adopt rules necessary to administer this subchapter.

2003 Acts, ch 119, §8, 11; 2017 Acts, ch 54, §76

515F.38 Retroactive applicability.

This subchapter applies retroactively to October 7, 1968, to validate action taken under the Iowa basic property insurance inspection and placement program adopted by the commissioner of insurance.

2003 Acts, ch 119, §9, 11; 2017 Acts, ch 54, §76

CHAPTER 515G

MUTUAL INSURANCE COMPANY CONVERSIONS

Referred to in §87.4, 296.7, 331.301, 364.4, 505.28, 505.29, 521.2, 521A.14, 669.14, 670.7

515G.1 Definitions.
515G.2 Mutual insurer becoming stock company — authorization.
515G.3 Plan of conversion.
515G.4 Policyholders — voting rights.
515G.5 Appointment of consultant.
515G.6 Approval of plan by policyholders — notice of election — effective date.
515G.7 Review of plan by commissioner — hearing authorized — approval.
515G.8 Payment of fees, salaries, and costs.
515G.9 Act of conversion — continuation of company.
515G.10 Continuation of officers.
515G.11 Rules.
515G.12 Amendments — withdrawal.
515G.13 Prohibitions on certain offers to acquire shares.
515G.14 Limitation of actions — security for attorney fees.
515G.15 Duties of secretary of state.

515G.1 Definitions.

As used in this chapter, unless the context clearly requires otherwise:

1. *"Affiliate"* of a mutual insurer means a person who controls, is controlled by, or is under common control with, the mutual insurer being converted.

2. *"Control"* has the meaning assigned to it in section 521A.1, subsection 3.

3. *"Eligible policyholder"* means a policyholder who had a policy in force with a mutual insurer at any time during the three-year period immediately preceding the date of the adoption of a plan of conversion by the mutual insurer's board of directors, including the date of adoption of the plan of conversion, and who, therefore, is eligible to receive an

equitable share of the remaining statutory surplus of the mutual insurer, after provision for the base value for voting policyholders, as a result of the conversion.

4. *"Holder of a surplus note agreement"* means the holder of a guaranty fund or contribution certificate issued pursuant to section 515.20 or its equivalent which has been approved by the commissioner of insurance.

5. *"Mutual insurer"* means a domestic mutual property and casualty insurance company organized and licensed under chapter 515.

6. *"Voting policyholder"* means a policyholder who had a policy in force as provided in section 515G.4.

90 Acts, ch 1083, §1; 2006 Acts, ch 1117, §74

515G.2 Mutual insurer becoming stock company — authorization.

1. A mutual insurer may become a stock insurance company pursuant to a plan of conversion established and approved in the manner provided by this chapter. The plan of conversion shall be adopted by the board of directors of the insurer to become effective on a future stated date.

2. A plan of conversion may provide that a mutual insurance company may convert into a domestic stock insurance company, convert and merge, or convert and consolidate with a domestic stock insurance company, as provided in chapter 490 or chapter 491, whichever is applicable. However, a mutual insurance company is not required to comply with sections 490.1102 and 490.1104 or sections 491.102 through 491.105 relating to approval of merger or consolidation plans by boards of directors and shareholders.

3. If conversion from a mutual insurer to a stock company is to be undertaken by a transaction which would be governed by chapter 521 or 521A, but the plan of conversion adopted by the board of directors of the insurer includes approval of an acquisition of control, merger, consolidation, or reinsurance, then chapter 521 or 521A shall not be applicable to the transaction. However, in that case, the commissioner may require any information from the person or persons acquiring control of the insurer as could be required under chapter 521 or 521A, and may disapprove the transaction on any basis on which it could be disapproved under chapter 521 or 521A.

90 Acts, ch 1083, §2; 2006 Acts, ch 1117, §75

515G.3 Plan of conversion.

1. A plan of conversion shall include all of the following:

a. The proposed articles of incorporation and bylaws of the mutual insurer as a stock company.

b. The manner of treating a holder of a surplus note agreement, if any. The holder of a surplus note agreement, if otherwise qualified, may, at its option, exchange the agreement for an equitable share of the securities or other consideration, or both, of the corporation into which the insurer is to be converted.

c. The manner and basis of exchanging the rights of each voting policyholder and each eligible policyholder of the mutual insurer to be converted to a stock company pursuant to this chapter. Such exchange may include a base value for each voting policyholder in recognition of the voting policyholder's voting rights as a mutual policyholder as well as consideration to be provided to each eligible policyholder in exchange for the eligible policyholder's rights as a mutual policyholder of the mutual insurer to be converted. After determining the base value to be provided to each voting policyholder in recognition of the voting rights of the voting policyholder, the equitable share of each eligible policyholder in the remaining statutory surplus of the mutual insurer, plus any adjustments for nonadmitted assets or additional value permitted by the commissioner, to be provided to each eligible policyholder shall be determined by the ratio which the net earned premiums the eligible policyholder has properly and timely paid to the mutual insurer on insurance policies in effect during the three-year period immediately preceding the adoption of the plan of conversion, including the date of the adoption of the plan of conversion, bears to the total net earned premiums received by the mutual insurer from all eligible policyholders during that three-year period. The base value to be provided to each voting policyholder in recognition

of voting rights and the equitable share of each eligible policyholder may be exchanged, without additional payment, for securities or other consideration, or both, of the stock corporation or an affiliate into which the mutual insurer is to be converted. If the base value for each voting policyholder or the equitable share of each eligible policyholder entitles the policyholder to the purchase of a fractional share of stock, the policyholder has the option to receive the value of the fractional share in cash or purchase a full share by paying the balance in cash. However, policyholders due a de minimus amount, as established by the commissioner, need not be offered the value of the fractional share or the option to purchase a full share. The plan shall also provide for the disposition of any unclaimed shares.

d. The number of voting common shares proposed to be authorized for the stock corporation, their par value, and the price at which they shall be offered.

2. A plan of conversion for an insurer organized on the mutual plan under chapter 491, shall also provide for conversion to a stock company as follows: the insurer organized on the mutual plan under chapter 491 shall amend its articles pursuant to chapter 491 as necessary to become a stock company, and shall immediately convert to a chapter 490 corporation as provided in section 490.1701 upon becoming a stock company.

90 Acts, ch 1083, §3; 2006 Acts, ch 1117, §76; 2012 Acts, ch 1023, §157
Referred to in §515G.5

515G.4 Policyholders — voting rights.

The policyholders who are entitled to notice of and to vote upon approval of a plan of conversion and entitled to notice of a public hearing are the policyholders whose policies are in force on the date of the adoption of the plan by the board of directors.

90 Acts, ch 1083, §4
Referred to in §515G.1

515G.5 Appointment of consultant.

1. A plan may provide for the appointment by the mutual insurer of a person as defined in section 4.1, subsection 20, who is qualified to act as a consultant. The appointment of the consultant shall be reviewed by the commissioner and unless the commissioner finds the consultant unqualified, the consultant shall carry out the duties required by the mutual insurer and this chapter.

2. The consultant may assist in determining the equity or value of the policyholders and the mutual insurer. The consultant may consider the value of the consideration to be given to the participating policyholders in exchange for their membership interests or into which the membership interest is to be converted and may consider any valuations necessary to carry out the plans provided for in section 515G.3. Valuations shall be made taking into account the latest filed annual statement of the mutual insurer and any significant developments occurring subsequent to the date of the statement.

3. The findings of the consultant may be modified by the mutual insurer at any time so long as the results are not unfair or inequitable to policyholders.

4. If it can be shown by the mutual insurer to the commissioner that an underwriter of the shares is a qualified person, the underwriter may be appointed as the consultant.

90 Acts, ch 1083, §5; 2018 Acts, ch 1041, §127
Code editor directive applied

515G.6 Approval of plan by policyholders — notice of election — effective date.

After the plan has been approved by the commissioner as provided in section 515G.7, the plan of conversion shall be submitted to and shall not take effect until approved by two-thirds of the policyholders of the mutual insurer voting on the plan or such greater vote, if any, as is required by the articles of incorporation or bylaws of the mutual insurer. Notice of a meeting for the purpose of voting on the conversion plan shall be provided by mail to each policyholder entitled to vote in accordance with notice provisions in the articles of incorporation or bylaws of the mutual insurer. Each policyholder entitled to vote may cast one vote unless otherwise provided in the articles of incorporation or bylaws of the mutual insurer. Voting shall be by ballot, in person, or by proxy. A quorum consists of a quorum as defined in the articles of incorporation or bylaws of the mutual insurer. A copy of the plan of conversion, or a summary

of the plan of conversion, shall accompany the notice of meeting and election. An approved plan of conversion shall take effect on the date specified in the plan.

90 Acts, ch 1083, §6

515G.7 Review of plan by commissioner — hearing authorized — approval.

The commissioner of insurance shall review the plan. The commissioner shall approve the plan if the commissioner finds the plan complies with all provisions of law, the plan is fair and equitable to the mutual insurer and its policyholders, and that the reorganized company will have the amount of capital and surplus deemed by the commissioner to be reasonably necessary for its future solvency. The commissioner may order a hearing on the fairness and equity of the terms of the plan after giving written notice of the hearing to the mutual insurer, and its policyholders, all of whom have the right to appear at the hearing.

90 Acts, ch 1083, §7; 2000 Acts, ch 1023, §33

Referred to in §505.23, 515G.6

515G.8 Payment of fees, salaries, and costs.

A director, officer, agent, or employee of the mutual insurer shall not receive a fee, commission, or other valuable consideration, other than regular salary and compensation, for aiding, promoting, or assisting in the conversion except as set forth in the plan approved by the commissioner. However, this section does not prohibit the payment of reasonable fees and compensation to a consultant, attorneys at law, accountants, actuaries, or other persons specifically employed for services performed in the practice of their professions while completing the plan of conversion, even if these persons are directors of the mutual insurer.

90 Acts, ch 1083, §8

515G.9 Act of conversion — continuation of company.

When the commissioner and the policyholders approve the conversion plan as provided in this chapter, the commissioner shall issue a new certificate of authority to the successor stock company effective on the date specified in the plan. The successor stock company is a continuation of the mutual insurer and the conversion does not annul or modify any of the mutual insurer's existing suits, contracts, or liabilities except as provided in the approved conversion plan. All rights, franchises, and interests of the mutual insurer in and to property, assets, and other interests shall be transferred to and shall vest in the successor stock company and the successor stock company shall assume all obligations and liabilities of the mutual insurer.

The successor stock company shall exercise all rights and powers and perform all duties conferred or imposed by law on insurance companies writing the classes of insurance written by it, and shall retain the rights and contracts existing before conversion, subject to provisions of the plan.

90 Acts, ch 1083, §9

515G.10 Continuation of officers.

The directors and officers of the mutual insurer shall serve the reorganized company until new directors and officers are elected and qualify pursuant to the articles of incorporation and bylaws of the reorganized company.

90 Acts, ch 1083, §10

515G.11 Rules.

The commissioner may issue rules pursuant to chapter 17A to carry out the provisions of this chapter.

90 Acts, ch 1083, §11

515G.12 Amendments — withdrawal.

At any time before approval of the plan of conversion and pursuant to rules issued by the commissioner, the board of directors of a mutual insurer may amend the conversion plan. The

board of directors of a mutual insurer may withdraw the plan of conversion at any time prior to the approval of the plan of conversion by either the commissioner or the policyholders.

90 Acts, ch 1083, §12

515G.13 Prohibitions on certain offers to acquire shares.

Prior to and for a period of five years following the effective date of the conversion, and five years following the date of distribution of consideration to the policyholders in exchange for their membership interests, an officer or director, including family members and their spouses, of the mutual insurer or the successor stock company, shall not directly or indirectly offer to acquire or acquire control of the successor stock company unless the acquisition is made pursuant to a stock option or other plan approved by the commissioner, made pursuant to the plan of conversion, or made after the initial public offering from a broker or dealer of registered securities with the securities and exchange commission at the quoted price on the date of purchase, or made in connection with the defense against an acquisition of control of the reorganized company pursuant to any proposal not approved by the board of directors. As used in this section, *"family member"* includes a brother, sister, spouse, parent, grandparent, ancestor, or descendant of the officer or director.

90 Acts, ch 1083, §13

515G.14 Limitation of actions — security for attorney fees.

An action challenging the validity of a conversion plan, or any part of a conversion plan, shall not be commenced more than thirty days following the date of approval by the commissioner, unless an application for rehearing is filed pursuant to section 17A.16, subsection 2. If an application for rehearing is filed, then such action must be filed within thirty days after that application is denied or deemed denied or, if the application is granted, within thirty days after the issuance of the commissioner's final decision on rehearing.

The successor stock company or any defendant may require the plaintiff in such an action to give security for the reasonable attorney fees which may be incurred by any party to the action. The amount of the security may be increased or decreased in the discretion of the court having jurisdiction if a showing is made that the security provided is or may become inadequate or excessive.

90 Acts, ch 1083, §14; 2000 Acts, ch 1023, §34

[Unnumbered paragraph 2 was inadvertently omitted from Code 2001 through Code 2007]

515G.15 Duties of secretary of state.

After approval of the conversion plan by the commissioner and the policyholders, the secretary of state shall accept for filing a verified copy of the amended articles of incorporation.

90 Acts, ch 1083, §15

CHAPTER 515H

PROPERTY AND CASUALTY ACTUARIAL OPINIONS

Referred to in §87.4, 296.7, 331.301, 364.4, 505.28, 505.29, 669.14, 670.7

515H.1 Short title.
515H.2 Actuarial opinion of reserves — supporting documentation.
515H.3 Confidentiality.

515H.1 Short title.

This chapter shall be known and may be cited as the *"Property and Casualty Actuarial Opinions Act"*.

2007 Acts, ch 137, §13

515H.2 Actuarial opinion of reserves — supporting documentation.

1. *Statement of actuarial opinion.* Every property and casualty insurance company doing business in this state, unless otherwise exempted from this requirement by the commissioner, shall annually submit the opinion of an appointed actuary entitled "statement of actuarial opinion" with the company's annual statement in accordance with the provisions of section 515.63 and with the requirements of the national association of insurance commissioners' property and casualty annual statement instructions.

2. *Actuarial opinion summary.*

a. Every property and casualty insurance company domiciled in this state that is required to submit a statement of actuarial opinion shall annually submit an actuarial opinion summary, prepared and signed by the company's appointed actuary. The actuarial opinion summary shall be filed in accordance with the requirements of the national association of insurance commissioners' property and casualty company annual statement instructions and shall be considered a document in support of the statement of actuarial opinion required under subsection 1.

b. A property and casualty insurance company that is licensed but not domiciled in this state shall provide an actuarial opinion summary upon request of the commissioner.

3. *Actuarial report and work papers.*

a. An actuarial report and supporting work papers shall be prepared to support each statement of actuarial opinion in accordance with the requirements of the national association of insurance commissioners' property and casualty company annual statement instructions.

b. If an insurance company fails to provide a supporting actuarial report and work papers as requested by the commissioner or the commissioner determines that the actuarial report or work papers provided are unacceptable, the commissioner may engage a qualified actuary at the company's expense to review the statement of actuarial opinion and the basis for the opinion and to prepare a supporting actuarial report or work papers.

4. An appointed actuary shall not be liable for damages to any person, except the company and the insurance commissioner, for any act, error, omission, decision, or misconduct of the appointed actuary in conducting the actuary's duties pursuant to this section except in cases of fraud or willful misconduct on the part of the appointed actuary.

2007 Acts, ch 137, §14
Referred to in §515H.3

515H.3 Confidentiality.

1. A statement of actuarial opinion filed pursuant to section 515H.2, subsection 1, is a public record subject to examination and copying.

2. Documents in the possession or control of the insurance division that are provided to the division in support of a statement of actuarial opinion, that are considered an actuarial report, work papers, an actuarial opinion summary, or any other material provided by the company in connection with the actuarial report, work papers, or actuarial opinion summary are confidential records under section 507.14 and shall not be subject to subpoena or discovery or be admissible in evidence in any private civil action.

3. Disclosure of any documents, materials, or information to the division in compliance with the requirements of this chapter shall not be considered a waiver of any applicable privilege or claim of confidentiality.

2007 Acts, ch 137, §15

CHAPTER 515I

SURPLUS LINES INSURANCE

Referred to in §87.4, 296.7, 321N.4, 331.301, 364.4, 432.1, 505.28, 505.29, 507A.4, 515E.9, 522B.6, 669.14, 670.7

515I.1 Purpose.
515I.2 Definitions.
515I.3 Placement of surplus lines insurance business with nonadmitted insurers.
515I.4 Requirements for eligible surplus lines insurers.
515I.5 Duties of surplus lines insurance producers.
515I.6 Actions against eligible surplus lines insurers.
515I.7 Effect of payment to surplus lines insurance producer.
515I.8 Referrals to surplus lines insurance producers.
515I.9 Exempt commercial purchasers.
515I.10 Independently procured surplus lines insurance — premium tax — penalty.
515I.11 Violations and penalties.
515I.12 Cease and desist orders — civil and criminal penalties.
515I.13 Insurance policy or contract remains valid.
515I.13A Scope of operation.
515I.14 Severability.
515I.15 Rulemaking authority.

515I.1 Purpose.

1. The purposes of this chapter are to do all of the following:

a. Establish a system of regulation which will permit orderly access to surplus lines insurance in this state.

b. Encourage admitted insurers to make new and innovative types of insurance available to consumers in this state.

c. Protect persons seeking insurance in this state.

d. Permit surplus lines insurance to be placed with reputable and financially sound nonadmitted insurers.

e. Provide a system through which persons may independently procure surplus lines insurance.

f. Protect revenues of this state.

g. Foster a national system of regulation of surplus lines insurance by collaborating with other state insurance commissioners.

h. Provide a system which subjects surplus lines insurance activities in this state to the jurisdiction of the insurance commissioner and state and federal courts in suits by or on behalf of the state.

i. Ensure compliance with the federal Nonadmitted and Reinsurance Reform Act of 2010, Tit. V, subtit. B, of the federal Dodd-Frank Wall Street Reform and Consumer Protection Act.

2. This chapter shall be liberally construed to promote these purposes.

2012 Acts, ch 1025, §1, 22; 2012 Acts, ch 1138, §73, 86, 87

515I.2 Definitions.

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

1. *"Admitted insurer"* means an insurer licensed to do insurance business in this state.

2. *"Affiliate"* means, with respect to an insurer, any entity that controls, is controlled by, or is under common control with the insurer.

3. *"Affiliated group"* means any group of entities that are affiliates.

4. *"Commercial insurance"* means insurance for businesses or professionals.

5. *"Commissioner"* means the commissioner of insurance, or the commissioner's designees.

6. *"Control"* means either of the following:

a. That an entity directly or indirectly, or acting through one or more other persons, owns, controls, or has the power to vote twenty-five percent or more of any class of voting securities of another entity.

b. That an entity controls in any manner the election of a majority of the directors or trustees of another entity.

7. *"Eligible surplus lines insurer"* means either of the following:

a. A nonadmitted insurer that has filed an application with the commissioner and been approved for placement of surplus lines insurance and appears on the Iowa listing of nonadmitted companies.

b. A nonadmitted insurer domiciled outside of the United States that is listed on the quarterly listing of alien insurers maintained by the national association of insurance commissioners.

8. *"Exempt commercial purchaser"* means any person purchasing commercial insurance that, at the time of placement, meets all of the following requirements:

a. The person employs or retains a qualified risk manager to negotiate insurance coverage.

b. The person has paid aggregate nationwide commercial property and casualty insurance premiums in excess of one hundred thousand dollars in the immediately preceding twelve months.

c. The person meets at least one of the following criteria:

(1) The person possesses a net worth in excess of twenty million dollars except that beginning on January 1, 2015, and on January 1 every five years thereafter, this amount shall be adjusted to reflect the percentage change in the consumer price index for all urban consumers for the most recent available five-year period published by the United States department of labor, bureau of labor statistics.

(2) The person generates annual revenues in excess of fifty million dollars except that beginning on January 1, 2015, and on January 1 every five years thereafter, this amount shall be adjusted to reflect the percentage change in the consumer price index for all urban consumers for the most recent available five-year period published by the United States department of labor, bureau of labor statistics.

(3) The person employs more than five hundred full-time or full-time equivalent employees per individual insured or is a member of an affiliated group employing more than one thousand employees in the aggregate.

(4) The person is a nonprofit organization or public entity generating annual budgeted expenditures of at least thirty million dollars except that beginning on January 1, 2015, and on January 1 every five years thereafter, this amount shall be adjusted to reflect the percentage change in the consumer price index for all urban consumers for the most recent available five-year period published by the United States department of labor, bureau of labor statistics.

(5) The person is a municipality with a population in excess of fifty thousand persons.

9. *"Home state"* means:

a. Except as provided in paragraph *"b"*, with respect to an insured either of the following:

(1) The state in which an insured maintains its principal place of business or, in the case of an individual, the individual's principal residence.

(2) If one hundred percent of the insured risk is located out of the state described in subparagraph (1), the state to which the greatest percentage of the insured's taxable premium for that insurance policy or contract is allocated.

b. If more than one insured from an affiliated group is a named insured on a single surplus lines insurance policy or contract, the home state, as determined pursuant to paragraph *"a"*, subparagraph (1), of the member of the affiliated group that has the largest percentage of premium attributed to it under such insurance policy or contract.

10. *"Independently procured insurance"* means insurance obtained by a person directly from a nonadmitted insurer.

11. *"Insurer"* means the same as defined in section 507.1, subsection 2.

12. *"Nonadmitted insurer"* means an insurer not licensed to do insurance business in this state. *"Nonadmitted insurer"* does not include a risk retention group as defined in chapter 515E.

13. *"Person"* means the same as defined in section 507.1, subsection 2, or any government or governmental entity.

14. *"Placement"* or *"placed"* means that an eligible surplus lines insurer has accepted a premium and issued an insurance policy or contract for a particular risk.

15. *"Premium tax"* means the tax imposed by the state on a contract of insurance equal to the applicable percent, as provided in section 432.1.

16. *"Qualified risk manager"* means a person who meets all of the following requirements:

a. The person is an employee of, or third party consultant retained by a commercial insurance policyholder.

b. The person provides skilled services in loss prevention, loss reduction, or risk and insurance coverage analysis, and purchase of insurance.

c. The person meets one of the following requirements:

(1) The person has a bachelor's degree from an accredited college or university in risk management, business administration, finance, economics, or any other field determined by the commissioner to demonstrate minimum competence in risk management; and meets both of the following requirements:

(a) Has three years of experience in risk financing, claims administration, loss prevention, risk and insurance coverage analysis, or purchasing commercial lines of insurance.

(b) Has one of the following designations:

(i) Chartered property and casualty underwriter.

(ii) Associate in risk management.

(iii) Certified risk manager.

(iv) Risk and insurance management society fellow.

(v) Any other designation, certification, or license determined by the commissioner to demonstrate minimum competency in risk management.

(2) The person has at least seven years of experience in risk financing, claims administration, loss prevention, risk and insurance coverage analysis, or purchasing commercial lines of insurance; and has any one of the designations specified in subparagraph (1), subparagraph division (b).

(3) The person has at least ten years of experience in risk financing, claims administration, loss prevention, risk and insurance coverage analysis, or purchasing commercial lines of insurance.

(4) The person has a graduate degree from an accredited college or university in risk management, business administration, finance, economics, or any other field determined by the commissioner to demonstrate minimum competence in risk management.

17. *"Surplus lines insurance"* means any property and casualty insurance in this state on properties, risks, or exposures, located or to be performed in this state, that is placed through a surplus lines insurance producer with an eligible surplus lines insurer. For purposes of this chapter only, *"surplus lines insurance"* also includes disability insurance that is in excess of policy limits available from an admitted insurer.

18. *"Surplus lines insurance producer"* means a person licensed pursuant to chapter 522B to sell, solicit, or negotiate surplus lines insurance.

2012 Acts, ch 1025, §2, 22

515I.3 Placement of surplus lines insurance business with nonadmitted insurers.

1. Surplus lines insurance may be placed by a surplus lines insurance producer with a nonadmitted insurer only if all of the following requirements are met:

a. The proposed nonadmitted insurer is an eligible surplus lines insurer.

b. The proposed nonadmitted insurer is authorized to write the type of insurance sought in this state in its domiciliary jurisdiction.

c. Unless otherwise exempt from this requirement, after a diligent search the full amount or type of insurance cannot be obtained from an admitted insurer.

d. All other requirements of this chapter are met.

2. *a.* In addition to the full amount of gross premiums charged by the nonadmitted insurer for the insurance on which a premium tax is imposed for surplus lines insurance for which the insured's home state is Iowa, a surplus lines insurance producer shall collect and pay to the state of Iowa the appropriate amount of premium tax as provided in section 432.1 for surplus lines insurance. The commissioner shall adopt rules to specify the use of credits or deductions that may be applied to the premium tax.

b. The tax on any portion of the premium unearned at the termination of the surplus lines insurance that has been credited by the state shall be returned to the policyholder directly

by the surplus lines insurance producer. The surplus lines insurance producer is prohibited from rebating, for any reason, any part of the tax.

3. This section shall not apply to a person properly licensed as an insurance producer, who, for a fee and pursuant to a written agreement, is engaged solely to offer advice, counsel, opinion, or service to an insured with respect to the benefits, advantages, or disadvantages promised under any proposed or in-force policy of insurance if the person does not, directly or indirectly, participate in the sale, solicitation, or negotiation of insurance on behalf of the insured.

4. Insurance placed under this section shall be valid and enforceable as to all parties.

2012 Acts, ch 1025, §3, 22

515I.4 Requirements for eligible surplus lines insurers.

1. When this state is the home state of the insured, a nonadmitted insurer shall not place any surplus lines insurance business in this state unless the insurer has been approved for such activity by the commissioner. A nonadmitted insurer seeking to qualify as an eligible surplus lines insurer shall submit a request to so qualify in a form and format as directed by the commissioner which demonstrates all of the following:

a. Capital and surplus or its equivalent under the laws of the insurer's domiciliary jurisdiction which equals the greater of either of the following:

(1) The minimum capital and surplus requirements under the laws of this state.

(2) Fifteen million dollars.

b. Evidence that the nonadmitted insurer is in good standing with its domiciliary regulator.

2. The commissioner may waive the requirements of this section or set specific requirements on a case-by-case basis upon an affirmative finding of acceptability by the commissioner that the placement of insurance with the nonadmitted insurer is necessary and will not be detrimental to the public and to policyholders. In determining whether business may be placed with a nonadmitted insurer, the commissioner shall consider all of the following:

a. The interests of the public and policyholders.

b. The length of time the insurer has been licensed to do insurance business in its domiciliary jurisdiction and elsewhere.

c. The unavailability of particular coverages from other admitted insurers or eligible surplus lines insurers in this state.

d. The size of the nonadmitted insurer as measured by the insurer's assets, capital and surplus, reserves, premium writings, insurance in force, or other appropriate criteria.

e. The kinds of business the nonadmitted insurer writes, the insurer's net exposure, and the extent to which the insurer's business is diversified among several lines of insurance and geographic locations.

f. The past and projected trend in the size of the nonadmitted insurer's capital and surplus considering such factors as premium growth, operating history, loss and expense ratios, or other appropriate criteria.

3. Eligible surplus lines insurers shall not be required to file or seek approval of their forms and rates.

2012 Acts, ch 1025, §4, 22

515I.5 Duties of surplus lines insurance producers.

1. A surplus lines insurance producer shall not issue or deliver any evidence of insurance or purport to insure or represent that insurance will be or has been written by an eligible surplus lines insurer, unless the producer has authority from the insurer to bind the risk to be insured, or has received information from the insurer in the regular course of business that the coverage has been granted.

2. Upon placement of surplus lines insurance, the surplus lines insurance producer shall promptly deliver to the insured the policy or contract, or if the policy or contract is not then available, a certificate cover note, binder, or other evidence of insurance. The certificate cover note, binder, or other evidence of insurance shall contain information as specified by the commissioner by rule.

3. As soon as is reasonably possible after the placement of the insurance, the surplus lines insurance producer shall deliver a copy of the policy or contract or, if not available, a certificate of insurance to the insured to replace any evidence of insurance previously issued. Each policy or contract or certificate of insurance shall contain or have attached a complete record of all policy or contract insuring agreements, conditions, exclusions, clauses, endorsements, or any other material facts that would regularly be included in the policy or contract.

4. If, after delivery of any evidence of insurance, there is any change in the identity of the eligible surplus lines insurer, or the proportion of the risk assumed by such insurer, or any other material change in coverage as stated in the original evidence of insurance, or in any other material change as to the insurance coverage so evidenced, the surplus lines insurance producer shall promptly issue and deliver to the insured an appropriate substitute for, or endorsement of the original document, accurately showing the current status of the coverage and the surplus lines insurer responsible for the coverage.

5. Each surplus lines insurance producer shall keep a full and true record of each surplus lines insurance policy or contract placed by an eligible surplus lines insurer and issued or delivered by that person which covers risks wholly or partly located or to be performed in this state. These records and any other records deemed reasonably necessary by the commissioner shall be made available to the commissioner for examination upon request. Records shall be maintained for a period of not less than five years following termination of the surplus lines insurance policy or contract.

6. A surplus lines insurance producer shall file a report and remit all premium taxes due to this state for all surplus lines insurance placed by an eligible surplus lines insurer and issued or delivered by that person during the reporting period established by the commissioner. The specific requirements for the timing of and content of the report and the manner of filing shall be specified by the commissioner by rule.

2012 Acts, ch 1025, §5, 22

515I.6 Actions against eligible surplus lines insurers.

An eligible surplus lines insurer may be sued upon a cause of action arising in this state under a surplus lines insurance policy or contract placed by the insurer or upon evidence of insurance placed by the insurer and issued or delivered in this state by a surplus lines insurance producer. A policy or contract issued by an eligible surplus lines insurer shall contain a provision stating the substance of this section and designating the person upon whom service of process can be made on behalf of the insurer.

2012 Acts, ch 1025, §6, 22

515I.7 Effect of payment to surplus lines insurance producer.

A payment of premium to a surplus lines insurance producer acting for a person other than the producer in procuring, continuing, or renewing any policy or contract of surplus lines insurance procured under this chapter shall be deemed to be payment to the eligible surplus lines insurer, notwithstanding any other conditions or stipulations that are inserted in the policy or contract of insurance.

2012 Acts, ch 1025, §7, 22

515I.8 Referrals to surplus lines insurance producers.

A surplus lines insurance producer may accept referrals to place surplus lines insurance from any other licensed insurance producer and the surplus lines insurance producer may compensate the referring insurance producer for the referral.

2012 Acts, ch 1025, §8, 22

515I.9 Exempt commercial purchasers.

A surplus lines insurance producer seeking to procure or place surplus lines insurance in this state for an exempt commercial purchaser is not required to make a diligent search to determine whether the full amount or type of insurance sought by such exempt commercial

purchaser can be obtained from an admitted insurer if both of the following requirements are met:

1. The surplus lines insurance producer has disclosed to the exempt commercial purchaser that such insurance may be available from an admitted insurer that may provide the purchaser with greater protection and with more regulatory oversight.

2. The exempt commercial purchaser has subsequently requested in writing that the surplus lines insurance producer place such insurance with an eligible surplus lines insurer.

2012 Acts, ch 1025, §9, 22

515I.10 Independently procured surplus lines insurance — premium tax — penalty.

1. When this state is the home state of the insured, a person who directly procures, continues, or renews a surplus lines insurance policy or contract independently and without using a surplus lines insurance producer on properties, risks, or exposures located or to be performed in whole or in part in this state shall file a written report regarding the transaction with the commissioner, in a manner and method as directed by the commissioner by rule.

2. When this state is the home state of the insured, each person who has independently procured a surplus lines insurance policy or contract shall pay a premium tax at a rate appropriate to the amount of premium tax equal to the applicable percent, as provided in section 432.1. The tax shall be remitted via a method and schedule and in a manner as directed by the commissioner by rule.

3. The commissioner may assess a penalty of one percent of the delinquent amount of taxes owed per month as specified in section 507A.9.

2012 Acts, ch 1025, §10, 22

515I.11 Violations and penalties.

1. The commissioner may, after notice and a hearing, declare a surplus lines insurer ineligible to place surplus lines insurance in the state if at any time the commissioner has reason to believe that a surplus lines insurer meets any of the following conditions:

a. Is in unsound financial condition or has acted in an untrustworthy manner.

b. No longer meets the standards set forth in this chapter.

c. Has willfully violated the laws of this state.

d. Does not conduct its claims settlement practices in a fair and reasonable manner.

e. Has committed an unfair or deceptive insurance trade practice under chapter 507B.

2. The commissioner may suspend, revoke, or refuse to renew the license of a surplus lines insurance producer or impose any sanction or penalty allowed under chapter 507B after notice and hearing for one or more of the following grounds:

a. Removal of the resident surplus lines insurance producer's principal place of business from this state without notice to the commissioner.

b. Removal of the resident surplus lines insurance producer's office accounts and records from this state during the period for which the accounts and records are required to be maintained.

c. Closure of the surplus lines insurance producer's office for a period of more than thirty business days, unless permission is granted by the commissioner.

d. Failure to file required reports with the commissioner or the commissioner's designee.

e. Failure to remit surplus lines insurance premium taxes to this state as directed by the commissioner.

f. Violating any provision of this chapter.

g. For any cause for which an insurance producer license could be denied, revoked, or suspended, or renewal refused or a civil penalty imposed under chapter 522B.

3. The commissioner may initiate an administrative proceeding against a surplus lines insurance producer for the collection of unpaid premium taxes. The commissioner may assess a penalty of one percent of the delinquent amount of taxes owed per month as specified in section 507A.9 and any other penalties allowed by law.

4. A person that represents or aids a nonadmitted insurer in violation of this chapter shall be subject to criminal penalties as set forth in section 507A.10.

2012 Acts, ch 1025, §11, 22

515I.12 Cease and desist orders — civil and criminal penalties.

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

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

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

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

3. A person acting as a surplus lines insurance producer, an eligible surplus lines insurer, or nonadmitted insurer who willfully violates any provision of this chapter, or any rule adopted or order issued under this chapter, is guilty of a class "D" felony.

4. A person acting as a surplus lines insurance producer, an eligible surplus lines insurer, or nonadmitted insurer who willfully violates any provision of this chapter, or any rule adopted or order issued under this chapter, when such violation results in a loss of more than ten thousand dollars, is guilty of a class "C" felony.

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

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

2012 Acts, ch 1025, §12, 22

515I.13 Insurance policy or contract remains valid.

A policy or contract of insurance issued or delivered by an eligible surplus lines insurer or a nonadmitted insurer which is otherwise valid and contains a condition or provision not in compliance with the requirements of this chapter is not thereby rendered invalid but shall be construed and applied in accordance with the conditions and provisions which would

have applied had the policy or contract been issued or delivered in full compliance with this chapter.

2012 Acts, ch 1025, §13, 22

515I.13A Scope of operation.

This chapter applies only to transactions when this state is the home state of the applicant or the insured.

2012 Acts, ch 1025, §14, 22

515I.14 Severability.

If any provision of this chapter, or the application of the provision of this chapter to any person or circumstance, is held invalid, the remainder of the chapter and the application of the provision to persons or circumstances other than those as to which it is held invalid, shall not be affected by that holding.

2012 Acts, ch 1025, §15, 22

515I.15 Rulemaking authority.

The commissioner shall adopt rules pursuant to chapter 17A to implement the purposes of this chapter.

2012 Acts, ch 1025, §16, 22

CHAPTER 516

LIABILITY POLICIES — UNSATISFIED JUDGMENTS

Referred to in §87.4, 296.7, 331.301, 364.4, 505.28, 505.29, 669.14, 670.7

516.1 Inurement of policy.
516.2 Settlement.
516.3 Limitation on action.

516.1 Inurement of policy.

All policies insuring the legal liability of the insured, issued in this state by any company, association or reciprocal exchange shall, notwithstanding any other provision of the statutes, contain a provision providing that, in event an execution on a judgment against the insured be returned unsatisfied in an action by a person who is injured or whose property is damaged, the judgment creditor shall have a right of action against the insurer to the same extent that such insured could have enforced the insured's claim against such insurer had such insured paid such judgment.

[C35, §9024-g1; C39, §**9024.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §516.1]

516.2 Settlement.

No settlement between said insurer and insured, after loss, shall bar said action unless consented to by said judgment plaintiff.

[C35, §9024-g2; C39, §**9024.2;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §516.2]

516.3 Limitation on action.

Said action may be brought against said insurer within one hundred eighty days from the entry of judgment in case no appeal is taken, and, in case of appeal, within one hundred eighty days after the judgment is affirmed on appeal, anything in the policy or statutes to the contrary notwithstanding.

[C35, §9024-g3; C39, §**9024.3;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §516.3]

CHAPTER 516A

UNINSURED, UNDERINSURED, OR HIT-AND-RUN MOTORISTS

Referred to in §87.4, 296.7, 321N.4, 331.301, 364.4, 505.28, 505.29, 515B.9, 669.14, 670.7

516A.1 Coverage included in every liability policy — rejection by insured.
516A.2 Construction — minimum coverage — stacking.
516A.3 Definition.
516A.4 Insurer making payment — reimbursement.
516A.5 Tolling of statute.

516A.1 Coverage included in every liability policy — rejection by insured.

No automobile liability or motor vehicle liability insurance policy insuring against liability for bodily injury or death arising out of the ownership, maintenance, or use of a motor vehicle shall be delivered or issued for delivery in this state with respect to any motor vehicle registered or principally garaged in this state, unless coverage is provided in such policy or supplemental thereto, for the protection of persons insured under such policy who are legally entitled to recover damages from the owner or operator of an uninsured motor vehicle or a hit-and-run motor vehicle or an underinsured motor vehicle because of bodily injury, sickness, or disease, including death resulting therefrom, caused by accident and arising out of the ownership, maintenance, or use of such uninsured or underinsured motor vehicle, or arising out of physical contact of such hit-and-run motor vehicle with the person insured or with a motor vehicle which the person insured is occupying at the time of the accident. Both the uninsured motor vehicle or hit-and-run motor vehicle coverage, and the underinsured motor vehicle coverage shall include limits for bodily injury or death at least equal to those stated in section 321A.1, subsection 11. The form and provisions of such coverage shall be examined and approved by the commissioner of insurance.

However, the named insured may reject all of such coverage, or reject the uninsured motor vehicle (hit-and-run motor vehicle) coverage, or reject the underinsured motor vehicle coverage, by written rejections signed by the named insured. If rejection is made on a form or document furnished by an insurance company or insurance producer, it shall be on a separate sheet of paper which contains only the rejection and information directly related to it. Such coverage need not be provided in or supplemental to a renewal policy if the named insured has rejected the coverage in connection with a policy previously issued to the named insured by the same insurer.

[C71, 73, 75, 77, 79, 81, §516A.1]

83 Acts, ch 101, §108; 90 Acts, ch 1233, §33; 2001 Acts, ch 16, §10, 37

Referred to in §516A.2, 516A.5

516A.2 Construction — minimum coverage — stacking.

1. *a.* Except with respect to a policy containing both underinsured motor vehicle coverage and uninsured or hit-and-run motor vehicle coverage, nothing contained in this chapter shall be construed as requiring forms of coverage provided pursuant hereto, whether alone or in combination with similar coverage afforded under other automobile liability or motor vehicle liability policies, to afford limits in excess of those that would be afforded had the insured thereunder been involved in an accident with a motorist who was insured under a policy of liability insurance with the minimum limits for bodily injury or death prescribed in section 321A.1, subsection 11. Such forms of coverage may include terms, exclusions, limitations, conditions, and offsets which are designed to avoid duplication of insurance or other benefits.

b. To the extent that *Hernandez v. Farmers Insurance Company*, 460 N.W.2d 842 (Iowa 1990), provided for interpolicy stacking of uninsured or underinsured coverages in contravention of specific contract or policy language, the general assembly declares such decision abrogated and declares that the enforcement of the antistacking provisions contained in a motor vehicle insurance policy does not frustrate the protection given to an insured under section 516A.1.

2. Pursuant to chapter 17A, the commissioner of insurance shall, by January 1, 1992, adopt rules to assure the availability, within the state, of motor vehicle insurance policies, riders,

endorsements, or other similar forms of coverage, the terms of which shall provide for the stacking of uninsured and underinsured coverages with any similar coverage which may be available to an insured.

3. It is the intent of the general assembly that when more than one motor vehicle insurance policy is purchased by or on behalf of an injured insured and which provides uninsured, underinsured, or hit-and-run motor vehicle coverage to an insured injured in an accident, the injured insured is entitled to recover up to an amount equal to the highest single limit for uninsured, underinsured, or hit-and-run motor vehicle coverage under any one of the above described motor vehicle insurance policies insuring the injured person which amount shall be paid by the insurers according to any priority of coverage provisions contained in the policies insuring the injured person.

[C71, 73, 75, 77, 79, 81, §516A.2]

91 Acts, ch 213, §30; 2012 Acts, ch 1023, §157

516A.3 Definition.

For the purpose of this chapter, the term *"uninsured motor vehicle"* shall, subject to the terms and conditions of the coverage herein required, be deemed to include an insured motor vehicle with respect to which insolvency proceedings have been instituted against the liability insurer thereof by the insurance regulatory official of this or any other state or territory of the United States or of the District of Columbia.

An insurer's insolvency protection is applicable only to accidents occurring during a policy period in which its insured's uninsured motorist coverage is in effect and only if the liability insurer of the tortfeasor is insolvent at the time of such an accident or becomes insolvent after the accident.

[C71, 73, 75, 77, 79, 81, §516A.3]

91 Acts, ch 26, §46; 92 Acts, ch 1162, §46

516A.4 Insurer making payment — reimbursement.

In the event of payment to any person under the coverage required by this chapter and subject to the terms and conditions of such coverage, the insurer making such payment shall, to the extent thereof, be entitled to the proceeds of any settlement or judgment resulting from the exercise of any rights of recovery of such person against any person or organization legally responsible for the bodily injury for which such payment is made, including the proceeds recoverable from the assets of the insolvent insurer. The person to whom said payment is made under the insolvency protection required by this chapter shall to the extent thereof, be deemed to have waived any right to proceed to enforce such a judgment against the assets of the judgment debtor who was insured by the insolvent insurer whose insolvency resulted in said payment being made, other than assets recovered or recoverable by such judgment debtor from such insolvent insurer.

[C71, 73, 75, 77, 79, 81, §516A.4]

516A.5 Tolling of statute.

Commencement of an action by an insured under a provision included in an automobile liability or motor vehicle liability insurance policy pursuant to section 516A.1 tolls the statute of limitations for purposes of the insurer's subrogated cause of action against a party, as defined in section 668.2. Section 668.8 is also applicable to an action commenced as described in this section.

98 Acts, ch 1057, §12

CHAPTER 516B

AUTOMOBILE LIABILITY POLICIES

Referred to in §87.4, 296.7, 331.301, 364.4, 505.28, 505.29, 669.14, 670.7

516B.1 Definitions.
516B.2 Reduction in premiums to reflect reductions in losses.
516B.3 Minor traffic violations not considered in establishing rates.

516B.1 Definitions.

As used in this chapter, unless otherwise required by the context:

1. *"Automobile liability policy"* means an insurance policy issued by an insurance carrier authorized to do business in this state to or for the benefit of the person named in the policy as insured against loss from liability imposed by law for damages arising out of ownership, maintenance, or use of an insured automobile.

2. *"Commissioner"* means the commissioner of insurance.

86 Acts, ch 1218, §1

516B.2 Reduction in premiums to reflect reductions in losses.

The commissioner shall require that insurance companies transacting business in this state reduce the automobile liability insurance premiums charged insureds in this state for liability insurance renewed or issued on or after July 1, 1987. The reduction in insurance premiums, on a statewide basis, shall be at whatever amount the commissioner of insurance deems appropriate as reflecting the reduction in annual losses incurred by the insurance companies with the enactment of 1986 Iowa Acts, ch. 1009. The commissioner of insurance may annually make adjustments to the reduction in insurance premiums as the commissioner deems appropriate considering the latest statistics available to the commissioner.

In making the determination on the amount of reduction of automobile liability insurance premiums which takes effect July 1, 1987, the commissioner may employ or contract with actuarial consultants as necessary in making the determination. The reasonable fees and expenses of an actuarial consultant employed or contracted by the commissioner for the purpose of determining the amount of the July 1, 1987 reduction shall be assessed against and paid by the affected insurance companies.

86 Acts, ch 1218, §2; 2014 Acts, ch 1026, §143

516B.3 Minor traffic violations not considered in establishing rates.

1. The commissioner shall require that insurance companies transacting business in this state not consider speeding violations occurring on or after July 1, 1986, but before May 12, 1987, which are for speeding violations for ten miles per hour or less over the legal speed limit in speed zones that have a legal speed limit greater than thirty-five miles per hour or speeding violations occurring on or after May 12, 1987, which are for speeding violations for ten miles per hour or less over the legal speed limit in speed zones that have a legal speed limit equal to or greater than thirty-five miles per hour but not greater than fifty-five miles per hour for the purpose of establishing rates for motor vehicle insurance charged by the insurer and shall require that insurance companies not cancel or refuse to renew any such policy for such violations. In any twelve-month period, this section applies only to the first two such violations which occur.

2. If the rate for motor vehicle insurance is based on an operating record of a period longer than twelve months in length, the twelve-month periods under subsection 1 shall not overlap.

87 Acts, ch 120, §8; 88 Acts, ch 1158, §78; 88 Acts, ch 1214, §3

Referred to in §507B.4

CHAPTER 516C

RESERVED

CHAPTER 516D

RENTAL OF MOTOR VEHICLES

Referred to in §87.4, 296.7, 331.301, 364.4, 505.28, 505.29, 669.14, 670.7, 714H.3

516D.1 Title.
516D.2 Scope.
516D.3 Definitions.
516D.3A Vehicle license recovery fee.
516D.4 Damage or loss — collision damage waiver.
516D.5 Recovery for damage or loss.
516D.6 Disclosures.
516D.7 Prohibitions.
516D.8 Rules.
516D.9 Enforcement.

516D.1 Title.

This chapter shall be known and may be cited as the *"Iowa Car Rental and Collision Damage Waiver Act"*.

91 Acts, ch 204, §1

516D.2 Scope.

This chapter applies to advertising and business practices relating to vehicle rental agreements entered into in this state.

91 Acts, ch 204, §2

516D.3 Definitions.

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

1. *"Authorized driver"* means any of the following:

a. A customer to whom a vehicle is rented.

b. A person expressly listed by a rental company on a rental agreement as an authorized driver.

c. A customer's spouse, if the spouse is a licensed driver and satisfies the rental company's minimum age requirement.

d. A customer's employer or coworker, if the employer or coworker is engaged in a business activity with the customer to whom the vehicle is rented, is a licensed driver, and satisfies the rental company's minimum age requirement.

2. *"Collision damage waiver"* means a contract or contractual provision, whether separate from or a part of a rental agreement, whereby the rental company agrees, for a charge, to waive claims against an authorized driver for all, or any portion of, damages to the rental vehicle, loss due to theft of the rental vehicle, or damages resulting from the loss of use of the rental vehicle.

3. *"Customer"* means a person entering into a rental agreement and obtaining the use of a rental vehicle from a rental company under the terms of the rental agreement.

4. *"Estimated time for repair"* means a good faith estimate of the reasonable number of hours of labor, or fraction of an hour, needed to repair a damaged vehicle or damaged vehicle parts.

5. *"Estimated time for replacement"* means the number of hours of labor, or fraction of an hour, needed to replace damaged vehicle parts as set forth in collision damage estimating guides generally used in the vehicle repair business and commonly known as crash books.

6. *"Mandatory charge"* means any charge, fee differential, or surcharge that all or a majority of customers must pay in order to obtain or operate a rental vehicle except as follows:

a. *"Mandatory charge"* does not include an airport-imposed fee or a vehicle license recovery fee if the existence and amount of the fee are clearly and conspicuously disclosed immediately adjacent to any advertised rental price. The customer must be informed of the amount of the fee when the reservation is made. When an advertisement encompasses more than one rental location, the fee may be expressed as the maximum fee or range of fees.

b. *"Mandatory charge"* does not include taxes imposed directly upon the rental transaction by an authorized taxing authority.

c. *"Mandatory charge"* does not include mileage fees as long as the existence of any

mileage limitation and cost per mile for excess mileage is clearly and conspicuously disclosed immediately adjacent to the advertised price.

7. *"Material restriction"* means a restriction, limitation, or other requirement which significantly affects the price of, normal anticipated use of, or a customer's financial responsibility for, a rental vehicle. Restrictions against any or all of the following activities in connection with the acquisition or use of a rental vehicle are not material restrictions:

a. Obtaining a rental vehicle by use of false or misleading information.

b. Operating a rental vehicle while intoxicated or under the influence of any drug.

c. Using a rental vehicle to transport persons or property for hire.

d. Using a rental vehicle to engage in a race, training activity, contest, or use for an illegal purpose.

e. Using a rental vehicle to push or tow a vehicle or other object.

f. Operating a rental vehicle in an abusive or reckless manner.

g. Operating a rental vehicle other than on regularly maintained hard surface roadways, including private driveways and parking lots. For purposes of this chapter, *"hard surface roadways"* includes, but is not limited to, all regularly maintained gravel-covered surfaces.

h. Operating a rental vehicle outside the continental United States unless specifically authorized by the rental agreement.

8. *"Placing a block"* means any procedure or mechanism which reserves a specified amount of the customer's otherwise available credit on the customer's credit or charge card account so that the amount is not available for future credit purchases.

9. *"Rental agreement"* means a written contract containing the terms and conditions for the use of a rental vehicle by a customer for a term of sixty days or less.

10. *"Rental company"* means a person in the business of providing rental vehicles to customers.

11. *"Rental vehicle"* means a private passenger type vehicle which, upon the execution of a rental agreement, is made available to a customer for the customer's use or other authorized driver's use.

12. *"Vehicle license recovery fee"* means a charge that may be separately stated and charged on a vehicle rental transaction originating in this state to recover fees paid to this state by a rental company to license, title, register, and plate rental vehicles.

91 Acts, ch 204, §3; 92 Acts, ch 1163, §101; 2002 Acts, ch 1151, §29; 2015 Acts, ch 102, §1, 2
Referred to in §321.484

516D.3A Vehicle license recovery fee.

1. A rental company may include separately stated charges in a rental agreement pursuant to the provisions of this chapter for the recovery of fees paid to this state to license, title, register, and plate rental vehicles.

2. If a rental company includes a vehicle license recovery fee as a separately stated charge in a rental transaction, the amount of the fee shall represent the rental company's good-faith estimate of the rental company's average per vehicle portion of the rental company's total annual titling and registration fees paid to this state.

3. If the total amount of the vehicle license recovery fees collected by a rental company under this section in any calendar year exceeds the rental company's actual fees paid to this state to license, title, register, and plate rental vehicles for that calendar year, the rental company shall do both of the following:

a. Retain the excess amount to be held in a vehicle license recovery fee fund as a consumer credit for the following year.

b. Lower the estimated average per vehicle titling and registration charge for the following calendar year by the corresponding amount in the vehicle license recovery fee fund.

2015 Acts, ch 102, §3

516D.4 Damage or loss — collision damage waiver.

1. *a.* A rental company shall not hold, or attempt to hold, an authorized driver liable for physical damage to a rental vehicle, loss due to theft of a rental vehicle, or damages resulting from the loss of use of a rental vehicle, unless the rental company offers the customer a

collision damage waiver under the terms and conditions described in subsection 2, or unless one or more of the following applies:

(1) The damage or loss is caused intentionally by an authorized driver or is a result of the authorized driver's willful, abusive, reckless, or wanton misconduct.

(2) The damage or loss arises out of the authorized driver's operation of the rental vehicle while intoxicated or under the influence of a drug.

(3) The damage or loss is caused while the authorized driver is engaged in a race, training activity, contest, or use of the rental vehicle for an illegal purpose.

(4) The rental agreement is based on false or misleading information supplied by the customer or an authorized driver.

(5) The damage or loss is caused by operating the rental vehicle other than on regularly maintained hard surface roadways, including private driveways and parking lots.

(6) The damage or loss arises out of the use of the rental vehicle to transport persons or property for hire or to push or tow anything.

(7) The damage or loss occurs while the rental vehicle is operated by a driver other than an authorized driver.

(8) The damage or loss arises out of the use of the rental vehicle outside the continental United States unless such use is specifically authorized by the rental agreement.

(9) The damage or loss is attributable to theft which occurs with the prior knowledge or knowing participation of an authorized driver, or which is attributable to the authorized driver leaving the rental vehicle unattended with the keys in the rental vehicle.

b. This section does not alter the liability of a customer or authorized driver for bodily injury or the death of another and for property damage other than to the rental vehicle in accordance with the rental agreement. This section does not prohibit a rental company from accepting or negotiating master contracts with companies or government entities in advance of need whereby the companies or government entities specifically agree to assume liability in exchange for rate concessions. This section does not prohibit a rental company from entering into agreements with insurance companies to provide replacement vehicles to insurance company customers whereby the insurance company agrees to assume the risk of loss.

c. If the rental vehicle is not repaired, damages shall not exceed the fair market value of the vehicle, as determined in the customary market for that vehicle, less salvage or actual sale value, plus additional license and tax fees incurred because of the sale, plus administrative fees. A claim shall not be made for loss of use if the rental vehicle is not repaired.

2. *a.* A rental company may offer a collision damage waiver under the following terms and conditions:

(1) All restrictions, conditions, and exclusions must be printed in the rental agreement, or on a separate sheet or document, in ten point type, or larger; or written in pen and ink or typewritten in or on the face of the rental agreement in a blank space provided for such restrictions, conditions, and exclusions. The rental agreement may provide that the collision damage waiver may be voided under the conditions set forth in subsection 1, paragraph "*a*", subparagraphs (1) through (9).

(2) The rental agreement, separate sheet, or document must clearly and conspicuously state both the daily and estimated total charge for the collision damage waiver.

(3) (a) The rental agreement, separate sheet, or document given to the customer prior to entering into the rental agreement must display in ten point type, or larger, the following notice:

> NOTICE: This contract offers, for an additional charge, a collision damage waiver to cover all or part of your responsibility for damage to the rental vehicle.
>
> Before deciding whether to purchase the collision damage waiver, you may wish to determine whether your own automobile insurance affords you coverage for damage to the rental vehicle and the amount of the deductible under your own insurance coverage.

The purchase of this collision damage waiver is not mandatory and may be declined.

(b) The customer must separately acknowledge that the customer received the above notice, that the customer desires to purchase the collision damage waiver, and the terms of the collision damage waiver to which the customer agrees.

(4) The car rental company shall not pay commissions to a rental counter agent or representative for selling collision damage waivers and is prohibited from considering volume of sales of collision damage waivers in an employee evaluation or determination of promotion.

b. However, notwithstanding whether a rental company offers a collision damage waiver under the provisions of this subsection, the rental company shall not hold an authorized driver liable for damage or loss due to theft except where subsection 1, paragraph "*a*", subparagraph (9) applies.

91 Acts, ch 204, §4; 2012 Acts, ch 1023, §127

516D.5 Recovery for damage or loss.

A claim against an authorized driver resulting from damage to a rental vehicle, loss due to theft of a rental vehicle, or damages resulting from the loss of use of a rental vehicle, must be reasonably and rationally related to the actual loss incurred. A rental company shall mitigate damages where possible and shall not assert or collect any claim for physical damage which exceeds the actual cost of the repair, including all discounts or price reductions. Administrative fees shall be limited to the reasonable administrative costs associated with processing the damage claim. A claim made for loss of use shall not exceed the daily rental rate stated in the customer's contract, excluding optional charges, multiplied by the total of the estimated time for replacement and the estimated time for repair, divided by eight.

91 Acts, ch 204, §5

516D.6 Disclosures.

1. All material restrictions on an advertised rate or on the use of the rental vehicle must be clearly and conspicuously disclosed in any price advertisement.

2. A rental company shall only advertise, quote, and charge a rental rate that includes all mandatory charges. A rental company shall not impose any mandatory charges in addition to the advertised or quoted rental rate.

91 Acts, ch 204, §6

516D.7 Prohibitions.

Unfair or deceptive acts or practices in the advertisement or rental of vehicles are prohibited. Unfair or deceptive acts or practices include, but are not limited to, the following:

1. A representation connected with the advertisement or rental of a vehicle that the purchase of a collision damage waiver is mandatory.

2. Failure to provide disclosures as required by this chapter.

3. Failure to disclose in a manner likely to be noticed and comprehended in an advertisement, as defined in section 714.16, subsection 1, paragraph "*a*", the availability of a collision damage waiver, and the cost of the waiver.

4. Misrepresentation of a customer's need for a collision damage waiver, personal accident insurance, or personal effects insurance.

5. Misrepresentation of the characteristics or availability of a reserved rental vehicle in order to rent a customer a more expensive vehicle than the one reserved.

6. Failure to provide a vehicle in the class reserved, or, if the reserved vehicle is out of stock, failure to provide another vehicle in the class reserved or a more expensive vehicle. A replacement vehicle for an out-of-stock reserved vehicle may be provided from the stock of the rental company or from another rental company but, in any event, must be provided at the rate quoted for the vehicle reserved.

7. Failure to disclose the following material restrictions, where applicable, in response to

direct consumer inquiries regarding the price of renting a vehicle, when the rental company discloses a vehicle rental rate, and at the time the reservation is accepted:

a. Specific geographic restrictions and limitations, other than travel outside the continental United States.

b. Advance reservation and payment requirements.

c. The existence of penalties or higher rates that may apply for early or late returns.

d. Cost of an additional driver fee.

e. Credit or cash deposit requirements.

f. Extent of liability for damage or loss and price range of collision damage waiver.

g. Mileage limitations and charges.

8. Placement of a block against a customer's credit limit or charge against a customer's credit card in the following manner:

a. Placing a block or charge against a customer's credit limit without disclosing in the rental agreement in a clear and conspicuous manner the fact that a block or charge will be placed against the customer's credit card, and the amount of the block or charge. Such disclosure shall also be made orally whenever possible.

b. Placing a block or charge against a portion or the entirety of the credit limit of the card or otherwise placing a block or charge against the card in excess of the estimated total daily or weekly charges, including taxes and charges of optional services accepted by the customer, stated in the rental agreement multiplied by the number of days of the estimated rental if rented on a daily basis or, if rented on a weekly basis, multiplied by the number of weeks of the estimated rental.

c. Placing a block or charge against a customer's credit card and then failing to clear the unused amount of the block or charge against the customer's credit card after the customer returns the rental vehicle in the same amount of time, subject to credit card company or charge card company availability, as it took the rental company to place the block or charge against the customer's card when the customer rented the vehicle.

d. Placing or threatening to place a block or charge on a customer's credit card when seeking to recover any portion of a claim arising out of damage to, or loss of use of, the rental vehicle, unless, after the rental vehicle is damaged or lost, the rental company determines the exact amount of the repair or replacement costs and the customer authorizes the charge.

e. Charging an amount to a customer's credit card for damage to, or loss of use of, a rental vehicle after the customer has left the location where the rental vehicle was returned, unless the customer has authorized the specific charge, in a specific amount, to be charged to the customer's credit card. This subsection does not apply to a block in the amount of one dollar obtained for authorized charge amounts.

9. Assessment of additional driver fees for licensed drivers who are spouses or business associates engaged in business activities with the customer to whom the vehicle is rented, other than charges for a person who does not satisfy the rental company's minimum age requirement, if applicable.

91 Acts, ch 204, §7

516D.8 Rules.

The attorney general shall prescribe forms and adopt rules pursuant to chapter 17A as necessary to administer this chapter.

91 Acts, ch 204, §8

516D.9 Enforcement.

A violation of this chapter or any rules adopted by the attorney general pursuant to this chapter is a violation of section 714.16, subsection 2, paragraph "*a*". The provisions of section 714.16, including, but not limited to, provisions relating to investigation, injunctive relief, and penalties, apply to violations of this chapter.

91 Acts, ch 204, §9

CHAPTER 516E

MOTOR VEHICLE SERVICE CONTRACTS

Referred to in §87.4, 296.7, 331.301, 364.4, 505.28, 505.29, 669.14, 670.7

Chapter transferred from chapter 321I in Code 2001 pursuant to directive in 2000 Acts, ch 1147, §15

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516E.1 Definitions.

For the purposes of this chapter:

1. *"Administrator"* means the deputy administrator appointed pursuant to section 502.601.
2. *"Commissioner"* means the commissioner of insurance as provided in section 505.1.
3. *"Financial institution"* means an institution that is all of the following:

a. Organized or, in the case of the office of a foreign banking organization located in the United States, licensed, under the laws of the United States or any state, and granted authority to operate with fiduciary powers.

b. Regulated, supervised, and examined by federal or state authorities empowered to regulate banks and trust companies.

4. *"Maintenance agreement"* means a contract of limited duration that provides for scheduled maintenance only.
5. *"Mechanical breakdown insurance"* means a policy, contract, or agreement that undertakes to perform or provide repair or replacement service, or indemnification for that service, for the operational or structural failure of a motor vehicle due to a defect in materials or skill of work or normal wear and tear, and that is issued by an insurance company authorized to do business in this state.
6. *"Motor vehicle"* means any self-propelled vehicle subject to registration under chapter 321.
7. *"Premium"* means the consideration paid to an insurer for a reimbursement insurance policy.
8. *"Provider"* means a person who sells or offers to sell a service contract.
9. *"Record"* means information stored or preserved in any medium, including in an electronic or paper format. A record includes but is not limited to documents, books, publications, accounts, correspondence, memoranda, agreements, computer files, film, microfilm, photographs, and audio or visual tapes.
10. *"Reimbursement insurance policy"* means a contractual liability insurance policy issued to a service company that either provides reimbursement to a service company under the terms of insured service contracts issued or sold by the service company or, in the event of nonperformance by the service company, pays, on behalf of the service company, all covered contractual obligations incurred by the service company under the terms of the insured service contracts issued or sold by the service company.

11. *"Service company"* means a person who issues and is obligated to perform, or arrange for the performance of, services pursuant to a service contract.

12. *"Service company fee"* means the consideration paid for a service contract.

13. *"Service contract"* means a contract or agreement given for consideration over and above the lease or purchase price of a new or used motor vehicle having a gross vehicle weight rating of less than sixteen thousand pounds, that undertakes to perform or provide repair or replacement service, or indemnification for that service, for the operation or structural failure of a motor vehicle due to a defect in materials or skill of work or normal wear and tear, but does not include mechanical breakdown insurance or maintenance agreements.

14. *"Service contract holder"* means a person who purchases a service contract.

15. *"Third-party administrator"* means a person who contracts with a service company to be responsible for the administration of the service company's service contracts, including processing and adjudicating claims pursuant to a service contract.

85 Acts, ch 45, §1
CS85, §321I.1
90 Acts, ch 1145, §1; 92 Acts, ch 1163, §77; 2000 Acts, ch 1147, §1, 2, 15
C2001, §516E.1
2005 Acts, ch 70, §25; 2006 Acts, ch 1117, §77, 78
Referred to in §163.51, 322.19, 523C.1, 551A.1

516E.2 Requirements for doing business — registration — fee.

1. A service contract shall not be issued, sold, or offered for sale in this state unless the service company does all of the following:

a. Provides a receipt for the purchase of the service contract to the service contract holder.

b. Provides a copy of the service contract to the service contract holder within a reasonable period of time after the date of purchase of the service contract.

2. A service company shall not issue a service contract or arrange to perform services pursuant to a service contract unless the service company is registered with the commissioner. A service company shall file a registration with the commissioner annually, on a form prescribed by the commissioner, accompanied by a registration fee in the amount of five hundred dollars. Fees collected under this subsection shall be deposited as provided in section 505.7.

3. In order to assure the faithful performance of a service company's obligations to its service contract holders, service contracts shall be secured by a reimbursement insurance policy in compliance with the requirements set forth in section 516E.4 or the service company shall comply with the financial responsibility and security standards set forth in section 516E.21.

4. *a.* The commissioner may issue an order denying, suspending, or revoking any registration if the commissioner finds that the order is in the public interest and finds any of the following:

(1) The registration is incomplete in any material respect or contains any statement which, in light of the circumstances under which the registration was made, is determined by the commissioner to be false or misleading with respect to any material fact.

(2) A provision of this chapter or a rule, order, or condition lawfully imposed under this chapter, has been willfully violated in connection with the sale of service contracts by any of the following persons:

(a) The person filing the registration, but only if the person filing the registration is directly or indirectly controlled by or acting for the service company.

(b) The service company, any partner, officer, or director of the service company or any person occupying a similar status or performing similar functions for the service company, or any person directly or indirectly controlling or controlled by the service company.

(3) The service company has not filed a document or information required under this chapter.

(4) The service company's literature or advertising is misleading, incorrect, incomplete, or deceptive.

(5) The service company has failed to pay the proper filing fee. However, the

commissioner shall vacate an order issued pursuant to this paragraph when the proper fee has been paid.

b. The commissioner may vacate or modify an order issued under this subsection if the commissioner finds that the conditions which prompted the entry of the order have changed or that it is otherwise in the public interest to do so.

85 Acts, ch 45, §2
CS85, §321I.2
90 Acts, ch 1145, §2; 2000 Acts, ch 1147, §3, 15
C2001, §516E.2
2005 Acts, ch 70, §26; 2006 Acts, ch 1117, §79, 80; 2009 Acts, ch 181, §82
Referred to in §516E.21

516E.3 Filing and fee requirements.

1. *Service companies.*

a. A service contract shall not be issued, sold, or offered for sale in this state unless a true and correct copy of the service contract, and the service company's reimbursement insurance policy, if applicable, have been filed with the commissioner by the service company.

b. A service company shall file a consent to service of process on the commissioner, and such other information as the commissioner requires, annually with the commissioner no later than the first day of August. If the first day of August falls on a weekend or a holiday, the date for filing shall be the next business day. In addition to the annual filing, the service company shall promptly file copies of any amended documents if material amendments have been made in the materials on file with the commissioner. If an annual filing is made after the first of August and sales have occurred during the period when the service company was in noncompliance with this section, the commissioner shall assess an additional filing fee that is two times the amount normally required for an annual filing. A fee shall not be charged for interim filings made to keep the materials filed with the division current and accurate. The annual filing shall be accompanied by a filing fee determined by the commissioner which shall be sufficient to defray the costs of administering this chapter.

c. (1) A service company shall promptly file the following information with the commissioner:

(a) A change in the name or ownership of the service company.

(b) The termination of the service company's business.

(2) The service company is not required to submit a fee as part of this filing.

2. *Providers.*

a. A provider shall file a consent to service of process on the commissioner, a notice with the name and ownership of the provider, and such other information as the commissioner requires, annually with the commissioner no later than August 1. If August 1 falls on a weekend or a holiday, the date for filing shall be the next business day. In addition to the annual filing, the provider shall promptly file copies of any amended documents if material amendments have been made in the materials on file with the commissioner. If an annual filing is made after August 1 and sales have occurred during the period when the provider was in noncompliance with this section, the commissioner shall assess an additional filing fee that is two times the amount normally required for an annual filing. A fee shall not be charged for interim filings made to keep the materials filed with the division current and accurate. The annual filing shall be accompanied by a filing fee in the amount of one hundred dollars.

b. (1) A provider shall promptly file the following information with the commissioner:

(a) A change in the name or ownership of the provider.

(b) The termination of the provider's business.

(2) A provider is not required to submit a fee as part of this filing.

85 Acts, ch 45, §3
CS85, §321I.3
90 Acts, ch 1145, §3; 98 Acts, ch 1189, §1; 2000 Acts, ch 1147, §4, 5, 15

C2001, §516E.3
2005 Acts, ch 70, §27; 2006 Acts, ch 1117, §81, 82; 2007 Acts, ch 137, §16; 2012 Acts, ch 1023, §157
Referred to in §516E.15

516E.4 Reimbursement insurance policy requirements — insurer qualifications.

1. *Requirements.* A reimbursement insurance policy insuring a service contract issued, sold, or offered for sale in this state shall provide for all of the following:

a. The reimbursement insurance policy shall, in the event of the service company's failure to perform under the service contract or otherwise, either reimburse or pay on behalf of the service company any covered amounts that the service company is legally obligated to pay under the service contract, including the return of any unearned service company fee owed by the service company to the service contract holder.

b. An insurer that issues a reimbursement insurance policy shall assume full responsibility for the administration of claims made pursuant to a service contract in the event that the service company is unable to do so.

c. If a service covered under a service contract is not provided by the service company within sixty days of proof of loss by the service contract holder, the service contract holder is entitled to apply directly against the reimbursement insurance policy of the service company.

2. *Termination.* As applicable, an insurer that issued a reimbursement insurance policy shall not terminate the policy unless a written notice has been received by the commissioner and by each applicable provider, service company, or third-party administrator. The notice shall fix the date of termination at a date no earlier than ten days after receipt of the notice by the commissioner and by the applicable provider, service company, or third-party administrator. The notice may be delivered in person or sent by mail, and a restricted certified mail return receipt shall be deemed proof of receipt of notice. The termination of a reimbursement insurance policy shall not reduce the issuer's responsibility for a service contract issued by a service company prior to the date of termination.

3. *Indemnification or subrogation.* This section does not prevent or limit the right of an insurer that issued a reimbursement insurance policy to seek indemnification from or subrogation against a service company if the insurer pays or is obligated to pay a service contract holder sums that the service company was obligated to pay pursuant to the provisions of a service contract or pursuant to a contractual agreement.

4. *Obligations insured.* If a service company secures its service contracts with a reimbursement insurance policy, the reimbursement insurance policy shall insure one hundred percent of the obligations of all service contracts sold by the service company.

5. *Qualifications of insurer.* An insurer issuing a reimbursement insurance policy under this chapter shall be authorized, registered, or otherwise permitted to transact business in this state, or shall be an excess and surplus lines insurer authorized, registered, or otherwise permitted to transact business in this state, and shall meet one of the following requirements:

a. At the time the policy is filed with the commissioner, and continuously thereafter, the insurer maintains surplus as to policyholders and paid-in capital of at least fifteen million dollars and annually files copies of the insurer's financial statements, national association of insurance commissioners annual statement, and actuarial certification, if required and filed in the insurer's state of domicile.

b. At the time the policy is filed with the commissioner and continuously thereafter, the insurer does all of the following:

(1) Maintains surplus as to policyholders and paid-in capital of less than fifteen million dollars but at least ten million dollars.

(2) Demonstrates to the satisfaction of the commissioner that the insurer maintains a ratio of net written premiums, wherever written, to surplus as to policyholders and paid-in capital of not greater than three to one.

(3) Files copies annually of the insurer's financial statements, national association of insurance commissioners annual statement, and actuarial certification, if required and filed in the insurer's state of domicile.

85 Acts, ch 45, §4

CS85, §321I.4
2000 Acts, ch 1147, §15
C2001, §516E.4
2005 Acts, ch 70, §28; 2006 Acts, ch 1117, §83, 84
Referred to in §516E.2

516E.5 Disclosure to service contract holders — contract provisions.

1. *a.* A service contract insured by a reimbursement insurance policy shall not be issued, sold, or offered for sale in this state unless the contract conspicuously states that the obligations of the service company to the service contract holder are guaranteed under a reimbursement insurance policy, including a statement in substantially the following form:

> Obligations of the service company under this service contract are guaranteed under a reimbursement insurance policy. If the service company fails to pay or provide service on a claim within sixty days after proof of loss has been filed with the service company, the service contract holder is entitled to make a claim directly against the reimbursement insurance policy.

b. A claim against a reimbursement insurance policy shall also include a claim for return of the unearned service company fee paid for the service contract. A service contract shall conspicuously state the name and address of the issuer of the reimbursement insurance policy for that service contract.

c. A service contract issued, sold, or offered for sale in this state that is not insured under a reimbursement insurance policy shall contain a statement in substantially the following form:

> Obligations of the service company under this service contract are backed by the full faith and credit of the service company.

2. A service contract shall be written in clear, understandable language and the entire contract shall be printed or typed in easy-to-read type, size, and style, and shall not be issued, sold, or offered for sale in this state unless the contract does all of the following:

a. Clearly and conspicuously states the name and address of the service company and describes the service company's obligations to perform services or to arrange for the performance of services under the service contract.

b. Clearly and conspicuously states the name and address of the issuer of the reimbursement insurance policy, if applicable.

c. Identifies the service company obligated to perform the service under the service contract, any third-party administrator, and the service contract holder to the extent that the name and address of the service contract holder has been furnished by the service contract holder.

d. Sets forth the total purchase price of the service contract and the terms under which the purchase price of the service contract is to be paid.

e. Sets forth the procedure for making a claim, including a telephone number.

f. Clearly and conspicuously states the dates that coverage starts and ends and the existence, terms, and conditions of a deductible amount, if any.

g. Specifies the merchandise or services, or both, to be provided and clearly states any and all limitations, exceptions, or exclusions.

h. Sets forth the conditions on which substitution of services will be allowed.

i. Sets forth all of the obligations and duties of the service contract holder, including but not limited to the duty to protect against any further damage to the motor vehicle, and the obligation to notify the service company in advance of any repair, if any.

j. Sets forth any and all terms, restrictions, or conditions governing transferability of the service contract, if any.

k. Describes or references any and all applicable provisions of the Iowa consumer credit code, chapter 537.

l. States the name and address of the commissioner.

m. Sets forth any and all conditions on which the service contract may be canceled, the

terms and conditions for the refund of any portion of the purchase price, the identity of the person primarily liable to provide any refund, and the identity of any other person liable to provide any portion of the refund. If the service contract holder cancels the service contract, the service company shall mail a written notice of termination to the service contract holder within fifteen days of the date of the termination.

n. Permits the service contract holder to cancel and return the service contract within at least twenty days of the date of mailing the service contract to the service contract holder or within at least ten days after delivery of the service contract if the service contract is delivered at the time of sale of the service contract, or within a longer period of time as permitted under the service contract. If no claim has been made under the service contract prior to its return, the service contract is void and the full purchase price of the service contract shall be refunded to the service contract holder. A ten percent penalty shall be added each month to a refund that is not paid to a service contract holder within thirty days of the return of the service contract to the service company. The applicable time period for cancellation of a service contract shall apply only to the original service contract holder that purchased the service contract.

3. A complete copy of the terms of the service contract shall be delivered to the prospective service contract holder at or before the time that the prospective service contract holder makes application for the service contract. If there is no separate application procedure, then a complete copy of the service contract shall be delivered to the service contract holder at or before the time the service contract holder becomes bound under the contract.

85 Acts, ch 45, §5
CS85, §321I.5
90 Acts, ch 1145, §4; 94 Acts, ch 1031, §1; 98 Acts, ch 1189, §2, 3; 2000 Acts, ch 1147, §15
C2001, §516E.5
2005 Acts, ch 70, §29; 2006 Acts, ch 1117, §85, 86
Referred to in §714H.3

516E.6 Commissioner may prohibit certain sales — injunction.

The commissioner shall issue an order instructing a provider, service company, or third-party administrator to cease and desist from selling or offering for sale service contracts if the commissioner determines that the provider, service company, or third-party administrator has failed to comply with a provision of this chapter. Upon the failure of a provider, service company, or third-party administrator to obey a cease and desist order issued by the commissioner, the commissioner may give notice in writing of the failure to the attorney general, who shall immediately commence an action against the provider, service company, or third-party administrator to enjoin the provider, service company, or third-party administrator from selling or offering for sale service contracts until the provider, service company, or third-party administrator complies with the provisions of this chapter, and the district court may issue the injunction.

85 Acts, ch 45, §6
CS85, §321I.6
98 Acts, ch 1189, §4; 2000 Acts, ch 1147, §15
C2001, §516E.6
2005 Acts, ch 70, §30

516E.7 Rules.

The commissioner may adopt rules as provided in chapter 17A to administer and enforce the provisions of this chapter and to establish minimum standards for disclosure of service contract coverage limitations and exclusions.

85 Acts, ch 45, §7
CS85, §321I.7
2000 Acts, ch 1147, §15
C2001, §516E.7
2005 Acts, ch 70, §31

516E.8 Exemption.

This chapter does not apply to a service contract issued by the manufacturer or importer of the motor vehicle covered by the service contract or to any third party acting in an administrative capacity on the manufacturer's behalf in connection with that service contract.

85 Acts, ch 45, §8
CS85, §321I.8
90 Acts, ch 1145, §5; 94 Acts, ch 1031, §2; 2000 Acts, ch 1147, §15
C2001, §516E.8
2005 Acts, ch 70, §32

516E.9 Misrepresentations of state approval.

A service company shall not represent or imply in any manner that the service company has been sponsored, recommended, or approved or that the service company's abilities or qualifications have in any respect been passed upon by the state of Iowa, including the commissioner, the insurance division, or the division's securities and regulated industries bureau.

90 Acts, ch 1145, §7
C91, §321I.10
92 Acts, ch 1163, §78; 2000 Acts, ch 1147, §6, 15
C2001, §516E.9
2005 Acts, ch 70, §33; 2006 Acts, ch 1117, §87
Referred to in §714H.3

516E.10 Prohibited acts — unfair or deceptive trade practices.

1. *Misrepresentations, false advertising, and unfair practices.*

a. Unless licensed as an insurance company, a service company shall not use in its name, contracts, or literature, the words "insurance", "casualty", "surety", "mutual", or any other words descriptive of the insurance, casualty, or surety business or deceptively similar to the name or description of any insurance or surety corporation, or any other service company.

b. A service company shall not, without the written consent of the purchaser, knowingly charge a purchaser for duplication of coverage or duties required by state or federal law, a warranty expressly issued by a manufacturer or seller of a product, or an implied warranty enforceable against the lessor, seller, or manufacturer of a product.

c. A provider, service company, or third-party administrator shall not make, permit, or cause a false or misleading statement, either oral or written, in connection with the sale, offer to sell, or advertisement of a service contract.

d. A provider, service company, or third-party administrator shall not permit or cause the omission of a material statement in connection with the sale, offer to sell, or advertisement of a service contract, which under the circumstances should have been made in order to make the statement not misleading.

e. A provider, service company, or third-party administrator shall not make, permit, or cause to be made a false or misleading statement, either oral or written, about the benefits or services available under the service contract.

f. A provider, service company, or third-party administrator shall not make, permit, or cause to be made a statement of practice which has the effect of creating or maintaining a fraud.

g. A provider, service company, or third-party administrator shall not make, publish, disseminate, circulate, or place before the public, or cause, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public in a newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over a radio or television station, or in any other way, an advertisement, announcement, or statement containing an assertion, representation, or statement with respect to the service contract industry or with respect to a provider, service company, or third-party administrator which is untrue, deceptive, or misleading. It is deceptive or misleading to use any combination of words, symbols, or physical materials which by their content,

phraseology, shape, color, or other characteristics are so similar to a combination of words, symbols, or physical materials used by a manufacturer or of such a nature that the use would tend to mislead a person into believing that the solicitation is in some manner connected with the manufacturer, unless actually authorized or issued by the manufacturer.

h. A bank, savings association, credit union, insurance company, or other lending institution shall not require the purchase of a service contract as a condition of a loan.

2. *Defamation.* A provider, service company, or third-party administrator shall not make, publish, disseminate, or circulate, directly or indirectly, or aid, abet, or encourage the making, publishing, disseminating, or circulating of an oral or written statement or a pamphlet, circular, article, or literature which is false or maliciously critical of or derogatory to the financial condition of a person, and which is calculated to injure the person.

3. *Boycott, coercion, and intimidation.* A provider, service company, or third-party administrator shall not enter into an agreement to commit, or by a concerted action commit, an act of boycott, coercion, or intimidation resulting in or tending to result in unreasonable restraint of, or monopoly in, the service contract industry.

4. *False statements.* A provider, service company, or third-party administrator shall not knowingly file with a supervisory or other public official, or knowingly make, publish, disseminate, circulate, or deliver to a person, or place before the public, or knowingly cause directly or indirectly to be made, published, disseminated, circulated, delivered to a person, or placed before the public, a false material statement of fact as to the financial condition of a person.

5. *False entries.* A provider, service company, or third-party administrator shall not knowingly make a false entry of a material fact in a book, report, or statement of a person or knowingly fail to make a true entry of a material fact pertaining to the business of the person in a book, report, or statement of the person.

6. *Used or rebuilt parts.* A service company shall not repair a motor vehicle covered by a service contract with any of the following:

a. Used parts, unless the service company receives prior written authorization by the vehicle owner.

b. Rebuilt parts, unless the parts are rebuilt according to national standards recognized by the insurance division.

7. *Marketing.* A provider, service company, or third-party administrator shall not market, advertise, offer to sell, or sell a service contract by using personal information obtained in violation of the federal Driver's Privacy Protection Act, 18 U.S.C. §2721 et seq.

8. *Violations of section 714.16.*

a. A violation of this chapter or rules adopted by the commissioner pursuant to this chapter is an unfair practice as defined in section 714.16.

b. An enforcement agreement between the commissioner and a provider, service company, or third-party administrator does not bar the attorney general from bringing an action against the provider, service company, or third-party administrator under section 714.16 as to allegations that a violation of this chapter constitutes a violation of section 714.16.

90 Acts, ch 1145, §8
C91, §321I.11
98 Acts, ch 1189, §5; 2000 Acts, ch 1147, §7, 15
C2001, §516E.10
2005 Acts, ch 70, §34; 2006 Acts, ch 1030, §63; 2012 Acts, ch 1017, §100
Referred to in §714H.3

516E.11 Records — explanation of reasons for denial of claims.

1. A provider, service company, or third-party administrator shall keep accurate records concerning transactions regulated under this chapter.

a. Records of a provider, service company, or third-party administrator shall include all of the following:

(1) Copies of each type of service contract issued or sold.

(2) The name and address of each service contract holder.

(3) Claim files which shall contain, at a minimum, the dates, amounts, and descriptions of all receipts, claims, and expenditures related to service contracts.

(4) Copies of all materials relating to claims which have been denied.

b. A provider, service company, or third-party administrator shall retain all required records pertaining to a service contract holder for at least two years after the specified period of coverage has expired. A provider, service company, or third-party administrator discontinuing business in this state shall maintain its records until the provider, service company, or third-party administrator furnishes the commissioner satisfactory proof that the provider, service company, or third-party administrator has discharged all obligations to contract holders in this state.

c. A provider, service company, or third-party administrator shall make all records concerning transactions regulated under the chapter available to the commissioner for the purpose of examination.

d. A provider, service company, or third-party administrator may keep all records required under this chapter in an electronic form. If an administrator maintains records in a form other than a printed copy, the records shall be accessible from a computer terminal available to the commissioner and shall be capable of duplication to a legible printed copy.

2. A provider, service company, or third-party administrator shall promptly deliver a written explanation to the service contract holder, describing the reasons for denying a claim or for the offer of a compromise settlement, based on all relevant facts or legal requirements and referring to applicable provisions of the service contract.

3. A provider, service company, or third-party administrator shall keep accurate records concerning transactions regulated under this chapter, including a list of the locations where service contracts are marketed, sold, offered for sale, or performed.

90 Acts, ch 1145, §9
C91, §321I.12
94 Acts, ch 1031, §3; 98 Acts, ch 1189, §6; 2000 Acts, ch 1147, §8 – 10, 15
C2001, §516E.11
2005 Acts, ch 70, §35

516E.12 Service of process.

The commissioner shall be the attorney for service of process upon a provider, a service company, a third-party administrator, or an issuer of a reimbursement insurance policy. Service of process made on the commissioner as the agent for service of process shall be made as provided in section 505.30.

90 Acts, ch 1145, §10
C91, §321I.13
2000 Acts, ch 1147, §15
C2001, §516E.12
2005 Acts, ch 70, §36; 2018 Acts, ch 1018, §10
Section amended

516E.13 Orders, investigations, examinations, and subpoenas.

1. The commissioner may take actions which are necessary or appropriate for the protection of service contract holders or for the effective administration of this chapter. The commissioner may make private and public investigations and examinations as the commissioner deems necessary to determine whether any person has violated or is about to violate this chapter or a rule or order adopted or issued pursuant to this chapter.

2. In an investigation or proceeding under this chapter, the commissioner or any officer designated by the commissioner may administer oaths and affirmations, subpoena witnesses and compel their attendance, take evidence, and require the production of records which the commissioner deems relevant or material to an inquiry, all of which may be enforced in accordance with chapter 17A.

3. A person is not excused from attending and testifying or from producing a document or record before the administrator or in obedience to a subpoena of the administrator or an officer designated by the administrator, or in a proceeding instituted by the administrator, on

the grounds that the testimony or evidence, documentary or otherwise, required of the person may tend to incriminate or subject the person to a penalty or forfeiture. However, a person shall not be prosecuted or subjected to any penalty or forfeiture due to a transaction or matter about which the person is compelled, after claiming privilege against self-incrimination, to testify or produce evidence, documentary or otherwise. The person testifying, however, is not exempt from prosecution and punishment for perjury or contempt committed while testifying.

4. Upon the commissioner's determination that a provider, service company, or third-party administrator has engaged, is engaging, or is about to engage in any act or practice constituting a violation of this chapter or a rule adopted pursuant to this chapter, the commissioner may issue a summary order directing the person to cease and desist from engaging in the act or practice resulting in the violation or to take other affirmative action as in the judgment of the commissioner is necessary to comply with the requirements of this chapter.

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

b. A person violating a summary order issued under this subsection shall be deemed in contempt of that order. The commissioner may petition the district court to enforce the order as certified by the commissioner. The district court shall adjudge the person in contempt of the order if the court finds after hearing that the person is not in compliance with the order. The court shall assess a civil penalty against the person in an amount not less than three thousand dollars but not greater than ten thousand dollars per violation, and may issue further orders as it deems appropriate.

90 Acts, ch 1145, §11
C91, §321I.14
94 Acts, ch 1031, §4; 2000 Acts, ch 1147, §11, 15
C2001, §516E.13
2005 Acts, ch 70, §37

516E.14 Audits.

The commissioner may examine or cause to be examined the records of a provider, service company, or third-party administrator for the purpose of verifying compliance with this chapter. The commissioner may require, by a subpoena, the attendance of the provider, service company, or third-party administrator, or a representative thereof, and any other witness whom the commissioner deems necessary or expedient, and the production of records relating in any manner to compliance with this chapter if a provider, service company, third-party administrator, or witness fails or refuses to produce the documents for examination when requested by the commissioner.

90 Acts, ch 1145, §12
C91, §321I.15
2000 Acts, ch 1147, §12, 15
C2001, §516E.14
2005 Acts, ch 70, §38

516E.15 Violations — penalties.

1. *a.* Except as provided in paragraph "*b*", all of the following shall apply:

(1) A violation of this chapter or a rule adopted pursuant to this chapter is a violation of section 714.16, subsection 2, paragraph "*a*". The remedies and penalties provided by section 714.16, including but not limited to injunctive relief and civil penalties, apply to violations of this chapter.

(2) A person who willfully and knowingly violates this chapter or a rule adopted pursuant to this chapter is, upon conviction, guilty of a class "D" felony.

b. A provider or service company that fails to file documents and information with the commissioner as required pursuant to section 516E.3 may be subject to a civil penalty. The amount of the civil penalty shall not be more than four hundred dollars plus two dollars for each service contract that the person executed prior to satisfying the filing requirement. However, a person who fails to file information regarding a change in the name or the termination of the business of a provider or service company as required pursuant to section 516E.3 is subject to a civil penalty of not more than five hundred dollars.

2. If the commissioner believes that grounds exist for the criminal prosecution of a provider, service company, or third-party administrator for violating this chapter or any other law of this state, the commissioner may forward to the attorney general or the county attorney the grounds for the belief, including all evidence in the commissioner's possession for action deemed appropriate by the attorney general or county attorney. At the request of the attorney general, the county attorney shall appear and prosecute the action when brought in the county served by the county attorney.

94 Acts, ch 1031, §5
C95, §321I.16
2000 Acts, ch 1147, §13, 15
C2001, §516E.15
2005 Acts, ch 70, §39, 40; 2006 Acts, ch 1117, §88

516E.16 Court action for failure to cooperate.

1. If a person fails or refuses to file a statement or report or to produce any books, accounts, papers, correspondence, memoranda, purchase agreements, files, or other documents or records, or to obey a subpoena issued by the commissioner, the commissioner may refer the matter to the attorney general, who may apply to a district court to enforce compliance. The court may order any of the following:

a. Injunctive relief restricting or prohibiting the offer or sale of service contracts.

b. Production of documents or records including but not limited to books, accounts, papers, correspondence, memoranda, purchase agreements, files, or other documents or records.

c. Such other relief as may be appropriate.

2. A court order issued pursuant to subsection 1 is effective until the person who is subject to the order files the statement or report, produces the documents requested, or obeys the subpoena.

2005 Acts, ch 70, §41

516E.17 Net worth requirement. Repealed by 2006 Acts, ch 1117, §128. See §516E.21.

516E.18 Public access to records.

1. The administrator shall keep a register of all filings and orders which have been entered. The register shall be open for public inspection.

2. Upon request and for a reasonable fee, the administrator shall furnish to any person copies of any register entry or any document which is a matter of public record and not confidential. Copies shall be available during normal business hours and may be certified upon request. In any administrative, civil, or criminal proceeding, a certified copy is prima facie evidence of the contents of the document certified.

3. Pursuant to chapter 22, the administrator may maintain the confidentiality of information obtained during an investigation or audit.

2005 Acts, ch 70, §43

516E.19 Administration.

1. This chapter shall be administered by the commissioner. The deputy administrator appointed pursuant to section 502.601 shall be the principal operations officer responsible to the commissioner for the routine administration of this chapter and management of the

administrative staff. In the absence of the commissioner, whether because of vacancy in the office, by reason of absence, physical disability, or other cause, the deputy administrator shall be the acting administrator and shall, for the time being, have and exercise the authority conferred upon the commissioner. The commissioner may from time to time delegate to the deputy administrator any or all of the functions assigned to the commissioner in this chapter. The deputy administrator shall employ officers, attorneys, accountants, auditors, investigators, and other employees as shall be needed for the administration of this chapter.

2. Upon request, the commissioner may honor requests from interested persons for interpretive opinions.

2005 Acts, ch 70, §44

516E.20 Application of insurance laws.

The sale of a service contract under this chapter shall not be deemed to include the sale of insurance. Unless a service company, third-party administrator, or provider is otherwise engaged in the sale of insurance, the insurance laws of this state are not applicable to the service company, third-party administrator, or provider of such a service contract.

2006 Acts, ch 1117, §89

516E.21 Financial responsibility and security requirements in lieu of reimbursement insurance policy.

1. In lieu of obtaining a reimbursement insurance policy as provided in section 516E.2, subsection 3, a service company may secure its service contracts by maintaining a funded reserve account which complies with all of the following:

a. The reserve account shall be in a custodial account at a financial institution that is dedicated to the service company's outstanding obligations under service contracts issued and outstanding in this state.

b. The reserve account shall comply with rules adopted by the commissioner pursuant to chapter 17A establishing requirements for reserve accounts, reserve account agreements, or the method of valuing marketable securities as necessary to protect holders of service contracts issued and outstanding in this state. The commissioner may require amendments to reserve account agreements that are not in compliance with the provisions of this section.

c. The reserve account shall not be an amount that is less than forty percent of the gross consideration received, less claims paid, on the sale of service contracts issued and outstanding by the service company in this state.

d. The reserve account shall be subject to examination and review by the commissioner or a designee on the premises of the financial institution where the account is located and the financial institution shall, upon request, produce documents or records as necessary to allow the commissioner or a designee to verify the value and safety of the assets of the reserve account.

2. The service company shall annually provide the commissioner with one of the following:

a. A copy of the service company's financial statements.

b. If the service company's financial statements are consolidated with those of its parent company, a copy of the parent company's most recent form 10-K or form 20-F filed with the federal securities and exchange commission within the last calendar year, or if the parent company does not file with the federal securities and exchange commission, a copy of the parent company's audited financial statements showing a net worth of at least one hundred million dollars. If the service company's financial statements are consolidated with those of its parent company, the service company shall also provide a copy of a written agreement by the parent company guaranteeing the obligations of the service company under service contracts issued and outstanding by the service company in this state.

3. If a service company secures its contracts by maintaining a funded reserve account as provided in subsection 1 but does not have or maintain a minimum net worth or stockholders' equity of one hundred million dollars or more, the service company shall also meet one of the following requirements:

a. Maintain a security deposit trust fund which complies with all of the following:

(1) The security deposit trust fund shall be in an account at a financial institution.

(2) The security deposit trust fund shall be held, invested, and administered for the benefit and protection of service contract holders in this state in the event of nonperformance of the service contract by the service company.

(3) The security deposit trust fund shall comply with rules adopted by the commissioner pursuant to chapter 17A, establishing the form, terms, and conditions of security deposit trust fund agreements established pursuant to this paragraph *"a"*.

(4) The security deposit trust fund shall be subject to recovery by any service contract holder sustaining actionable injury due to the failure of the service company to perform its obligations under the service contract. A holder of a service contract issued in this state may, in the event of nonperformance by the service company, maintain an action and file a claim against the security deposit trust fund maintained by the service company.

(5) The security deposit trust fund shall not be commingled with other funds of the service company.

(6) The security deposit trust fund shall have a value of not less than five percent of the gross consideration received by the service company, less claims paid, for the sale of all service contracts issued and in force in this state, but not less than twenty-five thousand dollars, and consist of one or more of the following:

(a) Cash.

(b) Securities of the type eligible for deposit by insurers authorized to transact business in this state.

(c) Certificates of deposit.

(d) Another form of security as prescribed by the commissioner by rule.

b. File a surety bond with the commissioner that is issued by a surety company authorized to do business in this state, and that complies with all of the following:

(1) The surety bond is conditioned upon the service company's faithful performance of service contracts subject to this chapter.

(2) The surety bond is for the benefit of and subject to recovery by any service contract holder sustaining actionable injury due to the failure of the service company to perform its obligations under a service contract. The surety's liability shall extend to all service contracts issued by the service company and outstanding in this state. A holder of a service contract issued in this state may, in the event of nonperformance of the contract by the service company, maintain an action and file a claim against the surety bond filed by the service company.

(3) The surety bond is for an amount that is not less than five percent of the gross consideration received by the service company, less claims paid, for the sale of all service contracts issued and in force in this state, but not less than twenty-five thousand dollars.

(4) The surety bond cannot be canceled by the surety except upon written notice of cancellation by the surety to the commissioner by restricted certified mail, and not prior to the expiration of sixty days after receipt of the notice by the commissioner.

2006 Acts, ch 1117, §90

Referred to in §516E.2

CHAPTER 517

EMPLOYERS LIABILITY INSURANCE

Referred to in §87.4, 296.7, 331.301, 364.4, 505.28, 505.29, 669.14, 670.7

517.1 Reserve required.
517.2 Terms defined.
517.3 Distribution of unallocated payments.
517.4 Reports required.
517.5 Inspection not basis for civil liability.
517.6 Issuance of employers' liability coverage.

517.1 Reserve required.

Every corporation, association, company, or reciprocal exchange writing any of the several classes of insurance authorized by section 515.48, subsection 5, paragraph *"d"*, shall maintain reserves for outstanding losses under insurance against loss or damage from accident to or injuries suffered by an employee or other person and for which the insured is liable computed as follows:

1. For all liability suits being defended under policies written more than:

a. Ten years prior to the date as of which the statement is made, one thousand five hundred dollars for each suit.

b. Five and less than ten years prior to the date as of which the statement is made, one thousand dollars for each suit.

c. Three and less than five years prior to the date as of which the statement is made, eight hundred fifty dollars for each suit.

2. For all liability policies written during the three years immediately preceding the date as of which the statement is made, such reserve shall be sixty percent of the earned liability premiums of each of such three years less all loss and loss expense payments made under liability policies written in the corresponding years; but in any event, such reserve shall, for the first of such three years, be not less than seven hundred fifty dollars for each outstanding liability suit on said year's policies.

3. For all compensation claims under policies written more than three years prior to the date as of which the statement is made, the present values at four percent interest of the determined and the estimated future payments.

4. For all compensation claims under policies written in the three years immediately preceding the date as of which the statement is made, such reserve shall be sixty-five percent of the earned compensation premiums of each of such three years, less all loss and loss expense payments in connection with such claims under policies written in the corresponding years; but in any event, in the case of the first year of any of such three-year period such reserve shall be not less than the present value at four percent interest of the determined and the estimated unpaid compensation claims under policies written during such year.

[C24, 27, 31, 35, 39, §**9025;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §517.1]

2015 Acts, ch 29, §79

517.2 Terms defined.

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

1. *a. "Earned premiums"* shall include gross premiums charged on all policies written, including all determined excess and additional premiums, less returned premiums, other than premiums returned to policyholders as dividends, and less reinsurance premiums and premiums on policies canceled, and less unearned premiums on policies in force.

b. Any participating company which has charged in its premiums a loading solely for dividends shall not be required to include such loading in its earned premiums, provided a statement of the amount of such loading has been filed with and approved by the commissioner of insurance.

2. *"Compensation"* shall relate to all insurances affected by virtue of statutes providing compensation to employees for personal injuries irrespective of fault of the employer.

3. *"Liability"* shall relate to all insurance, except compensation insurance, against loss or damage from accident to or injuries suffered by an employee or other person and for which the insured is liable.

4. *"Loss payments"* and *"loss expense payments"* shall include all payments to claimants, including payments for medical and surgical attendance, legal expenses, salaries and expenses of investigators, and field personnel, rents, stationery, telegraph and telephone charges, postage, salaries and expenses of office employees, home office expenses, and all other payments made on account of claims, whether such payments shall be allocated to specific claims or unallocated.

[C24, 27, 31, 35, 39, §**9026;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §517.2]

2015 Acts, ch 30, §166

517.3 Distribution of unallocated payments.

1. *a.* All unallocated liability loss expense payments made in a given calendar year subsequent to the first four years in which an insurer has been issuing liability policies shall be distributed as follows:

(1) Thirty-five percent shall be charged to the policies written in that year.

(2) Forty percent to the policies written in the preceding year.

(3) Ten percent to the policies written in the second year preceding.

(4) Ten percent to the policies written in the third year preceding.

(5) Five percent to the policies written in the fourth year preceding.

b. The payments made in each of the first four calendar years in which an insurer issues liability policies shall be distributed as follows:

(1) In the first calendar year one hundred percent shall be charged to the policies written in that year.

(2) In the second calendar year fifty percent shall be charged to the policies written in that year and fifty percent to the policies written in the preceding year.

(3) In the third calendar year forty percent shall be charged to the policies written in that year, forty percent to the policies written in the preceding year, and twenty percent to the policies written in the second year preceding.

(4) In the fourth calendar year thirty-five percent shall be charged to the policies written in that year, forty percent to the policies written in the preceding year, fifteen percent to the policies written in the second year preceding, and ten percent to the policies written in the third year preceding.

c. A schedule showing such distribution shall be included in the annual statement.

2. *a.* All unallocated compensation loss expense payments made in a given calendar year subsequent to the first three years in which an insurer has been issuing compensation policies shall be distributed as follows:

(1) Forty percent shall be charged to the policies written in that year.

(2) Forty-five percent to the policies written in the preceding year.

(3) Ten percent to the policies written in the second year preceding.

(4) Five percent to the policies written in the third year preceding.

b. The payments made in each of the first three calendar years in which an insurer issues compensation policies shall be distributed as follows:

(1) In the first calendar year one hundred percent shall be charged to the policies written in that year.

(2) In the second calendar year fifty percent shall be charged to the policies written in that year and fifty percent to the policies written in the preceding year.

(3) In the third calendar year forty-five percent shall be charged to the policies written in that year, forty-five percent to the policies written in the preceding year, and ten percent to the policies written in the second year preceding.

c. A schedule showing such distribution shall be included in the annual statement.

3. Whenever, in the judgment of the commissioner of insurance, the liability or compensation loss reserves of any insurer under the commissioner's supervision, calculated in accordance with the foregoing provisions, are inadequate, the commissioner may, in the

commissioner's discretion, require such insurer to maintain additional reserves based upon estimated individual claims or otherwise.

[C24, 27, 31, 35, 39, §**9027;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §517.3]

2015 Acts, ch 30, §167; 2016 Acts, ch 1073, §149

517.4 Reports required.

Each insurer that writes liability or compensation policies shall include in the annual statement required by law a schedule of its experience thereunder in such form as the commissioner of insurance may prescribe.

[C24, 27, 31, 35, 39, §**9028;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §517.4]

Annual statement, §515.63

517.5 Inspection not basis for civil liability.

No inspection of any place of employment made by insurance company inspectors or other inspectors inspecting for group self-insurance purposes shall be the basis for the imposition of civil liability upon the inspector or upon the insurance company employing the inspector or upon any group organized for self-insurance purposes which employs an inspector and is regulated by the insurance departments; but this provision refers only to liability arising out of the making of an inspection and shall not be construed to deny or limit the liability of any employer to the employer's employees or the liability of any insurance carrier on its insurance policy.

[C79, 81, §517.5]

517.6 Issuance of employers' liability coverage.

An insurer intending to issue a policy providing employers' liability insurance only and covering a corporate officer excluded from workers' compensation coverage by the signing of a written rejection of workers' compensation coverage under section 87.22, shall file the policy with and obtain the approval of the commissioner of insurance. The filing shall include the premium rates which will apply to the employers' liability coverage.

83 Acts, ch 36, §6, 8

CHAPTER 517A

LIABILITY INSURANCE FOR PUBLIC EMPLOYEES

Referred to in §87.4, 296.7, 331.301, 364.4, 505.28, 505.29, 669.14, 670.7

See chapter 669 for tort liability of state
See chapter 670 for tort liability of governmental subdivisions

517A.1 Authority to purchase.

517A.1 Authority to purchase.

All state commissions, departments, boards and agencies and all commissions, departments, boards, districts, municipal corporations and agencies of all political subdivisions of the state of Iowa not otherwise authorized are hereby authorized and empowered to purchase and pay the premiums on liability, personal injury and property damage insurance covering all officers, proprietary functions and employees of such public bodies, including volunteer fire fighters, while in the performance of any or all of their duties including operating an automobile, truck, tractor, machinery or other vehicles owned or used by said public bodies, which insurance shall insure, cover and protect against individual personal, corporate or quasi corporate liability that said bodies or their officers or employees may incur.

The form and liability limits of any such liability insurance policy purchased by any

commission, department, board, or agency of the state of Iowa shall be subject to the approval of the attorney general.

[C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §517A.1]

CHAPTER 518

COUNTY MUTUAL INSURANCE ASSOCIATIONS

Referred to in §87.4, 296.7, 321H.3, 331.301, 364.4, 423.3, 505.28, 505.29, 506.14, 507.1, 508C.3, 515.1, 515B.2, 515F.3, 515F.32, 518C.2, 518C.3, 518C.5, 518C.10, 521.1, 521E.1, 533C.103, 537.7103, 669.14, 670.7

Memorandum of intent, 61 GA (1965), Senate Journal, page 1612; House Journal, page 1785

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518.1 Incorporation.

Corporations formed to operate as county mutual insurance associations shall be governed by the provisions of chapter 491, except as modified by the provisions of this chapter.

[C66, 71, 73, 75, 77, 79, 81, §518.1]

518.2 Articles — approval — bylaws.

The articles of incorporation, and any subsequent amendments, of an organization shall be filed with and approved by the commissioner of insurance before filing with the secretary of state. The organization shall file with the commissioner bylaws and subsequent amendments to the bylaws within thirty days of adoption of the bylaws or amendments.

[C66, 71, 73, 75, 77, 79, 81, §518.2]

99 Acts, ch 165, §15; 2009 Acts, ch 145, §26

518.3 Certificate — recording.

If the commissioner of insurance approves the articles of incorporation, the commissioner shall so certify and the articles with the certificates of approval shall then be recorded and certified by the secretary of state.

[C66, 71, 73, 75, 77, 79, 81, §518.3]

518.4 Identification as to type of insurer.

Any association incorporated under the laws of this state for the purpose of furnishing insurance as provided for in this chapter shall be known as a county mutual insurance

association. The words "mutual" and "association" shall be incorporated in and become a part of its name.

[C97, §1760; S13, §1759-b; C24, 27, 31, 35, 39, §**9030;** C46, 50, 54, 58, 62, §518.2; C66, 71, 73, 75, 77, 79, 81, §518.4]

518.5 Commencement of business — conditions.

A county mutual insurance association formed on or after July 1, 2009, shall not issue policies until applications for insurance of not less than one hundred thousand dollars, representing at least two hundred applicants, have been received, and no application for insurance during the period of organization shall exceed two percent of the amount required for organization, any reinsurance taking effect simultaneously with the policy being deducted in determining such maximum single risk.

[C66, 71, 73, 75, 77, 79, 81, §518.5]

2009 Acts, ch 145, §27

518.6 Powers of the members.

Members of the association shall have the power to make or amend articles of incorporation at any membership meeting, provided that notice of such addition or amendment has been mailed to each member at least ten days in advance of the meeting in which such proposed action is to be considered, and provided that no amendment shall become effective until approved by the commissioner of insurance and recorded in the office of the secretary of state.

[C66, 71, 73, 75, 77, 79, 81, §518.6]

518.7 Officers and directors — election.

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

[C66, 71, 73, 75, 77, 79, 81, §518.7]

97 Acts, ch 186, §22; 2000 Acts, ch 1023, §35

518.8 Bylaws.

The directors of the association shall have the authority to enact such bylaws and regulations not inconsistent with law as they consider necessary for the regulation and conduct of the business. No change in the bylaws shall have the effect of limiting coverage under existing policies of insurance. An association shall file with the commissioner bylaws and subsequent amendments to the bylaws within thirty days of the adoption of the bylaws and amendments.

[C66, 71, 73, 75, 77, 79, 81, §518.8]

2000 Acts, ch 1023, §36

518.9 Eligibility for membership.

The members of the association shall consist of those persons or organizations insured therein. The words *"persons"* and *"members"* as used in this chapter shall be construed to mean trustees, administrators, and all other individuals, public or private corporations or associations. Insurance on the property of one or more minors may be granted on application of an adult parent, friend or guardian who consents to become a member as representing such minor.

[C66, 71, 73, 75, 77, 79, 81, §518.9]

518.10 Territorial limitations.

The territory of any association shall be limited to the county in which its principal place of business is located, and to the counties contiguous thereto, and no coverage shall be placed on property located outside of this territory; provided, however, that the insurance may be

extended, if the policy so provides, to cover personal property while temporarily removed to other locations.

[C97, §1760; S13, §1759-b; C24, 27, 31, 35, 39, §**9030;** C46, 50, 54, 58, 62, §518.2; C66, 71, 73, 75, 77, 79, 81, §518.10]

518.11 Kinds of insurance.

1. Any association organized under this chapter is authorized to insure or to accept reinsurance against loss or damage by:

a. Any peril or perils resulting in physical loss or damage to property;

b. Theft of personal property;

c. Injury, sickness or death of animals and the furnishing of veterinary service.

2. Such contracts of insurance shall be subject only to such provisions as are contained in this chapter and shall consist of:

a. An application on blanks furnished by the association and signed by the insured or the insured's representatives;

b. A policy issued by the association in accordance with its rules, and approved by the commissioner of insurance.

[C66, 71, 73, 75, 77, 79, 81, §518.11]

2012 Acts, ch 1023, §157

Referred to in §518.17

518.12 Properties to be insured.

County mutual insurance associations are permitted to insure only the following classes of property:

1. Farm property, including residences and other farm buildings and all classes of personal property in connection therewith;

2. Buildings and personal property used in the processing of agricultural products in conjunction with a farming operation;

3. City and suburban residences, including household and personal effects;

4. Churches, schools and community buildings.

[C66, 71, 73, 75, 77, 79, 81, §518.12]

518.13 Premium charges.

Any association may by action of its board of directors establish premium charges for the purpose of payment of losses and expenses and for the establishment or maintenance of a reserve fund.

[C66, 71, 73, 75, 77, 79, 81, §518.13]

2009 Acts, ch 145, §28

518.13A Assessments prohibited.

An association doing business under this chapter shall not levy an assessment on any member of the association.

2000 Acts, ch 1023, §37

518.14 Investments.

1. *General considerations.* The following considerations apply in the interpretation of this section:

a. This section applies to the investments of county mutual insurance associations.

b. (1) The purpose of this section is to protect and further the interests of policyholders, claimants, creditors, and the public by providing standards for the development and administration of programs for the investment of the assets of associations organized under this chapter. These standards, and the investment programs developed by associations, shall take into account the safety of the association's principal, investment yield and growth, stability in the value of the investment, and liquidity necessary to meet the association's expected business needs, and investment diversification.

(2) All investments made pursuant to this section shall have investment qualities and characteristics such that the speculative elements of the investments are not predominant.

c. Financial terms relating to county mutual insurance associations have the meanings assigned to them under statutory accounting methods. Financial terms relating to companies or associations other than county mutual insurance associations have the meanings assigned to them under generally accepted accounting principles.

d. Investments shall be valued in accordance with the valuation procedures established by the national association of insurance commissioners, unless the commissioner requires or finds another method of valuation reasonable under the circumstances.

e. If an investment qualifies under more than one subsection, an association may elect to hold the investment under the subsection of its choice. This section does not prevent an association from electing to hold an investment under a subsection different from the one under which it previously held the investment.

2. *Definitions.* For purposes of this section:

a. "Admitted assets", for purposes of computing percentage limitations on particular types of investments, means the assets which are authorized to be shown on the commissioner's annual statement blank as admitted assets as of the December 31 immediately preceding the date the association acquires the investment.

b. "Clearing corporation" means as defined in section 554.8102.

c. "Custodian bank" means as defined in section 515.35.

d. "Issuer" means as defined in section 554.8201.

e. "Member bank" means a national bank, state bank, or trust company which is a member of the United States federal reserve system.

f. "National securities exchange" means an exchange registered under section 6 of the federal Securities Exchange Act of 1934 or an exchange regulated under the laws of Canada.

g. "Obligations" includes bonds, notes, debentures, transportation equipment certificates, domestic repurchase agreements, and obligations for the payment of money not in default as to payments of principal and interest on the date of investment, which constitute general obligations of the issuer or payable only out of certain revenues or certain funds pledged or otherwise dedicated for payment of principal and interest on the obligations. A lease is an obligation if the lease is assigned to the insurer and is nonterminable by the lessee upon foreclosure of any lien upon the leased property, and if rental payments are sufficient to amortize the investment over the primary lease term.

h. "Surplus", for purposes of computing percentage limitations on particular types of investments, means the surplus that is authorized to be shown on the commissioner's annual statement blank as surplus as of the December 31 immediately preceding the date the association acquires the investment.

3. *Investments in name of association or nominee and prohibitions.*

a. An association's investments shall be held in its own name or the name of its nominee, except as follows:

(1) Investments may be held in the name of a clearing corporation or of a custodian bank or in the name of the nominee of either on the following conditions:

(a) The clearing corporation, custodian bank, or nominee must be legally authorized to hold the particular investment for the account of others.

(b) When the investment is evidenced by a certificate and held in the name of a custodian bank or the nominee of a custodian bank, a written agreement shall provide that certificates so deposited shall at all times be kept separate and apart from other deposits with the depository, so that at all times they may be identified as belonging solely to the association making the deposit.

(c) If a clearing corporation is to act as depository, the investment may be merged or held in bulk in the name of the clearing corporation or its nominee with other investments deposited with the clearing corporation by any other person, if a written agreement between the clearing corporation and the association provides that adequate evidence of the deposit is to be obtained and retained by the association or a custodian bank.

(2) An association may participate through a member bank in the United States federal

reserve book entry system, and the records of the member bank shall at all times show that the investments are held for the association or for specific accounts of the association.

(3) An investment may consist of an individual interest in a pool of obligations or a fractional interest in a single obligation if the certificate of participation or interest or the confirmation of participation or interest in the investment is issued in the name of the association, the name of the custodian bank, or the nominee of either, and, if the interest as evidenced by the certificate or confirmation is, if held by a custodian bank, kept separate and apart from the investments of others so that at all times the participation may be identified as belonging solely to the association making the investment.

(4) Transfers of ownership of investments held as described in paragraph "*a*", subparagraph (1), subparagraph division (c), and subparagraphs (2) and (3), may be evidenced by bookkeeping entry on the books of the issuer of the investment, its transfer or recording agent, or the clearing corporation without physical delivery of a certificate evidencing the association's investment.

b. Except as provided in paragraph "*a*", subparagraph (4), if an investment is not evidenced by a certificate, adequate evidence of the association's investment shall be obtained from the issuer or its transfer or recording agent and retained by the association, a custodian bank, or clearing corporation. Adequate evidence, for purposes of this paragraph, means a written receipt or other verification issued by the depository or issuer or a custodian bank which shows that the investment is held for the association.

4. *Investments.* Except as otherwise permitted by this section, an association organized under this chapter shall only invest in the following:

a. United States government obligations. Bonds or other evidences of indebtedness issued, assumed, or guaranteed by the United States of America, or by any agency or instrumentality of the United States of America, including investments in an open-end management investment company registered with the federal securities and exchange commission under the federal Investment Company Act of 1940, 15 U.S.C. §80a-1 et seq., and operated in accordance with 17 C.F.R. §270.2a-7, the portfolio of which is limited to the United States obligations described in this paragraph, and which are included in the national association of insurance commissioners' securities valuation office's United States direct obligation – full faith and credit list.

b. Certain development bank obligations. Obligations issued or guaranteed by the international bank for reconstruction and development, the Asian development bank, the inter-American development bank, the export-import bank, the world bank, or any United States government-sponsored organization of which the United States is a member, if the principal and interest is payable in United States dollars. An association shall not invest more than five percent of its total admitted assets in the obligations of any one of these banks or organizations, and shall not invest more than a total of ten percent of its total admitted assets in the obligations authorized by this paragraph.

c. State obligations. Obligations issued or guaranteed by a state, a political subdivision of a state, or an instrumentality of a state.

d. Canadian government obligations. Obligations issued or guaranteed by Canada, by an agency or province of Canada, by a political subdivision of such province, or by an instrumentality of any of those provinces or political subdivisions.

e. Corporate and business trust obligations. Obligations issued, assumed, or guaranteed by a corporation or business trust organized under the laws of the United States or a state, or the laws of Canada or a province of Canada, provided that an association shall not invest more than five percent of its admitted assets in the obligations of any one corporation or business trust. Investments shall be made only in investment grade bonds.

f. Stocks. Common stocks, common stock equivalents, mutual fund shares, securities convertible into common stocks or common stock equivalents, or preferred stocks issued or guaranteed by a corporation incorporated under the laws of the United States or a state, or the laws of Canada or a province of Canada, or limited partnerships publicly traded on a nationally established stock exchange in the United States. Aggregate investments in nondividend paying stocks shall not exceed five percent of surplus.

(1) Stocks purchased under this lettered paragraph shall not exceed fifty percent of surplus.

(2) With the approval of the commissioner, an association may invest in common stocks, preferred stocks, or other securities of one or more subsidiaries provided that both of the following occur:

(a) After such investments the association's surplus as regards policyholders will be reasonable in relation to the association's outstanding liabilities and adequate to its financial needs.

(b) The association owns one hundred percent of the stock of the subsidiary.

(3) An association shall not invest more than ten percent of its surplus in the stocks of any one corporation.

g. Home office real estate. With the prior approval of the commissioner, funds may be invested in home office real estate for the association or a subsidiary, at the direction of the board of directors. The association or subsidiary shall obtain the approval of the commissioner prior to the sale or disposition of home office real estate owned by the association or subsidiary. Effective as to home office real estate acquired on or after July 1, 2009, an association shall not invest more than twenty percent of its total admitted assets in such real estate. With the prior approval of the commissioner, an association may exceed the real estate investment limitation to effectuate a merger with, or the acquisition of, another association.

[C66, 71, 73, 75, 77, 79, 81, §518.14]

95 Acts, ch 185, §26; 96 Acts, ch 1138, §3, 84; 2005 Acts, ch 70, §45; 2006 Acts, ch 1010, §141; 2007 Acts, ch 137, §17; 2009 Acts, ch 41, §263; 2009 Acts, ch 145, §29 – 31; 2010 Acts, ch 1061, §67; 2013 Acts, ch 124, §23; 2014 Acts, ch 1092, §186

518.15 Reports, examinations, and renewals.

1. The president or the vice president and secretary of each association authorized to do business under this chapter shall annually before the first day of March prepare under oath and file with the commissioner of insurance a full, true, and complete statement of the condition of such association on the last day of the preceding year. The commissioner of insurance shall prescribe the report forms and shall determine the information and data to be reported.

2. Such associations shall pay the same expenses of any examination made or ordered to be made by the commissioner of insurance and the same fees for the annual reports and annual certificates of authority as are required to be paid by domestic companies organized and doing business under chapter 515.

3. A certificate of authority of an association formed under this chapter expires on June 1 succeeding its issue and shall be renewed annually so long as the association transacts its business in accordance with all legal requirements. An association shall submit annually, on or before March 1, a completed application for renewal of its certificate of authority.

4. The commissioner shall refuse to renew the certificate of authority of an association that fails to comply with the provisions of this chapter.

5. An association formed under this chapter that fails to timely file the statement required under subsection 1 or the application for renewal required under subsection 3 is in violation of this section and shall pay an administrative penalty of five hundred dollars to the treasurer of state for deposit as provided in section 505.7. The association's right to transact new business in this state shall immediately cease until the association has fully complied with this chapter.

6. The commissioner may give notice to an association that the association has not timely filed the statement required under subsection 1 or an application for renewal under subsection 3 and is in violation of this section. If the association fails to file the required statement or application and comply with this section within ten days of the date of the notice, the association shall pay an additional administrative penalty of one hundred dollars for each day that the failure continues to the treasurer of state for deposit as provided in section 505.7.

[C66, 71, 73, 75, 77, 79, 81, §518.15]

88 Acts, ch 1112, §108; 2006 Acts, ch 1117, §91; 2009 Acts, ch 181, §83

518.16 Soliciting application for insurance — license required.

A person shall not solicit any application for insurance for an association in this state without having procured from the commissioner of insurance a license authorizing the person to act as an insurance producer pursuant to chapter 522B.

[C66, 71, 73, 75, 77, 79, 81, §518.16; 82 Acts, ch 1003, §8]

95 Acts, ch 185, §27; 2001 Acts, ch 118, §16

518.16A Limitation on termination of independent insurance producers.

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

2002 Acts, ch 1111, §25

518.17 Reinsurance.

1. A county mutual insurance association may reinsure a part or all of its coverages written pursuant to this chapter with an association operating under this chapter, or with any other association or company licensed in this state and authorized to write the kinds of insurance enumerated in section 518.11.

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

[C66, 71, 73, 75, 77, 79, 81, §518.17]

91 Acts, ch 26, §47; 99 Acts, ch 165, §16; 2000 Acts, ch 1023, §38; 2002 Acts, ch 1111, §26; 2002 Acts, ch 1119, §183; 2009 Acts, ch 145, §32

Referred to in §521.13

518.18 Premium tax.

After January 1, 1966, every association doing business under this chapter shall be required to pay to the director of the department of revenue, or a depository designated by the director, as taxes an amount equal to the following:

1. The applicable percent of the gross amount of premiums received during the preceding calendar year, after deducting the amount returned upon the canceled policies, certificates, and rejected applications; and after deducting premiums paid for windstorm or hail reinsurance on properties specifically reinsured. However, the reinsurer of such windstorm or hail risks shall pay the applicable percent of the gross amount of reinsurance premiums received upon such risks after deducting the amounts returned upon canceled policies, certificates, and rejected applications. For purposes of this section, *"applicable percent"* means the same as specified in section 432.1, subsection 4.

2. Except as provided in subsection 3, the premium tax shall be paid on or before March 1 of the year following the calendar year for which the tax is due. The commissioner of insurance may suspend the certificate of authority of a county mutual insurance association that fails to pay its premium tax on or before the due date.

3. *a.* Each county mutual insurance association transacting business in this state whose Iowa premium tax liability for the preceding calendar year was one thousand dollars or more shall remit on or before June 1, on a prepayment basis, an amount equal to one-half of the premium tax liability for the preceding calendar year.

b. In addition to the prepayment amount in paragraph *"a"*, each association shall remit on or before August 15, on a prepayment basis, an additional amount equal to the following percent of the premium tax liability for the preceding calendar year as follows:

(1) For prepayment in the 2003 and 2004 calendar years, eleven percent.

(2) For prepayment in the 2005 calendar year, twenty-six percent.

(3) For prepayment in the 2006 and subsequent calendar years, fifty percent.

c. The sums prepaid by a county mutual insurance association under this subsection shall be allowed as credits against its premium tax liability for the calendar year during which the payments are made. If a prepayment made under this subsection exceeds the annual premium tax liability, the excess shall be allowed as a credit against subsequent prepayment or tax liabilities. The commissioner of insurance may suspend the certificate of authority of an association that fails to make a prepayment on or before the due date.

[C66, 71, 73, 75, 77, 79, 81, §518.18]

2003 Acts, ch 145, §286; 2003 Acts, ch 179, §136, 159; 2004 Acts, ch 1175, §339, 348

Referred to in §432.1

518.19 Proof of loss.

A proof of loss shall contain such information as is required by the policy provisions of the association, which information shall be signed and sworn to by the insured.

[C66, 71, 73, 75, 77, 79, 81, §518.19]

2009 Acts, ch 145, §33

518.20 Reporting of livestock losses.

In the event of loss of livestock, the insured shall give notice to the association in sufficient time to permit the performance by a licensed veterinarian of a postmortem examination of the livestock for which claim is made, but in no event later than forty-eight hours from the time of occurrence.

[C66, 71, 73, 75, 77, 79, 81, §518.20]

518.21 Reporting of losses of crops by hail.

In the event of loss to growing crops by hail, notice of such loss must be given by mailing to the association a certified letter within ten days from the time such loss or damage occurred.

[C66, 71, 73, 75, 77, 79, 81, §518.21]

518.22 Limitation of action.

A suit or action on a policy for the recovery of any claim shall not be sustainable in any court of law or equity unless all requirements of the policy have been complied with, and unless commenced within twelve months next after the inception of the loss.

[C66, 71, 73, 75, 77, 79, 81, §518.22]

2009 Acts, ch 145, §34

518.23 Cancellation or nonrenewal of policies — notice.

1. *Cancellation by insured.* A policy shall be canceled at any time at the request of the insured.

2. *Cancellation by association.*

a. Except as provided in paragraph *"b"*, notice of cancellation is not effective unless mailed or delivered by the association to the named insured at least thirty days before the effective date of cancellation.

b. Notice of cancellation resulting from nonpayment of a premium or installment provided for in the policy, or provided for in a note or contract for the payment of such premium or installment, is not effective unless mailed or delivered by the association to the named insured at least ten days prior to the date of cancellation.

c. If a notice of cancellation under paragraph *"a"* or *"b"* fails to include the reason for such cancellation, the association, upon receipt of a timely request by the named insured, shall provide in writing the reason for the cancellation.

3. *Nonrenewal by association.* A notice of intention not to renew is not effective unless mailed or delivered by the insurer to the named insured at least thirty days prior to the expiration date of the policy. If the reason does not accompany the notice of nonrenewal, the association, upon receipt of a timely request by the named insured, shall provide the reason for the nonrenewal in writing.

4. *Notice.* Service of notice under subsection 2 or 3 may be delivered in person or mailed to the insured at the insured's post office address as given in or upon the policy, or to such other address as the insured shall have given to the association in writing. A post office department certificate of mailing shall be deemed proof of receipt of such mailing. If in either case the cash payments exceed the amount properly chargeable, the excess shall be refunded to the insured.

[C66, 71, 73, 75, 77, 79, 81, §518.23]

2000 Acts, ch 1023, §39; 2001 Acts, ch 69, §35; 2003 Acts, ch 91, §47; 2009 Acts, ch 145, §35

518.24 Reserved.

518.25 Surplus.

An association organized under this chapter before July 1, 2009, shall at all times maintain a surplus of not less than fifty thousand dollars or one-tenth of one percent of the gross risk in force, whichever is greater. An association organized under this chapter on or after July 1, 2009, shall at all times maintain a surplus of not less than one hundred thousand dollars or one-tenth of one percent of the gross risk in force, whichever is greater.

90 Acts, ch 1234, §70; 99 Acts, ch 165, §17; 2002 Acts, ch 1111, §27; 2009 Acts, ch 145, §36

518.26 Loans to officers prohibited.

Assets or other funds shall not be loaned directly or indirectly to an officer, director, or employee of the association, or directly or indirectly to a relative of an officer, director, or an employee of the association.

95 Acts, ch 185, §28

518.27 Form — approval.

The form of all policies, applications, agreements, and endorsements modifying the provisions of policies, and all permits and riders used in this state, issued or proposed to be issued by a county mutual insurance association doing business in this state under the provisions of this chapter, shall first be examined and approved by the commissioner of insurance.

95 Acts, ch 185, §29

Referred to in §518.28

518.28 Failure to file copy.

Upon the failure of a county mutual insurance association to file a copy of its forms of policies or contracts pursuant to section 518.27, the commissioner of insurance may suspend its authority to transact business within the state until such forms of policies or contracts have been filed and approved.

95 Acts, ch 185, §30; 2001 Acts, ch 24, §56

518.29 Disapproval of filings.

If the commissioner finds that a filing does not meet the requirements of this chapter, written notice of disapproval shall be sent to the county mutual insurance association specifying in what respect the filing fails to meet the requirements of this chapter and stating that the filing is not effective. If a filing is disapproved by the commissioner, the association may request a hearing on the disapproval within thirty days. The association bears the burden of proving compliance with the standards established by this chapter.

If, at any time after a form has been approved, the commissioner finds that the form no longer meets the requirements of this chapter, the commissioner may order the discontinuance of the use of the form. The order of discontinuance shall be in writing and may be issued only after a hearing with at least ten days' prior notice to all county mutuals affected by the order. The order shall state the grounds upon which the order is based and when the order of discontinuance is effective.

95 Acts, ch 185, §31

518.30 Certificate suspension.

The commissioner of insurance may suspend a county mutual insurance association's certificate of authority to do business if the association neglects or fails to comply with this chapter.

95 Acts, ch 185, §32

518.31 Rulemaking.

The commissioner may adopt rules pursuant to chapter 17A as necessary for the administration of this chapter.

2009 Acts, ch 145, §37

CHAPTER 518A

STATE MUTUAL INSURANCE ASSOCIATIONS

Referred to in §87.4, 296.7, 321H.3, 331.301, 364.4, 423.3, 505.28, 505.29, 506.14, 507.1, 508C.3, 515.1, 515B.2, 515F.3, 515F.32, 518C.2, 518C.3, 518C.5, 518C.10, 519.10, 521.1, 521A.2, 521E.1, 533C.103, 537.7103, 616.11, 669.14, 670.7

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518A.1 Organization — purpose and powers.

1. Any number of persons may, by incorporating under chapter 491, enter into contracts with each other for the following kinds of insurance from loss or damage by:

a. Any peril or perils resulting in physical loss of or damage to property.

b. Theft of personal property.

c. Injury, sickness, or death of animals and the furnishing of veterinary service.

d. Any vehicle, excluding automobile or aircraft, including loss and expense resulting from the ownership, maintenance, or use thereof, but shall not include insurance against bodily injury to the person.

2. For the purpose of this protection these contracts of insurance shall be subject only to such provisions as are contained in this chapter and shall consist of:

a. An application on blanks furnished by the association and signed by the insured or the insured's representative, which may contain in addition to other provisions:

(1) The value of the property.

(2) The proper description of the property.

(3) The amount of other insurance and the encumbrance on the property.

(4) Agreement to be governed by the articles of incorporation and bylaws in force at the time the policy is issued.

(5) A representation that the foregoing statements are true as far as the same are known to the insured or material to the risk.

(6) That the insurance shall take effect when approved by the secretary.

b. A policy issued by the association in accordance with its rules, and approved by the commissioner of insurance.

3. Such associations may insure risks of their members or may reinsure risks of other associations or companies.

4. The words *"persons"* and *"members"* as used in this chapter shall be construed to mean trustees, administrators, and all other individuals, public or private corporations or associations.

5. Insurance on the property of one or more minors may be granted on application of an adult parent, friend, or guardian who consents to become a member as representing such minor.

[C73, §1160; C97, §1759; S13, §1759-a; C24, 27, 31, 35, 39, §**9029;** C46, 50, 54, 58, 62, §518.1; C66, 71, 73, 75, 77, 79, 81, §518A.1]

88 Acts, ch 1112, §510; 2007 Acts, ch 137, §18; 2015 Acts, ch 30, §168

Referred to in §518A.44

518A.1A Plan of organization.

An entity seeking to organize as or convert to a state mutual insurance association shall submit a plan of organization to the commissioner for approval.

99 Acts, ch 165, §18

518A.2 State mutual insurance associations.

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

[C97, §1760; S13, §1759-b; C24, 27, 31, 35, 39, §**9030;** C46, 50, 54, 58, 62, §518.2; C66, 71, 73, 75, 77, 79, 81, §518A.2]

2002 Acts, ch 1111, §28

518A.3 Meetings.

Unless the time and place of holding the annual meeting of the members of any association transacting business under the provisions of this chapter are plainly stated in their articles of incorporation or bylaws, twenty days' notice of the time and place of holding of said meetings shall be given to all members of the association. Annual meetings may adjourn from time to time.

[S13, §1759-o; C24, 27, 31, 35, 39, §**9031;** C46, 50, 54, 58, 62, §518.3; C66, 71, 73, 75, 77, 79, 81, §518A.3]

518A.4 Amendments to articles. Repealed by 2009 Acts, ch 145, §54. See §518A.57.

518A.5 Articles and bylaws part of policy.

When such articles of incorporation and bylaws are printed on the policy they become a part thereof and are binding upon the association and the insured alike.

[C24, 27, 31, 35, 39, §**9033;** C46, 50, 54, 58, 62, §518.5; C66, 71, 73, 75, 77, 79, 81, §518A.5]

518A.6 Officers — election.

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

[C24, 27, 31, 35, 39, §**9034;** C46, 50, 54, 58, 62, §518.6; C66, 71, 73, 75, 77, 79, 81, §518A.6]

97 Acts, ch 186, §23; 2000 Acts, ch 1023, §40

518A.6A Bylaws.

The directors of the association may enact the bylaws and regulations not inconsistent with law as they consider necessary for the regulation and conduct of the business. A change in the bylaws shall not limit coverage under existing policies of insurance. An association shall file with the commissioner bylaws and amendments to bylaws within thirty days of adoption.

2000 Acts, ch 1023, §41

518A.7 Policies — issuance — conditions. Repealed by 2009 Acts, ch 145, §54.

518A.8 Articles — approval — bylaws.

The articles of incorporation, and any subsequent amendments, to the articles of an organization shall be filed with and approved by the commissioner of insurance before filing with the secretary of state. The organization shall file with the commissioner bylaws and subsequent amendments to the bylaws within thirty days of adoption of the bylaws or amendments.

[C97, §1761; S13, §1759-c; C24, 27, 31, 35, 39, §**9036;** C46, 50, 54, 58, 62, §518.8; C66, 71, 73, 75, 77, 79, 81, §518A.8]

99 Acts, ch 165, §19; 2009 Acts, ch 145, §38

518A.9 Premium charges.

An association, by action of its board of directors, may establish premium charges for the purpose of payment of losses and expenses and for the establishment or maintenance of a reserve fund.

[C97, §1765; S13, §1759-h; C24, 27, 31, 35, 39, §**9037;** C46, 50, 54, 58, 62, §518.9; C66, 71, 73, 75, 77, 79, 81, §518A.9]

2000 Acts, ch 1023, §43; 2009 Acts, ch 145, §39

Referred to in §519.11

518A.9A Assessments prohibited.

An association doing business under this chapter shall not levy an assessment on any member of the association.

2000 Acts, ch 1023, §44

518A.10 and 518A.11 Reserved.

518A.12 Investments.

1. *General considerations.* The following considerations apply in the interpretation of this section:

a. This section applies to the investments of state mutual insurance associations.

b. (1) The purpose of this section is to protect and further the interests of policyholders, claimants, creditors, and the public by providing standards for the development and administration of programs for the investment of the assets of associations organized under this chapter. These standards, and the investment programs developed by companies, shall take into account the safety of the association's principal, investment yield and growth,

stability in the value of the investment, and liquidity necessary to meet the association's expected business needs, and investment diversification.

(2) All investments made pursuant to this section shall have investment qualities and characteristics such that the speculative elements of the investments are not predominant.

c. Financial terms relating to state mutual insurance associations have the meanings assigned to them under statutory accounting methods. Financial terms relating to companies other than state mutual insurance associations have the meanings assigned to them under generally accepted accounting principles.

d. Investments shall be valued in accordance with the valuation procedures established by the national association of insurance commissioners, unless the commissioner requires or finds another method of valuation reasonable under the circumstances.

e. If an investment qualifies under more than one subsection, an association may elect to hold the investment under the subsection of its choice. This section does not prevent an association from electing to hold an investment under a subsection different from the one under which it previously held the investment.

2. *Definitions.* For purposes of this section:

a. "Admitted assets", for purposes of computing percentage limitations on particular types of investments, means the assets which are authorized to be shown on the national association of insurance commissioner's annual statement blank as admitted assets as of the December 31 immediately preceding the date the association acquires the investment.

b. "Clearing corporation" means as defined in section 554.8102.

c. "Custodian bank" means as defined in section 515.35.

d. "Issuer" means as defined in section 554.8201.

e. "Member bank" means a national bank, state bank, or trust company which is a member of the United States federal reserve system.

f. "National securities exchange" means an exchange registered under section 6 of the federal Securities Exchange Act of 1934 or an exchange regulated under the laws of Canada.

g. "Obligations" includes bonds, notes, debentures, transportation equipment certificates, domestic repurchase agreements, and obligations for the payment of money not in default as to payments of principal and interest on the date of investment, which constitute general obligations of the issuer or payable only out of certain revenues or certain funds pledged or otherwise dedicated for payment of principal and interest on the obligations. A lease is an obligation if the lease is assigned to the insurer and is nonterminable by the lessee upon foreclosure of any lien upon the leased property, and if rental payments are sufficient to amortize the investment over the primary lease term.

h. "Surplus", for purposes of computing percentage limitations on particular types of investments, means the surplus that is authorized to be shown on the commissioner's annual statement blank as surplus as of the December 31 immediately preceding the date the association acquires the investment.

3. *Investments in name of association or nominee and prohibitions.*

a. An association's investments shall be held in its own name or the name of its nominee, except as follows:

(1) Investments may be held in the name of a clearing corporation or of a custodian bank or in the name of the nominee of either on the following conditions:

(a) The clearing corporation, custodian bank, or nominee must be legally authorized to hold the particular investment for the account of others.

(b) When the investment is evidenced by a certificate and held in the name of a custodian bank or the nominee of a custodian bank, a written agreement shall provide that certificates so deposited shall at all times be kept separate and apart from other deposits with the depository, so that at all times they may be identified as belonging solely to the association making the deposit.

(c) If a clearing corporation is to act as depository, the investment may be merged or held in bulk in the name of the clearing corporation or its nominee with other investments deposited with the clearing corporation by any other person, if a written agreement between the clearing corporation and the association provides that adequate evidence of the deposit is to be obtained and retained by the association or a custodian bank.

(2) An association may participate through a member bank in the United States federal reserve book entry system, and the records of the member bank shall at all times show that the investments are held for the association or for specific accounts of the association.

(3) An investment may consist of an individual interest in a pool of obligations or a fractional interest in a single obligation if the certificate of participation or interest or the confirmation of participation or interest in the investment is issued in the name of the association, the name of the custodian bank, or the nominee of either, and, if the interest as evidenced by the certificate or confirmation is, if held by a custodian bank, kept separate and apart from the investments of others so that at all times the participation may be identified as belonging solely to the association making the investment.

(4) Transfers of ownership of investments held as described in paragraph *"a"*, subparagraph (1), subparagraph division (c), and subparagraphs (2) and (3), may be evidenced by bookkeeping entry on the books of the issuer of the investment, its transfer or recording agent, or the clearing corporation without physical delivery of a certificate evidencing the association's investment.

b. Except as provided in paragraph *"a"*, subparagraph (4), if an investment is not evidenced by a certificate, adequate evidence of the association's investment shall be obtained from the issuer or its transfer or recording agent and retained by the association, a custodian bank, or clearing corporation. Adequate evidence, for purposes of this paragraph, means a written receipt or other verification issued by the depository or issuer or a custodian bank which shows that the investment is held for the association.

4. *Investments.* Except as otherwise permitted by this section, an association organized under this chapter shall only invest in the following:

a. United States government obligations. Bonds or other evidences of indebtedness issued, assumed, or guaranteed by the United States of America, or by any agency or instrumentality of the United States of America, including investments in an open-end management investment company registered with the federal securities and exchange commission under the federal Investment Company Act of 1940, 15 U.S.C. §80a-1 et seq., and operated in accordance with 17 C.F.R. §270.2a-7, the portfolio of which is limited to the United States obligations described in this paragraph, and which are included in the national association of insurance commissioners' securities valuation office's United States direct obligation – full faith and credit list.

b. Certain development bank obligations. Obligations issued or guaranteed by the international bank for reconstruction and development, the Asian development bank, the inter-American development bank, the export-import bank, the world bank, or any United States government-sponsored organization of which the United States is a member, if the principal and interest is payable in United States dollars. An association shall not invest more than five percent of its total admitted assets in the obligations of any one of these banks or organizations, and shall not invest more than a total of ten percent of its total admitted assets in the obligations authorized by this paragraph.

c. State obligations. Obligations issued or guaranteed by a state, a political subdivision of a state, or an instrumentality of a state.

d. Canadian government obligations. Obligations issued or guaranteed by Canada, by an agency or province of Canada, by a political subdivision of such province, or by an instrumentality of any of those provinces or political subdivisions.

e. Corporate and business trust obligations. Obligations issued, assumed, or guaranteed by a corporation or business trust organized under the laws of the United States or a state, or the laws of Canada or a province of Canada, provided that an association shall not invest more than five percent of its admitted assets in the obligations of any one corporation or business trust. Investments shall be made only in investment grade bonds.

f. Stocks. Common stocks, common stock equivalents, mutual fund shares, securities convertible into common stocks or common stock equivalents, or preferred stocks issued or guaranteed by a corporation incorporated under the laws of the United States or a state, or the laws of Canada or a province of Canada, or limited partnerships publicly traded on a nationally established stock exchange in the United States. Aggregate investments in nondividend paying stocks shall not exceed five percent of surplus.

(1) Stocks purchased under this lettered paragraph shall not exceed fifty percent of surplus.

(2) With the approval of the commissioner, an association may invest in common stocks, preferred stocks, or other securities of one or more subsidiaries provided that both of the following occur:

(a) After such investments the association's surplus as regards policyholders will be reasonable in relation to the association's outstanding liabilities and adequate to its financial needs.

(b) The association owns one hundred percent of the stock of the subsidiary.

(3) An association shall not invest more than ten percent of its surplus in the stocks of any one corporation.

g. Home office real estate. With the prior approval of the commissioner, funds may be invested in home office real estate for the association or a subsidiary, at the direction of the board of directors. The association or subsidiary shall obtain the approval of the commissioner prior to the sale or disposition of home office real estate owned by the association or subsidiary. Effective as to home office real estate acquired on or after July 1, 2009, an association shall not invest more than twenty percent of its total admitted assets in such real estate. With the prior approval of the commissioner, an association may exceed the real estate investment limitation to effectuate a merger with, or the acquisition of, another association.

[C24, 27, 31, 35, 39, §**9040;** C46, 50, 54, 58, 62, §518.12; C66, 71, 73, 75, 77, 79, 81, §518A.12]

95 Acts, ch 185, §33; 96 Acts, ch 1138, §4, 84; 2000 Acts, ch 1023, §45; 2005 Acts, ch 70, §46; 2006 Acts, ch 1010, §142; 2007 Acts, ch 137, §19; 2009 Acts, ch 41, §263; 2009 Acts, ch 145, §40 – 42; 2010 Acts, ch 1061, §68; 2013 Acts, ch 124, §24; 2014 Acts, ch 1092, §187

518A.13 through 518A.17 Reserved.

518A.18 Annual report — penalties.

1. An association doing business under this chapter, on or before March 1 of each year, shall prepare under oath and file with the commissioner of insurance an accurate and complete statement of the condition of the association as of the last day of the preceding calendar year. The statement shall conform to the annual statement blank prepared pursuant to instructions prescribed by the commissioner. All financial information reflected in the annual report shall be kept and prepared pursuant to accounting practices and procedures prescribed by the commissioner. Statements filed with the commissioner pursuant to this section shall be tabulated and published by the commissioner of insurance in the annual report of insurance.

2. An association that fails to timely file the statement required under subsection 1 is in violation of this section and shall pay an administrative penalty of five hundred dollars for each violation to the treasurer of state for deposit as provided in section 505.7.

3. The commissioner may give notice to an association that the association has not timely filed the statement required under subsection 1 and is in violation of this section. If the association fails to file the required statement and comply with this section within ten days of the date of the notice, the association shall pay an additional administrative penalty of one hundred dollars for each day that each failure continues to the treasurer of state for deposit as provided in section 505.7.

4. The association's right to transact new business in this state shall immediately cease until the association has fully complied with this chapter.

[C73, §1160; C97, §1762, 1763; S13, §1759-d, -e; C24, 27, 31, 35, 39, §**9044;** C46, 50, 54, 58, 62, §518.18; C66, 71, 73, 75, 77, 79, 81, §518A.18]

85 Acts, ch 228, §8; 2000 Acts, ch 1023, §46; 2006 Acts, ch 1117, §92; 2009 Acts, ch 181, §84

518A.19 Proof of loss.

A proof of loss shall contain such information as is required by the policy provisions of the association, which information shall be signed and sworn to by the insured.

[C24, 27, 31, 35, 39, §**9045;** C46, 50, 54, 58, 62, §518.19; C66, 71, 73, 75, 77, 79, 81, §518A.19]
2009 Acts, ch 145, §43

518A.20 Five-day limit.

In case of damage or loss to livestock by fire or lightning or loss or damage to automobiles or aircraft by theft or fire, notice of such loss must be given the association by mailing written notice within five days from the time such loss or damage occurred.

[C24, 27, 31, 35, 39, §**9046;** C46, 50, 54, 58, 62, §518.20; C66, 71, 73, 75, 77, 79, 81, §518A.20]

518A.21 Ten-day limit.

In case of loss to growing crops by hail, notice of such loss must be given the association by mailing a certified mail letter within ten days from the time such loss or damage occurred.

[C24, 27, 31, 35, 39, §**9047;** C46, 50, 54, 58, 62, §518.21; C66, 71, 73, 75, 77, 79, 81, §518A.21]

518A.22 Limitation of action.

A suit or action on a policy for the recovery of any claim shall not be sustainable in any court of law or equity unless all requirements of the policy have been complied with, and unless commenced within twelve months next after the inception of the loss.

[C24, 27, 31, 35, 39, §**9048;** C46, 50, 54, 58, 62, §518.22; C66, 71, 73, 75, 77, 79, 81, §518A.22]
2009 Acts, ch 145, §44

518A.23 Presumption as to value. Repealed by 2009 Acts, ch 145, §54.

518A.24 Value of building — liability.

The association issuing such policy may show the actual value of said property at date of policy, and any depreciation in the value thereof before the loss occurred; but the said association shall be liable for the actual value of the property insured at the date of the loss, unless such value exceeds the amount of insurance stated in the policy.

[C24, 27, 31, 35, 39, §**9050;** C46, 50, 54, 58, 62, §518.24; C66, 71, 73, 75, 77, 79, 81, §518A.24]

518A.25 Value of personal property — value of crops.

In any action on a policy to recover loss or damage on personal property, the association shall not be liable in excess of the amount of damage or loss at the time the loss or damage occurs; provided that the value of growing crops may be stated in the policy or contract.

[C24, 27, 31, 35, 39, §**9051;** C46, 50, 54, 58, 62, §518.25; C66, 71, 73, 75, 77, 79, 81, §518A.25]

518A.26 Arbitration.

No recovery on a policy or contract of insurance shall be defeated for failure of the insured to comply, after a loss occurs, with any arbitration or appraisement stipulation as to fixing the value of property. No arbitration shall take place except substantially where the property was situated at the time of loss. Contracts of insurance to indemnify against loss by hail to growing crops which stipulate for arbitration shall provide that the decision of the majority of the arbitrators shall be final only as to the arbitration.

[C31, 35, §9051-c1; C39, §**9051.1;** C46, 50, 54, 58, 62, §518.26; C66, 71, 73, 75, 77, 79, 81, §518A.26]

518A.27 Reinsurance — quo warranto.

The commissioner of insurance may address inquiries to any association in relation to its doings and condition and any association so addressed shall promptly reply thereto in writing. If the commissioner of insurance is then satisfied that the association has failed to comply with any provisions of this law, or is exceeding its powers, or is not carrying out its contracts in good faith; or is transacting business fraudulently or soliciting insurance in territories where it is not legally admitted to do business, or is in such condition as to render the further

transaction of business by it hazardous to the public or its policyholders, the business under the commissioner's supervision and with the consent of the association may be reinsured in some mutual association, or the commissioner may present the facts relating thereto to the attorney general and if the circumstances warrant the attorney general may commence an action in quo warranto in a court of competent jurisdiction.

[C97, §1766; S13, §1759-g; C24, 27, 31, 35, 39, §**9052;** C46, 50, 54, 58, 62, §518.27; C66, 71, 73, 75, 77, 79, 81, §518A.27]

518A.28 Reserved.

518A.29 Cancellation or nonrenewal by association — notice.

1. *Cancellation by insured.* A policy shall be canceled at any time at the request of the insured.

2. *Cancellation by association.*

a. Except as provided in paragraph *"b"*, notice of cancellation is not effective unless mailed or delivered by the association to the named insured at least thirty days before the effective date of cancellation.

b. Notice of cancellation resulting from nonpayment of a premium or installment provided for in the policy, or provided for in a note or contract for the payment of such premium or installment, is not effective unless mailed or delivered by the association to the named insured at least ten days prior to the date of cancellation.

c. If a notice of cancellation under paragraph *"a"* or *"b"* fails to include the reason for such cancellation, the association, upon receipt of a timely request by the named insured, shall provide the reason for the cancellation in writing.

3. *Nonrenewal by association.* A notice of intention not to renew is not effective unless mailed or delivered by the insurer to the named insured at least thirty days prior to the expiration date of the policy. If the reason does not accompany the notice of nonrenewal, the association, upon receipt of a timely request by the named insured, shall provide in writing the reason for the nonrenewal.

4. *Notice.* Service of notice under subsection 2 or 3 may be delivered in person or mailed to the insured at the insured's post office address as given in or upon the policy, or to such other address as the insured shall have given to the association in writing. A post office department certificate of mailing shall be deemed proof of receipt of such mailing. If in either case the cash payments exceed the amount properly chargeable, the excess shall be refunded to the insured.

[S13, §1759-m; C24, 27, 31, 35, 39, §**9054;** C46, 50, 54, 58, 62, §518.29; C66, 71, 73, 75, 77, 79, 81, §518A.29]

2000 Acts, ch 1023, §47; 2001 Acts, ch 69, §36; 2003 Acts, ch 91, §48; 2009 Acts, ch 145, §45

518A.30 through 518A.34 Reserved.

518A.35 Annual tax.

1. A state mutual insurance association doing business under this chapter shall on or before the first day of March, each year, pay to the director of revenue, or a depository designated by the director, a sum equivalent to the applicable percent of the gross receipts from premiums and fees for business done within the state, including all insurance upon property situated in the state without including or deducting any amounts received or paid for reinsurance. However, a company reinsuring windstorm or hail risks written by county mutual insurance associations is required to pay the applicable percent tax on the gross amount of reinsurance premiums written upon such risks, but after deducting the amount returned upon canceled policies and rejected applications covering property situated within the state, and dividends returned to policyholders on property situated within the state. For purposes of this section, *"applicable percent"* means the same as specified in section 432.1, subsection 4.

2. Except as provided in subsection 3, the premium tax shall be paid on or before March 1 of the year following the calendar year for which the tax is due. The commissioner of

insurance may suspend the certificate of authority of a state mutual insurance association that fails to pay its premium tax on or before the due date.

3. *a.* Each state mutual insurance association transacting business in this state whose Iowa premium tax liability for the preceding calendar year was one thousand dollars or more shall remit on or before June 1, on a prepayment basis, an amount equal to one-half of the premium tax liability for the preceding calendar year.

b. In addition to the prepayment amount in paragraph *"a"*, each association shall remit on or before August 15, on a prepayment basis, an additional amount equal to the following percent of the premium tax liability for the preceding calendar year as follows:

(1) For prepayment in the 2003 and 2004 calendar years, eleven percent.

(2) For prepayment in the 2005 calendar year, twenty-six percent.

(3) For prepayment in the 2006 and subsequent calendar years, fifty percent.

c. The sums prepaid by a state mutual insurance association under this subsection shall be allowed as credits against its premium tax liability for the calendar year during which the payments are made. If a prepayment made under this subsection exceeds the annual premium tax liability, the excess shall be allowed as a credit against subsequent prepayment or tax liabilities. The commissioner of insurance may suspend the certificate of authority of an association that fails to make a prepayment on or before the due date.

[C24, 27, 31, 35, 39, §**9060;** C46, 50, 54, 58, 62, §518.35; C66, 71, 73, 75, 77, 79, 81, §518A.35]

2000 Acts, ch 1023, §48; 2001 Acts, ch 24, §57; 2002 Acts, ch 1050, §46; 2003 Acts, ch 145, §286; 2003 Acts, ch 179, §137, 159; 2004 Acts, ch 1175, §340, 348; 2006 Acts, ch 1117, §93

518A.36 Reserved.

518A.37 Surplus.

An association organized under this chapter before July 1, 2009, shall at all times maintain a surplus of not less than one hundred thousand dollars, or one-tenth of one percent of the gross risk in force, whichever is greater. An association organized under this chapter on or after July 1, 2009, shall at all times maintain a surplus of not less than two hundred thousand dollars or one-tenth of one percent of the gross risk in force, whichever is greater.

90 Acts, ch 1234, §71; 99 Acts, ch 165, §20; 2002 Acts, ch 1111, §29; 2009 Acts, ch 145, §46

518A.38 Reserved.

518A.39 "Debt" defined.

In ascertaining such corporate indebtedness, a debt shall be deemed to exist, on account of its liabilities on the policy certificates or contracts of insurance issued by it equal to the amount of surplus or other funds accumulated by such corporation for the purpose of fulfilling its policy contracts of insurance and which can be used for no other purpose.

[C24, 27, 31, 35, 39, §**9064;** C46, 50, 54, 58, 62, §518.39; C66, 71, 73, 75, 77, 79, 81, §518A.39]

518A.40 Annual fees — renewals — penalties.

1. Such associations shall pay the same fees for annual reports and annual certificates of authority as are required to be paid by domestic companies organized and doing business under chapter 515, which certificates shall expire June 1 of the year following the date of issue.

2. A certificate of authority of an association formed under this chapter shall be renewed annually so long as the organization transacts its business in accordance with all legal requirements. Such an association shall submit annually, on or before March 1, a completed application for renewal of its certificate of authority.

3. The commissioner shall refuse to renew the certificate of authority of a state mutual insurance association that fails to comply with the provisions of this chapter and the association's right to transact new business in this state shall immediately cease until the association has so complied.

4. An association that fails to timely file the application for renewal required under

subsection 2 is in violation of this section and shall pay an administrative penalty of five hundred dollars to the treasurer of state for deposit as provided in section 505.7.

[C73, §1160; C97, §1764; S13, §1759-f; C24, 27, 31, 35, 39, §**9065;** C46, 50, 54, 58, 62, §518.40; C66, 71, 73, 75, 77, 79, 81, §518A.40]

2006 Acts, ch 1117, §94; 2009 Acts, ch 145, §47; 2009 Acts, ch 181, §85

518A.41 Insurance producers to be licensed.

A person or corporation shall not solicit an application for insurance for any association in this state without having procured from the commissioner of insurance a license authorizing the person or corporation to act as an insurance producer.

[C24, 27, 31, 35, 39, §**9066;** C46, 50, 54, 58, 62, §518.41; C66, 71, 73, 75, 77, 79, 81, §518A.41]

2002 Acts, ch 1119, §73; 2004 Acts, ch 1110, §58

518A.42 Limitation on termination of independent insurance producers.

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

2002 Acts, ch 1111, §30

518A.43 Reserved.

518A.44 Reinsurance.

A state mutual insurance association may reinsure a part or all of its coverages written pursuant to this chapter with an association operating under this chapter, or with any other association or company licensed in this state and authorized to write the kinds of insurance enumerated in section 518A.1.

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

95 Acts, ch 185, §35; 99 Acts, ch 165, §21; 2000 Acts, ch 1023, §49; 2002 Acts, ch 1111, §31

Referred to in §521.13

518A.45 through 518A.50 Reserved.

518A.51 Loans to officers prohibited.

Assets or other funds shall not be loaned directly or indirectly to an officer, director, or employee of the association, or directly or indirectly to a relative of an officer, director, or employee of the association.

95 Acts, ch 185, §36

518A.52 Form — approval.

The form of all policies, applications, agreements, and endorsements modifying the provisions of policies, and all permits and riders used in this state, issued or proposed to be issued by a state mutual insurance association doing business in this state under this chapter, shall first be examined and approved by the commissioner of insurance.

95 Acts, ch 185, §37; 2000 Acts, ch 1023, §50

Referred to in §518A.53

518A.53 Failure to file copy.

Upon the failure of a state mutual insurance association to file a copy of its forms of policies or contracts pursuant to section 518A.52, the commissioner of insurance may suspend its

authority to transact business within the state until such forms of policies or contracts have been filed and approved.

95 Acts, ch 185, §38; 2000 Acts, ch 1023, §51

518A.54 Disapproval of filings.

If the commissioner finds that a filing does not meet the requirements of this chapter, written notice of disapproval shall be sent to the state mutual insurance association specifying in what respect the filing fails to meet the requirements of this chapter and stating that the filing is not effective. If a filing is disapproved by the commissioner, the association may request a hearing on the disapproval within thirty days. The association bears the burden of proving compliance with the standards established by this chapter.

If, at any time after a form has been approved, the commissioner finds that the form no longer meets the requirements of this chapter, the commissioner may order the discontinuance of the use of the form. The order of discontinuance shall be in writing and may be issued only after a hearing with at least ten days' prior notice to all state mutual insurance associations affected by the order. The order shall state the grounds upon which the order is based and when the order of discontinuance is effective.

95 Acts, ch 185, §39; 2000 Acts, ch 1023, §52

518A.55 Certificate suspension.

The commissioner of insurance may suspend a state mutual insurance association's certificate of authority to do business if the association neglects or fails to comply with this chapter.

95 Acts, ch 185, §40; 2000 Acts, ch 1023, §53

518A.56 Rulemaking authority.

The commissioner may adopt rules, pursuant to chapter 17A, as necessary for the administration of this chapter.

2009 Acts, ch 145, §48

518A.57 Powers of members.

Members of the association shall have the power to make or amend articles of incorporation at any membership meeting, provided that notice of such proposed addition or amendment has been mailed to each member of the association at least ten days in advance of the meeting in which such proposed action is to be considered, and provided that no such addition or amendment shall become effective until approved by the commissioner of insurance and recorded in the office of the secretary of state.

2009 Acts, ch 145, §49

CHAPTER 518B

RIOT REINSURANCE PROGRAM

Referred to in §87.4, 296.7, 331.301, 364.4, 505.28, 505.29, 669.14, 670.7

518B.1	Definitions.	518B.5	Warrants issued — overage fund.
518B.2	Reimbursement fund created.	518B.6	Insolvent insurers.
518B.3	Secretary reimbursed.	518B.7	Recovery factor included.
518B.4	Insurers assessed.		

518B.1 Definitions.

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

1. *"The secretary"* means the secretary of the United States department of housing and urban development.

2. *"Farm property"* means the residence, personal effects, other farm buildings and other personal property used in conjunction with a farming operation.

3. *"The Act"* means Section 1223 of the Housing and Urban Development Act of 1968, Pub. L. No. 90-448, 90th Congress approved August 1, 1968.

4. *"The fund"* or *"fund"* means the federal riot reinsurance reimbursement fund referred to in this chapter.

5. *"Commissioner"* means the commissioner of insurance.

[C71, 73, 75, 77, 79, 81, §518B.1]
2006 Acts, ch 1010, §143

518B.2 Reimbursement fund created.

There is hereby created the federal riot reinsurance reimbursement fund in the office of the treasurer of state which shall be operated under the joint control of the director of the department of administrative services and the commissioner. The fund shall consist of all payments made by insurers in accordance with the provisions of this chapter. The director of the department of administrative services shall have the same power to enforce the collection of the assessments provided hereunder as any other obligation due the state.

[C71, 73, 75, 77, 79, 81, §518B.2]
2003 Acts, ch 145, §286

518B.3 Secretary reimbursed.

The commissioner shall reimburse the secretary in an amount up to five percent of the aggregate property, except farm property insurance premiums earned in this state during the calendar year immediately preceding the calendar year with respect to which the secretary paid losses on lines of insurance reinsured by the secretary in this state during that year and for which the secretary claims reimbursement from the fund in accordance with the Act.

[C71, 73, 75, 77, 79, 81, §518B.3]

518B.4 Insurers assessed.

Whenever the secretary shall, in accordance with the Act, present to the state a request for reimbursement under the Act, the commissioner shall immediately assess all insurers which, during the calendar year with respect to which reimbursement is requested by the secretary, were licensed to write and engaged in writing property insurance business, including the property insurance components of multiperil policies on a direct basis, in this state. The amount of each such insurer's assessment shall be calculated by multiplying the amount of the reimbursement requested by the secretary by a fraction the numerator of which is the insurer's premium actually written in this state in that calendar year on habitational and commercial property, except farm property, risks and the denominator of which is the aggregate premiums written by all licensed insurers on such property risks. In no event shall any insurer's assessment be less than one hundred dollars.

[C71, 73, 75, 77, 79, 81, §518B.4]
Referred to in §518B.6, 518B.7

518B.5 Warrants issued — overage fund.

The secretary shall be reimbursed up to the amount requested by warrants issued against the fund by the director of the department of administrative services upon vouchers approved by the director of the department of administrative services and the commissioner. If the assessment produces a fund greater than the amount requested by the secretary, the overage shall be placed in a special fund in the office of the treasurer of state under the control of the commissioner and the director of the department of administrative services and shall be applied to any subsequent requests by the secretary for reimbursement of losses paid on lines of insurance reinsured by the secretary in this state in accordance with the Act.

In the event that the provisions of this chapter and the assessments made thereunder are no

longer needed in order to effectuate the program for which they were intended, the amounts remaining in the special fund shall inure to the general fund of the state.

[C71, 73, 75, 77, 79, 81, §518B.5]

2003 Acts, ch 145, §286

518B.6 Insolvent insurers.

In the event any insurer fails, by reason of insolvency, to pay any assessment, the commissioner shall cause the reimbursement ratios computed under section 518B.4 to be immediately recalculated excluding therefrom the insolvent insurer, so that its assessment is in effect assumed and redistributed among the remaining insurers.

[C71, 73, 75, 77, 79, 81, §518B.6]

518B.7 Recovery factor included.

Insurers shall include in filings submitted pursuant to chapter 515A, a factor, applicable to the line or lines of insurance on which the assessment is levied, sufficient to recover within not more than three years after the date of assessment any amounts so assessed under section 518B.4 during the preceding calendar year together with the amount of costs and expenses reasonably attributable to such assessment and recovery thereof.

[C71, 73, 75, 77, 79, 81, §518B.7]

CHAPTER 518C

COUNTY AND STATE MUTUAL INSURANCE GUARANTY ASSOCIATION

Referred to in §87.4, 296.7, 331.301, 364.4, 505.28, 505.29, 669.14, 670.7

518C.1	Title.	518C.10	Nonduplication of recovery.
518C.2	Scope.	518C.11	Prevention of insolvencies.
518C.3	Definitions.	518C.12	Examination of the association.
518C.4	Association established.	518C.13	Tax exemption.
518C.5	Board of directors.	518C.14	Recognition of assessments in rates.
518C.6	Duties and powers of the association.	518C.15	Immunity.
518C.7	Plan of operation.	518C.16	Stay of proceedings.
518C.8	Duties and powers of the commissioner.	518C.17	Actions against the association.
518C.9	Effect of paid claims.	518C.18	Timely filing of claims.
		518C.19	Prohibited advertising.

518C.1 Title.

This chapter shall be known and may be cited as the *"Iowa County and State Mutual Insurance Guaranty Association Act"*.

2000 Acts, ch 1035, §1

518C.2 Scope.

This chapter applies to direct insurance authorized to be written by an insurer licensed to transact insurance business in this state under chapter 518 or 518A.

2000 Acts, ch 1035, §2

518C.3 Definitions.

As used in this chapter unless the context otherwise requires:

1. *"Association"* means the Iowa county and state mutual insurance guaranty association established pursuant to section 518C.4.

2. *"Claimant"* means an insured making a first-party claim or a person instituting a liability claim against an insolvent insurer. *"Claimant"* does not include a person who is an affiliate of an insolvent insurer.

3. *"Commissioner"* means the commissioner of insurance.

4. *a. "Covered claim"* means an unpaid claim, including one for unearned premiums, which arises out of and is within the coverage and subject to the applicable limits of an insurance policy subject to this chapter which is issued by an insurer, if the insurer becomes an insolvent insurer on or after July 1, 2000, and one of the following conditions exists:

(1) The claimant is a resident of this state at the time of the event giving rise to the covered claim. For a claimant other than an individual, the residence of the claimant is the state in which its principal place of business is located.

(2) The claim is a first-party claim by the claimant for damage to property permanently located in this state.

b. (1) *"Covered claim"* does not include any of the following:

(a) An amount due a reinsurer, insurer, insurance pool, underwriting association, or other group assuming insurance risks, as subrogation, contribution, indemnity recoveries, or otherwise.

(b) An amount that constitutes the portion of a claim that is within an insured's deductible or self-insured retention.

(c) A fee or other amount relating to goods or services sought by or on behalf of an attorney, adjuster, witness, or other provider of goods or services retained by the insolvent insurer or by an insured prior to the date the insurer was declared insolvent.

(d) An amount that constitutes a fine, penalty, interest, or punitive or exemplary damages.

(e) A fee or other amount sought by or on behalf of an attorney, adjuster, witness, or other provider of goods or services retained by the insured or claimant in connection with the assertion of any claim, covered or otherwise, against the association.

(f) A claim filed with the association or with a liquidator for protection afforded under the insured's policy or contract for incurred but not reported losses or expenses.

(g) An amount that is an obligation owed to or on behalf of an affiliate of, as defined in section 521A.1, an insolvent insurer.

(2) Notwithstanding subparagraph (1), subparagraph divisions (a) through (g), a person is not prevented from presenting a noncovered claim to the insolvent insurer or its liquidator. However, the noncovered claim shall not be asserted against any other person, including the person to whom benefits were paid or the insured of the insolvent insurer, except to the extent that the claim is outside the coverage of the policy issued by the insolvent insurer.

5. *"Insolvent insurer"* means an insurer against which a final order of liquidation with a finding of insolvency has been entered on or after July 1, 2000, by a court of competent jurisdiction of this state.

6. *"Insurer"* means a person licensed to transact insurance business in this state under either chapter 518 or chapter 518A either at the time the policy was issued or when the insured event occurred.

7. *"Net direct written premiums"* means direct gross premiums written in this state on insurance policies subject to this chapter, less return premiums and dividends paid or credited to policyholders on such direct business. *"Net direct written premiums"* does not include premiums on a contract between insurers or reinsurers.

8. *"Person"* means an individual, corporation, partnership, association, or voluntary organization.

2000 Acts, ch 1035, §3; 2011 Acts, ch 70, §34, 35; 2012 Acts, ch 1023, §128

518C.4 Association established.

An Iowa county and state mutual insurance guaranty association is established as a nonprofit unincorporated legal entity. An insurer shall be a member of the association as a condition of the insurer's authority to transact insurance business in this state. The association shall perform its functions under a plan of operation established and approved pursuant to section 518C.7 and shall exercise its powers through a board of directors established under section 518C.5. Except as otherwise provided in such plan of operation, an annual or special meeting of members of the association may be held on call as directed by the association's board of directors or by the commissioner of insurance. Written notice shall be given not less than ten days prior to the meeting by ordinary mail to each member

at the member's principal office as shown by the records in the commissioner's office. The notice shall state the time and place, and in the case of a special meeting, the purpose of the meeting. Members may vote in person and ten members present in person shall constitute a quorum for the transaction of any business.

2000 Acts, ch 1035, §4
Referred to in §518C.3

518C.5 Board of directors.

1. The board of directors of the association shall consist of the officers and directors of the mutual insurance association of Iowa or its successor association, but only if such officers and directors are employed by a corporation organized as a county mutual insurance association pursuant to chapter 518 or a state mutual insurance association pursuant to chapter 518A.

2. An officer and director of the mutual insurance association of Iowa shall serve in the same capacity on the association board as the officer or director serves the mutual insurance association of Iowa or its successor association, but only if the officer and director is employed by a corporation organized as a county mutual insurance association pursuant to chapter 518 or a state mutual insurance association pursuant to chapter 518A.

2000 Acts, ch 1035, §5; 2011 Acts, ch 70, §36
Referred to in §518C.4

518C.6 Duties and powers of the association.

1. The association is subject to all of the following:

a. (1) The association is obligated to pay a covered claim as follows:

(a) A covered claim existing prior to the final order of liquidation and arising within thirty days after the final order of liquidation.

(b) A covered claim existing before the policy expiration date if the expiration date is less than thirty days after the final order of liquidation.

(c) A covered claim existing before the insured replaces the policy or causes its cancellation, if the insured replaces or cancels the policy within thirty days of the final order of liquidation.

(2) An obligation under subparagraph (1) is satisfied by paying to the claimant an amount as follows:

(a) An amount not exceeding ten thousand dollars per policy for a covered claim for the return of unearned premium.

(b) An amount not exceeding the lesser of the policy limits or five hundred thousand dollars per claim for all covered claims for all damages arising out of any one or a series of accidents, occurrences, or incidents, regardless of the number of persons making claims or the number of applicable policies.

b. The association is obligated to pay covered claims subject to a limitation as established by the rights, duties, and obligations under the policy issued by the insolvent insurer.

c. (1) The association shall assess member insurers amounts necessary to pay the obligations of the association under paragraphs *"a"* and *"b"* subsequent to an insolvency, the expenses of handling covered claims subsequent to an insolvency, the cost of examinations under section 518C.12, and other expenses as authorized by this chapter. The assessment of each member insurer shall be in the proportion that the net direct written premiums of the member insurer for the preceding calendar year bear to the net direct written premiums of all member insurers for the preceding calendar year. Each member insurer shall be notified of the assessment not less than thirty days before it is due. A member insurer shall not be assessed in any year an amount greater than two percent of that member insurer's net direct written premiums for the preceding calendar year. If the maximum assessment, together with the other assets of the association, do not provide in any one year an amount sufficient to make all necessary payments, the funds available shall be prorated and the unpaid portion shall be paid as soon as funds become available. The association may exempt or defer, in whole or in part, the assessment of any member insurer if the assessment would cause the member insurer's financial statement to reflect amounts of surplus less than the minimum amounts required for a certificate of authority to transact insurance business. A

member insurer serving as a servicing facility pursuant to this section may set off against any assessment authorized payments made on covered claims and expenses incurred in the payment of such claims by the member insurer. All overdue and unpaid assessments shall draw interest at the rate of seven percent per annum.

(2) The association may pursue and retain for its own account salvage and subrogation recoverable on paid covered claim obligations. An obligation of the association to defend an insured shall cease upon the association's payment of an amount equal to the lesser of the association's covered claim obligation or the applicable policy limits.

d. The association shall investigate claims filed with the association and adjust, compromise, settle, defend, and pay covered claims to the extent of the association's obligation and deny all other claims.

e. The association shall notify such persons as the commissioner directs under section 518C.8, subsection 2, paragraph *"a"*.

f. The association shall process claims through its employees or through one or more member insurers or other persons designated as servicing facilities. Designation of a servicing facility is subject to the approval of the commissioner, but such designation may be declined by a member insurer.

g. The association shall reimburse each servicing facility for obligations of the association paid by the facility and for expenses incurred by the facility while handling claims on behalf of the association, and pay the other expenses of the association authorized by this chapter.

2. The association may do any of the following:

a. Appear in, defend, and appeal an action on a claim brought against the association.

b. Employ or retain persons necessary to handle claims and perform other duties of the association.

c. Borrow funds necessary to effect the purposes of this chapter in accord with the plan of operation.

d. Sue or be sued.

e. Negotiate and become a party to contracts necessary to carry out the purposes of this chapter.

f. Perform such other acts necessary or proper to effectuate the purposes of this chapter.

3. The board of directors, in its discretion, may from time to time refund excess amounts to member insurers that are not needed for current or projected liabilities of a particular insolvency. The amount of each refund is equal to the net direct written premiums of the member insurer for the preceding calendar year divided by the net written premiums of all member insurers for the preceding calendar year, multiplied by the total amount to be refunded to all members. At the discretion of the board of directors, an assessment or refund of any member insurer in an amount not to exceed twenty-five dollars may be waived.

2000 Acts, ch 1035, §6; 2011 Acts, ch 70, §37; 2012 Acts, ch 1023, §157
Referred to in §518C.7, 518C.10

518C.7 Plan of operation.

1. *a.* The association shall submit a plan of operation to the commissioner, together with any amendments necessary or suitable to ensure the fair, reasonable, and equitable administration of the association. The plan of operation and any amendment become effective upon written approval by the commissioner.

b. If the association fails to submit a suitable plan of operation within ninety days following July 1, 2000, or if at any time after submission of a suitable plan the association fails to submit suitable amendments to the plan, the commissioner, after notice and opportunity for hearing, shall adopt rules necessary or advisable to effectuate the provisions of this chapter. Such rules shall continue in force until modified by the commissioner or superseded by a plan submitted by the association and approved by the commissioner.

2. A member insurer shall comply with the association's plan of operation.

3. The plan of operation shall provide for all of the following:

a. Procedures for the performance of the duties and execution of the powers of the association under section 518C.6.

b. Procedures for managing the assets of the association.

c. Procedures by which claims may be filed with the association and acceptable forms of proof of covered claims. Notice of claims to the receiver or liquidator of the insolvent insurer constitutes notice to the association or its agent, and a list of such claims shall be periodically submitted to the association or similar organization in another state by the receiver or liquidator.

d. The place and time for meetings of the board of directors, as necessary.

e. Procedures for keeping records of all financial transactions of the association, its agents, and the board of directors.

f. That any member insurer aggrieved by a final action or decision of the association may appeal the action or decision to the commissioner within thirty days after the action or decision.

g. Additional provisions necessary or proper for the performance of the duties and execution of the powers of the association.

4. The plan of operation may delegate any or all duties and powers of the association, except those under section 518C.6, subsection 1, paragraph *"c"*, and section 518C.6, subsection 2, paragraph *"c"*, to a person with the approval of both the board of directors and the commissioner. Such delegation shall only be made to a person extending protection which is not substantially less favorable and effective than that provided by this chapter. Such person shall be reimbursed as a servicing facility and shall be paid for the performance of any other functions of the association.

2000 Acts, ch 1035, §7; 2012 Acts, ch 1023, §157; 2013 Acts, ch 30, §127
Referred to in §518C.4

518C.8 Duties and powers of the commissioner.

1. The commissioner shall do both of the following:

a. Notify the association of the existence of an insolvent insurer not later than three days after the commissioner receives notice of the determination of the insolvency.

b. Upon request of the board of directors, provide the association with a statement of the net direct written premiums of each member insurer.

2. The commissioner may do any of the following:

a. Require that the association notify the insureds of the insolvent insurer and any other interested parties of the determination of insolvency and of their rights under this chapter. The notification shall be by regular mail at their last known address, but, if sufficient information for notification by mail is not available, notice by publication in a newspaper of general circulation is sufficient.

b. Suspend or revoke, after notice and opportunity for hearing, the certificate of authority to transact insurance business in this state of any member insurer which fails to pay an assessment when due or fails to comply with the plan of operation. As an alternative, the commissioner may levy a penalty on any member insurer which fails to pay an assessment when due. Such penalty shall not exceed five percent of the unpaid assessment per month, except that a penalty shall not be less than one hundred dollars per month.

c. Revoke the designation of any servicing facility if the commissioner finds claims are being processed unsatisfactorily.

3. Judicial review of an action of the commissioner may be sought pursuant to chapter 17A.

2000 Acts, ch 1035, §8
Referred to in §518C.6

518C.9 Effect of paid claims.

1. A person recovering under a claim made pursuant to this chapter is deemed to have assigned the person's rights under the policy to the association to the extent of the person's recovery from the association. A claimant seeking the protection of this chapter shall cooperate with the association to the same extent as such claimant would have been required to cooperate with the insolvent insurer. The association has no cause of action against a claimant for any sums the association has paid out.

2. The association or a similar entity in another state shall be recognized as a claimant

in the liquidation of an insolvent insurer for any amounts paid by the association or similar entity on covered claim obligations as determined under this chapter or under similar law in another state. The association or similar entity shall receive dividends and any other distributions at the priority set forth under the applicable liquidation law. The receiver, liquidator, or statutory successor of an insolvent insurer is bound by determinations of covered claim eligibility under this chapter and by settlements of covered claims made by the association or a similar organization in another state. The court having jurisdiction shall grant such claims priority equal to that which the claimant would have been entitled in the absence of this chapter against the assets of the insolvent insurer. The expenses of the association or similar organization in handling claims shall be accorded the same priority as the liquidator's expenses.

3. The association shall periodically file with the receiver, liquidator, or statutory successor of the insolvent insurer statements of the covered claims paid by the association and estimates of anticipated claims on the association, which statements shall preserve the rights of the association against the assets of the insolvent insurer.

2000 Acts, ch 1035, §9

518C.10 Nonduplication of recovery.

1. A person having a claim under another policy, which claim arises out of the same facts which give rise to a covered claim, is first required to exhaust the person's rights under the other policy. An amount recovered or recoverable by a person under another insurance policy shall be credited against the liability of the association under section 518C.6, subsection 1, paragraph *"a"*. For purposes of this section, *"another insurance policy"* means a policy issued by an insurance company, whether a member insurer or not, which policy insures against any of the types of risks insured by an insurance company authorized to transact insurance business under chapter 518 or 518A, or comparable statutes of another state, except those types of risks set forth in chapters 508 and 514.

2. A person having a claim which may be recovered under more than one insurance guaranty association or an equivalent entity shall seek recovery first from the association of the place of residence of the insured. However, if the claim is a first-party claim for damage to property with a permanent location, recovery shall be first sought from the association or equivalent entity of the state in which the property is permanently located. An amount recovered from any other guaranty association or equivalent entity shall be subtracted from the maximum liability of the Iowa county and state mutual insurance guaranty association under section 518C.6, subsection 1, paragraph *"a"*.

2000 Acts, ch 1035, §10

518C.11 Prevention of insolvencies.

1. *a.* The board of directors, upon majority vote and for purposes of detecting and preventing insurer insolvencies, may do either of the following:

(1) Make recommendations to the commissioner for the detection and prevention of insurer insolvencies.

(2) Respond to a request by the commissioner to discuss and make recommendations regarding the status of a member insurer whose financial condition may be hazardous to policyholders or the public.

b. The board of directors, at the conclusion of a domestic insurer insolvency, may prepare a report based on the information available to the association on the history and causes of the insolvency. The report may be submitted to the commissioner.

2. Recommendations and reports made pursuant to subsection 1, paragraph *"a"*, subparagraph (2), are not public records under chapter 22.

2000 Acts, ch 1035, §11

518C.12 Examination of the association.

The association is subject to examination and regulation by the commissioner. The board of directors, not later than March 30 of each year, shall submit a financial report for the preceding calendar year in a form approved by the commissioner.

2000 Acts, ch 1035, §12

Referred to in §518C.6

518C.13 Tax exemption.

The association is exempt from the payment of fees and taxes levied by this state or a subdivision of the state except for taxes levied on property.

2000 Acts, ch 1035, §13

518C.14 Recognition of assessments in rates.

The rates and premiums charged for insurance policies to which this chapter applies shall include amounts sufficient to recoup a sum equal to the amounts paid to the association by the member insurer less any amounts returned to the member insurer by the association. Such rates and premiums shall not be deemed excessive as a result of including such recoupment allowances.

2000 Acts, ch 1035, §14

518C.15 Immunity.

There shall be no liability on the part of, and no cause of action of any nature shall arise against, any member insurer, the association or its agents or employees, the board of directors, any committee established for the purpose of administering the affairs of the association, or any person serving as an alternate or substitute representative director of the association, or the commissioner, or the commissioner's representatives, for any reasonable action taken or any reasonable failure to act by them in the performance of their duties and powers under this chapter.

2000 Acts, ch 1035, §15; 2011 Acts, ch 70, §38

518C.16 Stay of proceedings.

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

The association, on its own behalf or on behalf of the insured, with respect to a covered claim based on the default of an insurer who is or who becomes insolvent, or based on the failure of an insurer to defend an insured, is entitled to set the default aside and defend such claim on its merits.

2000 Acts, ch 1035, §16

518C.17 Actions against the association.

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

2000 Acts, ch 1035, §17; 2006 Acts, ch 1117, §95

518C.18 Timely filing of claims.

Notwithstanding any other provision of this chapter, a covered claim shall not include a claim filed with the association after the final date set by the court for the filing of claims against the insolvent insurer or its receiver.

2000 Acts, ch 1035, §18

518C.19 Prohibited advertising.

A person, in connection with the sale of an insurance policy, shall not advertise or publish that claims under the insurance policy are subject to this chapter or that such claims will be paid by the association.

2000 Acts, ch 1035, §19

CHAPTER 519

LIABILITY INSURANCE — CERTAIN PROFESSIONS

Referred to in §87.4, 296.7, 331.301, 364.4, 423.3, 505.28, 505.29, 515B.2, 669.14, 670.7

519.1	Authorization.	519.7	Reinsurance reserve.
519.2	Incorporation — powers.	519.8	Cancellation of policy.
519.3	Articles — approval — bylaws.	519.9	Fees.
519.4	Approval of policy — certificate of authority.	519.10	Powers of commissioner.
		519.11	Liability to assessments.
519.5	Conditions.	519.12	Foreign companies.
519.6	Reports.	519.13	Construction.

519.1 Authorization.

Any number of physicians and surgeons, osteopathic physicians and surgeons, podiatric physicians, chiropractors, pharmacists, dentists, and graduate nurses, licensed to practice their profession in this state, and hospitals licensed under chapter 135B, may, by complying with the provisions of this chapter and without regard to other statutory provisions, enter into contracts with each other for the purpose of protecting themselves by insurance against loss by reason of actions at law on account of their alleged error, mistake, negligence, or carelessness in the treatment and care of patients, including the performance of surgical operations, or in the prescribing and dispensing of drugs and medicines, or for loss by reason of damages in other respects, and to reimburse any member in case of such loss.

[C24, 27, 31, 35, 39, §**9069;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §519.1]

95 Acts, ch 108, §19; 2008 Acts, ch 1088, §141

Action on liability policy, chapter 516

519.2 Incorporation — powers.

All corporations, organized for the purpose of transacting such insurance business under the provisions of this chapter, shall incorporate under the provisions of chapter 491, and be known as mutual corporations; and are hereby empowered to collect such assessments, or premium payments, provided for in their articles of incorporation or bylaws, as are required to pay losses and expenses incurred in the conduct of their business and to cede reinsurance. Such mutual insurance corporations may issue certificates of membership, or policies; and may provide that all assessments, or premium payments, payable thereunder, be made in cash, or on the installment, or assessment plan.

[C24, 27, 31, 35, 39, §**9070;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §519.2]

519.3 Articles — approval — bylaws.

The articles of incorporation, and any subsequent amendments, of such mutual insurance corporation shall be filed with and approved by the commissioner of insurance before being filed with the secretary of state. A mutual insurance corporation shall file with the commissioner bylaws and subsequent amendments to the bylaws within thirty days of adoption of the bylaws or amendments.

[C24, 27, 31, 35, 39, §**9072;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §519.3]

2009 Acts, ch 145, §50

519.4 Approval of policy — certificate of authority.

No such mutual insurance corporation shall issue membership certificates, or policies, until its form of certificate or policy, shall have been submitted to, and approved by, the commissioner of insurance and until it has secured from such commissioner of insurance a certificate authorizing it to transact such an insurance business.

[C24, 27, 31, 35, 39, §**9073;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §519.4]

519.5 Conditions.

No such certificate shall be issued by the commissioner of insurance until two hundred fifty individual applications or ten or more applications from a hospital group, have been received, and until the commissioner of insurance is satisfied that such mutual insurance corporation has bona fide applications representing the number of applicants required, and that there is in the possession of such mutual insurance corporation cash assets amounting to not less than ten times the maximum single retained risk.

[C24, 27, 31, 35, 39, §**9074;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §519.5]

519.6 Reports.

Such mutual insurance corporations doing business under the provisions of this chapter shall, annually, before the first day of March, report to the commissioner of insurance, upon blanks furnished by the commissioner, the same facts, so far as applicable, as are required to be furnished by mutual insurance associations under the statutes of Iowa, which report shall be tabulated by the commissioner of insurance and published by the commissioner in the annual report on insurance.

[C24, 27, 31, 35, 39, §**9075;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §519.6]

Annual report, §515.63

519.7 Reinsurance reserve.

Such mutual insurance corporations shall, annually, set aside and maintain as a reinsurance reserve, an amount equal to ten percent of the receipts from assessments, or premium payments, during the year until the total amount thus accumulated shall equal forty percent, but not to exceed fifty percent of the amount of the annual assessment, or premium payment, at the rate charged for such insurance on all policies in force. The reserve thus accumulated may be used for the payment of losses and expenses, and when so used shall be restored and maintained in like manner as originally accumulated.

[C24, 27, 31, 35, 39, §**9076;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §519.7]

519.8 Cancellation of policy.

Any certificate of membership, or policy, issued by such a mutual insurance corporation may be canceled by the corporation by giving thirty days' written notice thereof to the insured; or such cancellation may be upon demand of the insured; and such cancellation, when so made, either by the corporation or by the insured, shall be upon a pro rata basis, and the cancellation of such certificate or policy shall release the member from all other future obligations to such corporation.

[C24, 27, 31, 35, 39, §**9077;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §519.8]

519.9 Fees.

Such a mutual insurance corporation shall pay the same fees for admission into the state, for annual reports, and for annual certificates of authority as are required to be paid by domestic mutual companies organized and doing business under chapter 515; such certificate shall expire June 1 of the year following the date of its issue.

[C24, 27, 31, 35, 39, §**9078;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §519.9]

88 Acts, ch 1112, §109

519.10 Powers of commissioner.

The commissioner of insurance shall have and exercise the same control over such corporations as the commissioner now has over state mutual insurance associations organized and doing business under chapter 518A.

[C24, 27, 31, 35, 39, §**9079;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §519.10]

2000 Acts, ch 1023, §54

519.11 Liability to assessments.

The provisions as to maximum liability of members to assessments when assets are insufficient and to assessments when the corporation is insolvent, found in section 518A.9, shall apply to all mutual insurance corporations organized under this chapter.

[C24, 27, 31, 35, 39, §**9080;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §519.11]

99 Acts, ch 165, §22; 2000 Acts, ch 1023, §55

519.12 Foreign companies.

Any mutual insurance association organized under the laws of any other state, for the purpose of transacting the kind of business described in this chapter, and which has on hand surplus amounting to not less than ten times the maximum single retained risk, and has not less than two hundred fifty members, may upon application, be admitted to do business in this state if the commissioner finds such admission is in the public interest; and shall thereafter make all reports and be subject to taxation, examination, and supervision by the commissioner of insurance to the same extent and in the same manner as are domestic corporations organized under the provisions of this chapter.

[C24, 27, 31, 35, 39, §**9081;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §519.12]

519.13 Construction.

All laws, or parts of laws, in conflict herewith shall be so construed as not to include corporations regulated by this chapter.

[C24, 27, 31, 35, 39, §**9082;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §519.13]

CHAPTER 519A

MEDICAL MALPRACTICE INSURANCE

Referred to in §87.4, 296.7, 331.301, 364.4, 505.28, 505.29, 669.14, 670.7

519A.1 Intent.
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519A.9 Governing board.
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519A.11 Annual statements.
519A.12 Examinations.
519A.13 Privileged communications.

519A.1 Intent.

1. The general assembly finds that a critical situation exists because of the high cost and impending unavailability of medical malpractice insurance. The purposes of sections 519A.2 through 519A.13 are to assure that the public is adequately protected against losses arising out of medical malpractice by providing licensed health care providers with medical malpractice insurance through the requirement that certain liability insurance carriers write medical malpractice insurance for a period of two years upon a finding of an emergency by the commissioner of insurance that either such insurance is not available through normal channels or that it is not available on a reasonable basis because of lack of competition for such insurance, or otherwise; to establish an association to equitably spread the risks for such insurance; and to provide for recoupment of losses resulting from the operation of the

association through a stabilization reserve fund contributed to by insureds, a surcharge on future liability insurance policies, or a favorable premium tax treatment.

2. It is the intent of this chapter to provide only an interim solution to the impending unavailability of medical malpractice insurance. It is not anticipated that this chapter will resolve the underlying causes of the unavailability and high cost which extend beyond the insurance mechanism. It is anticipated that future legislation will be required to deal on a more permanent basis with the underlying causes of the current situation.

[C77, 79, 81, §519A.1]

2016 Acts, ch 1073, §150

519A.2 Definitions.

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

1. *"Association"* means the joint underwriting association established pursuant to this section and sections 519A.3 through 519A.13.

2. *"Commissioner"* means the commissioner of insurance or a designee.

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

4. *"Medical malpractice insurance"* means insurance coverage against the legal liability of the insured and against loss, damage, or expense incident to a claim arising out of the death or injury of any person as the result of negligence or malpractice in rendering professional service by any licensed health care provider.

5. *"Net direct premiums"* means gross direct premiums written on liability insurance as reported in the annual statements filed by the insurers with the commissioner, including the liability component of multiple peril package policies as computed by the commissioner, less return premiums for the unused or unabsorbed portions of premium deposits.

[C77, 79, 81, §519A.2]

95 Acts, ch 108, §20; 2002 Acts, ch 1111, §32; 2008 Acts, ch 1088, §141; 2016 Acts, ch 1073, §151

Referred to in §519A.1, 519A.3, 519A.4, 519A.5, 519A.10, 519A.13

519A.3 Temporary joint underwriting association.

1. A temporary joint underwriting association is created, consisting of all insurers authorized to write and engaged in writing on a direct basis within this state liability insurance, including insurers covering such peril in multiple peril policies. Every such insurer shall be a member of the association and shall remain a member as a condition of its authority to continue to write liability insurance in this state.

2. The purpose of the association shall be to provide, for a period not exceeding two years, a market for medical malpractice insurance on a self-supporting basis without subsidy from its members.

3. *a.* The association shall not commence underwriting operations for health care providers until the commissioner, after notice and opportunity for hearing, has determined that medical malpractice insurance is not available at a reasonable cost for a specific type of licensed health care provider in the voluntary market. Upon such determination the association shall be authorized to issue policies of medical malpractice insurance for such specific type of health care provider but need not be the exclusive agency through which such insurance may be written on a primary basis in this state.

b. If the commissioner determines at any time that medical malpractice insurance can be made available in the voluntary market at a reasonable price for any specific type of licensed health care provider, the association shall thereby cease underwriting medical malpractice insurance for that type of licensed health care provider.

4. The association shall, subject to the terms and conditions of section 519A.2, this section, and sections 519A.4 through 519A.13, have and exercise the following powers on behalf of its members:

a. To issue, or to cause to be issued, policies of insurance to applicants, including

incidental coverages and subject to limits as specified in the plan of operation but not to exceed one million dollars for each claimant under one policy and three million dollars for all claimants under one policy in any one year.

b. To underwrite such insurance and to adjust and pay losses with respect thereto, or to appoint service companies to perform those functions.

c. To assume reinsurance from its members.

d. To cede reinsurance.

[C77, 79, 81, §519A.3]

2012 Acts, ch 1023, §157; 2016 Acts, ch 1073, §152

Referred to in §519A.1, 519A.2, 519A.4, 519A.5, 519A.10, 519A.13

519A.4 Plan of operation.

1. *a.* The association shall submit a plan of operation to the commissioner, together with any amendments necessary or suitable to assure the fair, reasonable, and equitable administration of the association consistent with sections 519A.2, 519A.3, this section, and sections 519A.5 through 519A.13. The plan of operation and any amendments thereto shall become effective only after promulgation of the plan or amendment by the commissioner as a rule pursuant to section 17A.4, provided that the initial plan may in the discretion of the commissioner become effective immediately upon filing with the secretary of state pursuant to section 17A.5, subsection 2, paragraph *"b"*, subparagraph (1), subparagraph division (a).

b. If the association fails to submit a suitable plan of operation within twenty-five days following July 1, 1975, or if at any time thereafter the association fails to submit suitable amendments to the plan, the commissioner shall adopt rules necessary to effectuate sections 519A.2, 519A.3, this section, and sections 519A.5 through 519A.13. Such rules shall continue in force until modified by the commissioner or superseded by a plan submitted by the association and approved by the commissioner.

2. The plan of operation shall provide for economic, fair and nondiscriminatory administration, and for the prompt and efficient provision of medical malpractice insurance. The plan shall contain other provisions, including but not limited to preliminary assessment of all members for initial expenses necessary to commence operations, establishment of necessary facilities, management of the association, assessment of members to defray losses and expenses, commission arrangements, reasonable and objective underwriting standards, acceptance and cession of reinsurance, appointment of servicing carriers or other servicing arrangements, and procedures for determining amounts of insurance to be provided by the association.

3. All member insurers shall comply with the plan of operation.

[C77, 79, 81, §519A.4]

2012 Acts, ch 1023, §157; 2015 Acts, ch 30, §225; 2016 Acts, ch 1073, §153; 2017 Acts, ch 29, §153; 2018 Acts, ch 1041, §105

Referred to in §519A.1, 519A.2, 519A.3, 519A.5, 519A.10, 519A.13

Subsection 2 amended

519A.5 Policy forms and rates.

1. The rates, rating plans, rating classifications, and policy forms and endorsements applicable to insurance written by the association and the statistical and experience data relating thereto shall be subject to sections 519A.2 through 519A.4, this section, and sections 519A.6 through 519A.13 and to the provisions of the general insurance code which are not inconsistent with the purposes and provisions of this chapter.

2. All policies issued by the association shall provide for a continuous period of coverage beginning with their respective effective dates. All policies shall terminate at 12:01 a.m. two years from the date of finding of an emergency by the commissioner, or earlier in accordance with sections 519A.2 through 519A.4, this section, and sections 519A.6 through 519A.13; or because of failure of the policyholder to pay any premium or stabilization reserve fund charge or portion of either when due. All policies shall be issued subject to the group retrospective rating plan and the stabilization reserve fund authorized by this chapter. No policy form shall be used by the association unless it has been filed with and approved by the commissioner.

3. The commissioner shall specify whether policy forms and the rate structure shall be

on a "claims-made" or "occurrence" basis and coverage shall be provided by the association only on the basis specified by the commissioner. The commissioner shall specify the "claims-made" basis only if the contract makes provision for residual "occurrence" coverage upon the retirement, death, disability or removal from this state of the insured. Provision may be made for a premium charge allocable to any such residual "occurrence" coverage and such premium charges for such residual coverage shall be segregated and separately maintained for such purpose which may include the reinsurance of all or a part of that portion of the risk.

4. The rates, rating plans, rating rules, and rating classifications applicable to the insurance written by the association shall be on an actuarially sound basis, giving due consideration to the group retrospective rating plan and the stabilization reserve fund, and shall be calculated to be self-supporting.

5. All policies issued by the association shall be subject to a nonprofit group retrospective rating plan to be approved by the commissioner under which the final premium for all policyholders of the association, as a group, will be equal to the administrative expenses, loss and loss adjustment expenses and taxes, plus a reasonable allowance for contingencies and servicing. Policyholders shall be given full credit for all investment income, net of expenses and a reasonable management fee, on policyholder supplied funds. The standard premium, before retrospective adjustment, for each policy issued by the association shall be established for portions of the policy period coinciding with the association's fiscal year on the basis of the association's rates, rating plans, rating rules, and rating classifications then in effect. The maximum final premium for all policyholders of the association, as a group, shall be limited as provided in section 519A.6, subsection 5. Since the business of the association is subject to the nonprofit group retrospective rating plan required by this subsection, there shall be a presumption that the rates filed and premiums imposed by the association are not unreasonable or excessive.

6. The association shall certify to the commissioner the estimated amount of any deficit remaining after the stabilization reserve fund has been exhausted in payment of the maximum final premium for all policyholders of the association. Within sixty days after that certification the commissioner shall authorize the members of the association to commence recoupment of their respective shares of the deficit by deducting their share of the deficit from past or future premium taxes due the state of Iowa. The association shall amend the amount of its certification of deficit to the commissioner as the values of its incurred losses become finalized and the members of the association shall amend their recoupment procedure accordingly.

7. In the event that sufficient funds are not available for the sound financial operation of the association, all members shall contribute to the financial requirements of the association in the manner provided for in section 519A.8. Any contribution shall be reimbursed to the members by recoupment as provided in subsection 6.

[C77, 79, 81, §519A.5]

2002 Acts, ch 1111, §33; 2016 Acts, ch 1073, §154

Referred to in §519A.1, 519A.2, 519A.3, 519A.4, 519A.10, 519A.13

519A.6 Stabilization reserve fund.

1. There is created a stabilization reserve fund. The fund shall be administered by three directors, one of whom shall be the commissioner. The remaining two directors shall be appointed by the commissioner, one of whom shall be a representative of the association and the other a representative of its policyholders.

2. The directors shall act by majority vote with two directors constituting a quorum for the transaction of any business or the exercise of any power of the fund. The directors shall serve without salary, but each director other than the commissioner shall be reimbursed for actual and necessary expenses incurred in the performance of official duties as a director. The directors shall not be subject to any personal liability with respect to the administration of the fund for acts or decisions made in good faith pursuant to the provisions of this chapter.

3. Each policyholder shall pay to the association a stabilization reserve fund charge determined by the directors which shall not exceed the amount of one annual premium due

for insurance through the association. Such charge shall be separately stated in the policy. The association shall cancel the policy of any policyholder who fails to pay the stabilization reserve fund charge.

4. The association shall promptly pay to the fund all stabilization reserve fund charges which it collects from its policyholders and any retrospective premium refunds payable under any group retrospective rating plan approved by the commissioner under the provisions of this chapter.

5. All moneys received by the fund shall be held in trust by a corporate trustee selected by the directors. The corporate trustee may invest the moneys held in trust, subject to the approval of the directors. All investment income shall be credited to the fund, and all expenses of administration of the fund shall be charged against the fund. The moneys held in trust shall be used solely for the purpose of discharging when due any retrospective premium charges payable by policyholders of the association under the group retrospective rating plan approved by the commissioner. Payment of retrospective premium charges shall be made by the directors upon certification to them by the association of the amount due. If all moneys accruing to the fund are finally exhausted in payment of retrospective premium charges, all liability and obligations of the association's policyholders with respect to the payment of retrospective premium charges shall there upon terminate and shall be conclusively presumed to have been discharged. Any moneys remaining in the fund after all such retrospective premium charges have been paid shall be returned to policyholders pursuant to procedures authorized by the directors.

[C77, 79, 81, §519A.6]

2017 Acts, ch 29, §154

Referred to in §519A.1, 519A.2, 519A.3, 519A.4, 519A.5, 519A.10, 519A.13

519A.7 Procedures.

1. Upon a finding by the commissioner, after notice and opportunity for hearing, that medical malpractice insurance is not available at a reasonable cost for a specific type of licensed health care provider in the voluntary market and upon notification of that finding to the association, any licensed health care provider of the type specified in the commissioner's finding shall be entitled to apply to the association for medical malpractice insurance coverage. The application may be made on behalf of a licensed health care provider by an authorized agent.

2. If the association determines that the applicant meets the underwriting standards of the association as prescribed in the plan of operation, then the association, upon receipt of the premium or such portion thereof as is prescribed in the plan of operation, shall cause to be issued a policy of medical malpractice insurance.

[C77, 79, 81, §519A.7]

Referred to in §519A.1, 519A.2, 519A.3, 519A.4, 519A.5, 519A.10, 519A.13

519A.8 Participation.

All members of the association shall participate in its writings, expenses, servicing allowance, management fees and losses in the proportion that the net direct premiums of each member, excluding that portion of premiums attributable to the operation of the association, written during the preceding calendar year bears to the aggregate net direct premiums written in this state by all members of the association. Each member's proportion shall be determined annually on the basis of the annual statements and other reports filed by the insurer with the commissioner.

[C77, 79, 81, §519A.8]

Referred to in §519A.1, 519A.2, 519A.3, 519A.4, 519A.5, 519A.10, 519A.13

519A.9 Governing board.

1. The association shall be governed by a board of eleven directors of whom three shall be appointed annually by the commissioner to represent the licensed health care providers. Eight members shall be elected annually, except as provided in subsection 2, by the members of the association. Vacancies on the board shall be filled for the remaining period of the term by majority vote of the remaining directors subject to approval of the commissioner.

2. *a.* The commissioner shall designate a time and place for a meeting of the members of the association at which the eight elected members serving on the board shall be elected. The commissioner shall appoint the appointive members of the board on or before the date of the meeting.

b. The commissioner may, prior to the first meeting of the members of the association, appoint an interim governing board of the association consisting of eight member insurers and three representatives of the licensed health care providers. The eight member insurers of that interim governing board shall serve until their successors are elected by the members of the association. In appointing members of the association to the interim governing board, the commissioner shall consider among other things whether all member insurers are fairly represented.

[C77, 79, 81, §519A.9]

2002 Acts, ch 1111, §34; 2012 Acts, ch 1023, §157

Referred to in §519A.1, 519A.2, 519A.3, 519A.4, 519A.5, 519A.10, 519A.13

519A.10 Appeals and judicial review.

1. Any applicant or any person insured pursuant to section 519A.7, or a legal representative, or any affected insurer, may appeal to the commissioner within thirty days after any ruling, action or decision by or on behalf of the association, with respect to those items the plan of operation defines as appealable matters.

2. All orders of the commissioner made pursuant to sections 519A.2 through 519A.9, this section, and sections 519A.11 through 519A.13 shall be subject to judicial review as provided in the Iowa administrative procedure Act, chapter 17A.

[C77, 79, 81, §519A.10]

2003 Acts, ch 44, §114; 2016 Acts, ch 1073, §155

Referred to in §519A.1, 519A.2, 519A.3, 519A.4, 519A.5, 519A.13

519A.11 Annual statements.

The association shall file in the office of the commissioner on or before the first day of March each year, a statement as prescribed by the commissioner. The statement shall contain matters and information required by the commissioner including, but not limited to, information with respect to its transactions, condition, operations and affairs during the preceding year, and shall be in a form approved by the commissioner. The commissioner may, at any time, require the association to furnish additional information with respect to matters considered to be material to the scope, operation and experience of the association.

[C77, 79, 81, §519A.11]

Referred to in §519A.1, 519A.2, 519A.3, 519A.4, 519A.5, 519A.10, 519A.13

519A.12 Examinations.

The commissioner shall make an examination of the association at least annually. The expenses of each examination shall be paid by the association.

[C77, 79, 81, §519A.12]

Referred to in §519A.1, 519A.2, 519A.3, 519A.4, 519A.5, 519A.10, 519A.13

519A.13 Privileged communications.

There shall be no liability on the part of, and no cause of action of any nature shall arise against the association, the commissioner, or any other person or organization, for any statements made in good faith by any of them in any report or communication concerning risks insured or to be insured by the association, or during any proceedings within the scope of sections 519A.2 through 519A.12 and this section.

[C77, 79, 81, §519A.13]

2016 Acts, ch 1073, §156

Referred to in §519A.1, 519A.2, 519A.3, 519A.4, 519A.5, 519A.10

CHAPTER 520

RECIPROCAL OR INTERINSURANCE CONTRACTS

Referred to in §87.4, 296.7, 331.301, 364.4, 423.3, 505.28, 505.29, 507.1, 508C.3, 509.5, 514A.1, 515B.1, 515B.2, 515B.9, 521.1, 521A.1, 521A.2, 521E.1, 521F.2, 522B.1, 533C.103, 537.7103, 669.14, 670.7

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520.1 Authorization.

Individuals, partnerships, and corporations, and cities, counties, townships, school districts and any other units of local government of this state, hereby designated subscribers, are hereby authorized to exchange reciprocal or interinsurance contracts with each other, and with individuals, partnerships, and corporations of other states, territories, districts, and countries, providing insurance among themselves from any loss which may be insured against under the law, except life insurance.

[C24, 27, 31, 35, 39, §**9083;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §520.1]

520.2 Execution of contract.

Such contracts may be executed by an attorney, agent, or other representative herein designated attorney, duly authorized and acting for such subscribers under powers of attorney, and such attorney may be a corporation. Such attorney shall have the power and authority to execute any and all instruments, papers, and documents incident to and a part of the business of the reciprocal or interinsurance exchange, including deeds for the conveyance of real estate, and acquisition and sale of securities. Such attorney shall have the power and authority to do all things necessary and incident to the management and operation of such business. The certificate of the commissioner of insurance certifying the name of the attorney for any reciprocal or interinsurance exchange shall be sufficient proof of the authority of any such attorney.

[C24, 27, 31, 35, 39, §**9084;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §520.2]

Referred to in §520.14

520.3 Office of attorney — foreign office.

The principal office of such attorney shall be maintained at such place as is designated by the subscribers in the power of attorney; provided that, where the principal office of such attorney is located in another state, the commissioner of insurance shall not issue a certificate of authority, or license, as provided in this chapter unless such attorney shall hold a license or certificate of authority from the insurance department of such other state.

[C24, 27, 31, 35, 39, §**9085;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §520.3]

Referred to in §520.14

520.4 Preliminary declaration.

Such subscribers so contracting among themselves, shall, through their attorney, file with the commissioner of insurance a declaration verified by the oath of such attorney, or, where such attorney is a corporation, by the oath of the duly authorized officers thereof, setting forth:

1. The name of the attorney and the name or designation under which such contracts are issued, which name or designation shall not be so similar to any name or designation adopted by any attorney or by any insurance organization in the United States prior to the adoption of such name or designation by the attorney, as to confuse or deceive.
2. The location of the principal office.
3. The kind or kinds of insurance to be effected.
4. A copy of each form of policy, contract, or agreement under or by which insurance is to be effected.
5. A copy of the form of power of attorney under which such insurance is to be effected.
6. That applications have been made for indemnity or insurance upon at least one hundred separate risks aggregating not less than one and one-half million dollars represented by executed contracts or bona fide applications to become concurrently effective; or in case of employers liability or workers' compensation insurance, covering a total payroll of not less than two and one-half million dollars.
7. That there is in the possession of such attorney and available for the payment of losses, assets amounting to not less than three hundred thousand dollars.
8. A financial statement under oath in form prescribed for the annual statement.
9. The instrument authorizing service of process as provided for in this chapter.
10. Certificate showing deposit of funds.

[C24, 27, 31, 35, 39, §**9086;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §520.4]
Referred to in §85.65A, 520.5, 520.9, 520.14, 520.18

520.5 Actions — venue — commissioner as process agent.

Concurrently with the filing of the declaration provided for by the terms of section 520.4, the attorney shall file with the commissioner of insurance, an instrument in writing executed by the attorney for said subscribers, conditioned that, upon the issuance of certificate of authority provided for in this chapter, action may be brought in the county in which the property or person insured thereunder is located, and that service of process shall be had upon the commissioner of insurance or upon the attorney in fact in all suits in this state, whether arising out of such policies, contracts, agreements or otherwise, which service shall be valid and binding upon all subscribers exchanging at any time reciprocal or interinsurance contracts through such attorney. All suits of every kind and description brought against such reciprocal exchange or the subscribers thereto on account of their connection therewith, must be brought against the attorney in fact therefor or the exchange as such, and shall not be brought against any of the subscribers thereto individually on account of their connection with or membership in such reciprocal exchange, and must be brought in the manner and method above provided.

[C24, 27, 31, 35, 39, §**9087;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §520.5]
Referred to in §520.14

520.6 Service of process.

Service of process made on the commissioner as the agent for service of process shall be made as provided in section 505.30.

[C24, 27, 31, 35, 39, §**9088;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §520.6]
2018 Acts, ch 1018, §11
Referred to in §520.14
Section amended

520.7 Judgment — satisfaction.

A judgment rendered in any such case where service of process has been so had upon the commissioner of insurance, shall be valid and binding against any and all such subscribers as their interests appear and such judgment may be satisfied out of the funds in the possession of the attorney belonging to such subscribers.

[C24, 27, 31, 35, 39, §**9089;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §520.7]
Referred to in §520.14

520.8 Reports — limitations on risks.

There shall be filed with the commissioner of insurance by such attorney whenever the commissioner of insurance shall so require, a statement under oath of such attorney showing the maximum amount of indemnity upon a single risk, and, except as to workers' compensation insurance, no subscriber shall assume on any single risk an amount greater than ten percent of the net worth of such subscriber.

[C24, 27, 31, 35, 39, §**9090;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §520.8]

Referred to in §520.14

520.9 Standard of solvency.

1. There shall at all times be maintained as assets a sum in cash, or in securities of the kind designated by the laws of the state where the principal office is located for the investment of funds of insurance companies, equal to one hundred percent of the net unearned premiums or deposits collected and credited to the account of subscribers, or assets equal to fifty percent of the net annual deposits collected and credited to the account of subscribers on policies having one year or less to run and pro rata on those for longer periods; in addition to which there shall be maintained in cash, or in such securities, assets sufficient to discharge all liabilities on all outstanding losses arising under policies issued, the same to be calculated in accordance with the laws of the state relating to similar reserves for companies insuring similar risks; provided that where the assets on hand available for the payment of losses other than determined losses, do not equal five million dollars, all liability for each determined loss or claim deferred for more than one year, shall be provided for by a special deposit in a trust company or bank having fiduciary powers of the state in which the principal office is located, to be used in payment of compensation benefits for disability; such deposit to be a trust fund and applicable only to the purposes stated, or such liability may be reinsured in authorized companies with a surplus of at least five million dollars. For the purpose of such reserves, net deposits shall be construed to mean the advance payments of subscribers after deducting the amount specifically provided in the subscribers' agreements for expenses. If at any time the assets so held in cash or such securities shall be less than required above, or less than five million dollars, the subscribers or their attorney for them shall make up the deficiency within thirty days after notice from the commissioner of insurance to do so. In computing the assets required by this section, the amount specified in section 520.4, subsection 7, shall be included.

2. Notwithstanding subsection 1, a person issuing reciprocal contracts and authorized to transact business under this chapter shall comply with the minimum surplus requirements of this section or chapter 521E, whichever is greater.

[C24, 27, 31, 35, 39, §**9091;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §520.9]

88 Acts, ch 1111, §16; 96 Acts, ch 1046, §8; 2007 Acts, ch 137, §20

Referred to in §85.65A, 520.9A, 520.14

520.9A Solvency standard — transition.

Notwithstanding section 520.9, a reciprocal or interinsurance insurer authorized to transact business in this state prior to July 1, 1988, may continue in operation provided that the insurer contributes an additional ten percent of the previous year ending capital and surplus to capital and surplus each year. If an insurer fails to contribute the additional ten percent, the commissioner of insurance may revoke the insurer's authorization to do business in this state. The insurance commissioner may waive this requirement for just cause shown.

88 Acts, ch 1111, §17

Referred to in §520.14

520.10 Annual report — examination — penalties.

1. Such attorney shall, within the time limited for filing the annual statement by insurance companies transacting the same kind of business, make a report, under oath, to the commissioner of insurance for each calendar year, showing the financial condition of affairs at the office where such contracts are issued and shall, at any and all times, furnish such additional information and reports as may be required; provided, however, that the attorney

shall not be required to furnish the names and addresses of any subscribers except in case of an unpaid final judgment. The business affairs, records, and assets of any such organization shall be subject to examination by the commissioner of insurance at any reasonable time, and such examination shall be at the expense of the organization examined.

2. A certificate of authority of a reciprocal or interinsurance insurer authorized under this chapter shall be renewed annually in accordance with section 520.12 so long as the insurer transacts its business in accordance with all legal requirements.

3. The commissioner shall refuse to renew the certificate of authority of a reciprocal or interinsurance insurer that fails to comply with the provisions of this chapter and the insurer's right to transact new business in this state shall immediately cease until the insurer has so complied.

4. A reciprocal or interinsurance insurer that fails to timely file the report required under subsection 1 is in violation of this section and shall pay an administrative penalty of five hundred dollars to the treasurer of state for deposit as provided in section 505.7.

5. The commissioner may give notice to a reciprocal or interinsurance insurer that the insurer has not timely filed the report required under subsection 1 and is in violation of this section. If the insurer fails to file the required report and comply with this section within ten days of the date of the notice, the insurer shall pay an additional administrative penalty of one hundred dollars for each day that the failure continues to the treasurer of state for deposit as provided in section 505.7.

[C24, 27, 31, 35, 39, §**9092;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §520.10]
2006 Acts, ch 1117, §96; 2009 Acts, ch 181, §86
Referred to in §520.14

520.11 Implied powers of corporations.

Any corporation now or hereafter organized under the laws of this state shall, in addition to the rights, powers, and franchises specified in its articles of incorporation, have full power and authority to exchange insurance contracts of the kind and character herein mentioned. The right to exchange such contracts is hereby declared to be incidental to the purposes for which such corporations are organized and as fully granted as the rights and powers expressly conferred.

[C24, 27, 31, 35, 39, §**9093;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §520.11]
Referred to in §520.14

520.12 Certificate of authority — renewal — penalties.

1. Upon compliance with the requirements of this chapter, the commissioner of insurance shall issue a certificate of authority or a license to the attorney, authorizing the attorney to make such contracts of insurance, which license shall specify the kind or kinds of insurance and shall contain the name of the attorney, the location of the principal office and the name or designation under which such contracts of insurance are issued. The certificate of authority shall expire on the first day of June next succeeding its issue, and shall be renewed annually as long as the company transacts business in accordance with the requirements of law. A copy of the certificate, when certified by the commissioner of insurance, shall be admissible in evidence for or against a company with the same effect as the original.

2. A reciprocal or interinsurance insurer shall submit annually, on or before March 1, a completed application for renewal of the insurer's certificate of authority. An insurer that fails to timely file an application for renewal shall pay an administrative fee of five hundred dollars to the treasurer of state for deposit as provided in section 505.7.

[C24, 27, 31, 35, 39, §**9094;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §520.12]
88 Acts, ch 1112, §110; 2006 Acts, ch 1117, §97; 2009 Acts, ch 181, §87
Referred to in §520.10, 520.14

520.13 Fidelity or surety bonds executed.

Fidelity or surety bonds executed by a reciprocal or interinsurance exchange pursuant to authority given by the commissioner of insurance shall be received and accepted as company or corporate bonds, provided, however, that such reciprocal companies before

being permitted to qualify for writing fidelity or surety bonds shall be required to maintain a surplus of three hundred thousand dollars.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §520.13]

Referred to in §520.14

520.14 Violations — exceptions.

It shall be unlawful for an attorney to exchange contracts of insurance of the kind and character specified in this chapter, or for an attorney or representative of the attorney to solicit or negotiate any applications for the same without the attorney having first complied with the provisions of sections 520.2 through 520.13. For the purpose of organization and upon issuance of permit by the commissioner of insurance, powers of attorney and applications for such contracts may be solicited without compliance with the provisions of this chapter, but an attorney, agent, or other person shall not make any such contracts of indemnity until all of the provisions of this chapter shall have been complied with.

[C24, 27, 31, 35, 39, §**9095;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §520.14]

2004 Acts, ch 1110, §59; 2009 Acts, ch 133, §169

520.15 Refusal or revocation of certificate.

In addition to the foregoing penalties and where not otherwise provided, the penalty for failure or refusal to comply with any of the terms and provisions of this chapter, upon the part of the attorney, shall be the refusal, suspension, or revocation of certificate of authority or license by the commissioner of insurance and the public announcement of the commissioner's act, after due notice and opportunity for hearing has been given such attorney so that the attorney may appear and show cause why such action should not be taken.

[C24, 27, 31, 35, 39, §**9096;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §520.15]

520.16 Bonds.

Where the principal office of the attorney in fact is located in this state the attorney shall give a fidelity bond to the subscribers thereof, personal or surety, in such sum as the commissioner of insurance shall deem sufficient, no less, however, than ten thousand dollars, which bond shall be approved by and deposited with the commissioner of insurance.

[C24, 27, 31, 35, 39, §**9097;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §520.16]

520.17 Additional security — refusal.

Should the commissioner of insurance consider the surety on said bond, or the amount thereof, insufficient, the commissioner may require additional security or an increase in the amount of the bond. If such additional security or increase be not furnished within thirty days after notice to furnish the same, the commissioner of insurance may revoke the certificate of authority.

[C24, 27, 31, 35, 39, §**9098;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §520.17]

520.18 Foreign attorney — bonds.

Where the principal office of the attorney is located in another state, there shall be filed with the commissioner of insurance, in connection with the declaration, provided for by section 520.4, certified copies of all such bonds given by such attorney as security for the funds of subscribers.

[C24, 27, 31, 35, 39, §**9099;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §520.18]

520.19 Annual tax — fees.

In lieu of all other taxes, licenses, charges, and fees whatsoever, such attorney shall annually pay to the commissioner the same fees as are paid by mutual companies transacting the same kind of business, and an annual tax based upon the applicable percentage stated in section 432.1, subsection 4, calculated upon the gross premiums or deposits collected from subscribers in this state during the preceding calendar year, after deducting therefrom returns, or cancellations, and all amounts returned to subscribers or credited to

their accounts as savings, and the amount returned upon canceled policies and rejected applications covering property situated or on business done within this state.

[C24, 27, 31, 35, 39, §**9100;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §520.19]

88 Acts, ch 1112, §305; 2005 Acts, ch 70, §47

520.20 Form of policy — construction.

The attorney may insert in any form of policy prescribed by the laws of this state any provisions or conditions required by the plan of reciprocal or interinsurance, provided the same shall not be inconsistent with or in conflict with any law of this state. Such policy, in lieu of conforming to the language and form prescribed by such law, shall be held to conform thereto in substance if such policy includes a provision or endorsement reciting that the policy shall be construed as if in the language and form prescribed by such law. Any such policy or endorsement shall first be filed with and approved by the commissioner of insurance.

[C24, 27, 31, 35, 39, §**9101;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §520.20]

520.21 Reinsurance.

Such attorney shall not effect any reinsurance on risks in this state unless the insurance carrier granting such reinsurance shall be licensed in this state.

[C24, 27, 31, 35, 39, §**9102;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §520.21]

Referred to in §521.13

520.22 Reserved.

520.23 Deposit of securities by reciprocal or interinsurance exchanges.

If the commissioner of insurance or chief insurance officer of any other state or territory of the United States, claiming to proceed under existing or future laws of any such state or territory, shall require reciprocal or interinsurance exchanges of this state or the agents thereof to make any deposit of securities in such other state or territory for the protection of policyholders or otherwise or to make payment of taxes, fines, penalties, certificates of authority, license fees or otherwise or subject them to any restrictions, obligations, conditions, or penalties, greater than are required or imposed by the laws of the state of Iowa relating to reciprocal or interinsurance exchanges, from such exchanges of such other states or territories by the then existing laws of this state, then and in every such case all such reciprocal or interinsurance exchanges of such other states or territories shall be and they are hereby required to make like deposits for like purposes with the insurance division of this state and to pay to the commissioner of insurance taxes, fines, penalties, certificates of authority, license fees and otherwise in an amount equal to the amount of such charges and payments, and shall be subjected to the same restrictions, obligations, conditions, or penalties imposed by the commissioner of insurance or chief insurance officer of such other states under and by virtue of law, upon reciprocal or interinsurance exchanges of this state and the agents thereof.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §520.23]

CHAPTER 521

CONSOLIDATION, MERGER, AND REINSURANCE

Referred to in §87.4, 296.7, 331.301, 364.4, 505.23, 505.28, 505.29, 507C.12, 508B.2, 515G.2, 521A.14, 669.14, 670.7

Securities to be deposited by foreign companies, §508.20 – 508.22, 515.70 – 515.72

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521.3 Submission of plan and application to commissioner of insurance.
521.4 Procedure — notice.
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521.6 Examination.
521.7 Appearance by members, policyholders, or shareholders.
521.8 Authorization.
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521.10 Election called.
521.11 Approval and filing with commissioner. Repealed by 2006 Acts, ch 1117, §127.
521.12 Companies other than life — approval of plan. Repealed by 2006 Acts, ch 1117, §127.
521.13 Reinsurance transactions — exemption.
521.14 Expenses and costs — how paid.
521.15 Violations. Repealed by 2004 Acts, ch 1110, §71.
521.16 Applicability of section 521A.3.
521.17 Additional filing requirements — plans and articles of merger or consolidation.
521.18 Articles of merger or consolidation — filing fees and approval.

521.1 Definitions.

For the purposes of this chapter:

1. *"Affected company"* or *"affected mutual company"* means the company being merged with and into the surviving company.

2. *"Commission"* means the commission created in section 521.5.

3. *"Commissioner"* means the commissioner of insurance.

4. *"Company"* means a company or association organized under chapter 508, 514B, 515, 518, 518A, or 520, and includes a mutual insurance holding company organized pursuant to section 521A.14.

[S13, §1821-m; C24, 27, 31, 35, 39, §**9104;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §521.1]

89 Acts, ch 83, §75; 95 Acts, ch 185, §41; 2006 Acts, ch 1117, §98; 2007 Acts, ch 22, §91; 2011 Acts, ch 70, §39

Referred to in §521.2

521.2 Consolidation, merger, and reinsurance.

1. One or more domestic mutual insurance companies organized under chapter 491 may merge or consolidate with a domestic or foreign mutual insurance company as provided in this chapter.

2. One or more domestic insurance companies organized under chapter 490 may merge with a domestic or foreign insurance company as provided in chapter 490 with the approval of the commission pursuant to this chapter.

3. The provisions of this chapter shall not be applicable to the merger or consolidation of a domestic mutual company with a stock company pursuant to chapter 508B or chapter 515G.

4. A domestic insurance company shall not assume or reinsure the whole or any part of the risks of any other company, except as provided in this chapter. However, this chapter shall not be construed to prevent any company, as defined in section 521.1, from reinsuring a fractional part of any risk.

5. One or more foreign or domestic stock insurance companies may merge into a domestic mutual insurance company organized under chapter 491 as provided in this chapter.

6. One or more domestic health maintenance organizations or limited service organizations formed under chapter 514B may merge into a domestic insurance company organized under chapter 490 or chapter 491 as provided in this chapter.

7. Sections 491.102 through 491.105 shall not be applicable to a merger or consolidation of a domestic mutual insurance company pursuant to this chapter.

[S13, §1821-n; C24, 27, 31, 35, 39, §**9105;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §521.2]

95 Acts, ch 185, §42; 2006 Acts, ch 1117, §99; 2007 Acts, ch 137, §21; 2009 Acts, ch 145, §51; 2011 Acts, ch 70, §40, 41

Referred to in §508.33A

521.3 Submission of plan and application to commissioner of insurance.

Any company proposing to consolidate, merge, or enter into any reinsurance contract with another company shall file a plan and an application in support of the plan with the commissioner. The plan shall set forth the terms of the proposed contract of consolidation, merger, or reinsurance, along with any other information requested by the commissioner.

[S13, §1821-o; C24, 27, 31, 35, 39, §**9106;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §521.3]

2006 Acts, ch 1117, §100

Referred to in §521.4

521.4 Procedure — notice.

The commission may hear and determine an application, and approve, disapprove, or require modification of a plan submitted under section 521.3 without notice and without public hearing. The commission may require a public hearing when necessary to conserve the interests of the members, policyholders, or shareholders of the affected company. In such cases the commission shall require the affected company to mail to all of its members, policyholders, or shareholders written notice of the public hearing stating that an application and plan have been filed with the commission, the nature of the plan, and the date, time, and place of the public hearing on the application and plan. The commission shall determine the number of days prior to the public hearing that notice is required to be given to the members or shareholders, which shall be no fewer than ten nor more than sixty days.

[S13, §1821-p; C24, 27, 31, 35, 39, §**9107;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §521.4]

2006 Acts, ch 1117, §101

Referred to in §521.7

521.5 Commission created.

A commission consisting of the commissioner of insurance and the attorney general is hereby created to hear and determine the application and to approve, disapprove, or require modification of the plan prior to approval.

[S13, §1821-q; C24, 27, 31, 35, 39, §**9108;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §521.5]

88 Acts, ch 1112, §702; 2006 Acts, ch 1117, §102

Referred to in §521.1

521.6 Examination.

The commission may examine the affairs and condition of any company as it deems proper. The commission shall have the power to summon and compel the attendance and testimony of witnesses. The commission shall have the power to compel the production of books and papers before the commission, and may administer oaths.

[S13, §1821-q; C24, 27, 31, 35, 39, §**9109;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §521.6]

2006 Acts, ch 1117, §103; 2007 Acts, ch 22, §92

521.7 Appearance by members, policyholders, or shareholders.

When notice is given as provided in section 521.4, any member, policyholder, or shareholder of the affected company shall have the right to appear before the commission and be heard regarding the application and plan.

[S13, §1821-q; C24, 27, 31, 35, 39, §**9110;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §521.7]

2006 Acts, ch 1117, §104

521.8 Authorization.

The commission, if satisfied that the interests of the members, policyholders, or shareholders of the affected company are properly protected and no reasonable objection to the application and plan exists, may approve, disapprove, or require modification of the proposed plan of consolidation, merger, or reinsurance prior to approval. The commission may make such order and disposition of the assets of any such company thereafter remaining as shall be just and equitable.

[S13, §1821-q; C24, 27, 31, 35, 39, §**9111;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §521.8]

2006 Acts, ch 1117, §105

521.9 Unanimous decision required. Repealed by 2006 Acts, ch 1117, §127.

521.10 Election called.

1. The commission may require an affected company to submit the plan of consolidation, merger, or reinsurance to a vote by its members. The plan shall be submitted at a meeting called for that purpose, upon not less than thirty days' notice. Member approval of the plan requires the affirmative vote of two-thirds of all members voting in person, by ballot, or by proxy.

2. Approval by the members of a mutual company of a plan of merger or reinsurance is not required if all of the following conditions are satisfied:

a. The company will survive the merger or is the reinsurer.

b. At the time of the merger or reinsurance, the number of members of the surviving company is greater than the number of members of the affected company.

c. At the time of the merger or reinsurance, the surplus of the surviving company is greater than the surplus of the affected company.

[S13, §1821-q; C24, 27, 31, 35, 39, §**9113;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §521.10]

2006 Acts, ch 1117, §106

521.11 Approval and filing with commissioner. Repealed by 2006 Acts, ch 1117, §127.

521.12 Companies other than life — approval of plan. Repealed by 2006 Acts, ch 1117, §127.

521.13 Reinsurance transactions — exemption.

Reinsurance as provided in sections 515.49, 518.17, 518A.44, and 520.21 is exempt from the requirements of this chapter.

[S13, §1821-s; C24, 27, 31, 35, 39, §**9116;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §521.13]

97 Acts, ch 186, §24; 2006 Acts, ch 1117, §107

521.14 Expenses and costs — how paid.

All expenses and costs incident to proceedings under this chapter shall be paid by the company filing the application and plan.

[S13, §1821-t; C24, 27, 31, 35, 39, §**9117;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §521.14]

2006 Acts, ch 1117, §108

521.15 Violations. Repealed by 2004 Acts, ch 1110, §71.

521.16 Applicability of section 521A.3.
For an insurer subject to chapter 521A, the provisions of section 521A.3 shall also be applicable to a merger or consolidation subject to this chapter. As used in this section, "*insurer*" means the same as defined in section 521A.1.
95 Acts, ch 185, §43; 2006 Acts, ch 1117, §109; 2008 Acts, ch 1123, §41

521.17 Additional filing requirements — plans and articles of merger or consolidation.
A company filing a plan to merge or consolidate shall, in addition to and after meeting the requirements of this chapter, make all appropriate filings with and pay appropriate fees to the secretary of state required under chapter 490 or 491.
2006 Acts, ch 1117, §110

521.18 Articles of merger or consolidation — filing fees and approval.
A company filing a plan to merge or consolidate under the provisions of this chapter shall file its articles of merger or consolidation with the commission for its approval. The fee for filing articles of merger or consolidation with the commission is fifty dollars.
2006 Acts, ch 1117, §111

CHAPTER 521A

INSURANCE HOLDING COMPANY SYSTEMS

Referred to in §87.4, 296.7, 331.301, 364.4, 505.28, 505.29, 507C.12, 508.5, 508.9, 508B.2, 510.1B, 510.6, 515.8, 515.12, 515G.2, 521.16, 521C.2, 521C.6, 521C.9, 669.14, 670.7

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MUTUAL INSURANCE HOLDING COMPANIES

521A.14 Mutual insurance holding companies.

GENERAL PROVISIONS

521A.1 Definitions.
For the purpose of this chapter, unless the context otherwise requires:
1. *"Affiliate of"*, or a person affiliated with, a specific person, shall mean a person who directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.
2. The term *"commissioner"* shall mean the insurance commissioner, the commissioner's deputies, or the insurance division, as appropriate.
3. *"Control"*, including *"controlling"*, *"controlled by"*, and *"under common control with"*, shall mean the possession, direct or indirect, of the power to direct or cause the direction

of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is solely the result of an official position with or a corporate office held by the person. Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing, ten percent or more of the voting securities of any other person. This presumption may be rebutted by a showing made in the manner provided in section 521A.3, subsections 1 through 5, inclusive, or section 521A.4, subsection 11, whichever is applicable, that control does not exist in fact. The commissioner may determine, after furnishing all persons in interest notice and opportunity to be heard and making specific findings of fact to support the determination, that control exists in fact, notwithstanding the absence of a presumption to that effect.

4. *"Domestic insurer"* means an insurer organized or created under the laws of this state except an insurer excluded under subsection 8.

5. *"Enterprise risk"* means any activity, circumstance, event, or series of events involving one or more affiliates of an insurer that, if not remedied promptly, is likely to have a material adverse effect upon the financial condition or liquidity of the insurer or its insurance holding company system as a whole, including but not limited to anything that would cause the insurer's risk-based capital to fall into a company-action-level event as set forth in section 521E.3 for insurers or section 521F.4 for health organizations, or would cause the insurer to be in hazardous financial condition pursuant to 191 IAC ch. 110.

6. *"Group-wide supervisor"* means a regulatory official who is authorized, and who is determined or acknowledged by the commissioner pursuant to section 521A.6B to have sufficient significant contacts with an internationally active insurance group, to engage in conducting and coordinating group-wide supervision of the internationally active insurance group.

7. *"Insurance holding company system"* shall consist of two or more affiliated persons, one or more of which is an insurer.

8. *"Insurer"* means a company qualified and licensed by the insurance division to transact the business of insurance in this state by certificate issued pursuant to chapters 508, 512B, 514, 514B, 515, 515E, and 520, except that it shall not include agencies, authorities, or instrumentalities of the United States, its possessions and territories, the commonwealth of Puerto Rico, the District of Columbia, or a state or political subdivision of a state.

9. *"Internationally active insurance group"* means an insurance holding company system that includes an insurer registered under section 521A.4 and that meets all of the following criteria:

a. The insurance holding company system has premiums written in at least three countries.

b. The percentage of gross premiums written outside the United States is at least ten percent of the insurance holding company system's total gross written premiums.

c. Based on a three-year rolling average, the total assets of the insurance holding company system are at least fifty billion dollars or the total gross written premiums of the insurance holding company system are at least ten billion dollars.

10. A *"person"* is an individual, a corporation, a partnership, an association, a joint stock company, a trust, an unincorporated organization, any similar entity or any combination of the foregoing acting in concert, but does not include a joint venture partnership exclusively engaged in owning, managing, leasing, or developing real or tangible personal property.

11. A *"securityholder"* of a specified person is one who owns any security of such person, including common stock, preferred stock, debt obligations, and any other security convertible into or evidencing the right to acquire any of the foregoing.

12. A *"subsidiary"* of a specified person is an affiliate controlled by such person directly, or indirectly through one or more intermediaries.

13. *"Supervisory college"* means a temporary or permanent forum for communication and cooperation between regulators charged with supervision of an insurer or its affiliates.

14. The term *"voting security"* shall include any security convertible into or evidencing a right to acquire a voting security.

[C71, 73, 75, 77, 79, 81, §521A.1]

86 Acts, ch 1102, §1, 2; 90 Acts, ch 1234, §72; 97 Acts, ch 186, §25; 2006 Acts, ch 1117, §112; 2014 Acts, ch 1018, §1, 2; 2016 Acts, ch 1122, §7

Referred to in §507C.2, 508.33A, 510A.2, 511.8(22)(b), 515.125, 515.128, 515B.2, 515G.1, 518C.3, 521.16, 521H.2, 521H.6, 522.2

521A.2 Subsidiaries of insurers.

1. *Authorization.* Any domestic insurer, either by itself or in cooperation with one or more persons, subject to the limitations set forth herein or elsewhere in this chapter, may organize or acquire one or more subsidiaries engaged or registered to engage in one or more of the following businesses or activities:

a. Any kind of insurance business authorized by the jurisdiction in which it is incorporated.

b. Acting as an insurance producer for its parent or for any of its parent's insurer subsidiaries or intermediate insurer subsidiaries.

c. Investing, reinvesting, or trading in securities and financial instruments as defined in section 511.8, subsection 22, for its own account, that of its parent, any subsidiary of its parent, or any affiliate or subsidiary.

d. Management of any investment company subject to or registered pursuant to the Investment Company Act of 1940, as amended, including related sales and services.

e. Acting as a broker dealer subject to or registered pursuant to the Securities Exchange Act of 1934 as amended.

f. Rendering financial services or advice to individuals, governments, government agencies, corporations, or other organizations or groups.

g. Rendering other services related to the operations of an insurance business including but not limited to actuarial, loss prevention, safety engineering, data processing, accounting, claims, appraisal, and collection services.

h. Ownership and management of assets which the parent corporation could itself own and manage. However, the aggregate investment by the insurer and its subsidiaries acquired or organized pursuant to this paragraph shall not exceed the limitations applicable to the investments by the insurer.

i. Acting as administrative agent for a government instrumentality which is performing an insurance function.

j. Financing of insurance premiums, agents and other forms of consumer financing.

k. Any other business or service activity reasonably ancillary to an insurance business.

l. Owning a corporation or corporations engaged or organized to engage exclusively in one or more of the businesses specified in paragraphs *"a"* to *"k"* inclusive.

2. *Exception.* Nothing contained in subsection 1 of this section shall prohibit a domestic insurer, either by itself or in cooperation with one or more persons, from investing amounts up to a total of ten percent of surplus in one or more subsidiaries or affiliates organized to do any lawful business.

3. *Additional investment authority.* In addition to investments in common stock, preferred stock, debt obligations and other securities permitted under all other sections of this subtitle, a domestic insurer may also:

a. Invest, in common stock, preferred stock, debt obligations, and other securities of one or more subsidiaries, amounts which do not exceed the lesser of ten percent of the insurer's assets or fifty percent of the insurer's surplus as regards policyholders, if after the investments the insurer's surplus as regards policyholders will be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs. In calculating the amount of the investments, investments in domestic or foreign insurance subsidiaries shall be excluded and both of the following shall be included:

(1) Total net moneys or other consideration expended and obligations assumed in the acquisition or formation of a subsidiary, including all organizational expenses and contributions to capital and surplus of such subsidiary whether or not represented by the purchase of capital stock or issuance of other securities.

(2) All amounts expended in acquiring additional common stock, preferred stock, debt obligations, and other securities and all contributions to the capital or surplus, of a subsidiary subsequent to its acquisition or formation.

b. Invest any amount in common stock, preferred stock, debt obligations and other securities of one or more subsidiaries provided that each such subsidiary agrees to limit its investments in any asset so that such investments will not cause the amount of the total investment of the insurer to exceed any of the investment limitations specified in paragraph *"a"* of this subsection or in chapters 511, 515, 518A, and 520 applicable to the insurer. For the purpose of this paragraph, *"total investment of the insurer"* shall include both:

(1) Any direct investment by the insurer in an asset.

(2) The insurer's proportionate share of any investment in an asset by any subsidiary of the insurer, which shall be calculated by multiplying the amount of the subsidiary's investment by the percentage of the insurer's ownership of such subsidiary.

c. With the approval of the commissioner, invest any greater amount in common stock, preferred stock, debt obligations, or other securities of one or more subsidiaries, if after the investment the insurer's surplus as regards policyholders is reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs.

d. Invest, reinvest, and trade in financial instruments as defined in section 511.8, subsection 22, for its own account, that of its parent, any subsidiary of its parent, or any affiliate or subsidiary.

4. *Exemption from investment restrictions.* Investments in common stock, preferred stock, debt obligations or other securities of subsidiaries made pursuant to subsection 3 of this section hereof shall not be subject to any of the otherwise applicable restrictions or prohibitions contained in the Code applicable to such investments of insurers.

5. *Qualification of investment — when determined.* Whether any investment pursuant to subsection 3 meets the applicable requirements of the subsection is to be determined before the investment is made by calculating the applicable investment limitations as though the investment had already been made, taking into account the then outstanding principal balance on all previous investments in debt obligations, and the value of all previous investments in equity securities as of the day they were made, net of any return of capital invested, excluding dividends.

6. *Cessation of control.* If an insurer ceases to control a subsidiary, it shall dispose of any investment therein made pursuant to this section within three years from the time of the cessation of control or within such further time as the commissioner may prescribe, unless at any time after such investment shall have been made, such investment shall have met the requirements for investment under any other section of the Code, and the insurer has notified the commissioner thereof.

[C71, 73, 75, 77, 79, 81, §521A.2; 82 Acts, ch 1051, §3]

86 Acts, ch 1102, §3 – 8; 87 Acts, ch 115, §65; 91 Acts, ch 26, §48; 2001 Acts, ch 16, §11, 37; 2006 Acts, ch 1117, §113, 114

Referred to in §521A.5

521A.3 Acquisition of control of or merger with domestic insurer.

1. *Filing requirements.*

a. No person other than the issuer shall make a tender offer for or a request or invitation for tenders of, or enter into any agreement to exchange securities for, seek to acquire, or acquire, in the open market or otherwise, any voting security of a domestic insurer if, after the consummation thereof, such person would, directly or indirectly, or by conversion or by exercise of any right to acquire, be in control of such insurer, and no person shall enter into an agreement to merge with or otherwise to acquire control of a domestic insurer unless, at the time any such offer, request, or invitation is first made or any such agreement is entered into, or prior to the acquisition of such securities if no offer or agreement is involved, such person has first filed with the commissioner and has sent to such insurer, a statement containing the information required by this section and such offer, request, invitation, agreement, or acquisition has been approved by the commissioner in the manner hereinafter prescribed.

b. For purposes of this section, any controlling person of a domestic insurer seeking

to divest its controlling interest in the domestic insurer, in any manner, shall file with the commissioner, with a copy to the insurer, confidential notice of its proposed divestiture at least thirty days prior to the cessation of control. The commissioner shall determine those instances in which the party seeking to divest or to acquire a controlling interest in an insurer, shall be required to file for and obtain approval of the transaction. The information shall remain confidential until the conclusion of the transaction unless the commissioner, in the commissioner's discretion, determines that confidential treatment will interfere with enforcement of this section. If the statement referred to in paragraph *"a"* is otherwise filed, this paragraph *"b"* shall not apply.

c. For purposes of this section a *"domestic insurer"* shall include any other person controlling a domestic insurer unless the other person is either directly or through its affiliates primarily engaged in business other than the business of insurance. However, for purposes of this section *"person"* does not include a securities broker holding, in the usual and customary broker's function, less than twenty percent of the voting securities of an insurance company or of a person which controls an insurance company.

2. *Content of statement.*

a. The statement to be filed with the commissioner hereunder shall be made under oath or affirmation and shall contain the following:

(1) The name and address of each person by whom or on whose behalf the merger or other acquisition of control referred to in subsection 1 is to be effected, hereinafter called "acquiring party".

(a) If such person is an individual, the individual's principal occupation and all offices and positions held during the past five years, and any conviction of crimes other than minor traffic violations during the past ten years.

(b) If such person is not an individual, a report of the nature of its business operations during the past five years or for such lesser period as such person and any predecessors thereof shall have been in existence; an informative description of the business intended to be done by such person and such person's subsidiaries; and a list of all individuals who are or who have been selected to become directors or executive officers of such person, or who perform or will perform functions appropriate to such positions. Such list shall include for each such individual the information required by subparagraph division (a).

(2) The source, nature, and amount of the consideration used or to be used in effecting the merger or other acquisition of control, a description of any transaction in which funds were or are to be obtained for any such purpose including a pledge of the insurer's stock, or the stock of any of its subsidiaries or controlling affiliates, and the identity of persons furnishing the consideration. However, if a source of the consideration is a loan made in the lender's ordinary course of business, the identity of the lender shall remain confidential, if the person filing the statement so requests.

(3) Fully audited financial information as to the earnings and financial condition of each acquiring party for the preceding five fiscal years of each such acquiring party, or for such lesser period as such acquiring party and any predecessors thereof shall have been in existence, and similar unaudited information as of a date not earlier than ninety days prior to the filing of the statement.

(4) Any plans or proposals which each acquiring party may have to liquidate such insurer, to sell its assets or merge or consolidate it with any person, or to make any other material change in its business or corporate structure or management.

(5) The number of shares of any security referred to in subsection 1 which each acquiring party proposes to acquire, and the terms of the offer, request, invitation, agreement, or acquisition referred to in subsection 1, and a statement as to the method by which the fairness of the proposal was arrived at.

(6) The amount of each class of any security referred to in subsection 1 which is beneficially owned or concerning which there is a right to acquire beneficial ownership by each acquiring party.

(7) A full description of any contracts, arrangements or understandings with respect to any security referred to in subsection 1 in which any acquiring party is involved, including but not limited to transfer of any of the securities, joint ventures, loan or option arrangements,

puts or calls, guarantees of loans, guarantees against loss or guarantees of profits, division of losses or profits, or the giving or withholding of proxies. Such description shall identify the persons with whom such contracts, arrangements or understandings have been entered into.

(8) A description of the purchase of any security referred to in subsection 1 during the twelve calendar months preceding the filing of the statement, by any acquiring party, including the dates of purchase, names of the purchasers, and consideration paid or agreed to be paid therefor.

(9) A description of any recommendations to purchase any security referred to in subsection 1 made during the twelve calendar months preceding the filing of the statement, by any acquiring party, or by anyone based upon interview or at the suggestion of such acquiring party.

(10) Copies of all tender offers for, requests or invitations for tenders of, exchange offers for, and agreements to acquire or exchange any securities referred to in subsection 1, and, if distributed, of additional soliciting material relating thereto.

(11) The terms of any agreement, contract or understanding made with any broker-dealer as to solicitation of securities referred to in subsection 1 for tender, and the amount of any fees, commissions, or other compensation to be paid to broker-dealers with regard thereto.

(12) An agreement by the person required to file the statement referred to in subsection 1 that the person will provide the annual report specified in section 521A.4, subsection 12 for so long as control exists.

(13) An acknowledgment by the person required to file the statement referred to in subsection 1 that the person and all subsidiaries within its control in the insurance holding company system will provide information to the commissioner upon request as necessary to evaluate enterprise risk to the insurer.

(14) Additional information as the commissioner may by rule prescribe as necessary or appropriate for the protection of policyholders of the insurer or in the public interest.

b. If the person required to file the statement referred to in subsection 1 is a partnership, limited partnership, syndicate or other group, the commissioner may require that the information called for by paragraph *"a"*, subparagraphs (1) through (14) shall be given with respect to each partner of such partnership or limited partnership, each member of such syndicate or group, and each person who controls such partner or member. If any such partner, member, or person is a corporation or the person required to file the statement referred to in subsection 1 is a corporation, the commissioner may require that the information called for by paragraph *"a"*, subparagraphs (1) through (14) shall be given with respect to such corporation, each officer and director of such corporation, and each person who is directly or indirectly the beneficial owner of more than ten percent of the outstanding voting securities of such corporation. If any material change occurs in the facts set forth in the statement filed with the commissioner and sent to such insurer pursuant to this section, an amendment setting forth such change, together with copies of all documents and other material relevant to such change, shall be filed with the commissioner and sent to such insurer within two business days after the person learns of such change. Such insurer shall send such amendment to its shareholders.

3. *Alternative filing materials.* If any offer, request, invitation, agreement, or acquisition referred to in subsection 1 of this section is proposed to be made by means of a registration statement under the Securities Act of 1933 or in circumstances requiring the disclosure of similar information under the Securities Exchange Act of 1934, or under a state law requiring similar registration, or disclosure, the person required to file the statement referred to in subsection 1 of this section may utilize such documents in furnishing the information called for by that statement.

4. *Approval by the commissioner — hearings.*

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

(1) After the change of control the domestic insurer referred to in subsection 1 will be able to satisfy the requirements for the issuance of a license to write the line or lines of insurance for which it is presently licensed.

(2) The effect of the merger or other acquisition of control will not substantially lessen competition in insurance in this state.

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

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

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

(6) The merger or other acquisition of control is not likely to be hazardous or prejudicial to the insurance-buying public.

b. The public hearing referred to in paragraph *"a"* shall be held within thirty days after the commissioner has determined that the statement required by subsection 1 has been completed and contains all the required information set forth in subsection 2, and at least twenty days' notice of the public hearing shall be given by the commissioner to the person filing the statement and to the domestic insurer. Not less than seven days' notice of the public hearing shall be given by the person filing the statement to the insurer and to such other persons as may be designated by the commissioner. The commissioner shall make a determination within thirty days after the conclusion of the hearing. At the hearing, the person filing the statement, the insurer, any person to whom notice of hearing was sent, and any other person whose interests may be affected shall have the right to present evidence, examine and cross-examine witnesses, and offer oral and written arguments and in connection therewith shall be entitled to conduct discovery proceedings in the same manner as is presently allowed in the district court of this state. All discovery proceedings shall be concluded not later than three days prior to the commencement of the public hearing.

c. If the proposed merger or other acquisition of control will require the approval of more than one commissioner, the public hearing referred to in paragraph *"a"* may be held on a consolidated basis upon request of the person filing the statement referred to in subsection 1. Such person may file the statement referred to in subsection 1 with the national association of insurance commissioners within five days of making the request for a public hearing. The commissioner may opt out of a consolidated hearing, and shall provide notice to the applicant of the opt-out within ten days of the receipt of the statement referred to in subsection 1. A hearing conducted on a consolidated basis shall be public and shall be held within the United States before the commissioners of the states in which the insurers are domiciled. Such commissioners shall hear and receive evidence. The commissioner may attend such hearing in person or by telecommunication.

d. The commissioner may retain any attorneys, actuaries, accountants, and other experts not otherwise a part of the commissioner's staff as may be reasonably necessary to assist the commissioner in reviewing the proposed merger or acquisition of control, the reasonable cost of which shall be paid by the acquiring party.

5. *Exemptions.* The provisions of this section shall not apply to any offer, request, invitation, agreement, or acquisition which the commissioner by order shall exempt therefrom for one of the following reasons:

a. It has not been made or entered into for the purpose and does not have the effect of changing or influencing the control of a domestic insurer.

b. It is otherwise not comprehended within the purposes of this section.

6. *Violations.* The following shall be violations of this section:

a. The failure to file any statement, amendment, or other material required to be filed pursuant to subsection 1 or 2 of this section.

b. The effectuation or any attempt to effectuate an acquisition of control of, or merger with, a domestic insurer unless the commissioner has given approval thereto.

7. *Jurisdiction — consent to service of process.* The district court is hereby vested with jurisdiction over a person that is not a resident, is not domiciled, or is not authorized to do business in this state that files a statement with the commissioner under this section, and

over all actions involving the person arising out of violations of this section, and the person shall be deemed to have performed acts equivalent to and constituting an appointment by the person of the commissioner to be the person's true and lawful attorney upon whom may be made all lawful process, notice, or demand in any action, suit, or proceeding arising out of a violation of this section. A copy of all such lawful process, notice, or demand shall be made on the commissioner as the attorney for service of process as provided in section 505.30.

[C71, 73, 75, 77, 79, 81, §521A.3; 82 Acts, ch 1051, §4 – 6]

86 Acts, ch 1102, §9 – 11; 91 Acts, ch 26, §49, 50; 93 Acts, ch 88, §26; 97 Acts, ch 186, §26; 2012 Acts, ch 1023, §129; 2014 Acts, ch 1018, §3 – 9; 2018 Acts, ch 1018, §12

Referred to in §505.23, 508B.13, 521.16, 521A.1, 521A.9, 521A.14
Subsection 7 amended

521A.4 Registration of insurers — enterprise risk report.

1. *Registration.* An insurer which is authorized to do business in this state and which is a member of an insurance holding company system shall register with the commissioner, except a foreign insurer subject to registration requirements and standards which are substantially similar to those contained in this section and section 521A.5, subsection 1, paragraph *"a"*, and are adopted by statute or regulation in the jurisdiction of its domicile. The insurer shall also file a copy of the summary of its registration statement as required by subsection 4 in each state in which that insurer is authorized to do business if requested to do so by the commissioner of that state. An insurer which is subject to registration under this section shall register within fifteen days after it becomes subject to registration and annually thereafter by March 31 of each year for the previous calendar year unless the commissioner for good cause shown extends the time for registration, and then within the extended time. The commissioner may require any authorized insurer which is a member of a holding company system which is not subject to registration under this section to furnish a copy of the registration statement or other information filed by the insurance company with the insurance regulatory authority of the company's domiciliary jurisdiction.

2. *Information and form required.* Every insurer subject to registration shall file a registration statement on a form prescribed by the commissioner, which may be a form provided by the national association of insurance commissioners, which shall contain current information about:

a. The capital structure, general financial condition, ownership and management of the insurer and any person controlling the insurer.

b. The identity and relationship of every member of the insurance holding company system.

c. The following agreements in force, relationships subsisting, and transactions currently outstanding or which have occurred during the last calendar year between the insurer and its affiliates:

(1) Loans, other investments, or purchases, sales, or exchanges of securities of the affiliates by the insurer or of the insurer by its affiliates.

(2) Purchases, sales, or exchanges of assets.

(3) Transactions not in the ordinary course of business.

(4) Guarantees or undertakings for the benefit of an affiliate which result in an actual contingent exposure of the insurer's assets to liability, other than insurance contracts entered into in the ordinary course of the insurer's business.

(5) All management and service contracts and all cost-sharing arrangements, other than cost allocation arrangements based upon generally accepted accounting principles.

(6) Reinsurance agreements.

(7) Dividends and other distributions to shareholders.

(8) Consolidated tax allocation agreements.

d. A pledge of the insurer's stock, including stock of a subsidiary or controlling affiliate, for a loan made to a member of the insurance holding company system.

e. If requested by the commissioner, the insurer shall include financial statements of or within an insurance holding company system, including all affiliates. Financial statements may include but are not limited to annual audited financial statements filed with the United

States securities and exchange commission pursuant to the federal Securities Act of 1933, as amended, or the federal Securities Exchange Act of 1934, as amended. An insurer required to file financial statements pursuant to this paragraph may satisfy the request by providing the commissioner with the most recently filed financial statements of the parent corporation that have been filed with the United States securities and exchange commission.

f. Statements that the insurer's board of directors oversees corporate governance and internal controls and that the insurer's officers or senior management have approved, implemented, and continue to maintain and monitor corporate governance and internal control procedures.

g. Other matters concerning transactions between registered insurers and any affiliates as may be included from time to time in any registration forms adopted or approved by the commissioner.

h. Any other information required by the commissioner by rule or by regulation.

3. *Materiality.* Information need not be disclosed on the registration statement filed pursuant to subsection 2 if the information is not material for the purposes of this section. Unless the commissioner by rule or order provides otherwise, sales, purchases, exchanges, loans or extensions of credit, or investments or guarantees involving one-half of one percent or less of an insurer's admitted assets as of the next preceding December 31 are not material for purposes of this section.

4. *Reporting of dividends to shareholders.* Subject to section 521A.5, subsection 3, a registered insurer shall report to the commissioner all dividends and other distributions to shareholders within fifteen days following the declaration of the dividends or distributions.

5. *Summary of registration statement.* All registration statements shall contain a summary outlining all items in the current registration statement representing changes from the next preceding registration statement.

6. *Information of insurers.* Any person within an insurance holding company system subject to registration is required to provide complete and accurate information to an insurer if the information is reasonably necessary to enable the insurer to comply with this chapter.

7. *Termination of registration.* The commissioner shall terminate the registration of any insurer which demonstrates that it no longer is a member of an insurance holding company system.

8. *Consolidated filing.* The commissioner may require or allow two or more affiliated insurers subject to registration hereunder to file a consolidated registration statement or consolidated reports amending their consolidated registration statement or their individual registration statements.

9. *Alternative registration.* The commissioner may allow an insurer which is authorized to do business in this state and which is part of an insurance holding company system to register on behalf of any affiliated insurer which is required to register under subsection 1 of this section and to file all information and material required to be filed under this section.

10. *Exemptions.* The provisions of this section shall not apply to any insurer, information, or transaction if and to the extent that the commissioner by rule, regulation, or order shall exempt the same from the provisions of this section.

11. *Disclaimer.* Any person may file with the commissioner a disclaimer of affiliation with any authorized insurer or such a disclaimer may be filed by such insurer or any member of an insurance holding company system. The disclaimer shall fully disclose all material relationships and basis for affiliation between such person and such insurer as well as the basis for disclaiming such affiliation. A disclaimer of affiliation shall be deemed to have been granted unless the commissioner, within thirty days following receipt of a complete disclaimer, notifies the filing party that the disclaimer is disallowed. In the event of disallowance, the disclaiming party may request an administrative hearing, which shall be granted. The disclaiming party shall be relieved of its duty to register under this section if approval of the disclaimer has been granted by the commissioner, or if the disclaimer is deemed to have been granted.

12. *Enterprise risk report.* The ultimate controlling person of every insurer subject to registration shall also file an annual enterprise risk report. The report shall, to the best of the ultimate controlling person's knowledge and belief, identify the material risks within the

insurance holding company system that could pose enterprise risk to the insurer. The report shall be filed with the lead state commissioner of the insurance holding company system as determined by the procedures within the financial analysis handbook adopted by the national association of insurance commissioners.

13. *Violations.* The failure to file a registration statement or a summary of the registration statement or an enterprise risk report required by this section within the time specified for the filing is a violation of this section.

[C71, 73, 75, 77, 79, 81, §521A.4]

86 Acts, ch 1102, §12 – 18; 87 Acts, ch 115, §66; 91 Acts, ch 26, §51 – 53; 2014 Acts, ch 1018, §10 – 13

Referred to in §508.33A, 521A.1, 521A.3, 521A.5, 521A.6, 521A.6A, 521A.6B, 521A.7, 521A.10, 521H.3

521A.5 Standards.

1. *Transactions within a holding company system affecting domestic insurers.*

a. Material transactions by registered insurers with their affiliates are subject to the following standards:

(1) The terms shall be fair and reasonable.

(2) Agreements for cost-sharing services and management shall include such provisions as required by rule issued by the commissioner.

(3) Charges or fees for services performed shall be reasonable.

(4) Expenses incurred and payment received shall be allocated to the insurer in conformity with customary and consistently applied insurance accounting practices.

(5) The books, accounts, and records of each party shall be so maintained as to clearly and accurately disclose the precise nature and details of the transactions.

(6) After any material transaction with an affiliate and after any dividends or distributions to shareholder affiliates, the insurer's surplus as regards policyholders shall be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs.

b. A domestic insurer and a person in its holding company system shall not enter into any of the following transactions between each other involving amounts equal to or exceeding the lesser of three percent of a nonlife insurer's admitted assets or twenty-five percent of the surplus as regards policyholders with respect to nonlife insurers, and equal to or exceeding three percent of the insurer's admitted assets with respect to life insurers, each as of the next preceding December 31, unless the domestic insurer notifies the commissioner in writing of its intention to enter into the transaction at least thirty days prior to entering into the transaction or within a shorter time permitted by the commissioner and the commissioner has not disapproved of the transaction within the time period:

(1) Sales.

(2) Purchases.

(3) Exchanges.

(4) Loans or extensions of credit.

(5) Investments.

(6) Loans or extensions of credit to a person who is not an affiliate, if the domestic insurer makes the loans or extensions of credit with the agreement or understanding that the proceeds of the transactions, in whole or in substantial part, are to be used to make loans or extensions of credit to, to purchase assets of, or to make investments in, an affiliate of the domestic insurer making the loans or extensions of credit.

c. A domestic insurer and a person in its holding company system shall not enter into any of the following transactions, unless the domestic insurer notifies the commissioner in writing of its intention to enter into the transaction at least thirty days prior to entering into the transaction or within a shorter time permitted by the commissioner and the commissioner has not disapproved of the transaction within the time period:

(1) All reinsurance pooling agreements.

(2) All reinsurance agreements or modifications to such agreements in which the reinsurance premium or a change in the insurer's liabilities, or the projected reinsurance premium or a change in the insurer's liabilities in any of the next three years, equals or exceeds five percent of the insurer's surplus as regards policyholders, as of the next

preceding December 31, including those agreements which may require as consideration the transfer of assets from an insurer to a nonaffiliate, if an agreement or understanding exists between the insurer and nonaffiliate that any portion of such assets will be transferred to one or more affiliates of the insurer.

(3) All management agreements, service contracts, tax allocation agreements, guarantees, and all other cost-sharing arrangements. A guarantee which is quantifiable as to amount is not subject to the notice requirements of this paragraph "*c*" unless it exceeds the lesser of one-half of one percent of the insurer's admitted assets or ten percent of surplus as regards policyholders as of the next preceding December 31. Further, all guarantees which are not quantifiable as to amount are subject to the notice requirements of this paragraph "*c*".

(4) Direct or indirect acquisitions or investments in a person that controls the insurer or in an affiliate of the insurer in an amount which, together with its present holdings in such investments, exceeds two and one-half percent of the insurer's surplus to policyholders. Direct or indirect acquisitions or investments in subsidiaries acquired pursuant to section 521A.2 or authorized under any other section of this chapter, or in nonsubsidiary insurance affiliates that are subject to the provisions of this chapter, are exempt from this subparagraph.

(5) Any material transactions specified by rule which the commissioner determines may adversely affect the interests of the domestic insurer's policyholders.

d. This subsection does not authorize or permit any transactions which in the case of an insurer would be otherwise contrary to law.

e. A domestic insurer shall not enter into transactions which are part of a plan or series of like transactions with a person or persons within the holding company system if the purpose of those separate transactions is to avoid the statutory threshold amount and thus avoid the review that would occur otherwise. If the commissioner determines that such separate transactions were entered into over a twelve-month period for that purpose, the commissioner may exercise the authority under section 521A.10.

f. The commissioner, in reviewing transactions pursuant to paragraphs "*b*" and "*c*", shall consider whether the transactions comply with the standards set forth in paragraph "*a*".

g. A domestic insurer shall notify the commissioner within thirty days of an investment of the insurer in a corporation if the total investment in the corporation by the insurance holding company system exceeds ten percent of the corporation's voting securities.

2. *Adequacy of surplus.* For purposes of this chapter in determining whether an insurer's surplus as regards policyholders is reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs, the following factors, among others, shall be considered:

a. The size of the insurer as measured by its assets, capital and surplus, reserves, premium writings, insurance in force and other appropriate criteria.

b. The extent to which the insurer's business is diversified among the several lines of insurance.

c. The number and size of risks insured in each line of business.

d. The extent of the geographical dispersion of the insurer's insured risks.

e. The nature and extent of the insurer's reinsurance program.

f. The quality, diversification, and liquidity of the insurer's investment portfolio.

g. The recent past and projected future trend in the size of the insurer's surplus as regards policyholders.

h. The surplus as regards policyholders maintained by other comparable insurers.

i. The adequacy of the insurer's reserves.

j. The quality and liquidity of investments in subsidiaries made pursuant to section 521A.2. The commissioner may treat any such investment as a disallowed asset for purposes of determining the adequacy of surplus as regards policyholders whenever in the commissioner's judgment such investment so warrants.

k. The quality of the company's earnings and the extent to which the reported earnings include extraordinary items.

3. *Dividends and other distributions.*

a. (1) A domestic insurer may declare and pay dividends to its shareholders only from earned surplus.

(2) For the purposes of this paragraph, *"earned surplus"* means surplus as regards policyholders less paid-in and contributed surplus, and may include a fair revaluation of assets by the board of directors that is reasonable under the circumstances. Assets revalued by the board of directors cannot be included in earned surplus until thirty days after the commissioner has received notice of the revaluation and has approved the revaluation. The commissioner shall approve or disapprove the revaluation within thirty days after receiving notice of the revaluation unless for good cause the commissioner extends the approval period for an additional thirty days.

b. (1) A domestic insurer shall not pay any extraordinary dividend or make any other extraordinary distribution to its shareholders until thirty days after the commissioner has received notice of the declaration of the dividend or distribution and has not disapproved such payment within the period, or until the time the commissioner has approved the payment within the thirty-day period.

(2) For purposes of this paragraph, an *"extraordinary dividend or distribution"* includes any dividend or distribution of cash or other property, whose fair market value together with that of other dividends or distributions made within the preceding twelve months exceeds the greater of the following:

(a) Ten percent of insurer's surplus as regards policyholders as of the thirty-first day of December next preceding.

(b) The net gain from operations of the insurer, if the insurer is a life insurer, or the net income, if the insurer is not a life insurer, for the twelve-month period ending the thirty-first day of December next preceding.

(3) An extraordinary dividend or distribution does not include pro rata distributions of any class of the insurer's own securities.

c. A domestic insurer subject to registration under section 521A.4 shall report to the commissioner all dividends to shareholders within five business days following the declaration of the dividends and not less than fourteen days prior to the payment of the dividends. This report shall also include a schedule setting forth all dividends or other distributions made within the previous twelve months.

d. Notwithstanding any other provision of law, a domestic insurer may declare an extraordinary dividend or distribution which is conditional upon the commissioner's approval of the dividend or distribution. Such declaration does not confer any rights upon shareholders until the commissioner has approved the payment of the dividend or distribution or the commissioner has not disapproved the payment within the thirty-day period as provided in paragraph *"b"*.

4. *Management of domestic insurers subject to registration.*

a. Notwithstanding the control of a domestic insurer by any person, the officers and directors of the insurer shall not thereby be relieved of any obligation or liability to which they would otherwise be subject by law, and the insurer shall be managed so as to assure its separate operating identity consistent with this chapter.

b. Nothing in this section shall preclude a domestic insurer from having or sharing a common management, or cooperative or joint use of personnel, property, or services with one or more other persons under arrangements meeting the standards of this section.

c. Not less than one-third of the directors of a domestic insurer, and not less than one-third of the members of each committee of the board of directors of any domestic insurer, shall be persons who are not officers or employees of the insurer or of any entity controlling, controlled by, or under common control with the insurer and who are not beneficial owners of a controlling interest in the voting stock of the insurer or entity. At least one such person must be included in any quorum for the transaction of business at any meeting of the board of directors or any committee of the board of directors.

d. The board of directors of a domestic insurer shall establish one or more committees comprised solely of directors or other persons appointed by the board, the majority of whom are not officers or employees of the insurer or of any entity controlling, controlled by, or under common control with the insurer and are not beneficial owners of a controlling interest in the voting stock of the insurer or any such entity. The committee or committees shall have responsibility for recommending or nominating candidates for director for

election by shareholders or policyholders, evaluating the performance of officers deemed to be principal officers of the insurer, and recommending to the board of directors the selection and compensation of the principal officers.

e. The provisions of paragraphs *"c"* and *"d"* shall not apply to a domestic insurer if the person controlling the insurer, such as an insurer, a mutual insurance holding company, or a publicly held corporation, has a board of directors and committees of the board of directors that meet the requirements of paragraphs *"c"* and *"d"* with respect to such controlling entity.

f. An insurer may make application to the commissioner for a waiver from the requirements of this subsection if the insurer's annual direct written and assumed premium, excluding premiums reinsured with the federal crop insurance corporation and federal flood program, is less than three hundred million dollars. An insurer may also make application to the commissioner for a waiver from the requirements of this subsection based upon unique circumstances. The commissioner may consider various factors including but not limited to the type of business entity, volume of business written, availability of qualified board members, or the ownership or organizational structure of the entity.

[C71, 73, 75, 77, 79, 81, §521A.5]

86 Acts, ch 1102, §19, 20; 91 Acts, ch 26, §54; 92 Acts, ch 1117, §40, 43; 93 Acts, ch 88, §27 – 30; 94 Acts, ch 1006, §1; 94 Acts, ch 1023, §125; 2012 Acts, ch 1023, §157; 2014 Acts, ch 1018, §14 – 17; 2015 Acts, ch 128, §25, 50, 51; 2016 Acts, ch 1073, §157

Referred to in §508.33A, 511.8(22)(b), 521A.4, 521A.7, 521A.10

521A.6 Examination — penalties — expenses.

1. *Power of commissioner.* Subject to the limitation contained in this section and in addition to the powers which the commissioner has under chapter 507 relating to the examination of insurers, the commissioner shall have the power to examine any insurer registered under section 521A.4 and its affiliates to ascertain the financial condition of the insurer, including the enterprise risk to the insurer by the ultimate controlling party, or by any entity or combination of entities within the insurance holding company system, or by the insurance holding company system on a consolidated basis.

2. *Access to books and records — penalty.*

a. The commissioner may order an insurer registered under section 521A.4 to produce records, books, or other information papers in the possession of the insurer or its affiliates as reasonably necessary or to determine compliance with this chapter.

b. To determine compliance with this chapter, the commissioner may order any insurer registered under section 521A.4 to produce information not in the possession of the insurer if the insurer can obtain access to such information pursuant to a contractual relationship, statutory obligation, or other method. In the event the insurer cannot obtain the information requested by the commissioner, the insurer shall provide the commissioner a detailed explanation of the reason that the insurer cannot obtain the information and the identity of the holder of the information. Whenever it appears to the commissioner that the detailed explanation is without merit, the commissioner may require, after notice and hearing, the insurer to pay a penalty of five hundred dollars for each day's delay, or may suspend or revoke the insurer's certificate of authority.

3. *Compelling production.* In the event the insurer fails to comply with an order, the commissioner shall have the power to examine the affiliates to obtain the information. The commissioner shall also have the power to issue subpoenas, to administer oaths, and to examine under oath any person for purposes of determining compliance with this section. Upon the failure or refusal of any person to obey a subpoena, the commissioner may petition a court of competent jurisdiction, and upon proper showing, the court may enter an order compelling the witness to appear and testify or produce documentary evidence. Failure to obey the court order shall be punishable as contempt of court. Every person shall be obliged to attend as a witness at the place specified in the subpoena, when subpoenaed, anywhere within the state. Such a person shall be entitled to the same fees and mileage, if claimed, as a witness in district court, which fees, mileage, and actual expense, if any, necessarily incurred in securing the attendance of witnesses, and their testimony, shall be itemized and charged against, and be paid by, the company being examined.

4. *Use of consultants.* The commissioner may retain at the registered insurer's expense such attorneys, actuaries, accountants, and other experts not otherwise a part of the commissioner's staff as shall be reasonably necessary to assist in the conduct of the examination under subsection 1, 2, or 3 of this section. Any persons so retained shall be under the direction and control of the commissioner and shall act in a purely advisory capacity.

5. *Expenses.* Each registered insurer producing for examination records, books, and papers pursuant to subsection 1, 2, or 3 of this section shall be liable for and shall pay the expense of such examination in accordance with section 507.7.

[C71, 73, 75, 77, 79, 81, §521A.6]

86 Acts, ch 1102, §21, 22; 2014 Acts, ch 1018, §18

Referred to in §508.33A, 521A.6A, 521A.6B, 521A.7

521A.6A Supervisory colleges — assessment of insurers.

1. *Power of commissioner.* With respect to any insurer registered under section 521A.4 and in accordance with this section, the commissioner shall have the power to participate in a supervisory college for any domestic insurer that is part of an insurance holding company system with international operations in order to determine compliance by the insurer with this chapter. The powers of the commissioner with respect to supervisory colleges include but are not limited to the following:

a. Initiating the establishment of a supervisory college.

b. Clarifying the membership and participation of other supervisors in the supervisory college.

c. Clarifying the functions of the supervisory college and the role of other regulators, including the establishment of a group-wide supervisor.

d. Coordinating the ongoing activities of the supervisory college, including planning meetings, supervisory activities, and processes for information sharing.

e. Establishing a crisis management plan.

2. *Expenses — assessment.* Each registered insurer subject to this section shall be liable for and shall pay the reasonable expenses of the commissioner's participation in a supervisory college in accordance with subsection 3, including reasonable travel expenses. For purposes of this section, a supervisory college may be convened as either a temporary or permanent forum for communication and cooperation between the regulators charged with the supervision of the insurer or its affiliates, and the commissioner may establish a regular assessment to the insurer for the payment of these expenses.

3. *Supervisory college.* In order to assess the business strategy, financial position, legal and regulatory position, risk exposure, risk management and governance processes, and as part of the examination of individual insurers in accordance with section 521A.6, the commissioner may participate in a supervisory college with other regulators charged with supervision of an insurer or its affiliates, including other state, federal, and international regulatory agencies. The commissioner may enter into agreements in accordance with section 521A.7, subsection 3, providing the basis for cooperation between the commissioner and the other regulatory agencies, and the activities of the supervisory college. Nothing in this section shall delegate to the supervisory college the authority of the commissioner to regulate or supervise the insurer or its affiliates within the commissioner's jurisdiction.

2014 Acts, ch 1018, §19; 2016 Acts, ch 1122, §8, 9

Referred to in §521A.6B, 521A.7

521A.6B Group-wide supervision of internationally active insurance groups.

1. *a.* The commissioner may act as the group-wide supervisor of an internationally active insurance group in accordance with the provisions of this section. However, the commissioner may authorize another regulatory official to act as the group-wide supervisor where the internationally active insurance group meets any of the following conditions:

(1) Does not have substantial insurance operations in the United States.

(2) Has substantial insurance operations in the United States, but not in Iowa.

(3) Has substantial insurance operations in the United States and in Iowa, but the

commissioner has determined pursuant to the factors set forth in subsections 2 and 6 that another regulatory official is the appropriate group-wide supervisor.

b. In response to a request from an insurance holding company system that does not otherwise qualify as an internationally active insurance group, the commissioner may make a determination of or acknowledge a group-wide supervisor for such an insurance holding company system pursuant to this section.

2. *a.* In cooperation with other state, federal, and international regulatory agencies, the commissioner shall identify a single group-wide supervisor for an internationally active insurance group. The commissioner may determine that the commissioner is the appropriate group-wide supervisor for an internationally active insurance group that conducts substantial insurance operations concentrated in this state, or the commissioner may acknowledge that a regulatory official from another jurisdiction is the appropriate group-wide supervisor for the internationally active insurance group. In making a determination or acknowledgment under this paragraph *"a"*, the commissioner shall consider the following factors:

(1) The place of domicile of the insurers within the internationally active insurance group that hold the largest share of the group's written premiums, assets, or liabilities.

(2) The place of domicile of the top-tiered insurers in the insurance holding company system of the internationally active insurance group.

(3) The location of the executive offices or largest operational offices of the internationally active insurance group.

(4) Whether another regulatory official is acting as or is seeking to act as the group-wide supervisor of the internationally active insurance group under a regulatory system that the commissioner determines to be either of the following:

(a) Substantially similar to the system of regulation provided under the laws of this state.

(b) Otherwise sufficient in terms of providing for group-wide supervision, enterprise risk analysis, and cooperation with other regulatory officials.

(5) Whether another regulatory official acting as or seeking to act as the group-wide supervisor for the internationally active insurance group provides the commissioner with reasonably reciprocal recognition and cooperation.

b. Notwithstanding paragraph *"a"*, even if the commissioner is identified pursuant to this subsection as the group-wide supervisor of an internationally active insurance group, the commissioner may determine that it is appropriate to acknowledge another regulatory official to serve as the group-wide supervisor of the internationally active insurance group.

c. The acknowledgment of a group-wide supervisor pursuant to this subsection shall be made after consideration of the factors listed in paragraph *"a"*, subparagraphs (1) through (5), and shall be made in cooperation with and subject to the acknowledgment of other regulatory officials involved with supervision of members of the internationally active insurance group, and in consultation with the internationally active insurance group.

3. Notwithstanding any other provision of law, when another regulatory official is acting as the group-wide supervisor of an internationally active insurance group, the commissioner shall acknowledge that regulatory official as the group-wide supervisor of the internationally active insurance group. However, the commissioner shall make a new determination or acknowledgment as to the appropriate group-wide supervisor for the internationally active insurance group in the event that a material change in the internationally active insurance group results in either of the following:

a. The internationally active insurance group's insurers domiciled in Iowa holding the largest share of the group's premiums, assets, or liabilities.

b. Iowa being the place of domicile of the top-tiered insurers in the insurance holding company system of the internationally active insurance group.

4. Pursuant to section 521A.6, the commissioner is authorized to collect from any insurer registered pursuant to section 521A.4 all information necessary to determine whether it is appropriate for the commissioner to act as the group-wide supervisor of an internationally active insurance group or to acknowledge another regulatory official to act as the group-wide supervisor of the internationally active insurance group. Prior to issuing a determination or acknowledgment pursuant to this section, the commissioner shall notify the insurer registered pursuant to section 521A.4 and the ultimate controlling

person within the internationally active insurance group of the pending determination or acknowledgment. The insurer and the internationally active insurance group shall have not less than thirty days to provide the commissioner with additional information pertinent to the commissioner's pending determination or acknowledgment. The commissioner shall publish the identity of the internationally active insurance groups that the commissioner has determined are subject to group-wide supervision by the commissioner.

5. If a determination is made that the commissioner is the appropriate group-wide supervisor for an internationally active insurance group, the commissioner is authorized to engage in any of the following group-wide supervision activities:

a. Assessing the enterprise risks within the internationally active insurance group to ensure all of the following:

(1) That the material financial condition and liquidity risks to members of the internationally active insurance group that are engaged in the business of insurance are identified by management.

(2) That reasonable and effective mitigation measures are in place.

b. Requesting, from any member of an internationally active insurance group subject to the commissioner's group-wide supervision, information necessary and appropriate to assess enterprise risk, including but not limited to information about the members of the internationally active insurance group regarding all of the following:

(1) Governance, risk assessment, and management.

(2) Capital adequacy.

(3) Material intercompany transactions.

c. Coordinating and, through the authority of the regulatory officials of the jurisdictions where members of the internationally active insurance group are domiciled, compelling the development and implementation of reasonable measures designed to ensure that the internationally active insurance group is able to timely recognize and mitigate enterprise risks to members of the internationally active insurance group that are engaged in the business of insurance.

d. Communicating with other state, federal, and international regulatory agencies for members within the internationally active insurance group and sharing relevant information, subject to the confidentiality provisions of section 521A.7, through supervisory colleges as set forth in section 521A.6A or otherwise.

e. Entering into agreements with or obtaining documentation from any insurer registered under section 521A.4, any member of an internationally active insurance group, and any other state, federal, or international regulatory agency for members of the internationally active insurance group, that provides the basis for or otherwise clarifies the commissioner's role as group-wide supervisor of an internationally active insurance group, including provisions for resolving disputes with other regulatory officials. Such agreements or documentation shall not serve as evidence in any proceeding that any insurer or person within an insurance holding company system not domiciled or incorporated in this state is doing business in this state or is otherwise subject to jurisdiction in this state.

f. Other activities of group-wide supervision, consistent with the authority and purposes set forth in this section, as considered necessary by the commissioner.

6. If the commissioner acknowledges that another regulatory official from a jurisdiction that is not accredited by the national association of insurance commissioners is the group-wide supervisor of an internationally active insurance group, the commissioner may reasonably cooperate through a supervisory college or otherwise, with group-wide supervision undertaken by that regulatory official provided that all of the following occur:

a. The commissioner's cooperation is in compliance with the laws of this state.

b. The regulatory official acknowledged as the group-wide supervisor of the internationally active insurance group also recognizes and cooperates with the commissioner's activities as a group-wide supervisor for other internationally active insurance groups, where applicable. If such recognition and cooperation is not reasonably reciprocal, the commissioner may refuse recognition and cooperation to that regulatory official.

7. The commissioner is authorized to enter into agreements with or obtain documentation

from any insurer registered under section 521A.4, any affiliate of the insurer, and any other state, federal, or international regulatory agency for members of the internationally active insurance group, that provides the basis for or otherwise clarifies another regulatory official's role as group-wide supervisor of an internationally active insurance group.

8. An insurer registered under section 521A.4 that is subject to this section shall be liable for and shall pay the reasonable expenses of the commissioner's participation in the administration of this section, including the engagement of attorneys, actuaries, accountants, and other experts not otherwise a part of the commissioner's staff and all reasonable travel expenses. Any persons so retained shall be under the direction and control of the commissioner and shall act in a purely advisory capacity.

9. The commissioner shall adopt rules pursuant to chapter 17A to administer this section.

2016 Acts, ch 1122, §10; 2016 Acts, ch 1138, §26
Referred to in §521A.1, 521A.7

521A.7 Confidential treatment.

1. All information, documents, and copies thereof obtained by or disclosed to the commissioner or any other person in the course of an examination or investigation made pursuant to section 521A.6 or 521A.6A, and all information reported or provided to the commissioner pursuant to sections 521A.4, 521A.5, 521A.6A, and 521A.6B, shall be given confidential treatment, shall not be subject to subpoena, shall not be subject to discovery or admissible in evidence in a private civil action, and shall not be made public by the commissioner or any other person, except to insurance departments of other states, without the prior written consent of the insurer to which it pertains unless the commissioner, after giving the insurer and its affiliates who would be affected thereby, notice and opportunity to be heard, determines that the interests of policyholders, shareholders, or the public will be served by the publication thereof, in which event the commissioner may publish all or any part thereof in such manner as the commissioner may deem appropriate. However, the commissioner is authorized to use the information, documents, or copies obtained by, disclosed to, or reported or provided to the commissioner as described in this subsection, in the furtherance of any regulatory or legal action brought as a part of the commissioner's official duties.

2. Neither the commissioner nor any person who received documents, materials, or other information while acting under the authority of the commissioner or with whom such documents, materials, or other information are shared pursuant to this chapter shall be permitted or required to testify in any private civil action concerning any confidential documents, materials, or other information subject to subsection 1.

3. In order to assist in the performance of the commissioner's duties, the commissioner:

a. May share documents, materials, or other information, including the confidential and privileged documents, materials, or information subject to subsection 1, with other state, federal, and international regulatory agencies, with the national association of insurance commissioners and its affiliates and subsidiaries, and with state, federal, and international law enforcement authorities, including members of any supervisory college described in section 521A.6A, provided that the recipient agrees in writing to maintain the confidentiality and privileged status of the document, material, or other information, and has verified in writing the legal authority to maintain confidentiality.

b. Notwithstanding paragraph *"a"*, the commissioner may only share confidential and privileged documents, materials, or information filed pursuant to section 521A.4, subsection 12, with commissioners of states having statutes or regulations substantially similar to subsection 1 of this section and who have agreed in writing not to disclose such information.

c. May receive documents, materials, or information, including otherwise confidential and privileged documents, materials, or information from the national association of insurance commissioners and its affiliates and subsidiaries and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any document, material, or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material, or information.

d. Shall enter into written agreements with the national association of insurance commissioners governing sharing and use of information provided pursuant to this chapter consistent with this subsection that shall do all of the following:

(1) Specify procedures and protocols regarding the confidentiality and security of information shared with the national association of insurance commissioners and subsidiaries pursuant to this chapter, including procedures and protocols for sharing by the association with other state, federal, or international regulators.

(2) Specify that ownership of information shared with the national association of insurance commissioners and its affiliates and subsidiaries pursuant to this chapter remains with the commissioner and the association's use of the information is subject to the direction of the commissioner.

(3) Require prompt notice to be given to an insurer whose confidential information in the possession of the national association of insurance commissioners pursuant to this chapter is subject to a request or subpoena to the association for disclosure or production.

(4) Require the national association of insurance commissioners and its affiliates and subsidiaries to consent to intervention by an insurer in any judicial or administrative action in which the association and its affiliates and subsidiaries may be required to disclose confidential information about the insurer shared with the association and its affiliates and subsidiaries pursuant to this chapter.

4. The sharing of information by the commissioner pursuant to this chapter shall not constitute a delegation of regulatory authority or rulemaking, and the commissioner is solely responsible for the administration, execution, and enforcement of the provisions of this chapter.

5. No waiver of any applicable privilege or claim of confidentiality in the documents, materials, or information shall occur as a result of disclosure to the commissioner under this section or as a result of sharing as authorized in subsection 3.

6. Documents, materials, or other information in the possession or control of the national association of insurance commissioners pursuant to this chapter shall be confidential by law and privileged, shall not be subject to chapter 22, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action.

[C71, 73, 75, 77, 79, 81, §521A.7]

93 Acts, ch 88, §31; 2014 Acts, ch 1018, §20; 2016 Acts, ch 1122, §11

Referred to in §521A.6A, 521A.6B

521A.8 Rules.

The commissioner may, upon notice and opportunity for all interested persons to be heard, issue such rules and orders as shall be necessary to carry out the provisions of this chapter.

[C71, 73, 75, 77, 79, 81, §521A.8]

521A.9 Injunctions — prohibitions against voting securities — sequestration of voting securities.

1. *Injunctions.* Whenever it appears to the commissioner that any insurer or any director, officer, employee, or agent thereof has committed or is about to commit a violation of this chapter or any rule, regulation, or order issued by the commissioner hereunder, the commissioner may apply to the district court of the county in which the principal office of the insurer is located or if such insurer has no such office in this state then to the district court of Polk county for an order enjoining such insurer or such director, officer, employee, or agent thereof from violating or continuing to violate this chapter or any such rule, regulation, or order, and for such other equitable relief as the nature of the case and the interests of the insurer's policyholders, creditors, and shareholders or the public may require.

2. *Voting of securities — when prohibited.* No security which is the subject of any agreement or arrangement regarding acquisition, or which is acquired or to be acquired, in contravention of the provisions of this chapter or of any rule, regulation, or order issued by the commissioner hereunder may be voted at any shareholders' meeting, or may be counted for quorum purposes, and any action of shareholders requiring the affirmative vote of a percentage of shares may be taken as though such securities were not issued and

outstanding; but no action taken at any such meeting shall be invalidated by the voting of such securities, unless the action would materially affect control of the insurer or unless the district court has so ordered. If any insurer or the commissioner has reason to believe that any security of the insurer has been or is about to be acquired in contravention of the provisions of this chapter or of any rule, regulation, or order issued by the commissioner hereunder the insurer or the commissioner may apply to the district court of Polk county or to the district court for the county in which the insurer has its principal place of business to enjoin any offer, request, invitation, agreement, or acquisition made in contravention of section 521A.3 or any rule, regulation, or order issued by the commissioner thereunder to enjoin the voting of any security so acquired, to void any vote of such security already cast at any meeting of shareholders, and for such other equitable relief as the nature of the case and the interests of the insurer's policyholders, creditors, and shareholders or the public may require.

3. *Sequestration of voting securities.* In any case where a person has acquired or is proposing to acquire any voting securities in violation of this chapter or any rule, regulation, or order issued by the commissioner hereunder, the district court of Polk county or the district court for the county in which the insurer has its principal place of business may, on such notice as the court deems appropriate, upon the application of the insurer or the commissioner seize or sequester any voting securities of the insurer owned directly or indirectly by such person, and issue such orders with respect thereto as may be appropriate to effectuate the provisions of this chapter. Notwithstanding any other provisions of law, for the purposes of this chapter the situs of the ownership of the securities of domestic insurers shall be deemed to be in this state.

[C71, 73, 75, 77, 79, 81, §521A.9]

521A.10 Sanctions and penalties.

1. If the commissioner finds after notice and hearing that a person subject to registration under section 521A.4 failed without just cause to file a registration statement as required in this chapter, the person shall be required to pay a penalty of one thousand dollars for each day's delay. The penalty shall be recovered by the commissioner and deposited as provided in section 505.7. The maximum penalty under this section is ten thousand dollars. The commissioner may reduce the penalty if the person demonstrates that the imposition of the penalty would constitute a financial hardship to the person.

2. *a.* A director or officer of an insurance holding company system who does any of the following is subject to the civil penalty imposed under paragraph *"b"*:

(1) Knowingly participates in or assents to transactions or investments which have not been properly reported or submitted pursuant to section 521A.4 or section 521A.5, subsection 1, paragraph *"b"*.

(2) Knowingly permits any of the officers or agents of an insurer to engage in transactions or make investments which have not been properly reported or submitted pursuant to section 521A.4 or section 521A.5, subsection 1, paragraph *"b"*.

(3) Knowingly violates any other provision of this chapter.

b. An officer or director of an insurance holding company system who commits any of the acts or omissions listed in paragraph *"a"* shall pay, in the person's individual capacity, a civil penalty of not more than one thousand dollars per violation, after notice and hearing before the commissioner. In determining the amount of the civil penalty, the commissioner shall take into account the appropriateness of the penalty with respect to the gravity of the violation, the history of previous violations, and such other matters as justice may require.

3. If it appears to the commissioner that an insurer subject to this chapter has engaged in a transaction or entered into a contract which is subject to section 521A.5 and which would not have been approved had approval been requested, the commissioner may order the insurer to immediately cease and desist any further activity under that transaction or contract. After notice and hearing, the commissioner may also order the insurer to void any contracts and restore the status quo if the commissioner finds that action is in the best interest of the policyholders, creditors, or the public.

4. If it appears to the commissioner that an insurer or a director, officer, agent, or

employee of an insurer has committed a willful violation of this chapter, the commissioner may institute criminal proceedings against the insurer or the responsible director, officer, agent, or employee in the district court for the county in which the principal office of the insurer is located, or if the insurer has no office in this state, then in the district court for Polk county. An insurer or individual who willfully violates this chapter is guilty of a class "D" felony.

5. A director or officer, or employee of an insurance holding company system who willfully and knowingly subscribes to or makes or causes to be made any false statements, false reports, or false filings with the intent to deceive the commissioner in the performance of the commissioner's duties under this chapter is guilty of a class "D" felony. Any fines imposed shall be paid by the director, officer, or employee in the person's individual capacity.

[C71, 73, 75, 77, 79, 81, §521A.10]

86 Acts, ch 1102, §23; 91 Acts, ch 26, §55, 56; 2009 Acts, ch 181, §88

Referred to in §521A.5

521A.11 Receivership.

Whenever it appears to the commissioner that any person has committed a violation of this chapter which so impairs the financial condition of a domestic insurer as to threaten insolvency or make the further transaction of business by it hazardous to its policyholders, creditors, shareholders or the public, then the commissioner may proceed as provided in section 505.9 to take possession of the property of such domestic insurer and to conduct the business thereof.

[C71, 73, 75, 77, 79, 81, §521A.11]

521A.11A Recovery.

1. Subject to subsections 2 through 4, if an order for liquidation, conservation, or rehabilitation of a domestic insurer has been entered, the receiver appointed under the order may recover on behalf of the insurer either of the following if made within one year preceding the filing of the petition for liquidation, conservation, or rehabilitation:

a. From a parent corporation, holding company, affiliate, or other person who otherwise controlled the insurer, the amount of distributions, other than distributions of shares of the same class of stock, paid by the insurer on its capital stock.

b. Any payment in the form of a bonus, termination settlement, or extraordinary lump sum salary adjustment made by the insurer or a subsidiary of the insurer to a director, officer, agent, or employee.

2. A distribution is not recoverable if the parent holding company, affiliate, or other person shows that when the distribution was paid it was lawful and reasonable, and that the insurer did not know and could not reasonably have known that the distribution might adversely affect the ability of the insurer to fulfill its contractual obligations.

3. A parent corporation, holding company, affiliate, or other person who otherwise controlled the insurer or affiliate at the time the distributions were paid is liable only up to the amount of distributions or payments under subsection 1 that the person received. A person who otherwise controlled the insurer at the time the distributions were declared is liable only up to the amount of distributions the person would have received if the person had been paid immediately. If two or more persons are liable with respect to the same distributions, each shall be separately liable for their distributive share.

4. The maximum amount recoverable under this section shall be the amount needed in excess of all other available assets of the impaired or insolvent insurer to pay the contractual obligations of the impaired or insolvent insurer and to reimburse any guaranty funds.

5. To the extent that a person liable under subsection 3 is insolvent or otherwise fails to pay claims due from the person pursuant to this section, the person's parent corporation, holding company, affiliate, or other person who otherwise controlled it at the time the distribution was paid, is separately liable for its share of any resulting deficiency in the amount recovered from the parent corporation, holding company, affiliate, or other person who otherwise controlled it.

86 Acts, ch 1102, §24; 87 Acts, ch 115, §67

521A.12 Revocation, suspension, or nonrenewal of insurer's license.

Whenever it appears to the commissioner that any person has committed a violation of this chapter which makes the continued operation of an insurer contrary to the interest of policyholders or the public, the commissioner may, after giving notice and an opportunity to be heard, determine to suspend, revoke or refuse to renew such insurer's license or authority to do business in this state for such period as the commissioner finds is required for the protection of policyholders or the public. Any such determination shall be accompanied by specific findings of fact and conclusions of law.

[C71, 73, 75, 77, 79, 81, §521A.12]

521A.13 Judicial review.

Judicial review of the actions of the commissioner may be sought in accordance with the terms of the Iowa administrative procedure Act, chapter 17A.

[C71, 73, 75, 77, 79, 81, §521A.13]

2003 Acts, ch 44, §114

MUTUAL INSURANCE HOLDING COMPANIES

521A.14 Mutual insurance holding companies.

1. *a.* A domestic mutual insurance company, upon approval of the commissioner, may reorganize by forming an insurance holding company based upon a mutual plan and continuing the corporate existence of the reorganizing insurance company as a stock insurance company. The commissioner, after a public hearing as provided in section 521A.3, subsection 4, paragraph *"b"*, if satisfied that the interests of the policyholders are properly protected and that the plan of reorganization is fair and equitable to the policyholders, may approve the proposed plan of reorganization and may require as a condition of approval such modifications of the proposed plan of reorganization as the commissioner finds necessary for the protection of the policyholders' interests. The commissioner may retain consultants as provided in section 521A.3, subsection 4, paragraph *"d"*. A reorganization pursuant to this section is subject to section 521A.3, subsections 1, 2, and 3. The commissioner shall retain jurisdiction over a mutual insurance holding company organized pursuant to this section to assure that policyholder interests are protected.

b. All of the initial shares of the capital stock of the reorganized insurance company shall be issued to the mutual insurance holding company. The membership interests of the policyholders of the reorganized insurance company shall become membership interests in the mutual insurance holding company. Policyholders of the reorganized insurance company shall be members of the mutual insurance holding company in accordance with the articles of incorporation and bylaws of the mutual insurance holding company. The mutual insurance holding company shall at all times own a majority of the voting shares of the capital stock of the reorganized insurance company.

2. *a.* A domestic mutual insurance company, upon the approval of the commissioner, may reorganize by merging its policyholders' membership interests into a mutual insurance holding company formed pursuant to subsection 1 and continuing the corporate existence of the reorganizing insurance company as a stock insurance company subsidiary of the mutual insurance holding company. The commissioner, after a public hearing as provided in section 521A.3, subsection 4, paragraph *"b"*, if satisfied that the interests of the policyholders are properly protected and that the merger is fair and equitable to the policyholders, may approve the proposed merger and may require as a condition of approval such modifications of the proposed merger as the commissioner finds necessary for the protection of the policyholders' interests. The commissioner may retain consultants as provided in section 521A.3, subsection 4, paragraph *"d"*. A merger pursuant to this section is subject to section 521A.3, subsections 1, 2, and 3. The commissioner shall retain jurisdiction over the mutual insurance holding company organized pursuant to this section to assure that policyholder interests are protected.

b. All of the initial shares of the capital stock of the reorganized insurance company

shall be issued to the mutual insurance holding company. The membership interests of the policyholders of the reorganized insurance company shall become membership interests in the mutual insurance holding company. Policyholders of the reorganized insurance company shall be members of the mutual insurance holding company in accordance with the articles of incorporation and bylaws of the mutual insurance holding company. The mutual insurance holding company shall at all times own a majority of the voting shares of the capital stock of the reorganized insurance company. A merger of policyholders' membership interests in a mutual insurance company into a mutual insurance holding company shall be deemed to be a merger of insurance companies pursuant to chapter 521 and chapter 521 is also applicable.

c. A foreign mutual insurance company, or a foreign health service corporation, which if a domestic corporation would be organized under chapter 514, may reorganize upon the approval of the commissioner and in compliance with the requirements of any law or regulation which is applicable to the foreign mutual insurance company or foreign health service corporation by merging its policyholders' or subscribers' membership interests into a mutual insurance holding company formed pursuant to subsection 1 and continuing the corporate existence of the reorganizing foreign mutual insurance company or reorganizing foreign health service corporation as a foreign stock insurance company subsidiary of the mutual insurance holding company. The commissioner, after a public hearing as provided in section 521A.3, subsection 4, paragraph *"b"*, may approve the proposed merger. The commissioner may retain consultants as provided in section 521A.3, subsection 4, paragraph *"d"*. A merger pursuant to this paragraph is subject to section 521A.3, subsections 1, 2, and 3. The reorganizing foreign mutual insurance company or reorganizing foreign health service corporation may remain a foreign company or foreign corporation after the merger, and may be admitted to do business in this state. A foreign mutual insurance company or foreign mutual health service corporation which is a party to the merger may at the same time redomesticate in this state by complying with the applicable requirements of this state and its state of domicile. The provisions of paragraph *"b"* shall apply to a merger authorized under this paragraph, except that a reference to policyholders in that paragraph is also deemed to include subscribers in the case of a health service corporation.

3. A mutual insurance holding company resulting from the reorganization of a domestic mutual insurance company organized under chapter 491 shall be incorporated pursuant to chapter 491. This requirement shall supersede any conflicting provisions of section 491.1. The articles of incorporation and any amendments to such articles of the mutual insurance holding company shall be subject to approval of the commissioner in the same manner as those of an insurance company.

4. A mutual insurance holding company is deemed to be an insurer subject to chapter 507C and shall automatically be a party to any proceeding under chapter 507C involving an insurance company which as a result of a reorganization pursuant to subsection 1 or 2 is a subsidiary of the mutual insurance holding company. In any proceeding under chapter 507C involving the reorganized insurance company, the assets of the mutual insurance holding company are deemed to be assets of the estate of the reorganized insurance company for purposes of satisfying the claims of the reorganized insurance company's policyholders. A mutual insurance holding company shall not dissolve or liquidate without the approval of the commissioner or as ordered by the district court pursuant to chapter 507C.

5. *a.* Chapters 508B and 515G are not applicable to a reorganization or merger pursuant to this section.

b. Chapter 508B is applicable to demutualization of a mutual insurance holding company which resulted from the reorganization of a domestic mutual life insurance company organized under chapter 508 as if it were a mutual life insurance company.

c. Chapter 515G is applicable to demutualization of a mutual insurance holding company which resulted from the reorganization of a domestic mutual property and casualty insurance company organized under chapter 515 as if it were a mutual property and casualty insurance company.

6. A membership interest in a domestic mutual insurance holding company shall not constitute a security as defined in section 502.102.

7. *a.* The majority of the voting shares of the capital stock of the reorganized insurance company, which is required by this section to be at all times owned by a mutual insurance holding company, shall not be conveyed, transferred, assigned, pledged, subjected to a security interest or lien, encumbered, or otherwise hypothecated or alienated by the mutual insurance holding company or intermediate holding company. Any conveyance, transfer, assignment, pledge, security interest, lien, encumbrance, or hypothecation or alienation of, in or on the majority of the voting shares of the reorganized insurance company which is required by this section to be at all times owned by a mutual insurance holding company, is in violation of this section and shall be void in inverse chronological order of the date of such conveyance, transfer, assignment, pledge, security interest, lien, encumbrance, or hypothecation or alienation, as to the shares necessary to constitute a majority of such voting shares. The majority of the voting shares of the capital stock of the reorganized insurance company which is required by this section to be at all times owned by a mutual insurance holding company shall not be subject to execution and levy as provided in chapter 626. The shares of the capital stock of the surviving or new company resulting from a merger or consolidation of two or more reorganized insurance companies or two or more intermediate holding companies which were subsidiaries of the same mutual insurance holding company are subject to the same requirements, restrictions, and limitations as provided in this section to which the shares of the merging or consolidating reorganized insurance companies or intermediate holding companies were subject by this section prior to the merger or consolidation.

b. As used in this section, "*majority of the voting shares of the capital stock of the reorganized insurance company*" means shares of the capital stock of the reorganized insurance company which carry the right to cast a majority of the votes entitled to be cast by all of the outstanding shares of the capital stock of the reorganized insurance company for the election of directors and on all other matters submitted to a vote of the shareholders of the reorganized insurance company. The ownership of a majority of the voting shares of the capital stock of the reorganized insurance company which are required by this section to be at all times owned by a parent mutual insurance holding company includes indirect ownership through one or more intermediate holding companies in a corporate structure approved by the commissioner. However, indirect ownership through one or more intermediate holding companies shall not result in the mutual insurance holding company owning less than the equivalent of a majority of the voting shares of the capital stock of the reorganized insurance company. The commissioner shall have jurisdiction over an intermediate holding company as if it were a mutual insurance holding company. As used in this section, "*intermediate holding company*" means a holding company which is a subsidiary of a mutual insurance holding company, and which either directly or through a subsidiary intermediate holding company has one or more subsidiary reorganized insurance companies of which a majority of the voting shares of the capital stock would otherwise have been required by this section to be at all times owned by the mutual insurance holding company.

95 Acts, ch 185, §44, 48; 96 Acts, ch 1014, §1, 2; 2009 Acts, ch 145, §52; 2012 Acts, ch 1023, §157

Referred to in §505.23, 521.1

CHAPTER 521B

CREDIT FOR REINSURANCE

Referred to in §87.4, 296.7, 331.301, 364.4, 505.28, 505.29, 669.14, 670.7

521B.1 through 521B.5 Repealed by 2013 Acts, ch 39, §7, 8, 11.
521B.101 Purpose — legislative intent.
521B.102 Credit allowed certain domestic ceding insurers.
521B.103 Limited credit allowed other domestic ceding insurers.
521B.104 Qualified United States financial institutions.
521B.105 Rules.
521B.106 Applicability.
521B.107 Service of process made on the commissioner as the agent for service of process.

521B.1 through 521B.5 Repealed by 2013 Acts, ch 39, §7, 8, 11.

521B.101 Purpose — legislative intent.

1. The purpose of this chapter is to protect the interests of insureds, claimants, ceding insurers, assuming insurers, and the public generally.

2. The general assembly declares its intent to ensure adequate regulation of insurers and reinsurers and adequate protection for those to whom insurers and reinsurers owe obligations.

3. The general assembly declares that the matters contained in this chapter are fundamental to the business of insurance in accordance with 15 U.S.C. §1011 – 1012.

2013 Acts, ch 39, §1, 11

521B.102 Credit allowed certain domestic ceding insurers.

Credit for reinsurance shall be allowed a domestic ceding insurer as either an asset or a reduction from liability on account of reinsurance ceded only when the reinsurer meets the requirements of subsection 1, 2, 3, 4, 5, or 6. The commissioner may adopt rules pursuant to section 521B.105 specifying additional requirements related to the valuation of assets or reserve credits, the amount and forms of security supporting reinsurance arrangements described in section 521B.105, and the circumstances pursuant to which credit shall be reduced or eliminated. Credit shall be allowed under subsection 1, 2, or 3 only respecting cessions of those kinds or classes of business which the assuming insurer is licensed or otherwise permitted to write or assume in the insurer's state of domicile or, in the case of a United States branch of an alien assuming insurer, in the state through which the insurer is entered and licensed to transact insurance or reinsurance. Credit shall be allowed under subsection 3 or 4 only if the applicable requirements of subsection 7 have been satisfied.

1. Credit shall be allowed when the reinsurance is ceded to an assuming insurer that is licensed to transact insurance or reinsurance in this state.

2. Credit shall be allowed when the reinsurance is ceded to an assuming insurer that is accredited by the commissioner as a reinsurer in this state. In order to be eligible for accreditation, an assuming insurer must do all of the following:

a. File with the commissioner evidence of the assuming insurer's submission to this state's jurisdiction.

b. Submit to this state's authority to examine the assuming insurer's books and records.

c. Be licensed to transact insurance or reinsurance in at least one state, or in the case of a United States branch of an alien assuming insurer, be entered through and licensed to transact insurance or reinsurance in at least one state.

d. File annually with the commissioner a copy of the assuming insurer's annual statement filed with the insurance department of the assuming insurer's state of domicile and a copy of the assuming insurer's most recent audited financial statement.

e. Demonstrate to the satisfaction of the commissioner that the assuming insurer has adequate financial capacity to meet the assuming insurer's reinsurance obligations and is otherwise qualified to assume reinsurance from domestic insurers. An assuming insurer is deemed to meet this requirement as of the time of the assuming insurer's application if the assuming insurer maintains a surplus as regards policyholders in an amount of not less than

twenty million dollars and the assuming insurer's accreditation has not been denied by the commissioner within ninety days after submission of the assuming insurer's application.

3. *a.* Credit shall be allowed when the reinsurance is ceded to an assuming insurer that is domiciled in, or in the case of a United States branch of an alien assuming insurer, is entered through, a state that employs standards regarding credit for reinsurance that are substantially similar to those applicable under this chapter and the assuming insurer or United States branch of an alien assuming insurer does all of the following:

(1) Maintains a surplus as regards policyholders in an amount of not less than twenty million dollars.

(2) Submits to the authority of this state to examine the assuming insurer's books and records.

b. The requirement of paragraph *"a"*, subparagraph (1) does not apply to reinsurance ceded and assumed pursuant to pooling arrangements among insurers in the same holding company system.

4. *a.* Credit shall be allowed when the reinsurance is ceded to an assuming insurer that maintains a trust fund in a qualified United States financial institution, as defined in section 521B.104, subsection 2, for payment of the valid claims of the assuming insurer's United States ceding insurers, their assigns, and successors in interest. To enable the commissioner to determine the sufficiency of the trust fund, the assuming insurer shall report annually to the commissioner information substantially the same as that required to be reported on the national association of insurance commissioners' annual statement form by licensed insurers. The assuming insurer shall submit to examination of the assuming insurer's books and records by the commissioner and bear the expense of examination.

b. Credit for reinsurance shall not be granted under this subsection unless all of the following conditions are satisfied:

(1) The form of the trust and any amendments to the trust have been approved by either of the following:

(a) The commissioner of the state where the trust is domiciled.

(b) The commissioner of another state who, pursuant to the terms of the trust instrument, has accepted principal regulatory oversight of the trust.

(2) The form of the trust and any trust amendments are filed with the commissioner of every state in which the ceding insurer's beneficiaries of the trust are domiciled. The trust instrument shall provide that contested claims are valid and enforceable upon the final order of any court of competent jurisdiction in the United States. The trust shall vest legal title to the trust's assets in its trustees for the benefit of the assuming insurer's United States ceding insurers, their assigns, and successors in interest. The trust and the assuming insurer shall be subject to examination as determined by the commissioner.

(3) The trust remains in effect for as long as the assuming insurer has outstanding obligations due under the reinsurance agreements subject to the trust. No later than February 28 of each year, the trustee of the trust shall report to the commissioner in writing the balance of the trust and list the trust's investments at the preceding year-end, and shall certify the date of termination of the trust, if so planned, or certify that the trust will not expire prior to the following December 31.

c. The following requirements apply to the following categories of assuming insurer:

(1) The trust fund for a single assuming insurer shall consist of funds in trust in an amount not less than the assuming insurer's liabilities attributable to reinsurance ceded by United States ceding insurers, and in addition, the assuming insurer shall maintain a trusteed surplus of not less than twenty million dollars, except as provided in subparagraph (2).

(2) At any time after an assuming insurer has permanently discontinued underwriting new business secured by the trust for at least three full years, the commissioner with principal regulatory oversight of the trust may authorize a reduction in the required trusteed surplus, but only after a finding, based on an assessment of the risk, that the new required trusteed surplus level is adequate for the protection of United States ceding insurers, policyholders, and claimants in light of reasonably foreseeable adverse loss development. The risk assessment may involve an actuarial review, including an independent analysis of reserves and cash flows, and shall consider all material risk factors, including, when

applicable, the lines of business involved, the stability of the incurred loss estimates, and the effect of the surplus requirements on the assuming insurer's liquidity or solvency. The minimum required trusteed surplus shall not be reduced to an amount less than thirty percent of the assuming insurer's liabilities attributable to reinsurance ceded by United States ceding insurers covered by the trust.

(3) In the case of a group including incorporated and individual unincorporated underwriters, all of the following requirements are met:

(a) For reinsurance ceded under reinsurance agreements with an inception, amendment, or renewal date on or after January 1, 1993, the trust shall consist of a trusteed account in an amount not less than the respective underwriters' several liabilities attributable to business ceded by United States domiciled ceding insurers to any underwriter of the group.

(b) For reinsurance ceded under reinsurance agreements with an inception date on or before December 31, 1992, and not amended or renewed after that date, notwithstanding the other provisions of this chapter, the trust shall consist of a trusteed account in an amount not less than the respective underwriters' several insurance and reinsurance liabilities attributable to business written in the United States.

(c) In addition to the trusts described in subparagraph divisions (a) and (b), the group shall maintain in trust a trusteed surplus of which one hundred million dollars shall be held jointly for the benefit of the United States domiciled ceding insurers of any member of the group for all years of account.

(d) The incorporated members of the group shall not be engaged in any business other than underwriting as a member of the group and shall be subject to the same level of regulation and solvency control by the group's domiciliary regulator as are the unincorporated members of the group.

(e) Within ninety days after its financial statements are due to be filed with the group's domiciliary regulator, the group shall provide to the commissioner an annual certification by the group's domiciliary regulator of the solvency of each underwriter member, or if a certification is unavailable, financial statements, prepared by independent public accountants, of each underwriter member of the group.

(4) In the case of a group of incorporated underwriters under common administration, the group shall meet all of the following requirements:

(a) Have continuously transacted an insurance business outside the United States for at least three years immediately prior to making application for accreditation.

(b) Maintain aggregate policyholders' surplus of at least ten billion dollars.

(c) Maintain a trust fund in an amount not less than the group's several liabilities attributable to business ceded by United States domiciled ceding insurers to any member of the group pursuant to reinsurance contracts issued in the name of the group.

(d) In addition, maintain a joint trusteed surplus of which one hundred million dollars shall be held jointly for the benefit of United States domiciled ceding insurers of any member of the group as additional security for these liabilities.

(e) Within ninety days after the group's financial statements are due to be filed with the group's domiciliary regulator, make available to the commissioner an annual certification of each underwriter member's solvency by the member's domiciliary regulator and financial statements of each underwriter member of the group prepared by the group's independent public accountant.

5. Credit shall be allowed when the reinsurance is ceded to an assuming insurer that has been certified by the commissioner as a reinsurer in this state and the assuming reinsurer secures its obligations in accordance with the following requirements:

a. In order to be eligible for certification, the assuming insurer shall meet all of the following requirements:

(1) The assuming insurer shall be domiciled and licensed to transact insurance or reinsurance in a qualified jurisdiction, as determined by the commissioner pursuant to paragraph "*c*".

(2) The assuming insurer shall maintain minimum capital and surplus, or its equivalent, in an amount to be determined by the commissioner pursuant to rule.

(3) The assuming insurer shall maintain financial strength ratings from two or more rating agencies deemed acceptable by the commissioner pursuant to rule.

(4) The assuming insurer shall agree to submit to the jurisdiction of this state, appoint the commissioner as the assuming insurer's agent for service of process in this state, and agree to provide security for one hundred percent of the assuming insurer's liabilities attributable to reinsurance ceded by United States ceding insurers, if the assuming insurer resists enforcement of a final United States judgment.

(5) The assuming insurer shall agree to meet applicable information filing requirements as determined by the commissioner, both with respect to an initial application for certification and on an ongoing basis.

(6) The assuming insurer shall satisfy any other requirements for certification deemed relevant by the commissioner.

b. An association including incorporated and individual unincorporated underwriters may be a certified reinsurer. In order to be eligible for certification, the association shall satisfy the requirements of paragraph *"a"* and in addition satisfy all of the following requirements:

(1) The association shall satisfy the association's minimum capital and surplus requirements through the capital and surplus equivalents, net of liabilities, of the association and its members, which shall include a joint central fund that may be applied to any unsatisfied obligation of the association or any of its members, in an amount determined by the commissioner to provide adequate protection.

(2) The incorporated members of the association shall not be engaged in any business other than underwriting as a member of the association and shall be subject to the same level of regulation and solvency control by the association's domiciliary regulator as are the unincorporated members of the association.

(3) Within ninety days after the association's financial statements are due to be filed with the association's domiciliary regulator, the association shall provide to the commissioner an annual certification by the association's domiciliary regulator, of the solvency of each underwriter member, or if a certification is unavailable, financial statements, prepared by an independent public accountant, of each underwriter member of the association.

c. The commissioner shall create and publish a list of qualified jurisdictions under which an assuming insurer licensed and domiciled in such jurisdiction is eligible to be considered for certification by the commissioner as a certified reinsurer.

(1) In order to determine whether the domiciliary jurisdiction of a non-United States insurer is eligible to be recognized as a qualified jurisdiction, the commissioner shall evaluate the appropriateness and effectiveness of the reinsurance supervisory system of the jurisdiction, both initially and on an ongoing basis, and consider the rights, benefits, and the extent of reciprocal recognition afforded by the non-United States jurisdiction to reinsurers licensed and domiciled in the United States. In order to be recognized as a qualified jurisdiction, a jurisdiction must agree to share information and to cooperate with the commissioner with respect to all certified reinsurers domiciled within that jurisdiction. A jurisdiction shall not be recognized as a qualified jurisdiction if the commissioner has determined that the jurisdiction does not adequately and promptly enforce final United States judgments and arbitration awards. Additional factors may be considered in the discretion of the commissioner.

(2) A list of qualified jurisdictions shall be published through the national association of insurance commissioners' committee process. The commissioner shall consider this list in determining qualified jurisdictions. If the commissioner recognizes a jurisdiction as qualified that does not appear on the list of qualified jurisdictions, the commissioner shall provide thoroughly documented justification for the recognition in accordance with criteria to be developed by rule.

(3) United States jurisdictions that meet the requirements for accreditation under the national association of insurance commissioners' financial standards and accreditation program shall be recognized as qualified jurisdictions.

(4) If a certified reinsurer's domiciliary jurisdiction ceases to be a qualified jurisdiction, the commissioner may, in the commissioner's discretion, suspend the reinsurer's certification indefinitely, in lieu of revocation.

d. The commissioner shall assign a rating to each certified reinsurer, giving due consideration to the financial strength ratings that have been assigned by rating agencies deemed acceptable to the commissioner pursuant to rule. The commissioner shall publish a list of all certified reinsurers and their ratings.

e. A certified reinsurer shall secure obligations assumed from United States ceding insurers under this subsection at a level consistent with the certified reinsurer's rating, as specified in rules adopted by the commissioner.

(1) In order for a domestic ceding insurer to qualify for full financial statement credit for reinsurance ceded to a certified reinsurer, the certified reinsurer shall maintain security in a form acceptable to the commissioner and consistent with the provisions of section 521B.103, or in a multibeneficiary trust in accordance with subsection 4, except as otherwise provided in this subsection.

(2) If a certified reinsurer maintains a trust to fully secure its obligations subject to subsection 4, and chooses to secure its obligations incurred as a certified reinsurer in the form of a multibeneficiary trust, the certified reinsurer shall maintain separate trust accounts for its obligations incurred under reinsurance agreements issued or renewed as a certified reinsurer with reduced security as permitted by this subsection or comparable laws of other United States jurisdictions and for its obligations subject to subsection 4. It shall be a condition to the grant of certification under this subsection that the certified reinsurer shall bind itself, by the language of the trust and by agreement with the commissioner which has principal regulatory oversight of each such trust account, to fund, upon termination of any such trust account, any deficiency of any other trust account out of the remaining surplus of the terminated trust account.

(3) The minimum trusteed surplus requirements provided in subsection 4 are not applicable with respect to a multibeneficiary trust maintained by a certified reinsurer for the purpose of securing obligations under this subsection, except that such a multibeneficiary trust shall maintain a minimum trusteed surplus of ten million dollars.

(4) With respect to obligations incurred by a certified reinsurer under this subsection, if the security is insufficient, the commissioner shall reduce the allowable credit by an amount proportionate to the deficiency, and the commissioner has the discretion to impose further reductions in allowable credit upon finding that there is a material risk that the certified reinsurer's obligations will not be paid in full when due.

(5) For purposes of this subsection, a certified reinsurer whose certification has been terminated for any reason shall be treated as a certified reinsurer required to secure all of its obligations.

(a) As used in this subsection, the term "*terminated*" includes revocation, suspension, voluntary surrender, and inactive status.

(b) If the commissioner continues to assign a higher rating to a certified reinsurer as permitted by other provisions of this subsection, this requirement does not apply to a certified reinsurer in inactive status or to a reinsurer whose certification has been suspended.

f. If an assuming insurer applying for certification as a reinsurer in this state has been certified as a reinsurer in another jurisdiction accredited by the national association of insurance commissioners, the commissioner has the discretion to defer to that jurisdiction's certification, and has the discretion to defer to the rating assigned by that jurisdiction, and the assuming insurer shall be considered to be a certified reinsurer in this state.

g. A certified reinsurer that ceases to assume new business in this state may request to maintain the reinsurer's certification in inactive status in order to qualify for a reduction in the amount of security required for the reinsurer's in-force business. An inactive certified reinsurer shall continue to comply with all applicable requirements of this subsection, and the commissioner shall assign the reinsurer a rating that takes into account, if relevant, the reasons why the reinsurer is not assuming new business.

6. Credit shall be allowed when reinsurance is ceded to an assuming insurer that does not meet the requirements of subsection 1, 2, 3, 4, or 5, but only as to the insurance of risks located in jurisdictions where the reinsurance is required by applicable law or regulation of that jurisdiction.

7. *a.* If the assuming insurer is not licensed, accredited, or certified to transact insurance

or reinsurance in this state, the credit permitted by subsections 3 and 4 shall not be allowed unless the assuming insurer agrees in the reinsurance agreements to do all of the following:

(1) In the event of the failure of the assuming insurer to perform its obligations under the terms of the reinsurance agreement, the assuming insurer, at the request of the ceding insurer, will submit to the jurisdiction of any court of competent jurisdiction in any state of the United States, will comply with all requirements necessary to give the court jurisdiction, and will abide by the final decision of the court or of any appellate court in the event of any appeal, concerning such failure.

(2) The assuming insurer will designate the commissioner or a designated attorney as its true and lawful attorney to receive lawful process in any action, suit, or proceeding instituted by or on behalf of the ceding insurer.

b. This subsection is not intended to conflict with or override the obligation of the parties to a reinsurance agreement to arbitrate their disputes if the obligation to arbitrate is created in the agreement.

8. If the assuming insurer does not meet the requirements of subsection 1, 2, or 3, the credit permitted by subsection 4 or 5 shall not be allowed unless the assuming insurer agrees in a trust agreement to satisfy the following conditions:

a. Notwithstanding any other provisions contained in the trust instrument, if the trust fund is inadequate because the trust fund contains an amount less than the amount required by subsection 4, paragraph *"c"*, or if the grantor of the trust has been declared insolvent or has been placed into receivership, rehabilitation, liquidation, or similar proceedings under the laws of the trust's state or country of domicile, the trustee shall comply with an order of the commissioner with regulatory oversight over the trust or with an order of a court of competent jurisdiction directing the trustee to transfer all of the assets of the trust fund to the commissioner with regulatory oversight over the trust.

b. The assets of the trust shall be distributed, and claims shall be filed and valued, by the commissioner with regulatory oversight over the trust in accordance with the laws of the state in which the trust is domiciled that are applicable to the liquidation of domestic insurance companies.

c. If the commissioner with regulatory oversight over the trust determines that the assets of the trust fund or any part of the trust fund are not necessary to satisfy the claims of the United States ceding insurers of the grantor of the trust, the assets of the trust or any part of those assets shall be returned by the commissioner with regulatory oversight over the trust to the trustee for distribution in accordance with the trust agreement.

d. The grantor shall waive any right otherwise available to the grantor under United States law that is inconsistent with the provisions of this subsection.

9. If an accredited or certified reinsurer ceases to meet the requirements of this section for accreditation or certification, the commissioner may suspend or revoke the reinsurer's accreditation or certification.

a. The commissioner shall give the reinsurer notice and opportunity for hearing prior to such suspension or revocation. The suspension or revocation shall not take effect until after the commissioner's order on hearing unless one of the following applies:

(1) The reinsurer waives its right to hearing.

(2) The commissioner's order is based on regulatory action by the reinsurer's domiciliary jurisdiction or by the voluntary surrender or termination of the reinsurer's eligibility to transact insurance or reinsurance business in the reinsurer's domiciliary jurisdiction or in the primary certifying state of the reinsurer under subsection 5, paragraph *"f"*.

(3) The commissioner finds that an emergency requires immediate action and a court of competent jurisdiction has not stayed the commissioner's action.

b. While a reinsurer's accreditation or certification is suspended, a reinsurance contract issued or renewed after the effective date of the suspension does not qualify for credit except to the extent that the reinsurer's obligations under the reinsurance contract are secured in accordance with section 521B.103. If a reinsurer's accreditation or certification is revoked, credit for reinsurance shall not be granted after the effective date of the revocation except to the extent that the reinsurer's obligations under the contract are secured in accordance with subsection 5, paragraph *"e"*, or section 521B.103.

10. *a.* A domestic ceding insurer shall take steps to manage its reinsurance recoverables proportionate to its own book of business. A domestic ceding insurer shall notify the commissioner within thirty days after reinsurance recoverables from any single assuming insurer, or group of affiliated assuming insurers, exceeds fifty percent of the domestic ceding insurer's last reported surplus to policyholders, or after it is determined that reinsurance recoverables from any single assuming insurer, or group of affiliated assuming insurers, is likely to exceed this limit. The notification shall demonstrate that the exposure is safely managed by the domestic ceding insurer.

b. A domestic ceding insurer shall take steps to diversify its reinsurance program. A domestic ceding insurer shall notify the commissioner within thirty days after ceding to any single assuming insurer, or group of affiliated assuming insurers, more than twenty percent of the domestic ceding insurer's gross written premium in the prior calendar year, or after the domestic ceding insurer has determined that the reinsurance ceded to any single assuming insurer, or group of affiliated assuming insurers, is likely to exceed this limit. The notification shall demonstrate that the exposure is safely managed by the domestic ceding insurer.

2013 Acts, ch 39, §2, 11; 2014 Acts, ch 1026, §116; 2017 Acts, ch 7, §5
Referred to in §508.33A, 521B.103

521B.103 Limited credit allowed other domestic ceding insurers.

1. An asset or a reduction from liability for reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements of section 521B.102, shall be allowed in an amount not exceeding the liabilities carried by the ceding insurer. The commissioner may adopt rules pursuant to section 521B.105 specifying requirements related to the valuation of assets or reserve credits, the amount and forms of security supporting reinsurance arrangements described in section 521B.105, and the circumstances pursuant to which credit shall be reduced or eliminated. The reduction shall be in the amount of funds held by or on behalf of the ceding insurer, including funds held in trust for the ceding insurer, under a reinsurance contract with the assuming insurer as security for the payment of obligations under the contract, if the security is held in the United States subject to withdrawal solely by, and under the exclusive control of, the ceding insurer, or in the case of a trust, held in a qualified United States financial institution as defined in section 521B.104, subsection 2.

2. The security may be in the form of any of the following:

a. Cash.

b. A security listed by the securities valuation office of the national association of insurance commissioners, including those securities deemed exempt from filing as defined by the purposes and procedures manual of the securities valuation office and those securities qualifying as admitted assets.

c. (1) Clean, irrevocable, unconditional letters of credit, issued or confirmed by a qualified United States financial institution, as defined in section 521B.104, subsection 1, effective no later than December 31 of the year for which the filing is being made, and in the possession of, or in trust for, the ceding insurer on or before the filing date of the ceding insurer's annual statement.

(2) A letter of credit meeting applicable standards of issuer acceptability as of the date of the letter of credit's issuance or confirmation shall, notwithstanding the issuing or confirming institution's subsequent failure to meet applicable standards of issuer acceptability, continue to be acceptable as security until the expiration, extension, renewal, modification, or amendment of the letter of credit, whichever occurs first.

d. Any other form of security acceptable to the commissioner.

2013 Acts, ch 39, §3, 11; 2017 Acts, ch 7, §6
Referred to in §521B.102, 521B.104

521B.104 Qualified United States financial institutions.

1. For purposes of section 521B.103, subsection 2, paragraph "*c*", a "*qualified United States financial institution*" means an institution that meets all of the following requirements:

a. Is organized, or in the case of a United States office of a foreign banking organization is licensed, under the laws of the United States or of any state of the United States.

b. Is regulated, supervised, and examined by United States federal or state authorities having regulatory authority over banks and trust companies.

c. Has been determined by either the commissioner or the securities valuation office of the national association of insurance commissioners to meet the standards of financial condition and standing as are considered necessary and appropriate to regulate the quality of financial institutions whose letters of credit will be acceptable to the commissioner.

2. For purposes of those provisions of this chapter specifying the institutions that are eligible to act as a fiduciary of a trust, a "*qualified United States financial institution*" means an institution that meets all of the following requirements:

a. Is organized, or in the case of a United States branch or agency office of a foreign banking organization is licensed, under the laws of the United States or of any state of the United States, and has been granted authority to operate with fiduciary powers.

b. Is regulated, supervised, and examined by United States federal or state authorities having regulatory authority over banks and trust companies.

2013 Acts, ch 39, §4, 11; 2014 Acts, ch 1092, §118
Referred to in §515E.3A, 521B.102, 521B.103

521B.105 Rules.

1. The commissioner may adopt rules, pursuant to chapter 17A, as necessary or convenient to administer this chapter.

2. The commissioner is further authorized to adopt rules pursuant to chapter 17A that are applicable to reinsurance arrangements as follows:

a. A rule adopted pursuant to this subsection is applicable only to reinsurance arrangements relating to the following:

(1) Life insurance policies with guaranteed nonlevel gross premiums or guaranteed nonlevel benefits.

(2) Universal life insurance policies with provisions allowing a policyholder to keep a policy in force over a secondary guarantee period.

(3) Variable annuities with guaranteed death or living benefits.

(4) Long-term care insurance policies.

(5) Other life and health insurance and annuity products as to which the national association of insurance commissioners adopts model regulatory requirements with respect to credit for reinsurance.

b. A rule adopted pursuant to paragraph "*a*", and applicable to policies described in paragraph "*a*", subparagraph (1) or (2), is applicable to any reinsurance contract containing either of the following:

(1) Policies issued on or after January 1, 2015.

(2) Policies issued prior to January 1, 2015, if risk pertaining to such policies is ceded in connection with the reinsurance contract, in whole or in part, on or after January 1, 2015.

c. A rule adopted pursuant to this subsection may require the ceding insurer, in calculating the amounts or forms of security required to be held under rules adopted under this subsection, to use the valuation manual as defined in section 508.36, including all amendments adopted by the national association of insurance commissioners and in effect on the date as of which the calculation is made, to the extent applicable.

3. A rule adopted pursuant to this section is not applicable to cessions to an assuming insurer that meets either of the following requirements:

a. Is certified in Iowa.

b. Maintains at least two hundred fifty million dollars in capital and surplus when determined in accordance with the accounting practices and procedures manual of the national association of insurance commissioners, including all amendments adopted by the national association of insurance commissioners, but excluding the impact of any permitted or prescribed practices; and meets either of the following requirements:

(1) Is licensed in at least twenty-six states.

(2) Is licensed in at least ten states, and is licensed or accredited in a total of at least thirty-five states.

4. The commissioner's authority to adopt rules pursuant to subsection 2 does not limit the commissioner's general authority to adopt rules pursuant to subsection 1.

2013 Acts, ch 39, §5, 11; 2017 Acts, ch 7, §7, 8

Referred to in §521B.102, 521B.103

2017 amendment to section applies retroactively to January 1, 2015, as to specified reinsurance contracts described in subsection 2, paragraph b; 2017 Acts, ch 7, §8

521B.106 Applicability.

This chapter applies to all cessions under reinsurance agreements that occur on or after January 1, 2014.

2013 Acts, ch 39, §6, 11

521B.107 Service of process made on the commissioner as the agent for service of process.

Service of process made on the commissioner as the agent for service of process shall be made as provided in section 505.30.

2018 Acts, ch 1018, §13

NEW section

CHAPTER 521C

REINSURANCE INTERMEDIARIES

Referred to in §87.4, 296.7, 331.301, 364.4, 505.28, 505.29, 669.14, 670.7

521C.1 Short title.
521C.2 Definitions.
521C.3 Licensure.
521C.4 Required contract provisions — reinsurance intermediary-brokers.
521C.5 Books and records — reinsurance intermediary-brokers.
521C.6 Duties of insurers utilizing the services of a reinsurance intermediary-broker.
521C.7 Required contract provisions — reinsurance intermediary-managers.
521C.8 Prohibited acts.
521C.9 Duties of reinsurers utilizing the services of a reinsurance intermediary-manager.
521C.10 Examination authority.
521C.11 Penalties and liabilities.
521C.12 Rules.
521C.13 Service of process made on the commissioner as the agent for service of process.

521C.1 Short title.

This chapter shall be known and may be cited as the *"Reinsurance Intermediary Model Act."*

91 Acts, ch 26, §19

521C.2 Definitions.

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

1. *"Actuary"* means a person who is a member in good standing of the American academy of actuaries.

2. *"Controlling person"* means a person who directly or indirectly has the power to direct or cause to be directed, the management, control, or activities of the reinsurance intermediary.

3. *"Insurer"* means a person licensed to transact the business of insurance in this state.

4. *"Licensed producer"* means an agent, broker, or reinsurance intermediary licensed pursuant to the applicable provision of the insurance law of any jurisdiction.

5. *"Qualified United States financial institution"* means an institution that satisfies all of the following conditions:

a. The financial institution is organized or licensed under the laws of the United States or any state of the United States.

b. The financial institution is regulated, supervised, and examined by federal or state authorities having regulatory authority over banks and trust companies.

c. The financial institution has been determined by either the commissioner, or the securities valuation office of the national association of insurance commissioners, to meet such standards of financial condition and standing as are considered necessary and appropriate to regulate the quality of financial institutions whose letters of credit will be acceptable to the commissioner.

6. *"Reinsurance intermediary"* means a reinsurance intermediary-broker or a reinsurance intermediary-manager.

7. *"Reinsurance intermediary-broker"* means a person, other than an officer or employee of the ceding insurer, who solicits, negotiates, or places reinsurance cessions or retrocessions on behalf of a ceding insurer without the authority or power to bind reinsurance on behalf of the ceding insurer.

8. *"Reinsurance intermediary-manager"* means a person who has authority to bind or manage all or part of the assumed reinsurance business of a reinsurer, including the management of a separate division, department, or underwriting office, and acts as an agent for the reinsurer whether known as a reinsurance intermediary-manager or manager, or known by any other similar term or title. However, for the purposes of this chapter, the following persons shall not be considered a reinsurance intermediary-manager, with respect to the reinsurer:

a. An employee of the reinsurer.

b. A manager of a United States branch of an alien reinsurer who resides in this country.

c. An underwriting manager who, pursuant to contract, manages all or part of the reinsurance operations of the reinsurer, who is under common control with the reinsurer, subject to chapter 521A relating to the regulation of insurance holding company systems, and who is not compensated based upon the volume of premiums written.

d. The manager of a group, association, pool, or organization of insurers who engages in joint underwriting or joint reinsurance and who is subject to examination by the insurance commissioner of the state in which the manager's principal business office is located.

9. *"Reinsurer"* means a person licensed in this state as a reinsurer with the authority to assume reinsurance.

10. *"To be in violation"* means that the reinsurance intermediary, insurer, or reinsurer for whom the reinsurance intermediary was acting failed to substantially comply with the provisions of this chapter.

91 Acts, ch 26, §20; 94 Acts, ch 1176, §14
Referred to in §521C.7

521C.3 Licensure.

1. A person shall not act as a reinsurance intermediary-broker in this state if the person maintains an office in this state or another state individually or as a member or employee of a firm or association, or as an officer, director, or employee of a corporation, unless the person is a licensed producer in this state or another state having a law substantially similar to this law, or the person is licensed in this state as a nonresident reinsurance intermediary.

2. A person shall not act as a reinsurance intermediary-manager in any of the following circumstances:

a. Where the reinsurer is domiciled in this state, unless the person is a licensed producer in this state.

b. Where the person maintains an office in this state individually or as a member or employee of a firm or association, or as an officer, director, or employee of a corporation in this state, unless the person is a licensed producer in this state.

c. Where the person would be acting in another state for a nondomestic insurer, unless the person is a licensed producer in this state or in another state having a law substantially similar to this law, or is licensed in this state as a nonresident reinsurance intermediary.

3. The commissioner may require a reinsurance intermediary-manager subject to subsection 2 to do one or more of the following:

a. File a bond in an amount determined by the commissioner from an insurer acceptable to the commissioner for the protection of each reinsurer represented by the reinsurance intermediary-manager.

b. Maintain an errors and omissions policy in an amount acceptable to the commissioner.

4. *a.* The commissioner may issue a reinsurance intermediary license to a person who has complied with the requirements of this chapter. Any such license issued to a firm or association will authorize all the members of the firm or association and any designated employees to act as reinsurance intermediaries under the license, and all such persons shall be named in the application and any supplements to the application. A license issued to a corporation shall authorize all of the officers, and any designated employees and directors of the corporation to act as reinsurance intermediaries on behalf of the corporation, and all such persons shall be named in the application and any supplements to the application.

b. A reinsurance intermediary license applicant, as a condition precedent to receiving or holding a license, shall designate the commissioner as agent for service of process, and also shall furnish the commissioner with the name and address of a resident of this state upon whom notices or orders of the commissioner or process affecting such nonresident reinsurance intermediary may be served. The licensee shall promptly notify the commissioner in writing of a change of the designated agent for service of process, and the change becomes effective upon acknowledgment by the commissioner.

5. *a.* The commissioner may refuse to issue a reinsurance intermediary license if, in the commissioner's judgment, any of the following conditions are present:

(1) The applicant, anyone named in the application, or any member, principal, officer, or director of the applicant, is not trustworthy.

(2) A controlling person of such applicant is not trustworthy to act as a reinsurance intermediary.

(3) Conditions present in subparagraph (1) or (2) have given cause for revocation or suspension of a license, or a person referred to in subparagraph (1) or (2) has failed to comply with any prerequisite for the issuance of a license.

b. Upon written request, the commissioner shall furnish a written summary of the basis for refusal to issue a license, which document is privileged and not subject to disclosure under chapter 22.

6. A licensed attorney in this state when acting in a professional capacity as an attorney is exempt from the requirements of this section.

91 Acts, ch 26, §21; 2003 Acts, ch 91, §49; 2012 Acts, ch 1023, §132
Referred to in §521C.6, 521C.9

521C.4 Required contract provisions — reinsurance intermediary-brokers.

Transactions between a reinsurance intermediary-broker and the insurer that the reinsurance intermediary-broker represents in such capacity shall only be entered into pursuant to a written authorization, specifying the responsibilities of each party. The authorization shall, at a minimum, contain provisions that satisfy all of the following requirements:

1. The insurer may terminate the authority of the reinsurance intermediary-broker at any time.

2. The reinsurance intermediary-broker shall render accounts to the insurer accurately detailing all material transactions, including information necessary to support all commissions, charges, and other fees received by or owing to the reinsurance intermediary-broker, and shall remit all funds due to the insurer within thirty days of receipt.

3. All funds collected for the account of the insurer shall be held by the reinsurance intermediary-broker in a fiduciary capacity in a bank, as defined in section 524.103.

4. The reinsurance intermediary-broker shall comply with section 521C.5.

5. The reinsurance intermediary-broker shall comply with the written standards established by the insurer for the cession or retrocession of all risks.

6. The reinsurance intermediary-broker shall disclose to the insurer any relationship with any reinsurer to which business will be ceded or retroceded.

91 Acts, ch 26, §22

521C.5 Books and records — reinsurance intermediary-brokers.

1. For a minimum of ten years after expiration of each contract of reinsurance transacted

by the reinsurance intermediary-broker, the reinsurance intermediary-broker shall keep a complete record for each transaction showing all of the following:

a. The type of contract, limits, underwriting restrictions, classes or risks, and territory.

b. The period of coverage, including effective and expiration dates, cancellation provisions, and notice required of cancellation.

c. The reporting and settlement requirements of balances.

d. The rate used to compute the reinsurance premium.

e. The names and addresses of assuming reinsurers.

f. The rates of all reinsurance commissions, including the commissions on any retrocessions handled by the reinsurance intermediary-broker.

g. All related correspondence and memoranda.

h. Proof of placement.

i. The details regarding retrocessions handled by the reinsurance intermediary-broker including the identity of retrocessionaires and percentage of each contract assumed or ceded.

j. Financial records, including but not limited to premium and loss accounts.

k. If the reinsurance intermediary-broker procures a reinsurance contract on behalf of a licensed ceding insurer one or both of the following shall be included in the record:

(1) Directly from any assuming reinsurer, written evidence that the assuming reinsurer has agreed to assume the risk.

(2) If placed through a representative of the assuming reinsurer, other than an employee, written evidence that the assuming reinsurer has delegated binding authority to the representative.

2. The insurer has a right of access and the right to copy and audit all accounts and records maintained by the reinsurance intermediary-broker related to its business in a form usable by the insurer.

91 Acts, ch 26, §23
Referred to in §521C.4

521C.6 Duties of insurers utilizing the services of a reinsurance intermediary-broker.

1. An insurer shall not engage the services of a person, firm, association, or corporation to act as a reinsurance intermediary-broker on its behalf unless the person is licensed as required by section 521C.3, subsection 1.

2. An insurer shall not employ an individual who is employed by a reinsurance intermediary-broker with which the insurer transacts business, unless such reinsurance intermediary-broker is under common control with the insurer and subject to chapter 521A relating to the regulation of insurance company holding systems.

3. The insurer shall annually obtain a copy of statements of the financial condition of each reinsurance intermediary-broker with which the insurer transacts business.

91 Acts, ch 26, §24

521C.7 Required contract provisions — reinsurance intermediary-managers.

Transactions between a reinsurance intermediary-manager and the reinsurer that the reinsurance intermediary-manager represents in such capacity shall only be entered into pursuant to a written contract, specifying the responsibilities of each party, which shall be approved by the reinsurer's board of directors. At least thirty days before the reinsurer assumes or cedes business through a reinsurance intermediary-manager, a true copy of the approved contract shall be filed with the commissioner for approval by the commissioner. The contract, at a minimum, shall contain the following provisions:

1. The reinsurer may terminate the contract for cause upon written notice to the reinsurance intermediary-manager. The reinsurer may suspend the authority of the reinsurance intermediary-manager to assume or cede business during the pendency of any dispute regarding the cause for termination.

2. The reinsurance intermediary-manager shall render accounts to the reinsurer accurately detailing all material transactions, including information necessary to support all commissions, charges, and other fees received by, or owing to the reinsurance

intermediary-manager, and shall remit all funds due under the contract to the reinsurer on not less than a monthly basis.

3. All funds collected for the reinsurer's account shall be held by the reinsurance intermediary-manager in a fiduciary capacity in a bank which is a qualified United States financial institution, as defined in section 521C.2. The reinsurance intermediary-manager may retain no more than three months' estimated claims payments and allocated loss adjustment expenses. The reinsurance intermediary-manager shall maintain a separate bank account for each reinsurer that the reinsurance intermediary-manager represents.

4. For at least ten years after expiration of each contract of reinsurance transacted by the reinsurance intermediary-manager, the reinsurance intermediary-manager shall keep a complete record for each transaction showing all of the following:

a. The type of contract, limits, underwriting restrictions, classes or risks, and territory.

b. The period of coverage, including effective and expiration dates, cancellation provisions and notice required of cancellation, and disposition of outstanding reserves on covered risks.

c. The reporting and settlement requirements of balances.

d. The rate used to compute the reinsurance premium.

e. The names and addresses of reinsurers.

f. The rates of all reinsurance commissions, including the commissions on any retrocessions handled by the reinsurance intermediary-manager.

g. Any related correspondence and memoranda.

h. Proof of placement.

i. The details regarding retrocessions handled by the reinsurance intermediary-manager, as permitted by section 521C.9, subsection 4, including the identity of retrocessionaires and percentage of each contract assumed or ceded.

j. Financial records, including but not limited to premium and loss accounts.

k. If the reinsurance intermediary-manager places a reinsurance contract on behalf of a ceding insurer one or both of the following shall be included in the record:

(1) Directly from any assuming reinsurer, written evidence that the assuming reinsurer has agreed to assume the risk.

(2) If placed through a representative of the assuming reinsurer, other than an employee, written evidence that the assuming reinsurer has delegated binding authority to the representative.

5. The reinsurer has a right of access and the right to copy all accounts and records maintained by the reinsurance intermediary-manager related to its business in a form usable by the reinsurer.

6. The contract cannot be assigned in whole or in part by the reinsurance intermediary-manager.

7. The reinsurance intermediary-manager shall comply with the written underwriting and rating standards established by the insurer for the acceptance, rejection, or cession of all risks.

8. The contract shall set forth the rates, terms, and purposes of commissions, charges, and other fees which the reinsurance intermediary-manager may levy against the reinsurer.

9. If the contract permits the reinsurance intermediary-manager to settle claims on behalf of the reinsurer, all of the following apply:

a. All claims shall be reported to the reinsurer in a timely manner.

b. A copy of the claim file shall be sent to the reinsurer at its request or as soon as it becomes known that the claim meets any or all of the following conditions:

(1) The claim has the potential to exceed the lesser of an amount determined by the commissioner or the limit set by the reinsurer.

(2) The claim involves a coverage dispute.

(3) The claim may exceed the claims settlement authority of the reinsurance intermediary-manager.

(4) The claim is open for more than six months.

(5) The claim is closed by payment of the lesser of an amount set by the commissioner or an amount set by the reinsurer.

c. All claim files shall be the joint property of the reinsurer and reinsurance intermediary-manager. However, upon an order of liquidation of the reinsurer the files shall become the sole property of the reinsurer or its estate. The reinsurance intermediary-manager shall have reasonable access to and the right to copy the files on a timely basis.

d. Any settlement authority granted to the reinsurance intermediary-manager may be terminated for cause upon the reinsurer's written notice to the reinsurance intermediary-manager or upon the termination of the contract. The reinsurer may suspend the settlement authority during the pendency of the dispute regarding the cause of termination.

10. If the contract provides for a sharing of interim profits by the reinsurance intermediary-manager, interim profits shall not be paid until one year after the end of each underwriting period for property insurance business and five years after the end of each underwriting period for casualty insurance business, or a later period as determined by the commissioner for each type of insurance, but in no case until the adequacy of reserves on remaining claims has been verified pursuant to section 521C.9, subsection 3.

11. The reinsurance intermediary-manager shall annually provide the reinsurer with a statement of its financial condition prepared by an independent certified accountant.

12. The reinsurer shall periodically, but not less than semiannually, conduct an on-site review of the underwriting and claims processing operations of the reinsurance intermediary-manager.

13. The reinsurance intermediary-manager shall disclose to the reinsurer any relationship the reinsurance intermediary-manager has with any insurer prior to ceding or assuming any business with the insurer pursuant to this contract.

14. The acts of the reinsurance intermediary-manager are deemed to be the acts of the reinsurer on whose behalf the reinsurance intermediary-manager is acting.

91 Acts, ch 26, §25

521C.8 Prohibited acts.

The reinsurance intermediary-manager shall not do any of the following:

1. Bind retrocessions on behalf of the reinsurer, except that the reinsurance intermediary-manager may bind facultative retrocessions pursuant to obligatory facultative agreements if the contract with the reinsurer contains reinsurance underwriting guidelines for such retrocessions. The guidelines shall include a list of reinsurers with which the automatic agreements are in effect, and for each reinsurer, the coverages and amounts or percentages that may be reinsured, and commission schedules.

2. Commit the reinsurer to participate in reinsurance syndicates.

3. Appoint any producer without assuring that the producer is licensed to transact the type of reinsurance for which the producer is appointed.

4. Without prior approval of the reinsurer, pay or commit the reinsurer to pay a claim, or a net amount of retrocessions, that exceeds the lesser of an amount specified by the reinsurer or one percent of the reinsurer's policyholder's surplus as of December 31 of the last complete calendar year.

5. Collect any payment from a retrocessionaire or commit the reinsurer to any claim settlement with a retrocessionaire, without prior approval of the reinsurer. If prior approval is given, a report must be promptly forwarded to the reinsurer.

6. Jointly employ an individual who is employed by the reinsurer.

7. Appoint an agent of a reinsurance intermediary-manager.

91 Acts, ch 26, §26

521C.9 Duties of reinsurers utilizing the services of a reinsurance intermediary-manager.

1. A reinsurer shall not engage the services of a person to act as a reinsurance intermediary-manager on its behalf unless the person is licensed as required by section 521C.3, subsection 2.

2. The reinsurer shall annually obtain a copy of statements of the financial condition

of each reinsurance intermediary-manager whom the reinsurer has engaged pursuant to subsection 1. The statements of financial condition shall be prepared by an independent certified accountant in a form acceptable to the commissioner.

3. If a reinsurance intermediary-manager establishes loss reserves, the reinsurer shall annually obtain the opinion of an actuary attesting to the adequacy of loss reserves established for losses incurred and outstanding on business produced by the reinsurance intermediary-manager. This opinion shall be in addition to any other required loss reserve certification.

4. Binding authority for all retrocessional contracts or participation in reinsurance syndicates shall rest with an officer of the reinsurer who shall not be affiliated with the reinsurance intermediary-manager.

5. Within thirty days of termination of a contract with a reinsurance intermediary-manager, the reinsurer shall provide written notification of the termination to the commissioner.

6. A reinsurer shall not appoint to its board of directors any officer, director, employee, controlling shareholder, or an agent of a producer of its reinsurance intermediary-manager. This subsection shall not apply to relationships governed by chapter 521A relating to the regulation of insurance company holding systems or, if applicable, governed by chapter 510A relating to the regulation of producer controlled property and casualty insurers.

91 Acts, ch 26, §27
Referred to in §521C.7

521C.10 Examination authority.

1. A reinsurance intermediary is subject to examination by the commissioner. The commissioner shall have access to all books, bank accounts, and records of the reinsurance intermediary in a form usable to the commissioner.

2. A reinsurance intermediary-manager may be examined as if it were the reinsurer.

91 Acts, ch 26, §28

521C.11 Penalties and liabilities.

1. *a.* A reinsurance intermediary or other person found by the commissioner, after a hearing conducted in accordance with chapter 17A, to have not materially complied with a provision of this chapter is subject to one or more of the following:

(1) For each separate violation, a civil penalty in an amount not exceeding five thousand dollars.

(2) Revocation or suspension of the license of the reinsurance intermediary.

b. If the commissioner finds that such noncompliance has resulted in a loss or damage to the insurer or reinsurer, the commissioner may bring a civil action on behalf of the insurer or reinsurer, and the policyholders and creditors of the insurer or reinsurer, seeking the recovery of compensatory damages for the benefit of the insurer or reinsurer, and the policyholders and creditors of the insurer or reinsurer, or seeking other relief as appropriate.

c. If an order of rehabilitation or liquidation has been entered pursuant to chapter 507C, and the receiver appointed under the order determines that the reinsurance intermediary or any other person has not materially complied with a provision of this chapter and such noncompliance has resulted in a loss or damage to the insurer or reinsurer, the receiver may bring a civil action on behalf of the insurer or reinsurer seeking the recovery of damages for the benefit of the insurer or reinsurer, or seeking other appropriate sanction or relief.

2. A decision, determination, or order of the commissioner made or entered pursuant to subsection 1 is subject to judicial review pursuant to chapter 17A.

3. This section does not affect the right of the commissioner to impose any other penalties provided in this subtitle.

4. This chapter shall not in any manner limit or restrict the rights of policyholders, claimants, creditors, or other third parties, or confer any rights to such persons.

91 Acts, ch 26, §29; 91 Acts, ch 213, §31; 94 Acts, ch 1176, §15; 2012 Acts, ch 1023, §157

521C.12 Rules.

The commissioner may adopt rules, pursuant to chapter 17A, as necessary or convenient for the administration of this chapter.

91 Acts, ch 26, §30

521C.13 Service of process made on the commissioner as the agent for service of process.

Service of process made on the commissioner as the agent for service of process shall be made as provided in section 505.30.

2018 Acts, ch 1018, §14
NEW section

CHAPTER 521D

DISCLOSURE OF MATERIAL TRANSACTIONS

Referred to in §87.4, 296.7, 331.301, 364.4, 505.28, 505.29, 669.14, 670.7

521D.1 Title.
521D.2 Report.
521D.3 Report of acquisition and disposition of assets — information required — scope.
521D.4 Report of nonrenewal, cancellation, revision of ceded reinsurance agreements — information required — scope.

521D.1 Title.

This chapter shall be known and may be cited as the *"Disclosure of Material Transactions Act"*.

94 Acts, ch 1176, §16

521D.2 Report.

1. An insurer domiciled in this state shall file a report with the commissioner disclosing material acquisitions and dispositions of assets, or material nonrenewals, cancellations, or revisions of ceded reinsurance agreements unless such acquisitions and dispositions of assets, or material nonrenewals, cancellations, or revisions of ceded reinsurance agreements have been submitted to the commissioner for review, approval, or information purposes pursuant to other provisions of this subtitle or pursuant to other requirements. The report shall be filed not later than fifteen days after the end of the calendar year in which the material acquisition or disposition of assets, or material nonrenewal, cancellation, or revision of ceded reinsurance agreements occurs.

2. The insurer shall also file a copy of the report required to be filed with the commissioner pursuant to subsection 1, including any exhibits or other attachments filed as part of the report, with the national association of insurance commissioners.

3. *a.* All reports obtained by or disclosed to the commissioner and the national association of insurance commissioners pursuant to this chapter are confidential and shall not be subject to subpoena and shall not be made public by the commissioner, the national association of insurance commissioners, or any other person without the prior written consent of the insurer to which it pertains, unless the commissioner, after giving such insurer notice and providing an opportunity to be heard, determines that the interest of policyholders, shareholders, or the public will be served by the publication or disclosure of the report, in which event the commissioner may publish or disclose all or any part of the report as deemed appropriate.

b. Notwithstanding this subsection, the commissioner or the national association of insurance commissioners may provide the report to the insurance regulatory agencies of other states.

94 Acts, ch 1176, §17; 2012 Acts, ch 1023, §157
Referred to in §521D.3, 521D.4

521D.3 Report of acquisition and disposition of assets — information required — scope.

1. An acquisition or disposition of assets need not be reported pursuant to section 521D.2 if the acquisition or disposition is not material. For purposes of this chapter, a material acquisition, or the aggregate of any series of related acquisitions, or a disposition, or the aggregate of any series of related dispositions, during any thirty-day period, is one that is nonrecurring, is not in the ordinary course of business, and involves more than five percent of the reporting insurer's total admitted assets as reported in its most recent statutory statement filed with the insurance division of the insurer's state of domicile.

2. For purposes of this chapter, an asset acquisition includes every purchase, lease, exchange, merger, consolidation, succession, or other acquisition, other than the construction or development of real property by or for the reporting insurer or the acquisition of materials for such purpose. For purposes of this chapter, an asset disposition includes every sale, lease, exchange, merger, consolidation, mortgage, hypothecation, assignment, whether for the benefit of creditors or otherwise, abandonment, destruction, or other disposition.

3. A report of a material acquisition or disposition of assets shall include all of the following:

a. Date of the transaction.

b. Manner of the acquisition or disposition.

c. Description of the assets involved.

d. Nature and amount of the consideration given or received.

e. Purpose of, or reason for, the transaction.

f. Manner by which the amount of consideration was determined.

g. Gain or loss recognized or realized as a result of the transaction.

h. Name or names of the person or persons from whom the assets were acquired or to whom they were disposed.

4. An insurer is required to report material acquisitions and dispositions on a nonconsolidated basis unless the insurer is part of a consolidated group of insurers which utilizes a pooling arrangement or one hundred percent reinsurance agreement that affects the solvency and integrity of the insurer's reserves, and such insurer ceded substantially all of its direct and assumed business to the pool. An insurer is deemed to have ceded substantially all of its direct and assumed business to a pool if the insurer has less than one million dollars total direct plus assumed written premiums during a calendar year that are not subject to a pooling arrangement, and the net income of the business not subject to the pooling arrangement represents less than five percent of the insurer's capital and surplus.

94 Acts, ch 1176, §18

521D.4 Report of nonrenewal, cancellation, revision of ceded reinsurance agreements — information required — scope.

1. A nonrenewal, cancellation, or revision of a ceded reinsurance agreement need not be reported pursuant to section 521D.2 if the nonrenewal, cancellation, or revision is not material. For purposes of this chapter, a material nonrenewal, cancellation, or revision of a ceded reinsurance agreement is one that does the following:

a. For property and casualty business including accident and health business when written as such, affects more than fifty percent of an insurer's ceded written premium on an annualized basis as indicated in the insurer's most recently filed statutory statement.

b. For life, annuity, and accident and health business, affects more than fifty percent of the total reserve credit taken for business ceded on an annualized basis as indicated in the insurer's most recently filed statutory statement.

2. Notwithstanding subsection 1, a filing is not required if the insurer's ceded written premium represents, on an annualized basis, less than ten percent of direct plus assumed written premium, or the total reserve credit taken for business ceded represents, on an annualized basis, less than ten percent of the statutory reserve requirement prior to any cession.

3. *a.* A report required to be filed pursuant to this chapter is to be filed regardless of who has initiated the nonrenewal, cancellation, or revision of the ceded reinsurance agreement whenever one or more of the following conditions exist:

(1) The entire cession has been canceled, nonrenewed, or revised and ceded indemnity and loss adjustment expense reserves, after any nonrenewal, cancellation, or revision, represent less than fifty percent of the comparable reserves that would have been ceded had the nonrenewal, cancellation, or revision not occurred.

(2) An authorized or accredited reinsurer has been replaced on an existing cession by an unauthorized reinsurer.

(3) Collateral requirements previously established for unauthorized reinsurers have been reduced.

b. Subject to the materiality criteria, for purposes of paragraph "*a*", subparagraphs (2) and (3), a report shall be filed if the result of the revision affects more than ten percent of the cession.

4. A report of a material nonrenewal, cancellation, or revision of a ceded reinsurance agreement required to be filed shall include all of the following:

a. The effective date of the nonrenewal, cancellation, or revision.

b. The description of the transaction including the identification of the initiator of the transaction.

c. The purpose of, or reason for, the transaction.

d. The identity of the replacement reinsurers, if applicable.

5. Insurers are required to report all material nonrenewals, cancellations, or revisions of ceded reinsurance agreements on a nonconsolidated basis unless the insurer is part of a consolidated group of insurers which utilizes an intercompany pooling agreement or arrangement or a one hundred percent reinsurance agreement under which the ceding company has ceded substantially one hundred percent of its direct and assumed business to a pool. An insurer is deemed to have ceded substantially one hundred percent of its direct and assumed business to a pool if the insurer has less than one million dollars of total direct plus assumed written premiums during a calendar year that are not subject to the pooling agreement or arrangement and the net income of the business not subject to the pooling agreement or arrangement represents less than five percent of the insurer's capital and surplus. If a group of insurers reports on a consolidated basis, the report shall identify the individual insurers that are members of the group.

94 Acts, ch 1176, §19; 2012 Acts, ch 1023, §133

CHAPTER 521E

RISK-BASED CAPITAL REQUIREMENTS FOR INSURERS

Referred to in §87.4, 296.7, 331.301, 364.4, 505.28, 505.29, 508.5, 508.9, 508.33A, 515.8, 515.12A, 515.69, 515.74, 515E.3A, 520.9, 521F.2, 669.14, 670.7

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521E.1 Definitions.

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

1. *"Adjusted risk-based capital report"* means a risk-based capital report adjusted by the commissioner pursuant to section 521E.2, subsection 5.

2. *"Commissioner"* means the commissioner of insurance.

3. *"Corrective order"* means an order issued by the commissioner of insurance specifying corrective actions which the commissioner has determined are required.

4. *"Domestic insurer"* means an insurance company domiciled in this state and licensed to transact the business of insurance under chapter 508, 512B, 515, or 520, except that it shall not include any of the following:

a. An agency, authority, or instrumentality of the United States, its possessions and territories, the commonwealth of Puerto Rico, the District of Columbia, or a state or political subdivision of a state.

b. A nonprofit medical, hospital, or dental service corporation organized under chapter 514.

c. A county mutual insurance association organized under chapter 518.

d. A state mutual insurance association organized under chapter 518A.

e. A health maintenance organization organized under chapter 514B.

5. *"Filing date"* means March 1 of each year.

6. *"Foreign insurer"* means an insurance company not domiciled in this state which is licensed to transact the business of insurance in this state under chapter 508, 512B, 515, or 520.

7. *"Life and health insurer"* means an insurance company licensed under chapter 508, a fraternal benefit society organized under chapter 512B, or a licensed property and casualty insurer writing only accident and health insurance under chapter 515.

8. *"Negative trend"* means a negative trend over a period of time as determined in accordance with the trend test calculation included in the risk-based capital instructions.

9. *"Property and casualty insurer"* means an insurance company licensed under chapter 515 but does not include monoline mortgage guaranty insurers, financial guaranty insurers, or title insurers.

10. *"Revised risk-based capital plan"* is a risk-based capital plan which has been rejected by the commissioner and has been revised by the insurer, with or without the commissioner's recommendation.

11. *"Risk-based capital instructions"* means the instructions included in the risk-based capital report as adopted by the national association of insurance commissioners, as such risk-based capital instructions may be amended by the national association of insurance commissioners from time to time in accordance with the procedures adopted by the national association of insurance commissioners.

12. *"Risk-based capital level"* means an insurer's company-action-level risk-based capital, regulatory-action-level risk-based capital, authorized-control-level risk-based capital, or mandatory-control-level risk-based capital as follows:

a. *"Company-action-level risk-based capital"* means, with respect to any insurer, the product of two and the insurer's authorized-control-level risk-based capital.

b. *"Regulatory-action-level risk-based capital"* means the product of one and one-half and the insurer's authorized-control-level risk-based capital.

c. *"Authorized-control-level risk-based capital"* means the number determined under the risk-based capital formula in accordance with the risk-based capital instructions.

d. *"Mandatory-control-level risk-based capital"* means the product of seven-tenths and the insurer's authorized-control-level risk-based capital.

13. *"Risk-based capital plan"* means a comprehensive financial plan containing the elements identified in section 521E.3, subsection 2.

14. *"Risk-based capital report"* means the report required to be prepared and submitted to the commissioner pursuant to section 521E.2.

15. *"Total adjusted capital"* means the sum of the following:

a. An insurer's statutory capital and surplus.

b. Such other items, if any, as identified in the risk-based capital instructions.

96 Acts, ch 1046, §9; 2000 Acts, ch 1023, §56; 2013 Acts, ch 124, §25 – 27

521E.2 Risk-based capital reports.

1. A domestic insurer, on or prior to the filing date, shall prepare and submit to the commissioner a report of the insurer's risk-based capital level as of the end of the calendar

year immediately preceding the filing date, in a form and containing the information required by the risk-based capital instructions. A domestic insurer shall also file its risk-based capital report with both of the following:

a. The national association of insurance commissioners.

b. The insurance commissioner in each state in which the insurer is authorized to do business, if such insurance commissioner has notified the insurer of its request in writing. Upon receipt of the written request, the insurer shall file its risk-based capital report with the requesting commissioner by no later than the later of the following:

(1) Fifteen days from the receipt of the written request.

(2) The filing date.

2. A life and health insurer's risk-based capital shall be determined pursuant to the formula set forth in the risk-based capital instructions. The formula shall take into account all of the following, and may be adjusted, as deemed appropriate by the commissioner, for the covariance between the following:

a. The risk with respect to the insurer's assets.

b. The risk of adverse insurance experience with respect to the insurer's liabilities and obligations.

c. The interest rate risk with respect to the insurer's business.

d. All other business risks and other relevant risks as identified in the risk-based capital instructions, determined in each case by applying the factors in the manner provided for in the risk-based capital instructions.

3. A property and casualty insurer's risk-based capital shall be determined pursuant to the formula set forth in the risk-based capital instructions. The formula shall take into account all of the following, and may be adjusted, as deemed appropriate by the commissioner, for the covariance between the following:

a. Asset risk.

b. Credit risk.

c. Underwriting risk.

d. All other business risks and other relevant risks as identified in the risk-based capital instructions, determined in each case by applying the factors in the manner provided for in the risk-based capital instructions.

4. An insurer shall seek to maintain capital above the risk-based capital levels required by this chapter.

5. A risk-based capital report filed by a domestic insurer which in the judgment of the commissioner is inaccurate, shall be adjusted by the commissioner to correct the inaccuracy. The commissioner shall notify the insurer of the adjustment. The notice shall contain a statement of the reason for the adjustment.

96 Acts, ch 1046, §10
Referred to in §521E.1, 521E.10

521E.3 Company-action-level event.

1. *"Company-action-level event"* means any of the following:

a. The filing of a risk-based capital report by an insurer which indicates any of the following:

(1) For an insurer other than a life and health insurer, the insurer's total adjusted capital is greater than or equal to its regulatory-action-level risk-based capital but less than its company-action-level risk-based capital.

(2) For a life and health insurer, the insurer's total adjusted capital is greater than or equal to its company-action-level risk-based capital but less than the product of its authorized-control-level risk-based capital and three, and has a negative trend.

(3) For a property and casualty insurer, the insurer's total adjusted capital is greater than or equal to its company-action-level risk-based capital but less than the product of its authorized-control-level risk-based capital and three and triggers the trend test determined in accordance with the trend test calculation included in the property and casualty risk-based capital instructions.

b. Notification by the commissioner to the insurer of an adjusted risk-based capital report

that indicates an event in paragraph *"a"*, provided the insurer does not challenge the adjusted risk-based capital report and request a hearing pursuant to section 521E.7.

c. If a hearing is requested pursuant to section 521E.7, notification by the commissioner to the insurer after the hearing that the commissioner has rejected the insurer's challenge of the adjusted risk-based capital report indicating an event in paragraph *"a"*.

2. Upon the occurrence of a company-action-level event, the insurer shall prepare and submit to the commissioner a risk-based capital plan which shall include all of the following:

a. Identification of the conditions which contributed to the company-action-level event.

b. Proposed corrective actions which the insurer intends to implement and which are expected to result in the elimination of the company-action-level event.

c. Projections of the insurer's financial results for the current year and at least the four succeeding years, including projections of statutory operating income, net income, capital, and surplus. Projections shall be provided assuming the absence of the proposed corrective actions and assuming the implementation of the proposed corrective actions. The projections for both new and renewal business may include separate projections for each major line of business and separately identify each significant income, expense, and benefit component.

d. Identification of the primary assumptions impacting the insurer's projections and the sensitivity of the projections to the assumptions.

e. Identification of the quality of, and problems associated with, the insurer's business, including but not limited to its assets, anticipated business growth and associated surplus strain, extraordinary exposure to risk, mix of business, and use of reinsurance, if any, in each case.

3. The risk-based capital plan shall be submitted within forty-five days of the company-action-level event, or, if the insurer requests a hearing pursuant to section 521E.7 for the purpose of challenging the adjusted risk-based capital report, within forty-five days after notification to the insurer that the commissioner, after hearing, has rejected the insurer's challenge.

4. Within sixty days after the submission by an insurer of a risk-based capital plan to the commissioner, the commissioner shall notify the insurer whether the risk-based capital plan shall be implemented or, in the judgment of the commissioner, is unsatisfactory. If the commissioner determines the risk-based capital plan is unsatisfactory, the notification to the insurer shall set forth the reasons for the determination, and may set forth proposed revisions which in the judgment of the commissioner will render the risk-based capital plan satisfactory. Upon the receipt of notification from the commissioner pursuant to this subsection, the insurer shall prepare a revised risk-based capital plan, which may incorporate by reference any revisions proposed by the commissioner, and submit the revised risk-based capital plan to the commissioner within forty-five days of the receipt of notification from the commissioner of the commissioner's determination that the risk-based capital plan is unsatisfactory, or, if the insurer requests a hearing pursuant to section 521E.7 for the purpose of challenging the commissioner's determination, within forty-five days after notification to the insurer that the commissioner, after hearing, has rejected the insurer's challenge.

5. After notification of the insurer by the commissioner that the insurer's risk-based capital plan or revised risk-based capital plan is unsatisfactory, the commissioner, at the commissioner's discretion and subject to the insurer's right to a hearing pursuant to section 521E.7, may specify in the notification that the notification constitutes a regulatory-action-level event.

6. A domestic insurer that files a risk-based capital plan or revised risk-based capital plan with the commissioner shall file a copy of the risk-based capital plan or revised risk-based capital plan with the insurance commissioner in a state in which the insurer is authorized to do business if both of the following apply:

a. The other state has a provision substantially similar to section 521E.8, subsection 1, with respect to the confidentiality and availability of such plans.

b. The insurance commissioner of that state has notified the insurer in writing of its request to receive a copy of the risk-based capital plan or revised risk-based capital plan. Upon receipt of the written request, the insurer shall file a copy of the risk-based capital

plan or revised risk-based capital plan with the requesting commissioner by no later than the later of the following:

(1) Fifteen days from the receipt of the written request.

(2) The date on which the risk-based capital plan or revised risk-based capital plan is filed pursuant to subsection 3 or 4, as applicable.

96 Acts, ch 1046, §11; 2011 Acts, ch 70, §42, 43; 2013 Acts, ch 124, §28
Referred to in §521A.1, 521E.1, 521E.4, 522.6

521E.4 Regulatory-action-level event.

1. *"Regulatory-action-level event"* means any of the following:

a. The filing of a risk-based capital report by the insurer which indicates that the insurer's total adjusted capital is greater than or equal to its authorized-control-level risk-based capital but less than its regulatory-action-level risk-based capital.

b. Notification by the commissioner to an insurer of an adjusted risk-based capital report that indicates the event in paragraph *"a"*, provided the insurer does not challenge the adjusted risk-based capital report and request a hearing pursuant to section 521E.7.

c. After a hearing pursuant to section 521E.7, notification by the commissioner to the insurer that the commissioner has rejected the insurer's challenge of the adjusted risk-based capital report indicating the event in paragraph *"a"*.

d. Failure of the insurer to file a risk-based capital report by the filing date, unless the insurer has provided an explanation for the failure which is satisfactory to the commissioner and has cured the failure within ten days after the filing date.

e. Failure of the insurer to submit a risk-based capital plan to the commissioner within the time period set forth in section 521E.3, subsection 3.

f. Notification by the commissioner to the insurer of both of the following:

(1) The risk-based capital plan or revised risk-based capital plan submitted by the insurer, in the judgment of the commissioner, is unsatisfactory.

(2) Notification pursuant to this paragraph constitutes a regulatory-action-level event with respect to the insurer, provided the insurer has not challenged the determination pursuant to section 521E.7.

g. After a hearing pursuant to section 521E.7, notification by the commissioner to the insurer that the commissioner has rejected the insurer's challenge of the determination made by the commissioner pursuant to paragraph *"f"*.

h. Notification by the commissioner to the insurer that the insurer has failed to adhere to the insurer's risk-based capital plan or revised risk-based capital plan, but only if the failure has a substantial adverse effect on the ability of the insurer to eliminate the company-action-level event pursuant to the insurer's risk-based capital plan or revised risk-based capital plan and the commissioner has so stated in the notification. However, notification by the commissioner pursuant to this paragraph does not constitute a company-action-level event if the insurer has challenged the determination of the commissioner pursuant to section 521E.7.

i. After a hearing pursuant to section 521E.7, notification by the commissioner to the insurer that the commissioner has rejected the insurer's challenge of the commissioner's determination pursuant to paragraph *"h"*.

2. In the event of a regulatory-action-level event the commissioner shall do all of the following:

a. Require the insurer to prepare and submit a risk-based capital plan or a revised risk-based capital plan, as applicable.

b. Perform an examination or analysis of the assets, liabilities, and operations of the insurer, including a review of its risk-based capital plan or revised risk-based capital plan, as deemed necessary by the commissioner.

c. Subsequent to the examination or analysis pursuant to paragraph *"b"*, issue a corrective order.

3. In determining the corrective actions to be specified, the commissioner shall take into account factors the commissioner deems to be relevant with respect to the insurer based upon the commissioner's examination or analysis of the assets, liabilities, and operations

of the insurer, including, but not limited to, the results of any sensitivity tests undertaken pursuant to the risk-based capital instructions. The risk-based capital plan or revised risk-based capital plan shall be submitted within forty-five days after the occurrence of the regulatory-action-level event, except as follows:

a. If the insurer challenges an adjusted risk-based capital report pursuant to section 521E.7, and in the judgment of the commissioner the challenge is not frivolous, within forty-five days after the notification to the insurer that the commissioner, after a hearing pursuant to section 521E.7, has rejected the insurer's challenge.

b. If the insurer challenges a revised risk-based capital plan pursuant to section 521E.7, and in the judgment of the commissioner the challenge is not frivolous, within forty-five days after the notification to the insurer that the commissioner, after a hearing pursuant to section 521E.7, has rejected the insurer's challenge.

4. The commissioner may retain actuaries, investment experts, and other consultants as deemed necessary by the commissioner to review the insurer's risk-based capital plan or revised risk-based capital plan; examine or analyze the assets, liabilities, and operations of the insurer; and assist in the formulation of the corrective order with respect to the insurer. Fees of the actuaries, investment experts, or other consultants retained by the commissioner shall be paid by the insurer subject to the review or examination.

96 Acts, ch 1046, §12
Referred to in §521E.5

521E.5 Authorized-control-level event.

1. *"Authorized-control-level event"* means any of the following:

a. The filing of a risk-based capital report by the insurer which indicates that the insurer's total adjusted capital is greater than or equal to its mandatory-control-level risk-based capital but less than its authorized-control-level risk-based capital.

b. Notification by the commissioner to an insurer of an adjusted risk-based capital report that indicates the event in paragraph *"a"*, provided the insurer does not challenge the adjusted risk-based capital report and request a hearing pursuant to section 521E.7.

c. After a hearing pursuant to section 521E.7, notification by the commissioner to the insurer that the commissioner has rejected the insurer's challenge of the adjusted risk-based capital report indicating the event in paragraph *"a"*.

d. Failure of the insurer to respond to a corrective order in a manner satisfactory to the commissioner, unless the insurer has challenged the corrective order pursuant to section 521E.7.

e. Failure of the insurer to respond to the corrective order in a manner satisfactory to the commissioner after the insurer has challenged the corrective order pursuant to section 521E.7, and the commissioner, after a hearing pursuant to section 521E.7, has rejected the challenge or modified the corrective order.

2. In the event of an authorized-control-level event the commissioner shall do either of the following:

a. Take action as required pursuant to section 521E.4 in the same manner as if a regulatory-action-level event has occurred.

b. Take action as necessary to cause the insurer to be placed under supervision or other regulatory control under chapter 507C, if the commissioner deems such action to be in the best interests of the policyholders and creditors of the insurer and of the public. If the commissioner takes action pursuant to this paragraph, the authorized-control-level event is deemed sufficient grounds for the commissioner to take action pursuant to chapter 507C, and the commissioner has the rights, powers, and duties with respect to the insurer as set forth in chapter 507C. If the commissioner takes action under this paragraph pursuant to an adjusted risk-based capital report, the insurer is entitled to the protections afforded to insurers under the provisions of chapter 17A relating to summary proceedings.

96 Acts, ch 1046, §13

521E.6 Mandatory-control-level event.

1. *"Mandatory-control-level event"* means any of the following events:

a. The filing of a risk-based capital report which indicates that an insurer's total adjusted capital is less than its mandatory-control-level risk-based capital.

b. Notification by the commissioner to an insurer of an adjusted risk-based capital report that indicates the event in paragraph *"a"*, provided the insurer does not challenge the adjusted risk-based capital report and request a hearing pursuant to section 521E.7.

c. After a hearing pursuant to section 521E.7, notification by the commissioner to the insurer that the commissioner has rejected the insurer's challenge of the adjusted risk-based capital report indicating the event in paragraph *"a"*.

2. In the event of a mandatory-control-level event the commissioner shall do the following:

a. With respect to a life insurer, take action as necessary to place the insurer under supervision or other regulatory control under chapter 507C. If the commissioner takes action pursuant to this paragraph, the mandatory-control-level event is deemed sufficient grounds for the commissioner to take action pursuant to chapter 507C, and the commissioner shall have the rights, powers, and duties with respect to the insurer as set forth in chapter 507C. If the commissioner takes action pursuant to an adjusted risk-based capital report, the insurer is entitled to the protections of chapter 17A pertaining to summary proceedings. Notwithstanding the provisions of this paragraph, the commissioner may forego any action pursuant to this paragraph for up to ninety days after the mandatory-control-level event if the commissioner finds a reasonable expectation exists that the mandatory-control-level event may be eliminated within the ninety-day period.

b. With respect to a property and casualty insurer, take action as necessary to place the insurer under supervision or other regulatory control under chapter 507C, or, in the case of an insurer which is no longer writing business and which is running off its existing business, the commissioner may allow the insurer to continue its run-off under the supervision of the commissioner. In either event, the mandatory-control-level event is deemed sufficient grounds for the commissioner to take action under chapter 507C and the commissioner shall have the rights, powers, and duties with respect to the insurer as set forth in chapter 507C. If the commissioner takes action pursuant to an adjusted risk-based capital report, the insurer is entitled to the protections of chapter 17A pertaining to summary proceedings. Notwithstanding the provisions of this paragraph, the commissioner may forego action for up to ninety days after the mandatory-control-level event if the commissioner finds a reasonable expectation exists that the mandatory-control-level event may be eliminated within the ninety-day period.

96 Acts, ch 1046, §14

521E.7 Confidential hearings.

1. An insurer shall notify the commissioner of the insurer's request for a confidential hearing within five days after the occurrence of any of the following:

a. Notification to an insurer by the commissioner of an adjusted risk-based capital report.

b. Notification to an insurer by the commissioner of both of the following:

(1) The insurer's risk-based capital plan or revised risk-based capital plan is unsatisfactory.

(2) That the notification pursuant to this paragraph constitutes a regulatory-action-level event with respect to the insurer.

c. Notification to an insurer by the commissioner that the insurer has failed to adhere to its risk-based capital plan or revised risk-based capital plan and that the failure has a substantial adverse effect on the ability of the insurer to eliminate the company-action-level event in accordance with its risk-based capital plan or revised risk-based capital plan.

d. Notification to an insurer by the commissioner of a corrective order with respect to the insurer.

2. An insurer receiving a notification pursuant to subsection 1 is entitled to a confidential hearing before the insurance division, at which the insurer may challenge a determination or action by the commissioner. Upon receipt of the insurer's request for a hearing, the

commissioner shall set a date for the hearing, which shall be not less than ten or more than thirty days after the date of the insurer's request.

96 Acts, ch 1046, §15
Referred to in §521E.3, 521E.4, 521E.5, 521E.6

521E.8 Confidentiality — use of reports and information — prohibition on announcements — prohibition on use in ratemaking.

1. A risk-based capital report, to the extent the information in the report is not required to be set forth in a publicly available annual statement schedule, or a risk-based capital plan, including the results or report of any examination or analysis of an insurer performed pursuant to this chapter, and any corrective order issued by the commissioner pursuant to an examination or analysis, with respect to a domestic insurer or foreign insurer, which are filed with the commissioner, are deemed not to be public records under chapter 22 and are privileged and confidential. This information shall not be made public and is not subject to subpoena, other than by the commissioner, and then only for the purpose of enforcement actions taken by the commissioner pursuant to this chapter or any other provision of the insurance laws of this state.

2. The comparison of an insurer's total adjusted capital to any of its risk-based capital levels is a regulatory tool which may indicate the need for possible corrective action with respect to the insurer, and is not to be used as a means to rank insurers generally.

3. Except as otherwise required under this chapter or as required of a publicly held company by the United States securities and exchange commission or other regulatory agency, the publication or dissemination in any manner of an announcement or statement which contains an assertion, representation, or statement with regard to the risk-based capital levels of an insurer, or of a component derived in the calculation, by an insurer, agent, broker, or other person engaged in any manner in the business of insurance which would be misleading, is prohibited. However, if a materially false statement comparing an insurer's total adjusted capital to its risk-based capital levels or a misleading comparison of any other amount to the insurer's risk-based capital levels is published or disseminated in any manner and if the insurer is able to demonstrate to the commissioner with substantial proof that the statement is false, misleading, or inappropriate, as the case may be, the insurer may publish an announcement in a written publication for the sole purpose of rebutting the materially false, misleading, or inappropriate statement.

4. The risk-based capital instructions, risk-based capital reports, adjusted risk-based capital reports, risk-based capital plans, and revised risk-based capital plans shall be solely used by the commissioner in monitoring the solvency of insurers and the need for possible corrective action with respect to insurers. The risk-based capital instructions, risk-based capital reports, adjusted risk-based capital reports, risk-based capital plans, and revised risk-based capital plans shall not be used by the commissioner for ratemaking and shall not be considered or introduced as evidence in any rate proceeding or used by the commissioner to calculate or derive any elements of an appropriate premium level or rate of return for any line of insurance which an insurer or any affiliate is authorized to write.

5. A violation of this section by an insurer, agent, broker, or other person engaged in any manner in the business of insurance constitutes an unfair trade practice under chapter 507B.

96 Acts, ch 1046, §16
Referred to in §521E.3

521E.9 Supplemental provisions — rules — exemption.

1. The provisions of this chapter are supplemental to any other provisions of the laws of this state, and shall not preclude or limit any other powers or duties of the commissioner under such laws, including, but not limited to, chapter 507C.

2. The commissioner may adopt rules pursuant to chapter 17A necessary for the administration of this chapter.

3. The commissioner may exempt from the application of this chapter any domestic property and casualty insurer which satisfies all of the following:

a. Writes direct business only in this state.

b. Writes direct annual premiums of one million dollars or less.

c. Does not assume reinsurance in excess of five percent of direct premiums written.

96 Acts, ch 1046, §17

521E.10 Foreign insurers.

1. *a.* A foreign insurer, upon the written request of the commissioner, shall submit to the commissioner a risk-based capital report as of the end of the calendar year just ended by the later of the following:

(1) The filing date.

(2) Fifteen days after the request is received by the foreign insurer.

b. A foreign insurer, upon the written request of the commissioner, shall promptly submit to the commissioner a copy of any risk-based capital plan that is filed with the insurance commissioner of any other state.

2. In the event of a company-action-level event, regulatory-action-level event, or authorized-control-level event with respect to a foreign insurer as determined under the risk-based capital statute applicable in the state of domicile of the insurer, or, if no risk-based capital statute is in force in that state, under the provisions of this chapter, and if the insurance commissioner of the state of domicile of the foreign insurer fails to require the foreign insurer to file a risk-based capital plan in the manner specified under that state's risk-based capital statute, or, if no risk-based capital statute is in force in that state, pursuant to section 521E.2, the commissioner may require the foreign insurer to file a risk-based capital plan with the commissioner. The failure of the foreign insurer to file a risk-based capital plan with the commissioner shall be sufficient grounds for the commissioner to order the insurer to cease and desist from writing new insurance business in this state.

3. In the event of a mandatory-control-level event with respect to a foreign insurer, if a domiciliary receiver has not been appointed with respect to the foreign insurer under the rehabilitation and liquidation statute applicable in the state of domicile of the foreign insurer, the commissioner may make application to the district court as permitted under chapter 507C with respect to the liquidation of property of foreign insurers found in this state, and the occurrence of the mandatory-control-level event shall be considered adequate grounds for the application.

96 Acts, ch 1046, §18; 2012 Acts, ch 1023, §157

521E.11 Immunity.

No liability shall arise on the part of, and no cause of action shall arise against, the commissioner or the insurance division or its employees or agents for an action taken in the exercise of powers or performance of duties under this chapter.

96 Acts, ch 1046, §19

521E.12 Effect of notices.

Notice by the commissioner to an insurer which may result in regulatory action under this chapter is effective upon being sent if transmitted by certified mail, or in the case of any other transmission is effective upon the insurer's receipt of the notice.

96 Acts, ch 1046, §20

CHAPTER 521F

RISK-BASED CAPITAL REQUIREMENTS FOR HEALTH ORGANIZATIONS

Referred to in §87.4, 296.7, 331.301, 364.4, 505.28, 505.29, 669.14, 670.7

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521F.10 Supplemental provisions — rules — exemption.
521F.11 Foreign health organizations.
521F.12 Immunity.
521F.13 Notices.

521F.1 Purpose.

The purpose of this chapter is to establish minimum capital requirements for health organizations that will provide protection related to the risks to which an individual health organization may be subject including, but not limited to, the health organization's assets risk, underwriting risk, credit risk, and other business risk.

2000 Acts, ch 1050, §1

521F.2 Definitions.

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

1. *"Adjusted risk-based capital report"* means a risk-based capital report adjusted by the commissioner pursuant to section 521F.3, subsection 4.
2. *"Commissioner"* means the commissioner of insurance.
3. *"Corrective order"* means an order issued by the commissioner specifying corrective actions which the commissioner has determined are required.
4. *"Domestic health organization"* means a health organization domiciled in this state.
5. *"Filing date"* means March 1 of each year.
6. *"Foreign health organization"* means a health organization that is not domiciled in this state.
7. *"Health organization"* means a health maintenance organization, limited service organization, dental or vision plan, hospital, medical and dental indemnity or service corporation or other managed care organization licensed under chapter 514 or 514B, or any other entity engaged in the business of insurance, risk transfer, or risk retention, that is subject to the jurisdiction of the commissioner of insurance. *"Health organization"* does not include an insurance company licensed to transact the business of insurance under chapter 508, 515, or 520, and which is otherwise subject to chapter 521E.
8. *"Revised risk-based capital plan"* means a risk-based capital plan that has been rejected by the commissioner and has been revised by the health organization, with or without the commissioner's recommendation.
9. *"Risk-based capital instructions"* means the instructions included in the risk-based capital report as adopted by the national association of insurance commissioners, as such risk-based capital instructions may be amended by the national association of insurance commissioners from time to time in accordance with the procedures adopted by the national association of insurance commissioners.
10. *"Risk-based capital level"* means a health organization's company-action-level risk-based capital, regulatory-action-level risk-based capital, authorized-control-level risk-based capital, or mandatory-control-level risk-based capital as follows:

a. *"Company-action-level risk-based capital"* means the product of two and the health organization's authorized-control-level risk-based capital.

b. *"Regulatory-action-level risk-based capital"* means the product of one and one-half and the health organization's authorized-control-level risk-based capital.

c. "Authorized-control-level risk-based capital" means the number determined under the risk-based capital formula in accordance with the risk-based capital instructions.

d. "Mandatory-control-level risk-based capital" means the product of seven-tenths and the health organization's authorized-control-level risk-based capital.

11. *"Risk-based capital plan"* means a comprehensive financial plan containing the elements identified in section 521F.4, subsection 2.

12. *"Risk-based capital report"* means the report required in section 521F.3.

13. *"Total adjusted capital"* means the sum of the following:

a. A health organization's statutory capital and surplus.

b. Such other items, if any, as identified in the risk-based capital instructions.

2000 Acts, ch 1050, §2; 2017 Acts, ch 148, §99

521F.3 Risk-based capital reports.

1. A domestic health organization, on or prior to the filing date, shall prepare and submit to the commissioner a report of the health organization's risk-based capital levels as of the end of the calendar year immediately preceding the filing date, in a form and containing the information required by the risk-based capital instructions. A domestic health organization shall also file its risk-based capital report with the insurance commissioner in each state in which the health organization is authorized to do business, if such insurance commissioner has notified the health organization of its request in writing. Upon receipt of the written request, the health organization shall file its risk-based capital report with the requesting commissioner by no later than the later of the following:

a. Fifteen days from the receipt of the written request.

b. The filing date.

2. *a.* A health organization's risk-based capital shall be determined pursuant to the formula set forth in the risk-based capital instructions. The formula shall take into account all of the following, and may be adjusted, as deemed appropriate by the commissioner, for the covariance between the following:

(1) Assets risk.

(2) Credit risk.

(3) Underwriting risk.

(4) All other business risks and other relevant risks as identified in the risk-based capital instructions.

b. The risk factors shall be applied in the manner set forth in the risk-based capital instructions.

3. A health organization shall seek to maintain capital above the risk-based capital levels required by this chapter.

4. A risk-based capital report filed by a domestic health organization which in the judgment of the commissioner is inaccurate shall be adjusted by the commissioner to correct the inaccuracy. The commissioner shall notify the health organization of the adjustment. The notice shall contain a statement of the reason for the adjustment.

2000 Acts, ch 1050, §3; 2000 Acts, ch 1232, §79

Referred to in §521F.2

521F.4 Company-action-level event.

1. *"Company-action-level event"* means any of the following:

a. The filing of a risk-based capital report by a health organization which indicates that the health organization's total adjusted capital is greater than or equal to its regulatory-action-level risk-based capital but less than its company-action-level risk-based capital.

b. The filing of a risk-based capital report by a health organization which indicates that the health organization has total adjusted capital which is greater than or equal to its company-action-level risk-based capital but less than the product of its authorized-control-level risk-based capital and three and triggers the trend test determined in accordance with the trend test calculation included in the health risk-based capital instructions.

c. Notification by the commissioner to a health organization of an adjusted risk-based capital report that indicates an event in paragraph "*a*" or "*b*", provided the health organization does not challenge the adjusted risk-based capital report and request a hearing pursuant to section 521F.8.

d. If a hearing is requested pursuant to section 521F.8, notification by the commissioner to the health organization after the hearing that the commissioner has rejected the health organization's challenge of the adjusted risk-based capital report indicating the event in paragraph "*a*" or "*b*".

2. Upon the occurrence of a company-action-level event, the health organization shall prepare and submit to the commissioner a risk-based capital plan that includes all of the following:

a. Identification of the conditions which contributed to the company-action-level event.

b. Proposed corrective actions which the health organization intends to implement and which are expected to result in the elimination of the company-action-level event.

c. Projections of the health organization's financial results for the current year and at least the two succeeding years, including projections of statutory balance sheets, operating income, net income, capital and surplus, and risk-based capital levels. Projections shall be provided assuming the absence of the proposed corrective actions and assuming the implementation of the proposed corrective actions. Projections shall be provided for each major line of business and separately identify each significant income, expense, and benefit component.

d. Identification of the primary assumptions impacting the health organization's projections and the sensitivity of the projections to the assumptions.

e. Identification of the quality of, and problems associated with, the health organization's business, including but not limited to its assets, anticipated business growth and associated surplus strain, extraordinary exposure to risk, mix of business, and use of reinsurance, if any, in each case.

3. The risk-based capital plan shall be filed within forty-five days of the company-action-level event, or, if the health organization requests a hearing pursuant to section 521F.8 for the purpose of challenging the adjusted risk-based capital report, within forty-five days after notification to the health organization that the commissioner, after hearing, has rejected the health organization's challenge.

4. Within sixty days after the submission by a health organization of a risk-based capital plan to the commissioner, the commissioner shall notify the health organization whether the risk-based capital plan shall be implemented or, in the judgment of the commissioner, is unsatisfactory. If the commissioner determines the risk-based capital plan is unsatisfactory, the notification to the health organization shall set forth the reasons for the determination, and may set forth proposed revisions which in the judgment of the commissioner will render the risk-based capital plan satisfactory. Upon the receipt of the notification from the commissioner, the health organization shall prepare a revised risk-based capital plan, which may incorporate by reference any revisions proposed by the commissioner, and file the revised risk-based capital plan with the commissioner.

5. The revised risk-based capital plan shall be filed within forty-five days of the receipt of notification from the commissioner of the commissioner's determination that the risk-based capital plan is unsatisfactory, or, if the health organization requests a hearing pursuant to section 521F.8 for the purpose of challenging the commissioner's determination, within forty-five days after notification to the health organization that the commissioner, after hearing, has rejected the health organization's challenge.

6. After notification of the health organization by the commissioner that the health organization's risk-based capital plan or revised risk-based capital plan is unsatisfactory, the commissioner, pursuant to section 521F.8, may specify in the notification that the notification constitutes a regulatory-action-level event.

7. *a.* A domestic health organization that files a risk-based capital plan or revised risk-based capital plan with the commissioner shall file a copy of the risk-based capital plan or revised risk-based capital plan with the insurance commissioner in a state in which the health organization is authorized to do business if both of the following apply:

(1) The other state has a risk-based capital provision substantially similar to section 521F.9, with respect to the confidentiality and availability of such plans.

(2) The insurance commissioner of that state has notified the health organization in writing of its request to receive a copy of the risk-based capital plan or revised risk-based capital plan.

b. Upon receipt of the written request under paragraph *"a"*, subparagraph (2), the health organization shall file a copy of the risk-based capital plan or revised risk-based capital plan with the requesting commissioner by no later than the later of the following:

(1) Fifteen days after the receipt of the written request.

(2) The date on which the risk-based capital plan or revised risk-based capital plan is filed under subsection 3 or 5, as applicable.

2000 Acts, ch 1050, §4; 2000 Acts, ch 1232, §80; 2011 Acts, ch 70, §44; 2011 Acts, ch 131, §72, 158

Referred to in §521A.1, 521F.2, 521F.5, 522.6

521F.5 Regulatory-action-level event.

1. *"Regulatory-action-level event"* means any of the following:

a. The filing of a risk-based capital report by the health organization that indicates that the health organization's total adjusted capital is greater than or equal to its authorized-control-level risk-based capital but less than its regulatory-action-level risk-based capital.

b. Notification by the commissioner to a health organization of an adjusted risk-based capital report that indicates the event in paragraph *"a"*, provided the health organization does not challenge the adjusted risk-based capital report and request a hearing pursuant to section 521F.8.

c. After a hearing pursuant to section 521F.8, notification by the commissioner to the health organization that the commissioner has rejected the health organization's challenge of the adjusted risk-based capital report indicating the event in paragraph *"a"*.

d. Failure of the health organization to file a risk-based capital report by the filing date, unless the health organization has provided an explanation for the failure which is satisfactory to the commissioner and has cured the failure within ten days after the filing date.

e. Failure of the health organization to submit a risk-based capital plan to the commissioner within the time period set forth in section 521F.4, subsection 3.

f. Notification by the commissioner to the health organization of both of the following:

(1) The risk-based capital plan or revised risk-based capital plan filed by the health organization, in the judgment of the commissioner, is unsatisfactory.

(2) Notification pursuant to this paragraph constitutes a regulatory-action-level event with respect to the health organization, provided the health organization has not challenged the determination pursuant to section 521F.8.

g. After a hearing pursuant to section 521F.8, notification by the commissioner to the health organization that the commissioner has rejected the health organization's challenge of the determination made by the commissioner pursuant to paragraph *"f"*.

h. Notification by the commissioner to the health organization that the health organization has failed to adhere to its risk-based capital plan or revised risk-based capital plan, but only if the failure has a substantial adverse effect on the ability of the health organization to eliminate the company-action-level event pursuant to the health organization's risk-based capital plan or revised risk-based capital plan and the commissioner has so stated in the notification. However, notification by the commissioner pursuant to this paragraph does not constitute a company-action-level event if the health organization has challenged the determination of the commissioner pursuant to section 521F.8.

i. After a hearing pursuant to section 521F.8, notification by the commissioner to the health organization that the commissioner rejected the health organization's challenge of the commissioner's determination pursuant to paragraph *"h"*.

2. Upon the occurrence of a regulatory-action-level event, the commissioner shall do all of the following:

a. Require the health organization to prepare and submit a risk-based capital plan or revised risk-based capital plan, as applicable.

b. Perform an examination or analysis of the assets, liabilities, and operations of the health organization, including a review of its risk-based capital plan or revised risk-based capital plan.

c. Subsequent to the examination or analysis pursuant to paragraph *"b"*, issue a corrective order.

3. The commissioner, in determining the corrective actions to be ordered, may take into account factors the commissioner deems relevant with respect to the health organization based upon the commissioner's examination or analysis of the assets, liabilities, and operations of the health organization, including, but not limited to, the results of any sensitivity tests undertaken pursuant to the risk-based capital instructions. The risk-based capital plan or revised risk-based capital plan shall be submitted within forty-five days after the occurrence of the regulatory-action-level event, except as follows:

a. If the health organization challenges a risk-based capital report pursuant to section 521F.8, and in the judgment of the commissioner the challenge is not frivolous, within forty-five days after the notification to the health organization that the commissioner, after a hearing pursuant to section 521F.8, has rejected the health organization's challenge.

b. If the health organization challenges a revised risk-based capital plan pursuant to section 521F.8, and in the judgment of the commissioner the challenge is not frivolous, within forty-five days after the notification to the health organization that the commissioner, after a hearing pursuant to section 521F.8, has rejected the health organization's challenge.

4. The commissioner may retain actuaries, investment experts, and other consultants as deemed necessary by the commissioner to review the health organization's risk-based capital plan or revised risk-based capital plan; examine or analyze the assets, liabilities, and operations of the health organization; and assist in the formulation of the corrective order with respect to the health organization. Fees of the actuaries, investment experts, or other consultants retained by the commissioner shall be paid by the health organization subject to the review or examination.

2000 Acts, ch 1050, §5
Referred to in §521F.6

521F.6 Authorized-control-level event.

1. *"Authorized-control-level event"* means any of the following:

a. The filing of a risk-based capital report by the health organization which indicates that the health organization's total adjusted capital is greater than or equal to its mandatory-control-level risk-based capital but less than its authorized-control-level risk-based capital.

b. Notification by the commissioner to a health organization of an adjusted risk-based capital report that indicates the event in paragraph *"a"*, provided the health organization does not challenge the adjusted risk-based capital report and request a hearing pursuant to section 521F.8.

c. After a hearing pursuant to section 521F.8, notification by the commissioner to the health organization that the commissioner has rejected the health organization's challenge of the adjusted risk-based capital report indicating the event in paragraph *"a"*.

d. Failure of the health organization to respond to a corrective order in a manner satisfactory to the commissioner, unless the health organization has challenged the corrective order pursuant to section 521F.8.

e. Failure of the health organization to respond to a corrective order in a manner satisfactory to the commissioner after the health organization has challenged the corrective order pursuant to section 521F.8, and the commissioner, after a hearing pursuant to section 521F.8, has rejected the challenge or modified the corrective order.

2. In the event of an authorized-control-level event, the commissioner shall do either of the following:

a. Take action as required pursuant to section 521F.5 in the same manner as if a regulatory-action-level event has occurred.

b. Take action as necessary to cause the health organization to be placed under supervision or other regulatory control under chapter 507C, if the commissioner deems such action to be in the best interests of the policyholders and creditors of the health organization and of the public. If the commissioner takes such action pursuant to this paragraph, the authorized-control-level event is deemed sufficient grounds for the commissioner to take action pursuant to chapter 507C and the commissioner has the rights, powers, and duties with respect to the health organization as set forth in chapter 507C. If the commissioner takes action under this paragraph pursuant to an adjusted risk-based capital report, the health organization is entitled to the protections of chapter 17A pertaining to summary proceedings.

2000 Acts, ch 1050, §6

521F.7 Mandatory-control-level event.

1. *"Mandatory-control-level event"* means any of the following:

a. The filing of a risk-based capital report which indicates that a health organization's total adjusted capital is less than its mandatory-control-level risk-based capital.

b. Notification by the commissioner to a health organization of an adjusted risk-based capital report that indicates the event in paragraph *"a"*, provided the health organization does not challenge the adjusted risk-based capital report and request a hearing pursuant to section 521F.8.

c. After a hearing pursuant to section 521F.8, notification by the commissioner to the health organization that the commissioner has rejected the health organization's challenge of the adjusted risk-based capital report indicating the event in paragraph *"a"*.

2. In the event of a mandatory-control-level event, the commissioner shall take action as necessary to place the health organization under supervision or other regulatory control pursuant to chapter 507C. If the commissioner takes action pursuant to this subsection, the mandatory-control-level event is deemed sufficient grounds for the commissioner to take action pursuant to chapter 507C, and the commissioner has the rights, powers, and duties with respect to the health organization as are set forth in chapter 507C. If the commissioner takes action pursuant to an adjusted risk-based capital report, the health organization is entitled to the protections of chapter 17A pertaining to summary proceedings. Notwithstanding this subsection, the commissioner may forego action for up to ninety days after the mandatory-control-level event if the commissioner finds a reasonable expectation exists that the mandatory-control-level event may be eliminated within the ninety-day period.

2000 Acts, ch 1050, §7

521F.8 Confidential hearings.

1. A health organization receiving a notification pursuant to subsection 2 is entitled to a confidential hearing before the insurance division, at which the health organization may challenge a determination or action by the commissioner. Upon receipt of the health organization's request for a hearing, the commissioner shall set a date for the hearing, which shall be not less than ten and not more than thirty days after the date of the health organization's request.

2. A health organization shall notify the commissioner of the health organization's request for a confidential hearing within five days after the occurrence of any of the following:

a. Notification to a health organization by the commissioner of an adjusted risk-based capital report.

b. Notification to a health organization by the commissioner of both of the following:

(1) That the health organization's risk-based capital plan or revised risk-based capital plan is unsatisfactory.

(2) That the notification pursuant to this paragraph constitutes a regulatory-action-level event with respect to the health organization.

c. Notification to a health organization by the commissioner that the health organization has failed to adhere to its risk-based capital plan or revised risk-based capital plan and that the failure has a substantial adverse effect on the ability of the health organization to

eliminate the company-action-level event in accordance with its risk-based capital plan or revised risk-based capital plan.

d. Notification to a health organization by the commissioner of a corrective order with respect to the health organization.

2000 Acts, ch 1050, §8; 2000 Acts, ch 1232, §81
Referred to in §521F.4, 521F.5, 521F.6, 521F.7

521F.9 Confidentiality — use of reports and information — prohibition on announcements — prohibition on use in ratemaking.

1. A risk-based capital report, to the extent the information in the report is not required to be set forth in a publicly available annual statement schedule, a risk-based capital plan, including the results or report of any examination or analysis of a health organization performed pursuant to this chapter, and any corrective order issued by the commissioner pursuant to an examination or analysis, which are filed with the commissioner, are deemed not to be public records under chapter 22 and are privileged and confidential. This information shall not be made public and is not subject to subpoena, other than by the commissioner, and then only for the purpose of enforcement actions taken by the commissioner pursuant to this chapter or any other provision of the insurance laws of this state.

2. The comparison of a health organization's total adjusted capital to any of its risk-based capital levels is a regulatory tool which may indicate the need for possible corrective action with respect to the health organization, and is not to be used as a means to rank health organizations generally.

3. Except as otherwise required under this chapter, the publication or dissemination in any manner of an announcement or statement which contains an assertion, representation, or statement with regard to the risk-based capital levels of a health organization, or of a component derived in the calculation, by a health organization, agent, broker, or other person engaged in any manner in the business of insurance, is prohibited. However, if a materially false statement comparing a health organization's total adjusted capital to its risk-based capital levels or a misleading comparison of any other amount to the health organization's risk-based capital levels is published or disseminated in any manner and if the health organization is able to demonstrate to the commissioner with substantial proof that the statement is false, misleading, or inappropriate, as the case may be, the health organization may publish an announcement in a written publication for the sole purpose of rebutting the materially false, misleading, or inappropriate statement.

4. The risk-based capital instructions, risk-based capital reports, adjusted risk-based capital reports, risk-based capital plans, and revised risk-based capital plans shall be solely used by the commissioner in monitoring the solvency of health organizations and the need for possible corrective action with respect to health organizations. The risk-based capital instructions, risk-based capital reports, adjusted risk-based capital reports, risk-based capital plans, and revised risk-based capital plans shall not be used by the commissioner for ratemaking and shall not be considered or introduced as evidence in any rate proceeding or used by the commissioner to calculate or derive any elements of an appropriate premium level or rate of return for any line of insurance which a health organization or any affiliate is authorized to write.

2000 Acts, ch 1050, §9
Referred to in §521F.4

521F.10 Supplemental provisions — rules — exemption.

1. This chapter shall not preclude or limit any other powers or duties of the commissioner under insurance laws including but not limited to chapter 507C.

2. The commissioner may adopt rules pursuant to chapter 17A as are necessary for the administration of this chapter.

3. The commissioner may exempt from filing a risk-based capital report a domestic health organization which writes direct business only in this state and satisfies any of the following:

a. Writes direct annual premiums of one hundred thousand dollars or less, and does not assume reinsurance in excess of five percent of direct annual premiums written.

b. Is authorized to do business pursuant to chapter 514 and writes direct annual premiums of one hundred thousand dollars or less.

c. Is a limited health service organization that covers fewer than five hundred lives.

2000 Acts, ch 1050, §10

521F.11 Foreign health organizations.

1. A foreign health organization, upon the written request of the commissioner, shall submit to the commissioner a risk-based capital report for the previous calendar year just ended by the later of the following:

a. The filing date.

b. Fifteen days after the request is received by the foreign health organization.

2. A foreign health organization, upon the written request of the commissioner, shall promptly submit to the commissioner a copy of any risk-based capital plan that is filed with the insurance commissioner of any other state.

3. The commissioner may require a foreign health organization to file a risk-based capital plan under either of the following circumstances:

a. In the event of a company-action-level event, regulatory-action-level event, or authorized-control-level event as determined under the risk-based capital statute applicable in the state of domicile of the foreign health organization, or, if no risk-based capital statute is in force in that state, under this chapter.

b. The insurance commissioner of the state of domicile of the foreign health organization fails to require the foreign health organization to file a risk-based capital plan in the manner specified under that state's risk-based capital statute, or, if no risk-based capital statute is in force in that state, pursuant to this chapter.

4. The failure of the foreign health organization to file a risk-based capital plan is sufficient grounds to order the health organization to cease and desist from writing new insurance business in this state.

5. In the event of a mandatory-control-level event with respect to a foreign health organization, if a domiciliary receiver has not been appointed with respect to the foreign health organization under the rehabilitation and liquidation statute applicable in the state of domicile of the foreign health organization, the commissioner may make application to the district court as permitted under chapter 507C with respect to the liquidation of property of foreign health organizations found in this state, and the occurrence of the mandatory-control-level event shall be considered adequate grounds for the application.

2000 Acts, ch 1050, §11

521F.12 Immunity.

Liability shall not arise on the part of and a cause of action shall not arise against the commissioner or the insurance division or its employees or agents for an action taken in the exercise of powers or performance of duties under this chapter.

2000 Acts, ch 1050, §12

521F.13 Notices.

Notice by the commissioner to a health organization which may result in regulatory action under this chapter is effective upon being sent if transmitted by certified mail, or, in the case of any other transmission, is effective upon the health organization's receipt of the notice.

2000 Acts, ch 1050, §13

CHAPTER 521G

PROTECTED CELL COMPANIES

Referred to in §87.4, 296.7, 331.301, 364.4, 505.28, 505.29, 669.14, 670.7

521G.1 Short title.
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521G.8 Supervision, rehabilitation, or liquidation of a protected cell company.
521G.9 Securitization transactions not insurance.
521G.10 Rules.

521G.1 Short title.

This chapter shall be known and may be cited as the "*Protected Cell Company Act*".

2000 Acts, ch 1046, §1

521G.2 Purpose.

The purpose of this chapter is to authorize the establishment of protected cells by a domestic insurer authorized to transact the business of insurance under chapter 508 or 515, as a means of accessing alternative sources of capital and achieving the benefits of insurance securitization. Investors in fully funded insurance securitization transactions provide funds that are available to pay the insurer's insurance obligations or to repay the investors, or both. Protected cells are intended to achieve more efficiencies with respect to such insurance securitization.

2000 Acts, ch 1046, §2

521G.3 Definitions.

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

1. "*Domestic insurer*" means an insurer domiciled in this state and organized under chapter 508 or 515.

2. "*Fair value*" of an asset or liability means the amount at which that asset or liability could be bought or incurred, or sold or settled, in a current transaction between willing parties, other than in a forced or liquidation sale, and as determined under section 521G.4.

3. "*Fully funded*" means, with respect to any exposure attributed to a protected cell, that the fair value of the protected cell assets, on the date on which the insurance securitization is effected, equals or exceeds the maximum possible exposure attributable to the protected cell with respect to such exposures.

4. "*General account*" means the assets and liabilities of a protected cell company other than protected cell assets and protected cell liabilities.

5. "*Indemnity trigger*" means a transaction term by which relief of the issuer's obligation to repay investors is triggered by its incurring a specified level of losses under its insurance or reinsurance contracts.

6. "*Nonindemnity trigger*" means a transaction term by which relief of the issuer's obligation to repay investors is triggered solely by some event or condition other than the individual protected cell company incurring a specified level of losses under its insurance or reinsurance contracts.

7. "*Protected cell*" means an identified pool of assets and liabilities of a protected cell company segregated and insulated as provided under this chapter from the remainder of the protected cell company's assets and liabilities.

8. "*Protected cell account*" means a specifically identified bank or custodial account established by a protected cell company for the purpose of segregating the protected cell assets of one protected cell from the protected cell assets of other protected cells and from the assets of the protected cell company's general account.

9. "*Protected cell assets*" means all assets, contract rights, and general intangibles, identified with and attributable to a specific protected cell of a protected cell company.

10. *"Protected cell company"* means a domestic insurer that has one or more protected cells.

11. *"Protected cell company insurance securitization"* means the issuance of a debt instrument, the proceeds from which support the exposures attributed to a protected cell, by a protected cell company where repayment of principal or interest, or both, to investors pursuant to the transaction terms is contingent upon the occurrence or nonoccurrence of an event with respect to which the protected cell company is exposed to loss under insurance or reinsurance contracts which the protected cell company has issued.

12. *"Protected cell liabilities"* means all liabilities and other obligations identified with and attributable to a specific protected cell of a protected cell company.

2000 Acts, ch 1046, §3

521G.4 Determination of fair value — valuation technique.

A quoted market price in an active market is deemed to be the best evidence of fair value of an asset and shall be used as the basis for the measurement of fair value, if available. If a quoted market price is available, the fair value is the product of the number of trading units times the quoted market price. If a quoted market price is not available, the estimate of fair value shall be based on the best information available. The estimate of fair value shall consider the price for similar assets and liabilities and the results of a valuation technique to the extent available in the circumstances. For purposes of this section, *"valuation technique"* includes, but is not limited to, the present value of estimated expected future cash flows using a discount rate commensurate with the risks involved, option-pricing models, matrix pricing, option-adjusted spread models, and fundamental analysis. A valuation technique for measuring financial assets and liabilities and servicing assets and liabilities shall be consistent with the objective of measuring fair value. A valuation technique shall incorporate assumptions that a market participant would use in estimating value, future revenue, and future expenses, including assumptions about interest rates, default, prepayment, and volatility. In measuring financial liabilities and servicing liabilities at fair value by discounting estimated future cash flows, discount rates shall be used at which those liabilities could be settled in an open and competitive transaction. An estimate of expected future cash flow, if used to estimate fair value, shall be the best estimate based on reasonable and supportable assumptions and projections. All available evidence shall be considered in developing an estimate of expected future cash flow. The weight given to the evidence shall be commensurate with the extent to which the evidence can be verified objectively. If a range is estimated for either the amount or timing of possible cash flows, the likelihood of possible outcomes shall be considered in determining the best estimate of such future cash flows.

2000 Acts, ch 1046, §4

Referred to in §521G.3

521G.5 Establishment of protected cells.

1. A protected cell company may establish one or more protected cells with the prior written approval of the commissioner of a plan of operation or amendments to such plan submitted by the protected cell company with respect to each protected cell related to an insurance securitization. The plan shall include, but not be limited to, the specific business objectives and investment guidelines of the protected cell company. Upon the written approval of the commissioner of the plan of operation, the protected cell company, consistent with the approved plan of operation, may attribute to the protected cell insurance obligations with respect to its insurance business and obligations relating to the insurance securitization and assets to fund the obligations. A protected cell shall have its own distinct name or designation, which shall include the words "protected cell". The protected cell company shall transfer all assets attributable to a protected cell to one or more separately established and identified protected cell accounts bearing the name or designation of that protected cell. Protected cell assets shall be held in the protected cell accounts for the purpose of satisfying the obligations of that protected cell.

2. Attribution of assets and liabilities between a protected cell and the general account shall be pursuant to the plan of operation. Other attribution of assets or liabilities shall not be

made by a protected cell company between the protected cell company's general account and its protected cells. The attribution of assets and liabilities between the general account and a protected cell, or from investors in the form of principal on a debt instrument issued by a protected cell company in connection with a protected cell company insurance securitization transaction, shall be in cash or in readily marketable securities with established market values.

3. The creation of a protected cell does not create, with respect to that protected cell, a legal person separate from the protected cell company. An amount attributed to a protected cell under this chapter, including assets transferred to a protected cell account, is owned by the protected cell company and the protected cell company shall not be, or hold itself out to be, a trustee with respect to those protected cell assets of that protected cell account. Notwithstanding this subsection, a protected cell company may permit a security interest to attach to protected cell assets or a protected cell account which is in favor of a creditor of the protected cell company and otherwise allowed under applicable law.

4. This chapter shall not be construed to prohibit the protected cell company from contracting with or arranging for an investment advisor, commodity trading advisor, or other third party to manage the protected cell assets of a protected cell, provided that all remuneration, expenses, and other compensation of the third-party advisor or manager are payable from the protected cell assets of that protected cell and not from the protected cell assets of other protected cells or the assets of the protected cell company's general account.

5. *a.* A protected cell company shall establish administrative and accounting procedures necessary to properly identify the protected cells of the protected cell company and the protected cell assets and protected cell liabilities attributable to the protected cells. The board of directors of a protected cell company shall do both of the following:

(1) Keep protected cell assets and protected cell liabilities separate and separately identifiable from the assets and liabilities of the protected cell company's general account.

(2) Keep protected cell assets and protected cell liabilities attributable to one protected cell separate and separately identifiable from protected cell assets and protected cell liabilities attributable to other protected cells.

b. Tracing shall be applicable to protected cell assets when commingled with protected cell assets of other protected cells or the assets of the protected cell company's general account. The remedy of tracing shall not be construed as an exclusive remedy.

6. A protected cell company, when establishing a protected cell, shall attribute to the protected cell assets a value at least equal to the reserves and other insurance liabilities attributed to that protected cell.

2000 Acts, ch 1046, §5

521G.6 Use and operation of protected cells.

1. The protected cell assets of a protected cell shall not be charged with liabilities arising out of any other business the protected cell company may conduct. A contract or other documentation reflecting protected cell liabilities shall clearly indicate that only the protected cell assets of a protected cell are available for the satisfaction of the protected cell liabilities attributed to that same protected cell.

2. The income, gains, and losses, realized or unrealized, from protected cell assets and protected cell liabilities shall be credited to or charged against the protected cell without regard to other income, gains, or losses of the protected cell company, including income, gains, or losses of another protected cell. An amount attributed to a protected cell and accumulations on the attributed amount may be invested and reinvested without regard to the requirements and limitations of section 511.8 or 515.35, and the investments in a protected cell shall not be taken into account in applying the investment limitations otherwise applicable to the investments of the protected cell company.

3. Assets and liabilities attributed to a protected cell shall be valued at their fair value on the date of valuation.

4. *a.* A protected cell company, with respect to its protected cells, shall engage in fully funded indemnity triggered insurance securitization to support in full the protected cell exposures attributable to that protected cell. A protected cell company insurance

securitization that is nonindemnity triggered qualifies as an insurance securitization under this chapter only after the commissioner adopts rules providing for all of the following:

(1) The methods of funding of the portion of the risk that is not indemnity based.

(2) Accounting requirements.

(3) Disclosure requirements.

(4) Risk-based capital treatment.

(5) Assessment of risks associated with such securitizations.

b. A protected cell company insurance securitization that is not fully funded, whether indemnity triggered or nonindemnity triggered, is prohibited. Protected cell assets may be used to pay interest or other consideration on an outstanding debt or other obligation attributable to that protected cell. This subsection shall not be construed or interpreted to prevent a protected cell company from entering into a swap agreement or other transaction for the account of the protected cell that has the effect of guaranteeing interest or other consideration.

5. In a protected cell company insurance securitization, a contract or other documentation affecting the transaction shall contain provisions identifying the protected cell to which the transaction is attributed. In addition, the contract or other documentation shall clearly disclose that the assets of the protected cell, and only those assets, are available to pay the obligations of that protected cell. Notwithstanding this subsection, the failure to include such language in a contract or other documentation shall not be used as the sole basis by a creditor, reinsurer, or other claimant to circumvent this chapter.

6. A protected cell company shall only attribute to a protected cell account the insurance obligations relating to the protected cell company's general account. A protected cell shall not issue an insurance or reinsurance contract directly to a policyholder or reinsured, and shall not have an obligation to a policyholder or reinsured of the protected cell company's general account.

7. At the cessation of business of a protected cell pursuant to the plan approved by the commissioner, the protected cell company shall close the protected cell account.

2000 Acts, ch 1046, §6; 2007 Acts, ch 137, §22

521G.7 Creditors and other claimants of protected cell companies.

1. *a.* Protected cell assets shall only be available to a creditor of the protected cell company that is a creditor with respect to that protected cell. Such a creditor shall have recourse to the protected cell assets attributable to that protected cell, to the exclusion of other creditors of the protected cell company that are not creditors with respect to that protected cell. Such other creditors shall have no recourse to the protected cell assets attributable to that protected cell. A creditor with respect to a protected cell does not have recourse against the protected cell assets of other protected cells or the assets of the protected cell company's general account.

b. Protected cell assets shall only be available to creditors of a protected cell company after all protected cell liabilities have been extinguished or otherwise provided for pursuant to the plan of operation relating to that protected cell.

2. An obligation of a protected cell company to a person which arises from a transaction, or is otherwise imposed, with respect to a protected cell, is subject to both of the following:

a. The obligation to a person shall extend only to the protected cell assets attributable to that protected cell, and with respect to that obligation, such person is entitled to recourse only against the protected cell assets attributable to that protected cell.

b. The obligation to a person shall not extend to the protected cell assets of another protected cell or the assets of the protected cell company's general account, and with respect to that obligation, such person is not entitled to recourse against the protected cell assets of any other protected cell or the assets of the protected cell company's general account.

3. An obligation of a protected cell company that relates solely to the general account shall extend only to the assets of the protected cell company's general account, and the creditor, with respect to that obligation, is entitled to recourse against only the assets of the protected cell company's general account.

4. A protected cell is not subject to any requirements relating to a guaranty fund or

guaranty association, and shall not be assessed by or otherwise be required to contribute to any guaranty fund or guaranty association in this state with respect to the activities, assets, or obligations of a protected cell. This section does not affect the activities or obligations of a protected cell company's general account.

5. The establishment of one or more protected cells, by itself, does not constitute any of the following:

a. A fraudulent conveyance.

b. An intent by the protected cell company to defraud creditors.

c. The transaction of business by the protected cell company for a fraudulent purpose.

2000 Acts, ch 1046, §7

521G.8 Supervision, rehabilitation, or liquidation of a protected cell company.

Upon an order of supervision, rehabilitation, or liquidation of a protected cell company, a receiver shall manage a protected cell company's assets and liabilities, including protected cell assets and protected cell liabilities, as provided in this chapter.

An amount recoverable by a receiver under a protected cell company insurance securitization shall not be reduced or diminished as a result of the entry of an order of supervision, rehabilitation, or liquidation with respect to the protected cell company, notwithstanding contrary provisions in a contract or other document governing the protected cell company insurance securitization.

2000 Acts, ch 1046, §8

521G.9 Securitization transactions not insurance.

A protected cell company insurance securitization is not an insurance or reinsurance contract. An investor in a protected cell company insurance securitization, by sole means of this investment, is not deemed to be transacting an insurance business in this state. An underwriter or selling agent, or a partner, director, officer, member, manager, employee, or agent of such underwriter or selling agent, participating in a protected cell company insurance securitization, is not deemed to be conducting an insurance or reinsurance agency, brokerage, intermediary, advisory, or consulting business as a result of such participation.

2000 Acts, ch 1046, §9

521G.10 Rules.

The commissioner shall adopt rules pursuant to chapter 17A as are necessary to administer this chapter.

2000 Acts, ch 1046, §10

CHAPTER 521H

CORPORATE GOVERNANCE ANNUAL DISCLOSURE

Referred to in §87.4, 296.7, 331.301, 364.4, 505.28, 505.29, 669.14, 670.7

521H.1	Purpose and scope.	521H.5	Contents of corporate governance annual disclosure.
521H.2	Definitions.	521H.6	Confidentiality.
521H.3	Corporate governance annual disclosure requirement.	521H.7	Penalties.
521H.4	Rules.	521H.8	Severability.

521H.1 Purpose and scope.

1. The purpose of this chapter is to do all of the following:

a. Provide the commissioner with a summary of an insurer's or insurance group's corporate governance structure, policies, and practices to permit the commissioner to gain and maintain an understanding of the insurer's or insurance group's corporate governance framework.

b. Outline the requirements for an insurer or insurance group to complete a corporate governance annual disclosure for submission to the commissioner.

c. Provide for the confidential treatment of the corporate governance annual disclosure and related information that contains confidential and sensitive information related to an insurer's or insurance group's internal operations and proprietary and trade secret information which, if made public, could potentially cause the insurer or insurance group competitive harm or disadvantage.

2. Nothing in this chapter shall be construed to prescribe or impose corporate governance standards or internal procedures beyond those which are required under applicable state corporate law. In addition, nothing in this chapter shall be construed to limit the commissioner's authority under chapter 507, or the rights or obligations of third parties thereunder.

3. The requirements of this chapter shall apply to all insurers domiciled in this state.

2015 Acts, ch 27, §1, 9

521H.2 Definitions.

1. *"Commissioner"* means the commissioner of insurance.

2. *"Corporate governance annual disclosure"* or *"disclosure"* means a confidential report filed by an insurer or insurance group pursuant to the requirements of this chapter.

3. *"Insurance group"* means those insurers and affiliates included within an insurance holding company system.

4. *"Insurance holding company system"* means the same as defined in section 521A.1.

5. *"Insurer"* means the same as defined in section 521A.1.

2015 Acts, ch 27, §2, 9

521H.3 Corporate governance annual disclosure requirement.

1. An insurer, or the insurance group of which the insurer is a member, shall, no later than June 1 of each calendar year, submit to the commissioner a corporate governance annual disclosure that contains the information described in section 521H.5. Notwithstanding any request from the commissioner made pursuant to subsection 2, if an insurer is a member of an insurance group, the insurer shall submit the disclosure required by this section to the commissioner of insurance of the lead state of the insurance group of which the insurer is a member, in accordance with the laws of the lead state, as determined by procedures contained in the financial analysis handbook adopted by the national association of insurance commissioners.

2. An insurer or insurance group that is not required to submit a corporate governance annual disclosure under this section shall do so upon the commissioner's request.

3. Review of the corporate governance annual disclosure and any additional requests for information shall be made through the lead state as determined by procedures contained in the financial analysis handbook adopted by the national association of insurance commissioners.

4. Insurers or insurance groups that provide information substantially similar to the information required by this chapter in other documents provided to the commissioner, including proxy statements filed in conjunction with the form B insurance holding company system annual registration statement requirements as provided in section 521A.4, or other state or federal filings provided to the commissioner, are not required to duplicate that information in the corporate governance annual disclosure, but shall cross reference the document in which the information is included.

2015 Acts, ch 27, §3, 9

521H.4 Rules.

The commissioner shall adopt rules pursuant to chapter 17A to administer this chapter.

2015 Acts, ch 27, §4, 9

521H.5 Contents of corporate governance annual disclosure.

1. An insurer, or the insurance group of which the insurer is a member, shall have

discretion over the responses to corporate governance annual disclosure inquiries, provided the corporate governance annual disclosure contains the material information necessary to permit the commissioner to gain an understanding of the insurer's or insurance group's corporate governance structure, policies, and practices. The commissioner may request additional information that the commissioner deems material and necessary to provide a clear understanding of the insurer's or insurance group's corporate governance policies, reporting or information systems, or the controls implementing such policies or systems.

2. The corporate governance annual disclosure shall be prepared consistent with rules adopted by the commissioner pursuant to chapter 17A. Documentation and supporting information prepared pursuant to this chapter and related rules shall be maintained and made available upon examination by or upon request of the commissioner.

3. The corporate governance annual disclosure shall include the signature of the insurer's or insurance group's chief executive officer or corporate secretary, attesting that to the best of that individual's belief and knowledge the insurer or the insurance group has implemented the corporate governance practices described in the disclosure and that a copy of the disclosure has been provided to the insurer's or the insurance group's board of directors or the appropriate committee of the board.

4. *a.* For purposes of completing a corporate governance annual disclosure, an insurer or insurance group may report information regarding corporate governance at the ultimate controlling parent level, at an intermediate holding company level, or at the individual legal entity level, depending upon how the insurer or insurance group has structured its system of corporate governance.

b. An insurer or insurance group is encouraged to report information in the corporate governance annual disclosure at the level at which the insurer's or insurance group's risk tolerance is determined; at the level at which the earnings, capital, liquidity, operations, and reputation of the insurer or insurance group are overseen collectively and the level at which the supervision of these factors is coordinated and exercised; or at the level at which legal liability for failure of general corporate governance duties would be placed. If an insurer or insurance group determines the level of reporting based upon the criteria set forth in this paragraph, the insurer or insurance group shall indicate which of the three criteria was used to determine the level of reporting and explain any subsequent changes that are made in the level of reporting.

2015 Acts, ch 27, §5, 9
Referred to in §521H.3

521H.6 Confidentiality.

1. Documents, materials, or other information, including a corporate governance annual disclosure, in the possession or control of the insurance division of the department of commerce, that is obtained by, created by, or disclosed to the commissioner or to any other person pursuant to this chapter, is recognized in this state as being proprietary and containing trade secrets. All such documents, materials, or other information, including the disclosure, shall be confidential and privileged, shall not be subject to chapter 22, shall be considered confidential under chapter 507, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action. However, the commissioner is authorized to use such documents, materials, or other information, including the disclosure, in the furtherance of any regulatory or legal action brought as a part of the commissioner's official duties. The commissioner shall not otherwise make the documents, materials, or other information, including the disclosure, public without the prior written consent of the insurer or insurance group that provided the documents, materials, or other information, including the disclosure. Nothing in this section shall be construed to require written consent of the insurer or insurance group before the commissioner may share or receive confidential documents, materials, or other information related to governance of an insurer or insurance group pursuant to subsection 3 to assist in the performance of the commissioner's regular duties.

2. The commissioner or any other person who received documents, materials, or other information related to corporate governance, through examination or otherwise, while acting

under the authority of the commissioner or with whom such documents, materials, or other information is shared pursuant to this chapter, shall not be permitted or required to testify in any private civil action concerning any confidential documents, materials, or information, including disclosures, subject to subsection 1.

3. In order to assist in the performance of the commissioner's regulatory duties, the commissioner may do any of the following:

a. Upon request, share documents, materials, or corporate governance annual disclosure-related information, including the confidential and privileged documents, materials, or information subject to subsection 1, and including proprietary and trade secret documents, materials, or information, with other state, federal, or international financial regulatory agencies, including members of any supervisory college as defined in section 521A.1, with the national association of insurance commissioners, or with any third-party consultants designated by the commissioner pursuant to subsection 4, provided that the recipient agrees in writing to maintain the confidentiality and privileged status of the documents, materials, or other corporate governance annual disclosure-related information and verifies in writing the legal authority to maintain such confidentiality and privilege.

b. Receive documents, materials, or other corporate governance annual disclosure-related information, including otherwise confidential and privileged documents, materials, or information, and proprietary and trade secret documents, materials, and information, from regulatory officials of other state, federal, or international regulatory agencies, including members of any supervisory college as defined in section 521A.1, and from the national association of insurance commissioners, and shall maintain as confidential or privileged any documents, materials, or information received with notice or the understanding that the documents, materials, or other information received is confidential and privileged under the laws of the jurisdiction that is the source of the documents, materials, or information.

4. In order to assist in the performance of the commissioner's regulatory duties under this chapter the commissioner may retain, at the insurer's or insurance group's expense, third-party consultants, including attorneys, actuaries, accountants, and other experts not otherwise a part of the commissioner's staff, as may be reasonably necessary to assist the commissioner in reviewing a disclosure and related information submitted under this chapter or ensuring compliance of an insurer or insurance group with the requirements of this chapter.

a. Any persons retained under this subsection shall be under the direction and control of the commissioner and shall act in a purely advisory capacity.

b. As part of the retention process, a third-party consultant shall verify to the commissioner, with notice to the insurer, that the third-party consultant is free of any conflict of interest and that the third-party consultant has internal procedures in place to monitor compliance if a conflict arises and to ensure compliance with the confidentiality standards and requirements of this chapter.

5. A written agreement entered into by the commissioner with the national association of insurance commissioners or with a third-party consultant governing the sharing and use of information provided pursuant to this chapter shall expressly require the written consent of the insurer prior to making public information provided under this chapter and shall contain a provision that does each of the following:

a. Expressly provides that the national association of insurance commissioners and any third-party consultants retained are subject to the same confidentiality standards and requirements governing the sharing and use of information provided pursuant to this chapter as the commissioner.

b. Specifies procedures and protocols regarding the confidentiality and security of information related to a corporate governance annual disclosure that is shared with the national association of insurance commissioners or with a third-party consultant pursuant to this chapter and specifies procedures and protocols for sharing information by the national association of insurance commissioners only with other state insurance regulators from states in which an insurance group has domiciled insurers. The agreement shall require that the recipient of such information must agree in writing to maintain the confidentiality and privileged status of the documents, materials, or other information related to the

corporate governance annual disclosure and verify in writing the legal authority to maintain confidentiality and privilege.

c. Specifies that ownership of information shared with the national association of insurance commissioners or with a third-party consultant pursuant to this chapter remains with the commissioner and that use of the information by the national association of insurance commissioners or by a third-party consultant is subject to the direction of the commissioner.

d. Prohibits the national association of insurance commissioners or a third-party consultant from storing the information shared pursuant to this chapter in a permanent database after the underlying analysis is completed.

e. Requires the national association of insurance commissioners or a third-party consultant to give prompt notice to the commissioner and to an insurer or insurance group whose confidential information is in the possession of the national association of insurance commissioners or a third-party consultant pursuant to this chapter, that the information is subject to a request or subpoena to the national association of insurance commissioners or the third-party consultant for disclosure or production.

f. Requires the national association of insurance commissioners or a third-party consultant to consent to intervention by an insurer or insurance group in any judicial or administrative action in which the national association of insurance commissioners or the third-party consultant may be required to disclose confidential information about the insurer or insurance group that was shared with the association or consultant pursuant to this chapter.

6. The sharing of documents, materials, or information by the commissioner pursuant to this chapter shall not constitute a delegation of regulatory authority or rulemaking, and the commissioner is solely responsible for the administration, execution, and enforcement of the provisions of this chapter.

7. No waiver of any applicable privilege or claim of confidentiality in the documents, proprietary and trade secret materials, or other corporate governance annual disclosure-related information shall occur as a result of the disclosure of such documents, materials, or information to the commissioner under this section or as a result of sharing those documents, materials, or information as authorized in this chapter.

2015 Acts, ch 27, §6, 9
Referred to in §521H.8

521H.7 Penalties.

1. If an insurer or insurance group fails, without just cause, to timely file a corporate governance annual disclosure as required in this chapter, the commissioner shall, after notice and hearing, impose a penalty of five hundred dollars for each day's delay. The penalty shall be collected by the commissioner and paid to the treasurer of state for deposit as provided in section 505.7. The maximum penalty which may be imposed under this section for any single failure is five thousand dollars.

2. The commissioner may reduce the penalty to be imposed if the insurer or insurance group demonstrates to the commissioner that imposition of the penalty would constitute a financial hardship to the insurer or insurance group.

2015 Acts, ch 27, §7, 9

521H.8 Severability.

If any provision of this chapter other than section 521H.6, or the application of this chapter to any person or circumstance, is held invalid, such holding shall not affect the provisions or applications of this chapter which can be given effect without the invalid provision or application, and to that end the provisions of this chapter, with the exception of section 521H.6, are severable.

2015 Acts, ch 27, §8, 9

CHAPTER 522

INSURER RISK AND SOLVENCY ASSESSMENTS

Referred to in §87.4, 296.7, 331.301, 364.4, 505.28, 505.29, 669.14, 670.7

Chapter applies on and after January 1, 2015; 2013 Acts, ch 40, §11

522.1 Purpose and scope — legislative intent.
522.2 Definitions.
522.3 Risk management framework.
522.4 Own risk and solvency assessment requirement.
522.5 Own risk and solvency assessment summary report.
522.6 Exemption.
522.7 Contents of own risk and solvency assessment summary report.
522.8 Confidentiality.
522.9 Penalties.
522.10 Severability.

522.1 Purpose and scope — legislative intent.

1. The purpose of this chapter is to require insurers to maintain a risk management framework and complete an own risk and solvency assessment and to provide guidance and instructions for the filing of own risk and solvency assessment reports with the commissioner.

2. The general assembly finds and declares that own risk and solvency assessment summary reports will contain confidential and sensitive information related to an insurer's or insurance group's identification of risks material and relevant to the insurer or insurance group filing the report. This information will include proprietary and trade secret information that has the potential for harm and competitive disadvantage to the insurer or insurance group if the information is made public. It is the intent of the general assembly that own risk and solvency assessment summary reports filed with the commissioner are confidential documents, shall be shared only as provided in this chapter and to assist the commissioner in the performance of the commissioner's duties, and shall not be subject to public disclosure.

2013 Acts, ch 40, §1, 11
Section applies on and after January 1, 2015; 2013 Acts, ch 40, §11

522.2 Definitions.

1. *"Affiliate"*, or a person affiliated with a specific person, means the same as defined in section 521A.1.

2. *"Commissioner"* means the Iowa commissioner of insurance.

3. *"Insurance group"* means the insurers and affiliates included within an insurance holding company system as defined in section 521A.1.

4. *"Insurer"* means the same as defined in section 521A.1.

5. *"Own risk and solvency assessment"* or *"assessment"* means a confidential internal assessment, appropriate to the nature, scale, and complexity of an insurer or insurance group, that is conducted by that insurer or insurance group, of the material and relevant risks associated with the insurer or insurance group's current business plan, and the sufficiency of capital resources to support those risks.

6. *"Own risk and solvency assessment guidance manual"* or *"guidance manual"* means the current version of the own risk and solvency assessment guidance manual developed and adopted by the national association of insurance commissioners and amended from time to time. A change in the guidance manual is effective and applicable to this chapter on January 1 following the calendar year in which the change was adopted by the national association of insurance commissioners.

7. *"Own risk and solvency assessment summary report"* or *"summary report"* means a confidential high-level summary of the own risk and solvency assessment conducted by an insurer or insurance group.

8. *"Supervisory college"* means a temporary or permanent forum for communication and cooperation between regulators charged with supervision of an insurer or its affiliates.

2013 Acts, ch 40, §2, 11
Section applies on and after January 1, 2015; 2013 Acts, ch 40, §11

522.3 Risk management framework.

An insurer shall maintain a risk management framework to assist the insurer with identifying, assessing, monitoring, managing, and reporting on the insurer's material and relevant risks. This requirement is satisfied if the insurance group of which the insurer is a member maintains a risk management framework applicable to the operations of the insurer.

2013 Acts, ch 40, §3, 11
Section applies on and after January 1, 2015; 2013 Acts, ch 40, §11

522.4 Own risk and solvency assessment requirement.

1. Subject to section 522.6, an insurer, or the insurance group of which the insurer is a member, shall regularly conduct an own risk and solvency assessment consistent and comparable with the assessment process contained in the own risk and solvency assessment guidance manual.

2. An own risk and solvency assessment shall be conducted at least annually, but an assessment shall also be conducted at any time when there are significant changes to the risk profile of an insurer or the insurance group of which the insurer is a member.

2013 Acts, ch 40, §4, 11
Section applies on and after January 1, 2015; 2013 Acts, ch 40, §11

522.5 Own risk and solvency assessment summary report.

1. *a.* Beginning in 2015, an insurer shall annually submit to the commissioner an own risk and solvency assessment summary report or any combination of reports that together contain the information described in the own risk and solvency assessment guidance manual that is applicable to the insurer or the insurance group of which the insurer is a member.

b. If the insurer is a member of an insurance group, the insurer shall submit the report or reports required by this section to the state commissioner that is the lead state commissioner of the insurance group of which the insurer is a member, as determined by the procedures contained in the financial analysis handbook adopted by the national association of insurance commissioners.

c. The own risk and solvency assessment summary report shall be filed after the insurer or the insurance group of which the insurer is a member conducts the insurer's or insurance group's strategic planning process. The insurer or insurance group shall notify the commissioner as to the date that the summary report will be filed.

2. The own risk and solvency assessment summary report shall include the signature of the insurer's or insurance group's chief risk officer or another executive having responsibility for the oversight of the insurer's enterprise risk management process, attesting that to the best of that person's belief and knowledge the insurer applies the enterprise risk management process described in the summary report and that a copy of the summary report has been provided to the insurer's or insurance group's board of directors or the appropriate committee of that board.

3. An insurer may comply with subsection 1 by submitting the most recent and substantially similar report provided by the insurer or another member of the insurance group of which the insurer is a member to the commissioner of insurance of another state or to a supervisor or regulator of a foreign jurisdiction, if that report provides information that is comparable to the information described in the own risk and solvency assessment guidance manual. Any such report that is submitted in a language other than English must be accompanied by a translation of that report into the English language.

2013 Acts, ch 40, §5, 11
Referred to in §522.6, 522.9
Section applies on and after January 1, 2015; 2013 Acts, ch 40, §11

522.6 Exemption.

1. An insurer is exempt from the requirements of this chapter if both of the following apply:

a. The insurer has annual direct written and unaffiliated assumed premium, including international direct and assumed premium, but excluding premiums reinsured with the

federal crop insurance corporation and the federal flood program, of less than five hundred million dollars.

b. The insurance group of which the insurer is a member has annual direct written and unaffiliated assumed premium, including international direct and assumed premium, but excluding premiums reinsured with the federal crop insurance corporation and the federal flood program, of less than one billion dollars.

2. If an insurer qualifies for exemption from the requirements of this chapter pursuant to subsection 1, paragraph *"a"*, but the insurance group of which the insurer is a member does not qualify for exemption pursuant to subsection 1, paragraph *"b"*, then the own risk and solvency assessment summary report that is required pursuant to section 522.5 shall include information concerning every insurer in the insurance group. This requirement may be satisfied by the submission of more than one summary report for any combination of insurers in the insurance group provided that the combination of reports submitted includes every insurer in the insurance group.

3. If an insurer does not qualify for exemption pursuant to subsection 1, paragraph *"a"*, but the insurance group of which the insurer is a member qualifies for exemption pursuant to subsection 1, paragraph *"b"*, then the only own risk and solvency assessment summary report that is required pursuant to section 522.5 is the report applicable to that insurer.

4. An insurer that does not qualify for exemption pursuant to subsection 1 may apply to the commissioner for a waiver from the requirements of this chapter based upon unique circumstances. In deciding whether to grant the insurer's request for a waiver, the commissioner may consider the type and volume of business written, ownership and organizational structure, and any other factors the commissioner considers relevant to the insurer or the insurance group of which the insurer is a member. If the insurer is part of an insurance group with insurers domiciled in more than one state, the commissioner shall coordinate with the state commissioner that is the lead state commissioner of the insurance group, as determined pursuant to section 522.5, and with the other domiciliary commissioners in considering whether to grant the insurer's request for a waiver.

5. Notwithstanding the exemptions provided in this section, the commissioner may do the following:

a. Require that an insurer maintain a risk management framework, conduct an own risk and solvency assessment, and file an own risk and solvency assessment summary report based on unique circumstances including but not limited to the type and volume of business written, ownership and organizational structure, federal agency requests, and international supervisor requests.

b. Require that an insurer maintain a risk management framework, conduct an own risk and solvency assessment, and file an own risk and solvency assessment summary report if the insurer has a risk-based capital level that is a company-action-level event as set forth in section 521E.3 for insurers and section 521F.4 for health organizations or that would cause the insurer to be in hazardous financial condition as set forth in 191 IAC ch. 110, or if the insurer otherwise exhibits qualities of a troubled insurer as determined by the commissioner.

6. If an insurer that qualifies for an exemption pursuant to subsection 1 subsequently no longer qualifies for that exemption due to changes in premium as reflected in the insurer's most recent annual statement or in the most recent annual statements of the other insurers in the insurance group of which the insurer is a member, the insurer shall have one year following the year the threshold is exceeded to comply with the requirements of this chapter.

2013 Acts, ch 40, §6, 11; 2013 Acts, ch 140, §73; 2015 Acts, ch 29, §80

Referred to in §522.4

Section applies on and after January 1, 2015; 2013 Acts, ch 40, §11

522.7 Contents of own risk and solvency assessment summary report.

1. The own risk and solvency assessment summary report shall be prepared consistent with the own risk and solvency assessment guidance manual, subject to the requirements of subsection 2. Documentation and supporting information shall be maintained and made available upon examination of an insurer or upon request of the commissioner.

2. The review of an own risk and solvency assessment summary report, and any additional

requests for information, shall be made using procedures similar to the procedures currently used in the analysis and examination of multistate or global insurers and insurance groups.

2013 Acts, ch 40, §7, 11
Section applies on and after January 1, 2015; 2013 Acts, ch 40, §11

522.8 Confidentiality.

1. Documents, materials, or other information, including an own risk and solvency assessment summary report, in the possession or control of the insurance division of the department of commerce, that are obtained by, created by, or disclosed to the commissioner or to any other person pursuant to this chapter, are recognized in this state as being proprietary and containing trade secrets. All such documents, materials, or other information, including the summary report, shall be confidential and privileged, shall not be subject to chapter 22, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action. However, the commissioner is authorized to use such documents, materials, or other information, including the summary report, in the furtherance of any regulatory or legal action brought as a part of the commissioner's official duties. The commissioner shall not otherwise make the documents, materials, or other information, including the summary report, public without the prior written consent of the insurer that provided the documents, materials, or other information, including the summary report.

2. The commissioner or any person who received documents, materials, or other information related to own risk and solvency assessments, through examination or otherwise, while acting under the authority of the commissioner or with whom such documents, materials, or other information are shared pursuant to this chapter, shall not be permitted or required to testify in any private civil action concerning any confidential documents, materials, or information, including summary reports, subject to subsection 1.

3. In order to assist in the performance of the commissioner's regulatory duties, the commissioner may do any of the following:

a. Upon request, share documents, materials, or other own risk and solvency assessment-related information, including the confidential and privileged documents, materials, or information subject to subsection 1, and including proprietary and trade secret documents, materials, or information, with other state, federal, or international financial regulatory agencies, including members of any supervisory college, with the national association of insurance commissioners, and with any third-party consultants designated by the commissioner, provided that the recipient agrees in writing to maintain the confidentiality and privileged status of the documents, materials, or other assessment-related information and verifies in writing the legal authority to maintain such confidentiality and privilege.

b. Receive documents, materials, or other own risk and solvency assessment-related information, including otherwise confidential and privileged documents, materials, or information, and proprietary and trade secret documents, materials, and information, from regulatory officials of other foreign or domestic jurisdictions, including members of any supervisory college, and from the national association of insurance commissioners, and shall maintain as confidential or privileged any documents, materials, or information received with notice or the understanding that the documents, materials, or other information received are confidential and privileged under the laws of the jurisdiction that is the source of the documents, materials, or information.

4. In order to assist in the performance of the commissioner's regulatory duties, the commissioner shall enter into a written agreement with the national association of insurance commissioners or with a third-party consultant that is consistent with subsection 3, governing the sharing and use of information provided pursuant to this chapter, and that does all of the following:

a. Specifies procedures and protocols regarding the confidentiality and security of information shared with the national association of insurance commissioners or with a third-party consultant pursuant to this chapter, including procedures and protocols of the national association of insurance commissioners for sharing information with other state regulators from states in which an insurance group has domiciled insurers. The agreement

shall require that the recipient of such information must agree in writing to maintain the confidentiality and privileged status of the own risk and solvency assessment-related documents, materials, or other information and verify in writing the legal authority to maintain confidentiality and privilege.

b. Specifies that ownership of information shared with the national association of insurance commissioners or with a third-party consultant pursuant to this chapter remains with the commissioner and that use of the information by the national association of insurance commissioners or by a third-party consultant is subject to the direction of the commissioner.

c. Prohibits the national association of insurance commissioners or a third-party consultant from storing the information shared pursuant to this chapter in a permanent database after the underlying analysis is completed.

d. Requires that prompt notice be given to an insurer whose confidential information is in the possession of the national association of insurance commissioners or a third-party consultant pursuant to this chapter, that the information is subject to a request or subpoena to the national association of insurance commissioners or the third-party consultant for disclosure or production.

e. Requires the national association of insurance commissioners or a third-party consultant to consent to intervention by an insurer in any judicial or administrative action in which the national association of insurance commissioners or the third-party consultant may be required to disclose confidential information about the insurer that was shared with the association or consultant pursuant to this chapter.

f. In the case of an agreement involving a third-party consultant, provides for the insurer's written consent to the agreement.

5. The sharing of documents, materials, or information by the commissioner pursuant to this chapter shall not constitute a delegation of regulatory authority or rulemaking, and the commissioner is solely responsible for the administration, execution, and enforcement of the provisions of this chapter.

6. No waiver of any applicable privilege or claim of confidentiality in the documents, proprietary and trade secret materials, or other own risk and solvency assessment-related information shall occur as a result of the disclosure of such documents, materials, or information to the commissioner under this section or as a result of the sharing of those documents, materials, or information as authorized in this chapter.

7. Documents, materials, or other information in the possession or control of the national association of insurance commissioners or a third-party consultant pursuant to this chapter shall be confidential and privileged, shall not be subject to chapter 22, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action.

2013 Acts, ch 40, §8, 11
Section applies on and after January 1, 2015; 2013 Acts, ch 40, §11

522.9 Penalties.

1. If an insurer fails, without just cause, to file an own risk and solvency assessment summary report by the filing date stipulated to the commissioner pursuant to section 522.5, subsection 1, the commissioner shall, after notice and hearing, impose a penalty of five hundred dollars for each day after the stipulated date that the summary report is not filed. The penalties shall be collected by the commissioner and deposited in the general fund of the state. The maximum penalty which may be imposed under this section is fifty thousand dollars.

2. The commissioner may reduce the penalty to be imposed if the insurer demonstrates to the commissioner that imposition of the penalty would constitute a financial hardship to the insurer.

2013 Acts, ch 40, §9, 11
Section applies on and after January 1, 2015; 2013 Acts, ch 40, §11

522.10 Severability.

If any provision of this chapter, or the application of this chapter to any person or circumstance, is held invalid, such holding shall not affect the provisions or applications of this chapter which can be given effect without the invalid provision or application, and to that end the provisions of this chapter are severable.

2013 Acts, ch 40, §10, 11
Section applies on and after January 1, 2015; 2013 Acts, ch 40, §11

CHAPTER 522A

SALE OF INSURANCE BY VEHICLE RENTAL COMPANIES

Referred to in §87.4, 296.7, 331.301, 364.4, 505.28, 505.29, 669.14, 670.7

522A.1	Purpose.	522A.5	Fees.
522A.2	Definitions.	522A.6	Vendor qualifications.
522A.3	Limited licenses.	522A.7	Rules.
522A.4	Term of limited license.		

522A.1 Purpose.

The purpose of this chapter is to provide for the limited licensing of rental companies when a motor vehicle rental company sells travel or automobile-related insurance products or coverage in connection with and incidental to the rental of vehicles.

99 Acts, ch 143, §1

522A.2 Definitions.

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

1. *"Commissioner"* means the commissioner of insurance appointed pursuant to section 505.2.
2. *"Counter employee"* means any employee at least eighteen years of age employed by a rental company that offers the products described in this chapter.
3. *"Limited licensee"* means a person at least eighteen years of age or an entity authorized to sell certain insurance coverages relating to the rental of vehicles.
4. *"Rental agreement"* means any written agreement setting forth the terms and conditions governing the use of a vehicle provided by a rental company for rental.
5. *"Rental company"* means any person or entity in the business of primarily providing vehicles intended for the private transportation of passengers to the public under a rental agreement for a period not to exceed ninety days.
6. *"Rental period"* means the term of the rental agreement.
7. *"Renter"* means any person obtaining the use of a vehicle from a rental company under the terms of a rental agreement for a period not to exceed ninety days.
8. *"Vehicle"* means a motor vehicle under section 321.1 used for the private transportation of passengers, including passenger vans, minivans, and sport utility vehicles, or used for the transportation of cargo with a gross vehicle weight of less than twenty-six thousand and one pounds and not requiring the operator to possess a commercial driver's license, including cargo vans, pickup trucks, and trucks.

99 Acts, ch 143, §2

522A.3 Limited licenses.

1. Notwithstanding the provisions of chapter 522B, the commissioner may issue a limited license to a rental company that has complied with the requirements of this chapter. The limited license shall authorize the limited licensee to offer or sell insurance with the rental of vehicles.
2. As a prerequisite for issuance of a limited license under this section, a written application for a limited license, which is signed by an officer of the applicant, shall be

filed with the commissioner. The application shall be in a form and contain information prescribed by the commissioner. The application shall include a list of all rental locations where the rental company intends to conduct business. An updated list shall be provided to the commissioner within thirty business days from any date on which the list is amended.

3. If a provision of this section is violated by a limited licensee, the commissioner may, after notice and a hearing, revoke or suspend a limited license issued under this section, or impose any other penalties, including suspending permission for the transaction of insurance offers or sales at specific rental locations where violations of this section have occurred, as the commissioner deems to be necessary or convenient to carry out the purposes of this section.

4. A rental company licensed pursuant to this section may offer or sell insurance issued by an insurance carrier authorized to do business in this state and only in connection with and incidental to the rental of a vehicle. A renter shall not be required to purchase coverage in order to rent a vehicle. The type of insurance offered or sold by a limited licensee, whether at the rental office or by preselection of coverage in a master, corporate, group rental, or individual agreement, may be in any of the following general categories:

a. Personal accident insurance covering the risks of travel, including, but not limited to, accident and health insurance that provides coverage, as applicable, to a renter and other rental vehicle occupants for accidental death or dismemberment and reimbursement for medical expenses resulting from an accident that occurs during the rental period.

b. Liability insurance that provides coverage, as applicable, to a renter and other authorized drivers of rental vehicles for liability arising from the operation of the rental vehicle.

c. Personal effects insurance that provides coverage, as applicable, to a renter and other vehicle occupants for the loss of, or damage to, personal effects that occurs during the rental period.

d. Roadside assistance and emergency sickness protection programs.

5. Insurance shall only be sold by a limited licensee pursuant to this section if all of the following apply:

a. The rental period of the rental agreement does not exceed ninety consecutive days.

b. At every rental location where a rental agreement is executed, brochures or other written materials are readily available to a prospective renter that include all of the following information:

(1) A clear and correct summary of the material terms of coverage offered to renters, including the identity of the insurer.

(2) A disclosure that the coverage offered by the rental company may provide a duplication of coverage already provided by a renter's personal automobile insurance policy, homeowner's insurance policy, personal liability insurance policy, or other source of coverage.

(3) A statement that the purchase by a renter of the types of coverage specified in this section is not required in order to rent a vehicle.

(4) A description of the process for filing a claim in the event a renter elects to purchase coverage and in the event of a claim.

c. Evidence of coverage in the rental agreement is provided to every renter who elects to purchase such coverage.

d. A fee, compensation, or commission is not paid to an employee by a rental company dependent solely on the sale of insurance under any limited license issued pursuant to this section.

6. Any limited license issued under this section shall authorize a counter employee of the limited licensee to act individually on behalf, and under the supervision, of the limited licensee with respect to the offer and sale of coverage specified in this section.

7. A rental company counter employee must successfully pass an examination covering the insurance products offered for sale by the rental company in connection with and incidental to the rental of vehicles by the rental company. The examination shall be approved and administered by the insurance division or a vendor approved by the insurance division pursuant to section 522A.6. The counter employee shall file an application with the commissioner for an individual license. Any application shall be deemed approved unless

the commissioner notifies the rental company of the denial or rejection of the application within thirty days of receiving the application. An application shall not include requirements greater in scope than defined in this section.

8. A limited licensee pursuant to this section shall not be required to treat moneys collected from renters purchasing insurance when renting vehicles as moneys received in a fiduciary capacity, provided that the charges for coverage are itemized and are ancillary to a rental agreement. The offer or sale of insurance not in conjunction with a rental agreement shall not be permitted.

9. A limited licensee under this section shall not advertise, represent, or otherwise hold itself out or hold any of its employees out as licensed insurers, insurance agents, or insurance brokers.

10. A limited licensee shall not engage in this state in any of the following:

a. A trade practice defined in chapter 507B as, or determined pursuant to section 507B.6 to be, an unfair method of competition or an unfair or deceptive act or practice in the business of insurance.

b. An illegal sales practice or unfair trade practice as defined in rules adopted pursuant to chapter 17A by the commissioner.

11. An individual license, authorization, and certification to offer or sell insurance products under this chapter shall expire when the counter employee's employment terminates with the rental company.

99 Acts, ch 143, §3; 2000 Acts, ch 1058, §48; 2001 Acts, ch 16, §12, 37
Referred to in §522A.6

522A.4 Term of limited license.

A limited license issued pursuant to this chapter is valid for three years and may be renewed without examination if the renewal application is received in a timely manner.

99 Acts, ch 143, §4

522A.5 Fees.

The fee for a counter employee license shall be fifty dollars per counter employee. In no case shall any combined fees exceed one thousand dollars in any calendar year for any one rental company or limited license or licensee or renewal license. The fees collected under this section shall be deposited as provided in section 505.7.

99 Acts, ch 143, §5; 2009 Acts, ch 181, §89

522A.6 Vendor qualifications.

If a qualified vendor is available, the commissioner shall utilize the qualified vendor closest in proximity to where the counter employee is employed to meet the requirements in section 522A.3. A vendor shall have at least two years teaching experience relating to the topic of the products described in this chapter. For purposes of this section, the commissioner may approve a rental company that meets the requirements of this section as a qualifying vendor to administer the requirements in section 522A.3.

99 Acts, ch 143, §6
Referred to in §522A.3

522A.7 Rules.

The commissioner shall adopt rules necessary for the administration of this chapter.

99 Acts, ch 143, §7

CHAPTER 522B

LICENSING OF INSURANCE PRODUCERS

Referred to in §8A.438, 87.4, 296.7, 321A.3, 331.301, 364.4, 423.3, 505.8, 505.28, 505.29, 507A.10, 507B.4, 508A.5, 508E.2, 514B.19, 514K.2, 515.115, 515I.2, 515I.11, 515I.12, 518.16, 522A.3, 522D.3, 522E.2, 522E.8, 522E.9, 522E.12, 523A.502, 523H.1, 537A.10, 669.14, 670.7, 714H.4

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522B.1 Definitions.

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

1. *"Business entity"* means a corporation, association, partnership, limited liability company, limited liability partnership, or other legal entity.

2. *"Commissioner"* means the commissioner of insurance.

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

4. *"Home state"* means the District of Columbia and any state or territory of the United States in which an insurance producer maintains the producer's principal place of residence or principal place of business and is licensed to act as an insurance producer.

5. *"Insurance"* means any of the lines of authority an insurer is authorized to sell in this state.

6. *"Insurance producer"* means a person required to be licensed under the laws of this state to sell, solicit, or negotiate insurance.

7. *"Insurer"* means a person engaged in the business of insurance who is regulated under chapter 508, 512B, 515, or 520.

8. *"License"* means a document issued pursuant to this chapter by the commissioner authorizing a person to act as an insurance producer for the lines of authority specified in the document. A license by itself does not create any authority, actual, apparent, or inherent, in the holder to represent or commit an insurer.

9. *"Limited lines insurance"* means any authority granted by the home state which restricts the authority of the license to less than the total authority prescribed in the associated major lines pursuant to section 522B.6, subsection 2, paragraphs *"a"* through *"f"*, and any other line of insurance that the commissioner may deem it necessary to recognize for the purposes of complying with section 522B.7, subsection 4.

10. *"Limited lines producer"* means a person licensed by the commissioner to sell, solicit, or negotiate limited lines insurance.

11. *"Negotiate"* means the act of conferring directly with or offering advice directly to a purchaser or prospective purchaser of a particular contract of insurance concerning any of the substantive benefits, terms, or conditions of the contract, provided that the person engaged in that act either sells insurance or obtains insurance from insurers for purchasers.

12. *"Person"* means an individual or a business entity.

13. *"Policy owner"* means a person who is identified as the legal owner of an insurance policy or contract under the terms of the insurance policy or contract, or who is otherwise vested with legal title to the insurance policy or contract through a valid assignment

completed in accordance with the terms of the insurance policy or contract and is properly recorded as the legal owner of the policy or contract in the records of the insurer. *"Policy owner"* does not include a person who has a mere beneficial interest in an insurance policy or contract.

14. *"Producer database"* means the national database of insurance producers maintained by the national association of insurance commissioners, its affiliates, or subsidiaries.

15. *"Sell"* means to exchange a contract of insurance by any means, for money or its equivalent, on behalf of an insurer.

16. *"Solicit"* or *"solicitation"* means attempting to sell insurance or asking or urging a person to apply for a particular kind of insurance from a particular company.

17. *"Terminate"* means the cancellation of the relationship between an insurance producer and the insurer or the termination of an insurance producer's authority to transact insurance.

18. *"Uniform application"* means the current version of the national association of insurance commissioners uniform application for resident and nonresident insurance producer licensing.

19. *"Uniform business entity application"* means the current version of the national association of insurance commissioners uniform business entity application for resident and nonresident business entities.

2001 Acts, ch 16, §15, 37; 2002 Acts, ch 1111, §35; 2002 Acts, ch 1119, §75; 2014 Acts, ch 1108, §1

Referred to in §515.106, 518.16A, 518A.42, 533C.103

522B.2 License required.

1. A person shall not sell, solicit, or negotiate insurance in this state for any line of insurance unless the person is licensed as an insurance producer for that line of insurance as provided in this chapter.

2. A person offering to the public, for a fee or commission, to engage in the business of offering any advice, counsel, or service with respect to the benefits, advantages, or disadvantages promised under any policy of insurance must also be licensed as an insurance producer.

2001 Acts, ch 16, §16, 37

Referred to in §522B.17A

522B.3 Exceptions to licensing.

1. Nothing in this chapter shall be construed to require an insurer to obtain an insurance producer license. For the purposes of this section, *"insurer"* does not mean an officer, director, employee, subsidiary, or affiliate of the insurer.

2. A license as an insurance producer shall not be required of any of the following:

a. An officer, director, or employee of an insurer or of an insurance producer, provided that the officer, director, or employee does not receive any commission on policies written or sold to insure risks residing, located, or to be performed in this state, and one of the following applies:

(1) The activities of the officer, director, or employee are executive, administrative, managerial, clerical, or a combination of these, and are only indirectly related to the sale, solicitation, or negotiation of insurance.

(2) The function of the officer, director, or employee relates to underwriting, loss control, inspection, or the processing, adjusting, investigating, or settling of a claim on a contract of insurance.

(3) The officer, director, or employee is acting in the capacity of a special agent or agency supervisor assisting insurance producers where the person's activities are limited to providing technical advice and assistance to licensed insurance producers and do not include the sale, solicitation, or negotiation of insurance.

b. A person who performs any of the following services and who is not paid a commission for the performance of such service:

(1) Secures and furnishes information for the purpose of group life insurance, group

property and casualty insurance, group annuities, or group or blanket accident and health insurance.

(2) Secures and furnishes information for the purpose of enrolling individuals under plans, issuing certificates under plans, or otherwise assisting in administering plans.

(3) Performs administrative services related to mass marketed property and casualty insurance.

c. An employer or association, or an officer, director, or employee of such employer or association, or the trustees of an employee trust plan, to the extent that such employer, association, officer, director, employee, or trustee is engaged in the administration or operation of a program of employee benefits for the employer's or association's own employees or the employees of its subsidiaries or affiliates, which program involves the use of insurance issued by an insurer, as long as such employer, association, officer, director, employee, or trustee is not in any manner compensated, directly or indirectly, by the insurer issuing the contracts.

d. An employee of an insurer, or an organization employed by an insurer, who engages in the inspection, rating, or classification of risks or in the supervision of the training of insurance producers and who is not individually engaged in the sale, solicitation, or negotiation of insurance.

e. A person whose activities in this state are limited to advertising without the intent to solicit insurance in this state through communications in printed publications or other forms of electronic mass media whose distribution is not limited to residents of the state, provided that the person does not sell, solicit, or negotiate insurance that would insure risks residing, located, or to be performed in this state.

f. A person who is not a resident of this state who sells, solicits, or negotiates a contract of insurance for commercial property and casualty risks to an insured with risks located in more than one state insured under that contract, provided that that person is otherwise licensed as an insurance producer to sell, solicit, or negotiate that insurance in the state where the insured maintains its principal place of business and the contract of insurance insures risks located in that state.

g. A salaried full-time employee who counsels or advises the employee's employer relative to the insurance interests of the employer or of the subsidiaries or business affiliates of the employer, provided that the employee does not sell or solicit insurance or receive a commission.

h. A licensed attorney providing surety bonds incident to the attorney's practice.

i. A person selling transportation tickets of a common carrier of persons or property when that person also sells, in connection with and related to the transportation ticket, a trip and accident insurance policy or an insurance policy on personal effects being carried as baggage.

2001 Acts, ch 16, §17, 37; 2002 Acts, ch 1050, §47; 2002 Acts, ch 1119, §76

See also §522A.3

522B.4 Application for examination.

1. A resident individual applying for an insurance producer license shall pass a written examination unless exempt pursuant to section 522B.8. The examination shall test the knowledge of the individual concerning the lines of authority for which application is made, the duties and responsibilities of an insurance producer, and the insurance laws and regulations of this state. The commissioner shall adopt rules pursuant to chapter 17A related to development and conduct of the examination.

2. The commissioner may make arrangements, including contracting with an outside testing service or other appropriate entity, for administering examinations and collecting fees.

3. An individual applying for an examination shall remit a nonrefundable fee as established by rule of the commissioner.

4. An individual who fails to appear for the examination as scheduled or fails to pass the

examination shall reapply for an examination and remit all required fees and forms before being rescheduled for another examination.

2001 Acts, ch 16, §18, 37
Referred to in §522B.6

522B.5 Application for license.

1. A person applying for a resident insurance producer license shall make application to the commissioner on the uniform application and declare under penalty of refusal, suspension, or revocation of the license that the statements made in the application are true, correct, and complete to the best of the individual's knowledge and belief. Before approving the application, the commissioner shall find all of the following:

a. The individual is at least eighteen years of age.

b. The individual has not committed any act that is a ground for denial, suspension, or revocation as set forth in section 522B.11.

c. The individual has paid the license fee of fifty dollars.

d. The individual has successfully passed the examinations for the lines of authority for which the person has applied.

e. In order to protect the public interest, the individual has the requisite character and competence to receive a license as an insurance producer.

2. A business entity acting as an insurance producer may elect to obtain an insurance producer license. Application shall be made using the uniform business entity application. Prior to approving the application, the commissioner shall find both of the following:

a. The business entity has paid the appropriate fees.

b. The business entity has designated a licensed producer responsible for the business entity's compliance with the insurance laws and rules of this state.

3. The commissioner may require any documents reasonably necessary to verify the information contained in an application.

4. Fees collected under this section shall be deposited as provided in section 505.7.

2001 Acts, ch 16, §19, 37; 2009 Acts, ch 181, §90
Referred to in §522B.6, 522B.8

522B.6 License.

1. A person who meets the requirements of sections 522B.4 and 522B.5, unless otherwise denied licensure pursuant to section 522B.11, shall be issued an insurance producer license. An insurance producer license is valid for three years.

2. An insurance producer may qualify for a license in one or more of the following lines of authority:

a. Life insurance providing coverage on human lives, including benefits of endowment and annuities, and may include benefits in the event of death or dismemberment by accident and benefits for disability income.

b. Accident and health or sickness insurance providing coverage for sickness, bodily injury, or accidental death, and may include benefits for disability income.

c. Property insurance providing coverage for the direct or consequential loss or damage to property of any kind.

d. Casualty insurance providing coverage against legal liability, including that for death, injury, or disability, or damage to real or personal property.

e. Variable life and variable annuity products insurance coverage provided under variable life insurance contracts and variable annuities.

f. Personal lines property and casualty insurance sold to individuals and families primarily for noncommercial purposes.

g. Excess and surplus lines insurance provided by certain nonadmitted insurers pursuant to chapter 515I.

h. Credit insurance, including credit life, credit disability, credit property, credit unemployment, involuntary unemployment, mortgage life, mortgage guaranty, mortgage disability, guaranteed automobile protection insurance, and any other form of insurance offered in connection with an extension of credit that is limited to partially or wholly

extinguishing a credit obligation and that the commissioner determines should be designated a form of credit insurance.

i. Any other line of insurance permitted under state law or by rule.

3. An insurance producer license remains in effect unless revoked or suspended as long as all required fees are paid and continuing education requirements for resident individual insurance producers are met by any applicable due date. Resident individual insurance producers are required to complete continuing education requirements in order to be eligible for license renewal unless exempted from such requirements under this chapter or by rule.

4. An individual insurance producer who allows the producer's license to lapse, within twelve months from the due date of the renewal fee, may have the same license reinstated without the necessity of passing a written examination upon the payment of a reinstatement fee as specified by rule of the commissioner. Such reinstatement fee shall be in addition to the required renewal fee.

5. A licensed insurance producer who is unable to comply with license renewal procedures due to military service or some other extenuating circumstance may request a waiver of those procedures. Such insurance producer may also request a waiver of any examination requirement or any other penalty or sanction imposed for failure to comply with renewal procedures.

6. The license shall contain the licensee's name, address, personal identification number, and the date of issuance, the lines of authority, the expiration date, and any other information the commissioner deems necessary.

7. A licensee shall inform the commissioner by any means acceptable to the commissioner of a change of legal name or address within thirty days of the change. Failure to timely inform the commissioner of a change in legal name or address may result in a penalty as specified in section 522B.17.

8. In order to assist with the commissioner's duties, the commissioner may contract with a nongovernmental entity, including the national association of insurance commissioners or any affiliate or subsidiary the national association of insurance commissioners oversees, to perform any ministerial functions, including the collection of fees, related to producer licensing that the commissioner deems appropriate.

2001 Acts, ch 16, §20, 37; 2002 Acts, ch 1050, §48; 2002 Acts, ch 1119, §77; 2007 Acts, ch 137, §23; 2007 Acts, ch 152, §82; 2012 Acts, ch 1025, §20, 22

Referred to in §522B.1

522B.7 Nonresident licensing.

1. Unless denied licensure pursuant to section 522B.11, a nonresident person shall receive a nonresident insurance producer license if all of the following apply:

a. The person is currently licensed as an insurance producer and is in good standing in the person's home state.

b. The person has submitted the proper request for licensure and has paid the required fees.

c. The person has submitted or transmitted to the commissioner the application for licensure that the person submitted to the person's home state, or in lieu of such application, a completed uniform application.

d. The person's home state awards nonresident insurance producer licenses to residents of this state on the same basis.

2. The commissioner may verify the insurance producer's licensing status through the producer database.

3. A nonresident insurance producer who moves from one state to another state or a resident insurance producer who moves from this state to another state shall file a change of address and provide certification from the new resident state within thirty days of the change of legal residence. No fee or license application is required. The certification may be obtained through the producer database.

4. Notwithstanding any other provision of this chapter, a person licensed as a limited lines insurance producer in the person's home state shall receive a nonresident limited lines

insurance producer license, pursuant to subsection 1, granting the same scope of authority as granted under the license issued by such person's home state.

2001 Acts, ch 16, §21, 37
Referred to in §522B.1, 522B.15

522B.8 Exemption from examination.

1. An individual who applies for an insurance producer license in this state who was previously licensed for the same lines of authority in another state shall not be required to complete an examination. This exemption is only available if the person is currently licensed in that other state or if the request for licensure is received within ninety days of the cancellation of the applicant's previous license and if the prior state issues a certification that, at the time of cancellation, the applicant was in good standing in that state. The certification may be obtained through the producer database.

2. A person licensed as an insurance producer in another state who moves to this state shall make application within ninety days of establishing legal residence to become a resident licensee pursuant to section 522B.5. An examination shall not be required of that person to obtain an insurance producer license for any line of authority previously held in the prior state except where the commissioner determines otherwise by regulation.

2001 Acts, ch 16, §22, 37
Referred to in §522B.4

522B.9 Assumed names.

An insurance producer doing business under any name other than the insurance producer's legal name is required to notify the commissioner prior to using the assumed name.

2001 Acts, ch 16, §23, 37

522B.10 Temporary licensing.

1. The commissioner may issue a temporary insurance producer license for a period not to exceed one hundred eighty days without requiring an examination if the commissioner deems that the temporary license is necessary for the servicing of an insurance business in the following cases:

a. To the surviving spouse or court-appointed personal representative of a licensed insurance producer who dies or becomes mentally or physically disabled, to allow adequate time for the sale of the insurance business owned by the insurance producer, for the recovery or return of the insurance producer to the business, or for the training and licensing of new personnel to operate the insurance producer's business.

b. To a member or employee of a business entity licensed as an insurance producer, upon the death or disability of an individual designated in the business entity application or the license.

c. To the designee of a licensed insurance producer entering active service in the armed forces of the United States.

d. In any other circumstance where the commissioner deems that the public interest will best be served by the issuance of a temporary license.

2. The commissioner may by order limit the authority of any temporary licensee in any way deemed necessary to protect insureds and the public. The commissioner may require the temporary licensee to have a suitable sponsor who is a licensed insurance producer or insurer and who assumes responsibility for all acts of the temporary licensee and may impose other similar requirements designed to protect insureds and the public. The commissioner may by order revoke a temporary license if the interest of insureds or the public is endangered. A temporary license shall not continue after the owner or the personal representative disposes of the business.

2001 Acts, ch 16, §24, 37

522B.11 License denial, nonrenewal, or revocation — limitation on duties and responsibilities of insurance producers.

1. The commissioner may place on probation, suspend, revoke, or refuse to issue or renew

an insurance producer's license or may levy a civil penalty as provided in section 522B.17 for any one or more of the following causes:

a. Providing incorrect, misleading, incomplete, or materially untrue information in the license application.

b. Violating any insurance laws, or violating any regulation, subpoena, or order of the commissioner or of a commissioner of another state.

c. Obtaining or attempting to obtain a license through misrepresentation or fraud.

d. Improperly withholding, misappropriating, or converting any moneys or properties received in the course of doing insurance business.

e. Intentionally misrepresenting the terms of an actual or proposed insurance contract or application for insurance.

f. Having been convicted of a felony.

g. Having admitted or been found to have committed any unfair insurance trade practice or fraud.

h. Using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this state or elsewhere.

i. Having an insurance producer license, or its equivalent, denied, suspended, or revoked in any other state, province, district, or territory.

j. Forging another's name to an application for insurance or to any document related to an insurance transaction.

k. Improperly using notes or any other reference material to complete an examination for an insurance license.

l. Knowingly accepting insurance business from an individual who is not licensed.

m. Failing to comply with an administrative or court order imposing a child support obligation.

n. Failing to comply with an administrative or court order related to repayment of loans to the college student aid commission.

o. Failing to pay state income tax or comply with any administrative or court order directing payment of state income tax.

p. Failing or refusing to cooperate in an investigation by the commissioner.

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

r. Using an insurance producer's license for the principal purpose of procuring, receiving, or forwarding applications for insurance of any kind, or placing, or effecting such insurance directly or indirectly upon or in connection with the property of the licensee or the property of a relative, employer, or employee of the licensee, or upon or in connection with property for which the licensee or a relative, employer, or employee of the licensee is an agent, custodian, vendor, bailee, trustee, or payee.

2. If the commissioner does not renew a license or denies an application for a license, the commissioner shall notify the applicant or licensee and advise, in writing, the licensee or applicant of the reason for the nonrenewal of the license or denial of the application for a license. The licensee or applicant may request a hearing on the nonrenewal or denial. A hearing shall be conducted according to section 507B.6.

3. The license of a business entity may be suspended, revoked, or refused if the commissioner finds, after hearing, that an individual licensee's violation was known or should have been known by a partner, officer, or manager acting on behalf of the business entity and the violation was not reported to the commissioner and corrective action was not taken.

4. In addition to, or in lieu of, any applicable denial, suspension, or revocation of a license, a person, after hearing, may be subject to a civil penalty as provided in section 522B.17.

5. The commissioner may conduct an investigation of any suspected violation of this chapter pursuant to section 507B.6 and may enforce the provisions and impose any penalty or remedy authorized by this chapter and chapter 507B against any person who is under

investigation for, or charged with, a violation of either chapter even if the person's license has been surrendered or has lapsed by operation of law.

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

b. Investigative information in the possession of the commissioner or the commissioner's employees or agents that relates to licensee discipline may be disclosed, in the commissioner's discretion, to appropriate licensing authorities within this state, the appropriate licensing authority in another state, the District of Columbia, or a territory or country in which the licensee is licensed or has applied for a license.

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

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

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

7. *a.* Unless an insurance producer holds oneself out as an insurance specialist, consultant, or counselor and receives compensation for consultation and advice apart from commissions paid by an insurer, the duties and responsibilities of an insurance producer are limited to those duties and responsibilities set forth in *Sandbulte v. Farm Bureau Mut. Ins. Co.*, 343 N.W.2d 457 (Iowa 1984).

b. The general assembly declares that the holding of *Langwith v. Am. Nat'l Gen. Ins. Co.*, 793 N.W. 2d 215 (Iowa 2010) is abrogated to the extent that it overrules *Sandbulte* and imposes higher or greater duties and responsibilities on insurance producers than those set forth in *Sandbulte*.

c. Notwithstanding the holding in *Pitts v. Farm Bureau Life Ins. Co.*, 818 N.W.2d 91 (Iowa 2012), an insurance producer, while acting within the scope and course of the license provided for by this chapter, is not in the business of supplying information to others unless the requirements of paragraph *"a"* relating to expanded duties and responsibilities are met.

d. Neither an insurance producer nor an insurer has a duty to change the beneficiary of an insurance policy or contract unless clear written evidence of the policy owner's intent to change a beneficiary of the policy or contract is presented to the insurance producer or insurer in the manner required by the policy or contract prior to the payment of any insurance benefits under the policy or contract. Such evidence shall be provided in the same manner as a claim for benefits under the policy or contract.

e. An insurance producer owes any duties and responsibilities referred to in this subsection only to the policy owner, a person in privity of contract with the insurance producer, and the principal in an agency relationship with the insurance producer. If a person to whom an insurance producer owes duties and responsibilities is deceased or incapacitated, a direct and specifically identified beneficiary referenced in a written instrument required by the insurer and delivered to the insurance producer prior to the death or incapacity may enforce the insurance producer's duties and responsibilities. An insurance producer does not owe any duty or responsibility to a person who was a direct and specifically identified beneficiary if the policy owner changes the beneficiary in the manner required by the policy or contract to remove the person as a beneficiary.

2001 Acts, ch 16, §25, 37; 2004 Acts, ch 1110, §60 – 62; 2008 Acts, ch 1123, §42; 2011 Acts, ch 70, §45; 2014 Acts, ch 1108, §2; 2015 Acts, ch 108, §8; 2017 Acts, ch 54, §62

Referred to in §505.8, 522B.5, 522B.6, 522B.7, 522B.14, 522B.16A

522B.12 Commissions.

1. An insurer or insurance producer shall not pay a commission, service fee, brokerage, or other valuable consideration to a person for selling, soliciting, or negotiating insurance in this state if that person is required to be licensed under this chapter and is not so licensed.

2. A person shall not accept a commission, service fee, brokerage, or other valuable consideration for selling, soliciting, or negotiating insurance in this state if that person is required to be licensed under this chapter and is not so licensed.

3. Renewal or other deferred commissions may be paid to a person for selling, soliciting, or negotiating insurance in this state if the person was required to be licensed under this chapter at the time of the sale, solicitation, or negotiation and was so licensed at that time.

4. An insurer or insurance producer may pay or assign a commission, service fee, brokerage, or other valuable consideration to an insurance agency or to a person who does not sell, solicit, or negotiate insurance in this state, unless the payment would violate chapter 507B.

2001 Acts, ch 16, §26, 37; 2007 Acts, ch 152, §83

522B.13 Appointments.

1. An individual insurance producer who acts as an agent of an insurer must be appointed by that insurer. An insurance producer who is not acting as an agent of an insurer need not be appointed. A business entity is not required to be appointed.

2. The appointing insurer, for the purpose of appointing an insurance producer as its agent, shall file, in a format approved by the commissioner, a notice of appointment within thirty days from the date the agency contract is executed or the first insurance application is submitted.

3. An insurer shall pay an appointment fee, in the amount and method of payment set forth by rule of the commissioner, for each insurance producer appointed by the insurer.

4. An insurer shall remit a renewal appointment fee in the manner and amount as set forth by rule of the commissioner.

2001 Acts, ch 16, §27, 37

522B.14 Notification to commissioner of termination — penalties.

1. An insurer or authorized representative of the insurer that terminates the appointment, employment, contract, or other insurance business relationship with an insurance producer shall notify the commissioner within thirty days following the effective date of the termination, using a format prescribed by the commissioner, if the reason for termination is one of the reasons set forth in section 522B.11, or the insurer has knowledge the insurance producer was found by a court, government body, or self-regulatory organization authorized by law to have engaged in any of the activities set forth in section 522B.11. Upon request of the commissioner, the insurer or authorized representative of the insurer shall provide additional information, documents, records, or other data pertaining to the termination or activity of the insurance producer.

2. An insurer or authorized representative of the insurer that terminates the appointment, employment, contract, or other insurance business relationship with an insurance producer for any reason not set forth in section 522B.11 shall notify the commissioner within thirty days following the effective date of the termination, using a format prescribed by the commissioner. Upon request of the commissioner, the insurer shall provide additional information, documents, records, or other data pertaining to the termination.

3. The insurer or the authorized representative of the insurer shall promptly notify the commissioner using a format prescribed by the commissioner if, upon further review or investigation, the insurer or authorized representative of the insurer discovers additional information that would have been reportable to the commissioner pursuant to subsection 1, had the insurer then known of its existence.

4. Within fifteen days after making the notification required by this section, the insurer shall mail a copy of the notification to the insurance producer at the insurance producer's last known address. If the insurance producer is terminated for any of the reasons set forth in section 522B.11, the insurer shall provide a copy of the notification to the insurance producer

at the insurance producer's last known address by restricted certified mail, as defined in section 618.15, or by overnight delivery using a nationally recognized carrier.

5. Within thirty days after the insurance producer has received the original or additional notification, the insurance producer may file written comments concerning the substance of the notification with the commissioner. The insurance producer, by the same means, shall simultaneously send a copy of the comments to the reporting insurer, and the comments shall become a part of the commissioner's record and accompany every copy of a report distributed or disclosed for any reason about the insurance producer, as permitted under subsection 8.

6. *a.* In the absence of actual malice, an insurer, the authorized representative of the insurer, an insurance producer, the commissioner, or an organization of which the commissioner is a member and that compiles the information and makes it available to other commissioners or regulatory or law enforcement agencies shall not be subject to civil liability. A civil cause of action of any nature shall not arise against any of these entities or their respective agents or employees, as a result of any statement or information required by or provided pursuant to this section or any information relating to any statement that may be requested in writing by the commissioner from an insurer or insurance producer; or a statement by a terminating insurer or insurance producer to an insurer or insurance producer limited solely and exclusively to whether a termination for cause under subsection 1 was reported to the commissioner, provided that the propriety of any termination for cause under subsection 1 is certified in writing by an officer or authorized representative of the insurer or insurance producer terminating the relationship.

b. In any action brought against a person that may have immunity under this section for making any statement required by this section or providing any information relating to any statement that may be requested by the commissioner, the party bringing the action shall plead specifically in any allegation that this section does not apply because the person making the statement or providing the information did so with actual malice. This section shall not abrogate or modify any existing statutory or common law privileges or immunities.

7. *a.* Any document, material, or other information in the control or possession of the insurance division that is furnished by an insurer, insurance producer, or an employee or agent of such insurer or insurance producer acting on behalf of the insurer or insurance producer, or obtained by the commissioner in an investigation pursuant to this section is considered a confidential record and shall not be subject to subpoena, or subject to discovery, or admissible in evidence in any private civil action. However, the commissioner is authorized to use such document, material, or other information in the furtherance of any regulatory or legal action brought as a part of the commissioner's duties.

b. Neither the commissioner nor any person who received any document, material, or other information while acting under the authority of the commissioner shall be permitted or required to testify in any private civil action concerning any confidential document, material, or information subject to this section.

8. *a.* The commissioner may share documents, materials, or other information, including the confidential and privileged documents, materials, or information subject to subsection 7, with other state, federal, and international regulatory agencies, with the national association of insurance commissioners, its affiliates or subsidiaries, and with state, federal, and international law enforcement authorities, provided that the recipient agrees to maintain the confidentiality and privileged status of the document, material, or other information.

b. The commissioner may receive documents, materials, or information, including otherwise confidential and privileged documents, materials, or information, from the national association of insurance commissioners, its affiliates or subsidiaries, and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any document, material, or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material, or information.

c. The commissioner may enter into agreements governing sharing and use of information consistent with this subsection.

9. A waiver of any applicable privilege or claim of confidentiality in the documents,

materials, or information shall not occur as a result of disclosure to the commissioner or sharing of information received under this section.

10. Nothing in this chapter shall prohibit the commissioner from releasing information regarding final, adjudicated actions that are considered public records subject to examination and copying under chapter 22 to a database or other clearinghouse service maintained by the national association of insurance commissioners, or an affiliate or subsidiary of the national association of insurance commissioners.

11. An insurer, the authorized representative of the insurer, or an insurance producer that fails to report as required under this section, or that is found to have reported with actual malice by a court of competent jurisdiction, after notice and hearing, may have its license or certificate of authority suspended or revoked and may be penalized as provided in section 522B.17.

2001 Acts, ch 16, §28, 37; 2001 Acts, ch 176, §72; 2012 Acts, ch 1023, §157

522B.15 Reciprocity.

1. The commissioner shall waive any requirements for a nonresident license applicant with a valid license from such applicant's home state, except for the requirements imposed by section 522B.7, if the applicant's home state awards nonresident licenses to residents of this state on the same basis.

2. A nonresident insurance producer's satisfaction of the producer's home state's continuing education requirements for licensed insurance producers shall constitute satisfaction of this state's continuing education requirements if the nonresident insurance producer's home state recognizes the satisfaction of its continuing education requirements imposed upon insurance producers from this state on the same basis.

2001 Acts, ch 16, §29, 37

522B.16 Reporting of actions.

1. An insurance producer shall report to the commissioner any administrative action taken against the insurance producer in another jurisdiction or by another governmental agency in this state within thirty days of the final disposition of the matter. This report shall include a copy of the order, consent to the order, and other relevant legal documents.

2. Within thirty days of the initial pretrial hearing date, an insurance producer shall report to the commissioner any criminal prosecution of the insurance producer taken in any jurisdiction. The report shall include a copy of the initial complaint filed, the order resulting from the hearing, and any other relevant legal documents.

2001 Acts, ch 16, §30, 37; 2002 Acts, ch 1050, §49; 2018 Acts, ch 1041, §127
Code editor directive applied

522B.16A Duties of licensees.

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

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

2004 Acts, ch 1110, §63

522B.16B Written consent to engage or participate in business of insurance.

1. A person who is prohibited by 18 U.S.C. §1033 from engaging or participating in the business of insurance because that person has been convicted of a crime under that statute or of a felony involving dishonesty or breach of trust may apply to the commissioner for written consent to engage or participate in the business of insurance in this state.

2. The commissioner, by rule, shall establish a procedure and standards for issuing such a written consent.

3. The commissioner shall not issue an insurance producer license to an applicant who has been convicted of a crime as set forth in subsection 1 unless the applicant has first obtained a written consent from the commissioner to engage or participate in the business of insurance in this state.

4. The commissioner shall not renew or issue an insurance producer license to an insurance producer licensee who has been convicted of a crime as set forth in subsection 1 unless that licensee has first obtained a written consent from the commissioner to engage or participate in the business of insurance in this state.

2006 Acts, ch 1117, §115

522B.17 Cease and desist orders — penalties.

1. An insurer or insurance producer who, after hearing, is found to have violated this chapter may be ordered to cease and desist from engaging in the conduct resulting in the violation and may be assessed a civil penalty pursuant to chapter 507B.

2. A person who, after hearing, is found to have violated this chapter by acting as an agent of an insurer or otherwise selling, soliciting, or negotiating insurance in this state, or offering to the public advice, counsel, or services with regard to insurance, who is not properly licensed may be ordered to cease and desist from engaging in the conduct resulting in the violation and may be assessed a civil penalty according to the provisions of chapter 507A.

3. If a person does not comply with an order issued pursuant to this section, the commissioner may petition a court of competent jurisdiction to enforce the order. The court shall not require the commissioner to post a bond in an action or proceeding under this section. If the court finds, after notice and opportunity for hearing, that the person is not in compliance with an order, the court may adjudge the person to be in civil contempt of the order. The court may impose a civil penalty against the person for contempt in an amount not less than three thousand dollars but not greater than ten thousand dollars for each violation and may grant any other relief that the court determines is just and proper in the circumstances.

2001 Acts, ch 16, §31, 37; 2005 Acts, ch 70, §48

Referred to in §505.8, 522B.6, 522B.11, 522B.14, 522B.17A

522B.17A Injunctive relief.

1. An association with at least twenty-five insurance producer members may bring an action in district court to enjoin a person from selling, soliciting, or negotiating insurance in violation of section 522B.2. However, before bringing an action in district court to enjoin a person pursuant to this section, an association shall file a complaint with the insurance division alleging that the person is selling, soliciting, or negotiating insurance in violation of section 522B.2.

2. If the division makes a determination to proceed administratively against the person for a violation of section 522B.2, the complainant shall not bring an action in district court against the person pursuant to this section based upon the allegations contained in the complaint filed with the division.

3. If the division does not make a determination to proceed administratively against the person for a violation of section 522B.2, the division shall issue, on or before ninety days from the date of filing of the complaint, a release to the complainant that permits the complainant to bring an action in district court pursuant to this section.

4. The filing of a complaint with the division pursuant to this section tolls the statute of limitations pursuant to section 614.1 as to the alleged violation for a period of one hundred twenty days from the date of filing the complaint.

5. Any action brought in district court by a complainant against a person pursuant to this section, based upon the allegations contained in the complaint filed with the division, shall be brought within one year after the ninety-day period following the filing of the complaint with the division, or the date of the issuance of a release by the division, whichever is earlier.

6. If the court finds that the person is in violation of section 522B.2 and enjoins the person from selling, soliciting, or negotiating insurance in violation of that section, the court's findings of fact and law, and the judgment and decree, when final, shall be admissible in any proceeding initiated pursuant to section 522B.17 by the commissioner against the person enjoined and the person enjoined shall be precluded from contesting in that proceeding the court's determination that the person sold, solicited, or negotiated insurance in violation of section 522B.2.

2005 Acts, ch 70, §49

522B.18 Rules.

The commissioner may adopt reasonable rules according to chapter 17A as are necessary or proper to carry out the purposes of this chapter.

2001 Acts, ch 16, §32, 37

CHAPTER 522C

LICENSING OF PUBLIC ADJUSTERS

Referred to in §87.4, 296.7, 331.301, 364.4, 505.28, 505.29, 669.14, 670.7

522C.1	Purpose.	522C.4	License required.
522C.2	Definitions.	522C.5	Application for license.
522C.3	Authority of the commissioner.	522C.6	Penalties.

522C.1 Purpose.

The purpose of this chapter is to govern the qualifications and procedures for licensing public adjusters in this state, and to specify the duties of and restrictions on public adjusters, including limitation of such licensure to assisting insureds only with first-party claims.

2007 Acts, ch 137, §24

522C.2 Definitions.

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

1. *"Business entity"* means a corporation, association, partnership, limited liability company, limited liability partnership, or any other legal entity.

2. *"Commissioner"* means the commissioner of insurance.

3. *"Fingerprints"* means an impression of the lines on a human finger taken for the purposes of identification. The impression may be electronic or in ink converted to an electronic format.

4. *"First-party claim"* means a claim filed by a person insured under the insurance policy against which the claim is made.

5. *"Individual"* means a natural person.

6. *"Person"* means an individual or a business entity.

7. *"Public adjuster"* means any person who for compensation or any other thing of value acts on behalf of an insured by doing any of the following:

a. Acting for or aiding an insured in negotiating for or effecting the settlement of a first-party claim for loss or damage to real or personal property of the insured.

b. Advertising for employment as a public adjuster of first-party insurance claims or otherwise soliciting business or representing to the public that the person is a public adjuster of first-party insurance claims for loss or damage to real or personal property of an insured.

c. Directly or indirectly soliciting business investigating or adjusting losses, or advising an insured about first-party claims for loss or damage to real or personal property of the insured.

8. *"Uniform business entity application"* means the current version of the national association of insurance commissioners' uniform business entity application for resident and nonresident business entities.

9. *"Uniform individual application"* means the current version of the national association

of insurance commissioners' uniform individual application for resident and nonresident individuals.

2007 Acts, ch 137, §25

522C.3 Authority of the commissioner.

1. The commissioner shall adopt rules pursuant to chapter 17A as necessary to administer and enforce this chapter.

2. The commissioner shall adopt rules including but not limited to all of the following:

a. Advertising standards.

b. Continuing education requirements for licensees.

c. Contracts between public adjusters and insureds.

d. Required disclosures by licensees.

e. Examinations for licensure.

f. Exemptions.

g. License bonds and errors and omissions insurance requirements.

h. License requirements and exclusions.

i. Prohibited practices.

j. Record retention requirements.

k. Reporting requirements.

l. Requirements and limitations on fees charged by public adjusters.

m. Standards for reasonableness of payment.

n. Standards of conduct.

o. Penalties.

2007 Acts, ch 137, §26

522C.4 License required.

A person shall not operate as or represent that the person is a public adjuster in this state unless the person is licensed by the commissioner in accordance with this chapter.

2007 Acts, ch 137, §27

522C.5 Application for license.

1. A person applying for a public adjuster license shall make application on a uniform individual application or uniform business entity application as prescribed by the commissioner pursuant to rules adopted under chapter 17A.

2. In determining eligibility for licensure under this chapter, the commissioner shall require each individual applying for a public adjuster license to submit a full set of fingerprints with the application. The commissioner shall also require each business entity applying for licensure under this chapter to submit a full set of fingerprints for each individual who will be acting as a public adjuster on behalf of the business entity. The commissioner shall conduct a state and national criminal history record check on each applicant. The commissioner is authorized to submit fingerprints and any required fees to the state department of public safety, the state attorney general, and the federal bureau of investigation for the performance of such criminal record checks.

a. The commissioner may contract for the collection, transmission, and resubmission of fingerprints required under this section and may contract for a reasonable fingerprinting fee to be charged by the contractor for these services. Any fees for the collection, transmission, and retention of fingerprints submitted pursuant to this subsection shall be paid directly to the contractor by the applicant.

b. The commissioner may waive submission of fingerprints by any person who has previously furnished fingerprints if those fingerprints are on file with the central repository of the national association of insurance commissioners, its affiliates, or subsidiaries.

c. The commissioner may receive criminal history record information concerning an applicant that was requested by the state department of justice directly from the federal bureau of investigation.

d. The commissioner may submit electronic fingerprint records and necessary identifying information to the national association of insurance commissioners, its affiliates, or

subsidiaries for permanent retention in a centralized repository whose purpose is to provide state insurance commissioners with access to fingerprint records in order to perform criminal history record checks.

2007 Acts, ch 137, §28

522C.6 Penalties.

1. The commissioner may place on probation, suspend, revoke, or refuse to issue or renew a public adjuster's license or may levy a civil penalty as provided in section 505.7A if a licensed public adjuster is found after hearing to be in violation of the requirements of this chapter or rules adopted or orders issued pursuant to this chapter.

2. A person acting as a public adjuster without proper licensure or a public adjuster who willfully violates any provision of this chapter or any rule adopted or order issued under this chapter is guilty of a serious misdemeanor.

3. *a.* A licensed public adjuster who, after hearing, is found to have violated this chapter or any rule adopted or order issued pursuant to this chapter, may be ordered to cease and desist from engaging in the conduct resulting in the violation and may be assessed a civil penalty as provided in section 505.7A.

b. A person who, after hearing, is found to have violated this chapter by acting as a public adjuster without proper licensure may be ordered to cease and desist from engaging in the conduct resulting in the violation and may be assessed a civil penalty according to the provisions of chapter 507A.

c. If a person has engaged, is engaging, or is about to engage in any act or practice constituting a violation of this chapter or any rule adopted or order issued pursuant to this chapter, the commissioner may issue a summary order that includes a brief statement of findings of fact, conclusions of law, and policy reasons for the order, and that directs the person to cease and desist from engaging in the act or practice constituting the violation and that may assess a civil penalty or take other affirmative action as in the judgment of the commissioner is necessary to assure that the person complies with the requirements of this chapter as provided in chapter 507A.

d. If a person does not comply with an order issued pursuant to this subsection, the commissioner may petition a court of competent jurisdiction to enforce the order. The court shall not require the commissioner to post a bond in an action or proceeding under this subsection. If the court finds, after notice and opportunity for hearing, that the person is not in compliance with an order, the court may adjudge the person to be in civil contempt of the order. The court may impose a civil penalty against the person for contempt in an amount not less than three thousand dollars but not greater than ten thousand dollars for each violation and may grant any other relief that the court determines is just and proper in the circumstances.

2007 Acts, ch 137, §29; 2013 Acts, ch 124, §29

CHAPTER 522D

LICENSING OF HEALTH PLAN NAVIGATORS

Referred to in §87.4, 296.7, 331.301, 364.4, 505.28, 505.29, 669.14, 670.7

For future contingent repeal of chapter, see §522D.12

522D.1 Definitions.
522D.2 License required.
522D.3 Actions prohibited.
522D.4 Written examination.
522D.5 Application for license.
522D.6 License.
522D.7 License denial, nonrenewal, or revocation.
522D.8 Cease and desist orders — penalties.
522D.9 Injunctive relief.
522D.10 Rules.
522D.11 Severability.
522D.12 Future repeal.

522D.1 Definitions.

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

1. "*Commissioner*" means the commissioner of insurance.

2. "*Navigator*" means a public or private entity or an individual that is qualified and licensed, if appropriate, to engage in the activities and meet the standards described in 45 C.F.R. §155.210.

2012 Acts, ch 1138, §121

522D.2 License required.

A person shall not act as a navigator in this state unless the person is licensed by the commissioner as required in this chapter.

2012 Acts, ch 1138, §122
Referred to in §522D.9

522D.3 Actions prohibited.

A navigator shall not perform the functions of a person required to be licensed as an insurance producer under chapter 522B unless the navigator is licensed as a navigator pursuant to this chapter and as an insurance producer pursuant to chapter 522B.

2012 Acts, ch 1138, §123

522D.4 Written examination.

1. An individual applying for a navigator license shall pass a written examination. The examination shall test the knowledge of the individual concerning the duties and responsibilities of a navigator and the insurance laws and regulations of this state. The commissioner shall adopt rules pursuant to chapter 17A related to the development and conduct of the examination.

2. The commissioner may make arrangements, including contracting with an outside testing service or other appropriate entity, for administering examinations and collecting fees.

3. An individual applying for an examination shall remit a nonrefundable fee as established by rule of the commissioner.

4. An individual who fails to appear for the examination as scheduled or fails to pass the examination shall reapply for an examination and remit all required fees and forms before being rescheduled for another examination.

2012 Acts, ch 1138, §124
Referred to in §522D.5, 522D.6

522D.5 Application for license.

1. A person applying for a navigator license shall make application to the commissioner on an application form approved by the commissioner and declare under penalty of refusal, suspension, or revocation of the license that the statements made on the application are true, correct, and complete to the best of the individual's knowledge and belief. Before approving the application, the commissioner shall find all of the following:

a. The individual is at least eighteen years of age.

b. The individual has not committed any act that is a ground for denial, suspension, or revocation as set forth in section 522D.7.

c. The individual has paid the license fee, as established by the commissioner by rule.

d. The individual has successfully completed the initial training and education program for a license as established by the commissioner by rule.

e. The individual has successfully passed the examination as provided in section 522D.4.

f. In order to protect the public interest, the individual has the requisite character and competence to receive a license as a navigator.

2. A public or private entity acting as a navigator may elect to obtain a navigator license. Application shall be made using the application form approved by the commissioner. Prior to approving the application, the commissioner shall find both of the following:

a. The entity has paid the appropriate fees.

b. The entity has designated a licensed navigator responsible for the entity's compliance with this chapter.

2012 Acts, ch 1138, §125
Referred to in §522D.6

522D.6 License.

1. A person who meets the requirements of sections 522D.4 and 522D.5, unless otherwise denied licensure pursuant to section 522D.7, shall be issued a navigator license. A navigator license is valid for three years.

2. A navigator license remains in effect unless revoked or suspended as long as all required fees are paid and continuing education requirements are met by any applicable due date. A navigator is required to complete continuing education requirements required by law in order to be eligible for license renewal.

3. A licensed navigator who is unable to comply with license renewal procedures due to military service or other extenuating circumstances may request a waiver of those procedures. The licensed navigator may also request a waiver of any examination requirement or any other penalty or sanction imposed for failure to comply with renewal procedures.

4. The license shall contain the licensee's name, address, personal identification number, the date of issuance, the expiration date, and any other information the commissioner deems necessary.

5. A licensee shall inform the commissioner by any means acceptable to the commissioner of a change of legal name or address within thirty days of the change. Failure to timely inform the commissioner of a change of legal name or address may result in a penalty as specified in section 522D.7.

6. The commissioner shall require by rule that a licensed navigator furnish a surety bond or other evidence of financial responsibility that protects all persons against wrongful acts, misrepresentations, errors, omissions, or negligence of the navigator.

7. In order to assist with the commissioner's duties, the commissioner may contract with a nongovernmental entity, including the national association of insurance commissioners or any affiliate or subsidiary the national association of insurance commissioners oversees, to perform any ministerial functions, including the collection of fees, related to navigator licensing that the commissioner deems appropriate.

2012 Acts, ch 1138, §126

522D.7 License denial, nonrenewal, or revocation.

1. The commissioner may place on probation, suspend, revoke, or refuse to issue or renew a navigator's license or may levy a civil penalty as provided in section 522D.8 for any one or more of the following causes:

a. Providing incorrect, misleading, incomplete, or materially untrue information in the license application.

b. Violating any insurance laws, or violating any regulation, subpoena, or order of the commissioner or of a commissioner of another state.

c. Obtaining or attempting to obtain a license through misrepresentation or fraud.

d. Improperly withholding, misappropriating, or converting any moneys or properties received in the course of doing insurance business.

e. Intentionally misrepresenting the terms of an actual or proposed insurance contract or application for insurance.

f. Having been convicted of a felony.

g. Having admitted or been found to have committed any unfair insurance trade practice or fraud.

h. Using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this state or elsewhere.

i. Having a navigator license, or its equivalent, denied, suspended, or revoked in any other state, province, district, or territory.

j. Forging another's name to an application for insurance or to any document related to an insurance transaction.

k. Improperly using notes or any other reference material to complete an examination for a navigator license.

l. Failing to comply with an administrative or court order imposing a child support obligation.

m. Failing to comply with an administrative or court order related to repayment of loans to the college student aid commission.

n. Failing to pay state income tax or comply with any administrative or court order directing payment of state income tax.

o. Failing or refusing to cooperate in an investigation by the commissioner.

2. If the commissioner does not renew a license or denies an application for a license, the commissioner shall notify the applicant or licensee and advise, in writing, the licensee or applicant of the reason for the nonrenewal of the license or denial of the application for a license. The licensee or applicant may request a hearing on the nonrenewal or denial. A hearing shall be conducted according to section 507B.6.

3. The license of a public or private entity operating as a navigator may be suspended, revoked, or refused if the commissioner finds, after hearing, that an individual navigator licensee's violation was known or should have been known by a partner, officer, or manager acting on behalf of the entity and the violation was not reported to the commissioner and corrective action was not taken.

4. In addition to, or in lieu of, any applicable denial, suspension, or revocation of a license, a person, after hearing, may be subject to a civil penalty as provided in section 522D.8.

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

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

b. Investigative information in the possession of the commissioner or the commissioner's employees or agents that relates to licensee discipline may be disclosed, in the commissioner's discretion, to appropriate licensing authorities within this state, the appropriate licensing authority in another state, the District of Columbia, or a territory or country in which the licensee is licensed or has applied for a license.

c. If the investigative information in the possession of the commissioner or the

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

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

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

2012 Acts, ch 1138, §127
Referred to in §522D.5, 522D.6

522D.8 Cease and desist orders — penalties.

1. A navigator who, after hearing, is found to have violated this chapter, may be ordered to cease and desist from engaging in the conduct resulting in the violation and may be assessed a civil penalty pursuant to chapter 507B.

2. If a person does not comply with an order issued pursuant to this section, the commissioner may petition a court of competent jurisdiction to enforce the order. The court shall not require the commissioner to post a bond in an action or proceeding under this section. If the court finds, after notice and opportunity for hearing, that the person is not in compliance with an order, the court may adjudge the person to be in civil contempt of the order. The court may impose a civil penalty against the person for contempt in an amount not less than three thousand dollars but not greater than ten thousand dollars for each violation and may grant any other relief that the court determines is just and proper in the circumstances.

2012 Acts, ch 1138, §128
Referred to in §522D.7, 522D.9

522D.9 Injunctive relief.

1. A person may bring an action in district court to enjoin another person from acting as a navigator in violation of section 522D.2. However, before bringing an action in district court to enjoin a person pursuant to this section, the person shall file a complaint with the insurance division alleging that another person is acting as a navigator in violation of section 522D.2.

2. If the division makes a determination to proceed administratively against the person for a violation of section 522D.2, the complainant shall not bring an action in district court against the person pursuant to this section based upon the allegations contained in the complaint filed with the division.

3. If the division does not make a determination to proceed administratively against the person for a violation of section 522D.2, the division shall issue, by ninety days from the date of filing of the complaint, a release to the complainant that permits the complainant to bring an action in district court pursuant to this section.

4. The filing of a complaint with the division pursuant to this section tolls the statute of limitations pursuant to section 614.1 as to the alleged violation for a period of one hundred twenty days from the date of filing the complaint.

5. Any action brought in district court by a complainant against a person pursuant to this section, based upon the allegations contained in the complaint filed with the division, shall be brought within one year after the ninety-day period following the filing of the complaint with the division, or the date of the issuance of a release by the division, whichever is earlier.

6. If the court finds that the person is in violation of section 522D.2 and enjoins the person from acting as a navigator in violation of that section, the court's findings of fact and law, and the judgment and decree, when final, shall be admissible in any proceeding initiated pursuant to section 522D.8 by the commissioner against the person enjoined and the person enjoined shall be precluded from contesting in that proceeding the court's determination that the person acted as a navigator in violation of section 522D.2.

2012 Acts, ch 1138, §129

522D.10 Rules.

The commissioner may adopt rules pursuant to chapter 17A as are necessary or proper to carry out the purposes of this chapter.

2012 Acts, ch 1138, §130

522D.11 Severability.

If any provision of this chapter or its application to any person or circumstance is held invalid by a court of competent jurisdiction or by federal law, the invalidity does not affect other provisions or applications of the chapter that can be given effect without the invalid provision or application, and to this end the provisions of the chapter are severable and the valid provisions or applications shall remain in full force and effect.

2012 Acts, ch 1138, §131

522D.12 Future repeal.

If the federal law providing for the sale of qualified health benefit plans of the state is repealed by federal legislation or is ruled invalid by a decision of the United States supreme court, the commissioner shall notify the Iowa Code editor of the effective date of the repeal or the date of the ruling. This chapter is repealed on the effective date of such federal legislation or the date of the United States supreme court decision.

2012 Acts, ch 1138, §132

CHAPTER 522E

SALE OF PORTABLE ELECTRONICS INSURANCE

Referred to in §87.4, 296.7, 331.301, 364.4, 505.28, 505.29, 669.14, 670.7

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522E.1 Definitions.

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

1. *"Commissioner"* means the commissioner of insurance.

2. *"Consumer"* means a person who purchases portable electronics in a retail transaction.

3. *"Endorsee"* means an unlicensed employee or authorized representative of a licensed portable electronics vendor.

4. *"Enrollment"* means the process of soliciting or accepting enrollments or applications from a consumer under a portable electronics insurance policy, which includes informing the consumer of the availability of coverage, preparing and delivery of the certificate of insurance or notice of proposed insurance, or otherwise assisting the consumer in making an informed decision whether or not to elect to purchase portable electronics insurance.

5. *"Free-trial offer"* means an offer to a consumer under which portable electronics insurance is provided free of charge for a limited time period subsequent to which a charge is made to the consumer for the insurance.

6. *a. "License period"* means all of that three-year period beginning as described in paragraph *"b"*, subparagraph (1) or (2), as applicable, and ending the second succeeding year on the last calendar day of the month in which the initial license was issued.

b. A license period shall be determined for each person as follows:

(1) Upon initial licensing, the license period shall start on the date the license is issued.

(2) For a subsequent license, the license period shall start on the first day following the month in which the initial license was issued.

c. A license shall be renewed on or before the expiration date of the license period.

7. *a.* *"Portable electronics"* means any of the following devices:

(1) Personal, self-contained, easily carried by an individual, battery-operated electronic communication, viewing, listening, recording, gaming, computing, or global positioning devices, including cell or satellite phones, pagers, personal global positioning satellite units, portable computers, portable audio listening, video viewing or recording devices, digital cameras, video camcorders, portable gaming systems, docking stations, and automatic answering devices, including their accessories and service related to the use of the devices.

(2) Any other electronic device that is portable in nature that the commissioner approves.

b. *"Portable electronics"* does not include telecommunications switching equipment, transmission wires, cell site transceiver equipment, or other equipment and systems used by telecommunications companies to provide telecommunications service to consumers.

8. *a.* *"Portable electronics insurance"* means a contract providing coverage for the repair or replacement of portable electronics against any one or more of the following causes of loss: loss, theft, mechanical failure, malfunction, damage, or other applicable perils.

b. *"Portable electronics insurance"* does not include any of the following:

(1) A service contract or extended warranty providing coverage limited to the repair, replacement, or maintenance of property for the operational or structural failure of property due to a defect in materials, workmanship, accidental damage from handling, power surges, or normal wear and tear.

(2) A policy of insurance covering a seller's or a manufacturer's obligations under a warranty.

(3) A homeowner's, renter's, private passenger automobile, commercial multiperil, or similar policy.

9. *"Portable electronics insurance license"* means a document issued by the commissioner pursuant to this chapter authorizing a portable electronics vendor to offer or sell portable electronics insurance in this state.

10. *"Portable electronics vendor"* means any person in the business, directly or indirectly, of selling, reselling, soliciting, or leasing portable electronics, their accessories, and related services to consumers.

2015 Acts, ch 87, §1, 16

522E.2 Licensure required.

A person shall not offer or sell any form of portable electronics insurance in this state unless the person is licensed as an insurance producer pursuant to chapter 522B, is issued a portable electronics insurance license pursuant to this chapter, or is an endorsee who is in compliance with section 522E.6.

2015 Acts, ch 87, §2, 16

522E.3 Portable electronics insurance license.

A portable electronics vendor that applies for a license and complies with the requirements of this chapter shall be issued a portable electronics insurance license by the commissioner that authorizes the licensee and the licensee's endorsees to offer or sell portable electronics insurance to a consumer in connection with, and incidental to, the sale of portable electronics or the sale and provision of accessories or services related to the use of portable electronics.

2015 Acts, ch 87, §3, 16

522E.4 Application and fees.

1. A portable electronics vendor applying for a portable electronics insurance license under this chapter shall submit all of the following to the commissioner:

a. A written application for licensure, signed by the applicant or an officer of the applicant, in the form prescribed by the commissioner.

b. A certificate by the insurer that is to be named in the portable electronics insurance

license, stating that the insurer is satisfied that the named applicant is trustworthy and competent to act as a portable electronics insurance licensee limited to this purpose and that the insurer will appoint the applicant to act as its agent to transact the kind or kinds of insurance that are permitted by this chapter if the portable electronics insurance license applied for is issued by the commissioner. The certification shall be subscribed by an officer or managing agent of the insurer on a form prescribed by the commissioner.

c. An application fee of the lesser of fifty dollars per each endorsee at a location of the vendor or five hundred dollars per location valid for a three-year period and, for each three-year period thereafter, a renewal fee in the same amount. A maximum fee of five thousand dollars shall apply for licensure of a portable electronics vendor with multiple locations. The fees collected shall be deposited as provided in section 505.7.

2. Costs associated with any enforcement action against or investigation of a portable electronics vendor licensed under this chapter shall be paid for by the portable electronics vendor.

2015 Acts, ch 87, §4, 16
Referred to in §522E.6

522E.5 License renewal.

1. Not less than sixty days before a portable electronics insurance license will expire, the commissioner may use an electronic delivery method, including electronic mail or other similar electronic method of delivery, to deliver, or may mail, to the latest electronic mail or mailing address appearing in the commissioner's records, an application to the licensee to renew a portable electronics insurance license for the appropriate succeeding license term. It is the licensee's responsibility to renew the license, whether or not a renewal notice is received.

2. The commissioner may accept a late renewal without penalty, provided that the licensee's failure to comply is due to a clerical error or inadvertence.

3. An application for renewal of a portable electronics insurance license may be filed on or before the expiration date of the license. An application for renewal of an expired license may be filed after the expiration date and until that same month and date of the next succeeding year.

4. The commissioner shall impose a penalty fee equal to one-half of the renewal fee for the portable electronics insurance license for any application for renewal that is filed after the expiration date of the license.

2015 Acts, ch 87, §5, 16

522E.6 Endorsee requirements.

An endorsee of a portable electronics vendor that has been issued a portable electronics insurance license pursuant to this chapter may sell or offer insurance products under the authority of the vendor's portable electronics insurance license if all of the following conditions have been met:

1. The endorsee is eighteen years of age or older.

2. The portable electronics vendor, at the time of submission of an application for a portable electronics insurance license pursuant to section 522E.4, includes a list of all locations in this state at which the vendor intends to offer coverage under a policy of portable electronics insurance. The list shall be maintained by the portable electronics vendor in a form prescribed by, or format acceptable to, the commissioner, shall be updated annually, and shall be made available to the commissioner for review and inspection upon request.

3. The portable electronics vendor provides for the training of its endorsees under a program developed by a licensed property and casualty insurance producer prior to allowing its endorsees to offer or sell portable electronics insurance. The training shall meet the following minimum standards:

a. Each endorsee shall receive instruction about the applicable kinds or types of portable electronics insurance authorized for sale to prospective consumers in this state as provided in section 522E.9, subsection 5.

b. Each endorsee shall receive training about ethical sales practices.

c. Each endorsee shall receive training about the disclosures to be given to prospective consumers pursuant to section 522E.9.

d. The retraining of endorsees shall be conducted whenever there is a material change in the insurance products sold that requires modification of the training materials, but in no event less frequently than every three years for each endorsee.

e. The portable electronics vendor shall maintain a list of its endorsees who have completed the required training, and make the list available to the commissioner upon request.

2015 Acts, ch 87, §6, 16
Referred to in §522E.2

522E.7 Endorsee conduct.

An endorsee may act on behalf of and under the supervision of a licensed portable electronics vendor in matters relating to transacting portable electronics insurance under that vendor's license. The conduct of an endorsee acting within the scope of the endorsee's employment or agency shall be deemed the conduct of the licensed portable electronics vendor for purposes of this chapter.

2015 Acts, ch 87, §7, 16

522E.8 Violations and penalties.

1. If a licensed portable electronics vendor or endorsee violates any provision of this chapter or any other provision of this title, the commissioner may do any of the following:

a. After notice and hearing, suspend or revoke the license of the portable electronics vendor.

b. After notice and hearing, impose penalties on the portable electronics vendor for its conduct or that of its endorsees.

c. After notice and hearing, impose other penalties that the commissioner deems necessary and convenient to carry out the purposes of this chapter, including suspending the privilege of transacting portable electronics insurance pursuant to this chapter at specific business locations of the portable electronics vendor where violations have occurred, imposing penalties on the portable electronics vendor, and suspending or revoking the ability of individual endorsees to act under the vendor's license.

2. If any person sells insurance in connection with, or incidental to, the sale of portable electronics or the sale or provision of accessories or services related thereto, or holds oneself or an organization out as a licensed portable electronics vendor without obtaining the license required by this chapter, or as being an insurance producer licensed pursuant to chapter 522B without obtaining that license, the commissioner may issue a cease and desist order.

2015 Acts, ch 87, §8, 16

522E.9 Requirements at time of sale.

A licensed portable electronics vendor shall not sell portable electronics insurance pursuant to this chapter unless, at the time of sale, or reasonably thereafter with respect to a sale or enrollment occurring by telephone, all of the following conditions are satisfied:

1. The portable electronics vendor provides brochures or other written materials to the prospective consumer that do all of the following:

a. Summarize the material terms and conditions of coverage offered, including the identity of the insurer.

b. Describe the process for filing a claim, including a toll-free telephone number to report a claim.

c. Disclose any additional information on the price, benefits, exclusions, conditions, or other limitations of those policies that the commissioner may, by rule, prescribe.

d. Provide the name, address, telephone number, and license number of the portable electronics vendor or the property and casualty insurance broker-agent appointed by the insurer issuing portable electronics insurance coverage to the portable electronics vendor.

2. The portable electronics vendor or its endorsees make all of the following disclosures, which shall either be acknowledged in writing by the consumer, be provided in writing to

the consumer, or, for sales made in person, shall be displayed by clear and conspicuous signs that are posted at every location where portable electronics insurance contracts are executed, such as the counter where the consumer signs the portable electronics insurance contract:

a. That the purchase by the consumer of the kinds of insurance prescribed in this chapter is not required in order to purchase portable electronics, accessories, or related services.

b. That the insurance policies offered by the portable electronics vendor may provide a duplication of coverage already provided by other insurance policies covering the consumer.

c. That the vendor or endorsee of the portable electronics vendor is not qualified or authorized to evaluate the adequacy of the consumer's existing insurance coverages, unless that person is licensed pursuant to chapter 522B.

d. That the consumer may cancel the insurance at any time. If the consumer cancels, any unearned premium will be refunded in accordance with applicable law.

3. The material terms and conditions of coverage are provided to every person who elects to purchase the coverage.

4. Costs for the insurance are separately itemized in any billing statement for the insurance. However, if the portable electronics insurance is included with the purchase or lease of portable electronics and accessories or related services, the portable electronics vendor shall clearly and conspicuously disclose to the consumer that the insurance coverage is included with the purchase of the portable electronics or related services and shall disclose the stand-alone cost of the premium for the same or similar insurance, if any, on the consumer's bill and in any marketing materials made available at the point of sale.

5. The portable electronics insurance is provided under an individual policy issued to the consumer, or under a group or master policy issued to an organization through a licensed insurance producer or through a licensed portable electronics vendor by an insurer authorized to transact the applicable kinds or types of insurance in this state.

6. Portable electronics insurance shall not be sold through a free-trial offer.

2015 Acts, ch 87, §9, 16

Referred to in §522E.6

522E.10 Charges and collection of moneys.

1. Charges for portable electronics insurance may be billed and collected by a licensed portable electronics vendor. A licensed vendor shall not be required to maintain those moneys in a segregated account if the insurer represented by the vendor has provided in writing that the moneys need not be segregated from moneys received by the portable electronics vendor on account of the sale or lease of portable electronics or related services or accessories.

2. All moneys received by a licensed portable electronics vendor from a consumer for the sale of portable electronics insurance shall be considered moneys held in trust by the portable electronics vendor in a fiduciary capacity for the benefit of the insurer. A licensed portable electronics vendor may receive compensation for billing and collection services.

2015 Acts, ch 87, §10, 16

522E.11 Other restrictions.

1. Under the authority of a portable electronics insurance license, a portable electronics vendor shall not do any of the following:

a. Offer to sell insurance except in conjunction with, and incidental to, the business of selling portable electronics, their accessories, or related services.

b. Advertise, represent, or otherwise portray itself or its endorsees as licensed insurers or property and casualty insurance broker-agents.

c. Pay an endorsee compensation based primarily on the number of consumers electing coverage under the portable electronics vendor's license. However, this chapter does not prohibit the payment of compensation to an endorsee of a portable electronics vendor for activities under the vendor's license that is incidental to the endorsee's overall compensation. The incidental compensation shall not exceed fifteen dollars per transaction for portable electronics insurance coverage.

2. Unless lawfully transacting the business of insurance pursuant to a certificate of authority issued for the appropriate class of insurance, a person obligated to perform under

a contract offered in or from this state that meets the definition of portable electronics insurance shall be deemed to be unlawfully transacting the business of insurance.

2015 Acts, ch 87, §11, 16

522E.12 Policy forms.

An insurer that provides insurance to be sold by a licensed portable electronics vendor shall file a copy of the policy form issued to a consumer, or of any policy or certificate issued under a group or master policy to an organization through an insurance producer licensed under chapter 522B or through a licensed portable electronics vendor, with the commissioner, who shall make the policy form available to the public.

2015 Acts, ch 87, §12, 16

522E.13 Portable electronics insurance policy — changes — termination.

1. An insurer may terminate a portable electronics insurance policy or otherwise change the terms and conditions of a portable electronics insurance policy only upon providing the licensed portable electronics vendor that is the policyholder and enrolled consumers with at least thirty calendar days' written notice.

2. If the insurer changes the terms and conditions of a policy of portable electronics insurance, the insurer shall provide the licensed portable electronics vendor that is the policyholder with a revised policy or endorsement and each enrolled consumer with a revised certificate, endorsement, updated brochure, or other evidence indicating that a change in the terms and conditions of the policy has occurred and a summary of those changes.

3. Notwithstanding subsection 1, an insurer may terminate an enrolled consumer's enrollment under a portable electronics insurance policy upon fifteen calendar days' notice for discovery of fraud or material misrepresentation in obtaining coverage or in the presentation of a claim under the policy.

4. Notwithstanding subsection 1, an insurer may immediately terminate an enrolled consumer's enrollment under a portable electronics insurance policy without prior notice for any of the following reasons:

a. Nonpayment of premium.

b. If the enrolled consumer ceases to have an active service with the licensed portable electronics vendor that is the policyholder.

c. If the enrolled consumer exhausts the aggregate limit of liability, if any, under the terms of the portable electronics insurance policy and the insurer sends notice of termination to the enrolled consumer within thirty calendar days after exhaustion of the limit. However, if notice is not sent within thirty calendar days, enrollment shall continue notwithstanding the aggregate limit of liability until thirty calendar days from the date the insurer sends notice of termination to the enrolled consumer.

5. If a portable electronics insurance policy is terminated by the licensed portable electronics vendor that is the policyholder, the portable electronics vendor shall mail or deliver a written notice to each enrolled consumer advising the enrolled consumer of the termination of the policy and the effective date of termination. The written notice shall be mailed or delivered by the portable electronics vendor to the enrolled consumer at least thirty calendar days prior to the termination. However, if the notice is not sent within thirty calendar days, enrollment shall continue until thirty calendar days from the date the portable electronics vendor sends notice of termination to the enrolled consumer or until a new portable electronics insurance policy is in effect.

6. Whenever notice or correspondence with respect to a policy of portable electronics insurance is required pursuant to this section, it shall be in writing and sent within the notice period required pursuant to this section. Notices and correspondence shall be sent to the licensed portable electronics vendor that is the policyholder at the portable electronics vendor's mailing address specified for that purpose and to its affected enrolled consumers' last known mailing addresses on file with the insurer or the portable electronics vendor. The insurer or portable electronics vendor shall maintain proof that the notice or correspondence was sent for not less than three years after that notice or correspondence was sent.

2015 Acts, ch 87, §13, 16

522E.14 Rules.

The commissioner may adopt rules pursuant to chapter 17A to implement and administer this chapter.

2015 Acts, ch 87, §14, 16

522E.15 Application of other law.

Nothing in this chapter regulating the sale of portable electronics insurance shall be construed to impair or impede the application of any other law regulating the sale of portable electronics insurance.

2015 Acts, ch 87, §15, 16

CHAPTER 523

ELECTIONS AND INSIDER TRADING

Referred to in §87.4, 296.7, 331.301, 364.4, 505.28, 505.29, 669.14, 670.7

523.1	Proxies authorized.	523.8	Profit in trading stock to inure to company.
523.2	Conditions.	523.9	Penalty for selling stock not directly owned by seller.
523.3	and 523.4 Repealed by 65 Acts, ch 402, §1.	523.10	Exceptions — rules by commissioner.
523.5	Proportionate representation. Repealed by 2007 Acts, ch 137, §30.	523.11	Arbitrage transactions excepted.
523.6	Amendment of articles. Repealed by 2007 Acts, ch 137, §30.	523.12	Equity security defined.
523.7	Statement of stock ownership filed with commissioner.	523.13	Exceptions as to domestic stock companies.
		523.14	Rules.

523.1 Proxies authorized.

Any insurance company or association organized under the laws of this state, may provide in its articles of incorporation, that its members or stockholders may vote by proxies, voluntarily given, upon all matters of business coming before the stated or called meetings of the stockholders or members, including the election of directors.

[S13, §1821-x; C24, 27, 31, 35, 39, §**9124;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §523.1]

523.2 Conditions.

The commissioner of insurance shall promulgate such rules with respect to the solicitation and voting of proxies as will in the commissioner's opinion best protect the interests of all stockholders or policyholders from whom they are solicited. Any violation of any rule promulgated hereunder shall be deemed a simple misdemeanor.

[S13, §1821-x; C24, 27, 31, 35, 39, §**9125;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §523.2]

523.3 and 523.4 Repealed by 65 Acts, ch 402, §1.

523.5 Proportionate representation. Repealed by 2007 Acts, ch 137, §30.

523.6 Amendment of articles. Repealed by 2007 Acts, ch 137, §30.

523.7 Statement of stock ownership filed with commissioner.

1. Every person who is directly or indirectly the beneficial owner of more than ten percent of any class of any equity security of a domestic stock insurance company, or who is a director or an officer of such company, shall file in the office of the commissioner of insurance as

prescribed by rule a statement, in a form as the commissioner may prescribe, of the amount of all equity securities of the company of which the person is the beneficial owner.

2. Within the time frame prescribed by rule, if there has been a change in the ownership during a time period prescribed by rule, a person who is directly or indirectly the beneficial owner of more than ten percent of any class of any equity security of a domestic stock insurance company, or who is a director or an officer of such company, shall file in the office of the commissioner a statement, in a form as the commissioner may prescribe, indicating the person's ownership at the close of the time period prescribed by rule and any changes in the person's ownership as have occurred during the time period prescribed by rule.

[C66, 71, 73, 75, 77, 79, 81, §523.7]
2003 Acts, ch 91, §50
Referred to in §523.11, 523.12, 523.13, 523.14

523.8 Profit in trading stock to inure to company.

For the purpose of preventing the unfair use of information which may have been obtained by such beneficial owner, director or officer by reason of the relationship to such company, any profit realized by the beneficial owner, director or officer from any purchase and sale, or any sale and purchase, of any equity security of such company within any period of less than six months, unless such security was acquired in good faith in connection with a debt previously contracted, shall inure to and be recoverable by the company, irrespective of any intention on the part of such beneficial owner, director or officer in entering into such transaction of holding the security purchase or of not repurchasing the security sold for a period exceeding six months. Suit to recover such profit may be instituted at law or in equity in any court of competent jurisdiction by the company, or by the owner of any security of the company in the name and in behalf of the company if the company shall fail or refuse to bring such suit within sixty days after request or shall fail diligently to prosecute the same thereafter; but no such suit shall be brought more than two years after the date such profit was realized. This section shall not be construed to cover any transaction where such beneficial owner was not such both at the time of the purchase and sale, or the sale and purchase, of the security involved, or any transaction or transactions which the commissioner by rules and regulations may exempt as not comprehended within the purpose of this section.

[C66, 71, 73, 75, 77, 79, 81, §523.8]
Referred to in §523.10, 523.11, 523.12, 523.13, 523.14

523.9 Penalty for selling stock not directly owned by seller.

It shall be unlawful for any such beneficial owner, director or officer, directly or indirectly, to sell any equity security of such company if the person selling the security or the person's principal does not own the security sold, or if owning the security, does not deliver it against such sale within twenty days thereafter, or does not within five days after such sale deposit it in the mails or other usual channels of transportation; but no person shall be deemed to have violated this section if the person proves that notwithstanding the exercise of good faith the person was unable to make such delivery or deposit within such time, or that to do so would cause undue inconvenience or expense.

[C66, 71, 73, 75, 77, 79, 81, §523.9]
Referred to in §523.10, 523.11, 523.12, 523.13, 523.14

523.10 Exceptions — rules by commissioner.

The provisions of section 523.8 shall not apply to any purchase and sale, or sale and purchase, and the provisions of section 523.9 shall not apply to any sale, of an equity security of a domestic stock insurance company not then or theretofore held in an investment account by a dealer in the ordinary course of the dealer's business and incident to the establishment or maintenance by the dealer of a primary or secondary market (otherwise than on an exchange as defined in the Securities Exchange Act of 1934) for such security. The commissioner may, by such rules and regulations as the commissioner deems necessary or appropriate in the public interest, define and prescribe terms and conditions with respect to securities held in an investment account and transactions made in the ordinary course

of business and incident to the establishment or maintenance of a primary or secondary market.

[C66, 71, 73, 75, 77, 79, 81, §523.10]
Referred to in §523.11, 523.12, 523.14

523.11 Arbitrage transactions excepted.

The provisions of sections 523.7, 523.8, and 523.9 shall not apply to foreign or domestic arbitrage transactions unless made in contravention of such rules and regulations as the commissioner may adopt in order to carry out the purposes of sections 523.7 to 523.14.

[C66, 71, 73, 75, 77, 79, 81, §523.11]
Referred to in §523.12, 523.14

523.12 Equity security defined.

The term *"equity security"* when used in sections 523.7 to 523.14 means any stock or similar security; or any security convertible, with or without consideration, into such a security, or carrying any warrant or right to subscribe to or purchase such a security; or any such warrant or right; or any other security which the commissioner shall deem to be of similar nature and consider necessary or appropriate, by such rules and regulations as the commissioner may prescribe in the public interest or for the protection of investors, to treat as an equity security.

[C66, 71, 73, 75, 77, 79, 81, §523.12]
Referred to in §523.11, 523.14

523.13 Exceptions as to domestic stock companies.

The provisions of sections 523.7, 523.8, and 523.9 shall not apply to equity securities of a domestic stock insurance company if either of the following apply:

1. The securities are registered, or are required to be registered, pursuant to section 12 of the Securities Exchange Act of 1934, 48 Stat. 881, 15 U.S.C. §77b et seq., as amended.

2. The domestic stock insurance company does not have any class of its equity securities held of record by one hundred or more persons on the last business day of the year next preceding the year in which equity securities of the company would be subject to the provisions of sections 523.7, 523.8, and 523.9 except for the provisions of this subsection 2.

[C66, 71, 73, 75, 77, 79, 81, §523.13]
2006 Acts, ch 1010, §144
Referred to in §523.11, 523.12, 523.14

523.14 Rules.

The commissioner shall have the power to make such rules and regulations as may be necessary for the execution of the functions vested in the commissioner by sections 523.7 to 523.13, and may for such purpose classify domestic stock insurance companies, securities, and other persons or matters, within the commissioner's jurisdiction. No provisions of sections 523.7, 523.8 and 523.9 imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule or regulation of the commissioner, notwithstanding that such rule or regulation may, after such act or omission, be amended or rescinded or determined by judicial or other authority to be invalid for any reason.

[C66, 71, 73, 75, 77, 79, 81, §523.14]
Referred to in §523.11, 523.12

CHAPTER 523A

CEMETERY AND FUNERAL MERCHANDISE AND FUNERAL SERVICES

Referred to in §87.4, 144C.4, 144C.6, 156.12, 296.7, 331.301, 364.4, 505.28, 505.29, 523I.212, 523I.306, 523I.312, 523I.314, 555A.1, 669.14, 670.7

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SUBCHAPTER I

SHORT TITLE AND DEFINITIONS

523A.101 Short title.

This chapter may be cited as the *"Iowa Cemetery and Funeral Merchandise and Funeral Services Act"*.

2001 Acts, ch 118, §17

523A.102 Definitions.

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

1. *"Authorized to do business within this state"* means a person licensed, registered, or subject to regulation by an agency of the state of Iowa or who has filed a consent to service of process with the commissioner for purposes of this chapter.

2. *"Beneficiary"* means any natural person specified or included in a purchase agreement, upon whose future death cemetery merchandise, funeral merchandise, funeral services, or a combination thereof are to be provided under the purchase agreement.

3. *"Burial account"* means an account established by a person with a financial institution for the purpose of funding the future purchase of cemetery merchandise, funeral merchandise, funeral services, or a combination thereof without any related trust agreement.

4. *"Burial trust fund"* means an irrevocable burial trust fund established by a person with a financial institution for the purpose of funding the future purchase of cemetery merchandise, funeral merchandise, funeral services, or a combination thereof upon the death of the person named in the burial trust fund's records or a related purchase agreement. *"Burial trust fund"* does not include or imply the existence of any oral or written purchase agreement for cemetery merchandise, funeral merchandise, funeral services, or a combination thereof between the person and a seller.

5. *"Cemetery merchandise"* means foundations, grave markers, tombstones, ornamental merchandise, memorials, and monuments sold under a purchase agreement that does not require installation within twelve months of the purchase.

6. *"Commissioner"* means the commissioner of insurance or the commissioner's designee.

7. *"Common business enterprise"* means a group of two or more business entities that share common ownership in excess of fifty percent.

8. *"Delivery"* occurs when:

a. The cemetery merchandise, funeral merchandise, or the title document establishing an easement for burial rights is physically delivered to the purchaser or installed, except that burial of any item at the site of its ultimate use shall not constitute delivery for purposes of this chapter.

b. If authorized by a purchaser under a purchase agreement, cemetery merchandise has been permanently identified with the name of the purchaser or the beneficiary and delivered to a bonded warehouse or storage facility approved by the commissioner and both title to the merchandise and a warehouse receipt have been delivered to the purchaser or beneficiary and a copy of the warehouse receipt has been delivered to the seller for retention in its files.

c. If authorized by a purchaser under a purchase agreement, a polystyrene or polypropylene outer burial container has been permanently identified with the name of the purchaser or the beneficiary and delivered to a bonded warehouse or storage facility approved by the commissioner and both title to the merchandise and a warehouse receipt have been delivered to the purchaser or beneficiary and a copy of the warehouse receipt has been delivered to the seller for retention in its files.

9. *"Doing business in this state"* means issuing or performing wholly or in part any term of a purchase agreement executed within the state of Iowa.

10. *"Financial institution"* means a state or federally insured bank, savings association, credit union, trust department thereof, or a trust company authorized to do business within this state and which has been granted trust powers under the laws of this state or the United States, which holds funds under a trust agreement. *"Financial institution"* does not include:

a. A seller.

b. Anyone employed by or directly involved with the seller in the seller's cemetery merchandise, funeral merchandise, or funeral services business.

11. *"Funeral merchandise"* means personal property used for the final disposition of a dead human body, including but not limited to clothing, caskets, vaults, urns, and interment receptacles. *"Funeral merchandise"* does not include easements for burial rights in a completed space or cemetery merchandise.

12. *"Funeral services"* means services provided for the final disposition of a dead human body, including but not limited to services necessarily or customarily provided for a funeral, or for the interment, entombment, or cremation of a dead human body, or any combination thereof. *"Funeral services"* does not include perpetual care or maintenance.

13. *"Inner burial container"* means a container in which human remains are placed for burial or entombment. Where only one container is used for burial or entombment, *"inner burial container"* includes a container serving as a burial vault, urn vault, grave box, grave liner, or lawn crypt.

14. *"Insolvent"* means the inability to pay debts as they become due in the usual course of business.

15. *"Interest or income"* means unrealized net appreciation or loss in the fair value of cemetery merchandise, funeral merchandise, and funeral services trust assets for which a market value may be determined with reasonable certainty, plus the return in money or property derived from the use of trust principal or income, net of investment losses, taxes, and expenses incurred in the sale of trust assets, any cost of the operation of the trust, and any annual audit fee. *"Interest or income"* includes but is not limited to:

a. Rent of real or personal property, including sums received for cancellation or renewal of a lease and any royalties.

b. Interest on money lent, including sums received as consideration for prepayment of principal.

c. Cash dividends paid on corporate stock.

d. Interest paid on deposit funds or debt obligations.

e. Gain realized from the sale of trust assets.

16. *"Next of kin"* means the surviving spouse and heirs at law of the deceased.

17. *"Nonguaranteed"* means that the price of the merchandise and services selected has not been fixed or guaranteed and will be determined by existing prices at the time the merchandise and services are delivered or provided.

18. *"Outer burial container"* means a container used for the burial of human remains that is used exclusively to surround or enclose an inner burial container and to support the earth above the container, commonly known as a burial vault, urn vault, grave box, or grave liner, but not including a lawn crypt.

19. *"Parent company"* means a corporation that has a controlling interest in a seller.

20. *"Personal representative"* means a personal representative as defined in section 633.3.

21. *"Provider"* means a person that provides funeral services, funeral merchandise, or cemetery merchandise purchased in a purchase agreement.

22. *"Purchase agreement"* means an agreement to furnish cemetery merchandise, funeral merchandise, funeral services, or a combination thereof when performance or delivery may be more than one hundred twenty days following the initial payment on the account.

23. *"Purchase price"* means the negotiated price for the item of merchandise or service, if itemized in the purchase agreement, or the price of the item listed in the seller's general price list at the time the purchase agreement is signed.

24. *"Purchaser"* means a person who purchases cemetery merchandise, funeral

merchandise, funeral services, or a combination thereof. The purchaser need not be a beneficiary of the agreement.

25. *"Sales agent"* means a person, including an employee, who is authorized by a seller to sell cemetery merchandise, funeral merchandise, funeral services, or a combination thereof, on behalf of the seller.

26. *"Seller"* or *"preneed seller"* means a person doing business within this state, including a person doing business within this state who sells insurance, who advertises, sells, promotes, or offers to furnish cemetery merchandise, funeral merchandise, funeral services, or a combination thereof when performance or delivery may be more than one hundred twenty days following the initial payment on the account whether the transaction is completed or offered in person, through the mail, over the telephone, by the internet, or through any other means of commerce. *"Seller"* or *"preneed seller"* includes any person performing any term of a purchase agreement executed within this state, and any person identified under a burial account as the provider of cemetery merchandise, funeral merchandise, funeral services, or a combination thereof. *"Seller"* or *"preneed seller"* does not include a person who has an ownership interest in a seller or preneed seller but who is not actively engaged in advertising, selling, promoting, or offering to furnish such cemetery merchandise, funeral merchandise, funeral services, or a combination thereof.

27. *"Total purchase price"* means the aggregate amount the purchaser is obligated to pay for merchandise or services pursuant to the purchase agreement, excluding any taxes, administrative charges, or financing charges.

2001 Acts, ch 118, §18; 2002 Acts, ch 1119, §78; 2004 Acts, ch 1104, §1; 2007 Acts, ch 175, §2 – 5, 51, 52; 2008 Acts, ch 1103, §1; 2012 Acts, ch 1017, §101; 2015 Acts, ch 128, §26, 50, 51

523A.103 through 523A.200 Reserved.

SUBCHAPTER II

ESTABLISHMENT OF TRUSTS — DEPOSIT, INVESTMENT, AND REPORTING REQUIREMENTS

523A.201 Establishment of trust funds.

Unless proceeding under section 523A.401, 523A.402, or 523A.403, a seller must establish a trust fund prior to advertising, selling, promoting, or offering cemetery merchandise, funeral merchandise, funeral services, or a combination thereof in this state as follows:

1. The trust fund must be established at a financial institution.

2. If a seller agrees to furnish cemetery merchandise, funeral merchandise, funeral services, or a combination thereof and performance or delivery may be more than one hundred twenty days following the initial payment on the account, a minimum of eighty percent of all payments made under a guaranteed purchase agreement or a minimum of one hundred percent of all payments made under a nonguaranteed purchase agreement shall be placed and remain in trust until the person for whose benefit the funds were paid dies.

3. If a purchase agreement for cemetery merchandise, funeral merchandise, funeral services, or a combination thereof provides that payments are to be made in installments, the seller shall deposit eighty percent of each payment made under a guaranteed purchase agreement and one hundred percent of each payment made under a nonguaranteed purchase agreement in the trust fund until the full amount required to be placed in trust has been deposited. If the purchase agreement is financed with or sold to a financial institution, the purchase agreement shall be considered paid in full and the trust requirements shall be satisfied within fifteen days after the seller receives funds from the financial institution.

4. A seller shall not invade the trust principal for any purpose.

5. Unless a seller deposits all of each payment in a trust fund that meets the requirements of this section and section 523A.202, the seller shall have a fidelity bond or similar insurance in an amount of not less than fifty thousand dollars to protect against the loss of purchaser

payments not placed in trust within the time period required by this section and section 523A.202. The commissioner may require a greater amount as the commissioner determines is necessary. If the seller changes ownership, the fidelity bond or similar insurance shall continue in force for at least one year after the transfer of ownership.

6. Payments otherwise subject to this section are not exempt merely because they are held in certificates of deposit.

7. Commingling of trust funds with other funds of the seller is prohibited.

8. Interest or income earned on amounts deposited in trust shall remain in trust under the same terms and conditions as payments made under the purchase agreement, except that a seller may withdraw so much of the interest or income as represents the difference between the amount needed to adjust the trust funds for inflation as set by the commissioner based on the consumer price index and the interest or income earned during the preceding year not to exceed fifty percent of the total interest or income on a calendar-year basis. The early withdrawal of interest or income under this provision does not affect the purchaser's right to a credit of such interest or income in the event of a nonguaranteed price agreement, cancellation, or nonperformance by such a seller.

9. The commissioner may require amendments to a trust agreement not in accord with the provisions of this chapter.

10. If a seller voluntarily or involuntarily ceases doing business and the seller's obligation to provide merchandise or services has not been assumed by another seller holding a current preneed seller's license, all trust funds, including accrued interest or income, shall be repaid to the purchaser within thirty days following the seller's cessation of business. A seller may petition the commissioner, upon a showing of good cause, for a longer period of time for repayment. A seller shall notify the commissioner at least thirty days prior to ceasing business.

2001 Acts, ch 118, §19; 2007 Acts, ch 175, §6 – 8; 2011 Acts, ch 62, §1, 2
Referred to in §523A.202, 523A.203, 523A.503, 523A.807, 523A.811, 523A.901

523A.202 Trust fund deposit requirements.

1. All funds held in trust pursuant to section 523A.201 shall be deposited in a financial institution within fifteen days following receipt of the funds. The financial institution shall hold the funds for the designated beneficiary until released.

2. All funds required to be deposited by the purchaser or the seller for a purpose described in section 523A.201 shall be deposited consistent with one of the following methods:

a. The payments shall be deposited directly into an interest-bearing burial account in the purchaser's name.

b. The purchaser or the seller shall deposit payments directly into a separate trust account in the purchaser's name. The account may be made payable to the seller upon the death of the purchaser or the designated beneficiary, provided that, until death, the purchaser retains the exclusive power to hold, manage, pledge, and invest the trust account funds and may revoke the trust and withdraw the funds, in whole or in part, at any time during the term of the agreement.

c. The purchaser or the seller shall deposit payments directly into a separate trust account in the name of the purchaser, as trustee, for the named beneficiary, to be held, invested, and administered as a trust account for the benefit and protection of the beneficiary. The depositor shall notify the financial institution of the existence and terms of the trust, including at a minimum, the name of each party to the agreement, the name and address of the trustee, and the name and address of the beneficiary. The account may be made payable to the seller upon the beneficiary's death.

d. The payments shall be deposited in the name of the trustee, as trustee, under the terms of a master trust agreement and the trustee may invest, reinvest, exchange, retain, sell, and otherwise manage the trust fund for the benefit and protection of the named beneficiary.

3. The commissioner may by rule authorize other methods of deposit upon a finding that such methods provide equivalent safety of the principal and interest or income and the seller lacks access to the proceeds prior to performance.

4. This section does not prohibit moving trust funds from one financial institution to

another if the commissioner is notified of the change within thirty days of the transfer of the trust funds.

2001 Acts, ch 118, §20; 2002 Acts, ch 1119, §79; 2007 Acts, ch 175, §9; 2009 Acts, ch 145, §53

Referred to in §523A.201, 523A.807

523A.203 Financial institution trustees — qualification and investment requirements.

1. A financial institution may serve as a trustee if granted those powers under the laws of this state or of the United States. A financial institution acting as a trustee of trust funds under this chapter shall invest the funds in accordance with applicable law.

2. A financial institution acting as a trustee of trust funds under this chapter has a fiduciary duty to make reasonable investment decisions and to properly oversee and manage the funds entrusted to it. The trustee shall use the judgment and care under the circumstances then prevailing that persons of prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital. The commissioner may take enforcement action against a financial institution in its capacity as trustee for a breach of fiduciary duty proven under this chapter.

3. Moneys deposited under a master trust agreement may be commingled by the financial institution for investment purposes if each deposit includes a detailed listing of the amount deposited in trust for each beneficiary and maintenance of a separate accounting of each purchaser's principal, interest, and income.

4. Subject to a master trust agreement, the seller may appoint an independent investment adviser to advise the financial institution about investment of the trust funds.

5. Subject to agreement between the parties, the financial institution may receive a reasonable fee from the trust funds for services rendered as trustee. The trust shall pay the trust operation costs and any annual audit fees.

6. A financial institution acting as a trustee of trust funds under this chapter shall notify each purchaser within sixty days from the date of deposit confirming that a deposit has been made establishing a trust fund for the purchaser's payments made under the purchase agreement.

7. The seller or any officer, director, agent, employee, or affiliate of the seller shall not serve as trustee. A financial institution holding trust funds shall not do any of the following:

a. Be owned, under the control of, or affiliated with a seller.

b. Use any funds required to be held in trust under this chapter to purchase an interest in any contract or agreement to which a seller is a party.

c. Otherwise invest, directly or indirectly, in a seller's business operations.

d. Use any funds required to be held in trust pursuant to section 523A.201 to purchase an insurance policy or annuity.

8. Unless proceeding under section 523A.403, investment and management decisions for all trust funds shall be made in accordance with the provisions of section 633A.4302.

2001 Acts, ch 118, §21; 2005 Acts, ch 128, §3; 2007 Acts, ch 175, §10; 2008 Acts, ch 1103, §2, 3

Referred to in §523A.807

523A.204 Preneed seller annual reporting requirements.

1. A preneed seller shall file with the commissioner not later than April 1 of each year an annual report on a form prescribed by the commissioner.

2. A preneed seller filing an annual report shall pay a filing fee of ten dollars per purchase agreement sold during the year covered by the report. Duplicate fees are not required for the same purchase agreement. If a purchase agreement has multiple sellers, the fee shall be paid by the preneed seller actually providing the merchandise and services.

3. All records maintained by the commissioner under this section shall be confidential pursuant to section 22.7, subsection 58, and shall not be made available for inspection or copying except upon the approval of the commissioner or the attorney general, or except when sought by the preneed seller to whom the records relate. Such records shall be

privileged and confidential in any judicial or administrative proceeding except any of the following:

a. An action commenced by the commissioner.

b. An administrative proceeding brought by the insurance division.

c. An action or proceeding which arises out of the criminal provisions of the laws of this state or of the United States.

d. An action brought by the insurance division or the attorney general to recover moneys for embezzlement, misappropriation, or misuse of trust funds.

2001 Acts, ch 118, §22; 2007 Acts, ch 175, §11; 2009 Acts, ch 102, §1, 3; 2009 Acts, ch 181, §91; 2010 Acts, ch 1121, §23; 2015 Acts, ch 128, §27, 28, 50, 51

Referred to in §22.7(58), 523A.404, 523A.501, 523A.812, 523A.814

Payment of examination fee also required, see §523A.814

523A.205 Financial institution annual reporting requirements.

1. A financial institution shall file with the commissioner not later than March 1 of each year an annual report on a form prescribed by the commissioner showing all funds deposited by a seller under a trust agreement during the previous year. Each report shall contain all information requested.

2. All records maintained by the commissioner under this section shall be confidential pursuant to section 22.7, subsection 58, and shall not be made available for inspection or copying except upon approval of the commissioner or the attorney general, or except when sought by the financial institution to whom the records relate. Such records shall be privileged and confidential in any judicial or administrative proceeding except any of the following:

a. An action commenced by the commissioner.

b. An administrative proceeding brought by the insurance division.

c. An action or proceeding which arises out of the criminal provisions of the laws of this state or of the United States.

d. An action brought by the insurance division or the attorney general to recover moneys for embezzlement, misappropriation, or misuse of trust funds.

2001 Acts, ch 118, §23; 2007 Acts, ch 175, §53; 2015 Acts, ch 128, §29, 30, 50, 51

Referred to in §22.7(58)

523A.206 Examinations — authority and scope.

1. The commissioner may conduct an examination under this chapter of any seller as often as the commissioner deems appropriate. If a seller has a trust arrangement, the commissioner shall conduct an examination of such seller doing business in this state not less than once every five years unless the seller has provided to the commissioner, on an annual basis, a certified copy of an audit conducted by an independent certified public accountant verifying compliance with this chapter. The commissioner may require an audit of a seller, or other person by a certified public accountant to verify compliance with the requirements of this chapter, including rules adopted and orders issued pursuant to this chapter.

2. A seller shall reimburse the division for the expense of conducting the examination, including an audit conducted by a certified public accountant, unless the commissioner waives this requirement, or the seller has previously provided to the commissioner a certified copy of an audit conducted by an independent certified public accountant verifying compliance with this chapter for each year in question and the examination conducted by the commissioner does not disclose that the seller has not complied with this chapter for the years in question. The expense of an examination involving multiple sellers or other persons shall be prorated among them upon any reasonable basis as determined by the commissioner.

3. For purposes of completing an examination under this chapter, the commissioner may examine or investigate any person, or the business of any person, if the examination or investigation is, in the sole discretion of the commissioner, necessary or material to the examination of the seller.

4. Upon determining that an examination should be conducted, the commissioner may appoint one or more examiners to perform the examination and instruct those examiners as to the scope of the examination.

5. A seller, or other person from whom information is sought, and its officers, directors, employees, and agents shall provide to the examiners appointed under subsection 4, timely, convenient, and free access at their offices, at all reasonable hours, to all books, records, accounts, papers, documents, and all electronic or other recordings related to the property, assets, business, and affairs of the seller being examined and shall facilitate the examination as much as possible.

a. The refusal of a seller, by its officers, directors, employees, or agents, to submit to an examination or to comply with a reasonable written request of an examiner shall constitute grounds for the suspension, revocation, or denial of an application to renew any license held by the seller to engage in business subject to the commissioner's jurisdiction.

b. If a seller declines or refuses to submit to an examination as provided in this chapter, the commissioner shall immediately suspend, revoke, or deny an application to renew any license held by the seller or business to engage in business subject to the commissioner's jurisdiction, and shall report the commissioner's action to the attorney general, who shall immediately apply to the district court for the appointment of a receiver to administer the final affairs of the seller.

6. All records maintained by the commissioner under this section, including work papers, notes, recorded information, documents, and copies thereof that are produced or obtained by or disclosed to the commissioner or another person in the course of a compliance examination, shall be confidential pursuant to section 22.7, subsection 58, and shall not be made available for inspection and copying except upon the approval of the commissioner or the attorney general. Such records shall be privileged and confidential in any judicial or administrative proceeding except any of the following:

a. An action commenced by the commissioner.

b. An administrative proceeding brought by the insurance division.

c. An action or proceeding which arises out of the criminal provisions of the laws of this state or of the United States.

d. An action brought by the insurance division or the attorney general to recover moneys for embezzlement, misappropriation, or misuse of trust funds.

7. This section shall not be construed to limit the commissioner's authority to terminate or suspend any examination in order to pursue other legal or regulatory actions pursuant to this chapter. Findings of fact and conclusions made pursuant to an examination are deemed to be prima facie evidence in any legal or regulatory action.

2001 Acts, ch 118, §24; 2007 Acts, ch 175, §12; 2008 Acts, ch 1123, §43; 2011 Acts, ch 70, §46; 2015 Acts, ch 128, §31, 50, 51

Referred to in §22.7(58)

523A.207 Report by certified public accountants — penalties — waiver — confidentiality.

1. A purchase agreement shall not be sold or transferred, as part of the sale of a business or the assets of a business, until a certified public accountant has completed an agreed-upon procedures engagement in accordance with the attestation standards established by the American institute of certified public accountants and a report is filed with the commissioner that expresses the factual findings and results of applying the agreed-upon procedures that verifies the adequacy or inadequacy of funding related to the purchase agreements to be sold or transferred.

2. If the buyer of a purchase agreement sold or transferred as part of the sale of a business or the assets of a business, fails to file a report described in subsection 1, the commissioner may suspend the preneed seller's license of the buyer and the preneed sales license of any sales agent in the employ of the buyer until the report is filed. In addition, the commissioner may assess a penalty against the buyer in an amount up to one hundred dollars for each day that the report remains unfiled. The commissioner shall allow a thirty-day grace period after the date that a purchase agreement is sold or transferred before suspension of a license or assessment of a penalty for failure to file the report. Upon good cause, the commissioner may issue an order waiving the report requirements.

3. All records maintained by the commissioner under this section shall be confidential pursuant to section 22.7, subsection 58, and shall not be made available for inspection or

copying except upon approval of the commissioner or the attorney general, or except when sought by the preneed seller to whom the records relate. Such records shall be privileged and confidential in any judicial or administrative proceeding except any of the following:

a. An action commenced by the commissioner.

b. An administrative proceeding brought by the insurance division.

c. An action or proceeding which arises out of the criminal provisions of the laws of this state or of the United States.

d. An action brought by the insurance division or the attorney general to recover moneys for embezzlement, misappropriation, or misuse of trust funds.

2007 Acts, ch 175, §13; 2010 Acts, ch 1067, §2; 2015 Acts, ch 128, §32, 50, 51; 2016 Acts, ch 1073, §158; 2018 Acts, ch 1074, §7

Referred to in §22.7(58), 523A.807
Section amended

523A.208 through 523A.300 Reserved.

SUBCHAPTER III

DISBURSEMENT OF REMAINING BURIAL TRUST FUNDS OR INSURANCE OR ANNUITY PROCEEDS — MEDICAL ASSISTANCE DEBTS

523A.301 Definition.

As used in sections 523A.302 and 523A.303, *"director"* means the director of human services.

2001 Acts, ch 118, §25

523A.302 Identification of merchandise and service provider.

If a burial trust fund identifies, either in the trust fund records or in a related purchase agreement, the seller who will provide the cemetery merchandise, funeral merchandise, funeral services, or a combination thereof, the trust fund records or the related purchase agreements must contain a statement signed by an authorized representative of the seller agreeing to furnish the cemetery merchandise, funeral merchandise, funeral services, or a combination thereof upon the death of the beneficiary. The burial trust fund shall not identify a specific seller as payee unless the trust fund records or the related purchase agreements, if any, contain the signature of an authorized representative of the seller and, if the agreement is for mortuary science services as mortuary science is defined in section 156.1, the name of a funeral director licensed to deliver those services. A person may enter into agreements authorizing the establishment of more than one burial trust fund and agreeing to furnish the applicable merchandise and services.

2001 Acts, ch 118, §26; 2002 Acts, ch 1119, §80

Referred to in §523A.301

523A.303 Disbursement of remaining funds.

1. If funds remain in a nonguaranteed irrevocable burial trust fund or from the proceeds of an insurance policy or annuity made payable or assigned to the seller or a provider after the payment of funeral and burial expenses in accordance with the conditions and terms of the purchase agreement for cemetery merchandise, funeral merchandise, or funeral services, the seller shall comply with all of the following:

a. The seller shall provide written notice by mail to the director under subsection 2.

b. At least sixty days after mailing notice to the director, the seller shall disburse any remaining funds from the burial trust fund as follows:

(1) If within the sixty-day period the seller receives a claim from the personal representative of the deceased, any remaining funds shall be disbursed to the personal representative, notwithstanding any claim by the director.

(2) If within the sixty-day period the seller has not received a claim from the personal

representative of the deceased but receives a claim from the director, the seller shall disburse the remaining funds up to the amount of the claim to the director.

(3) Any remaining funds not disposed of pursuant to subparagraphs (1) and (2) shall be disbursed to any person who is identified as the next of kin of the deceased in an affidavit submitted in accordance with subsection 5.

2. The notice mailed to the director shall meet all of the following requirements and is subject to all of the following conditions:

a. The notice shall be mailed with postage prepaid.

b. If the notice is sent by regular mail, the sixty-day period for receipt of a response is deemed to commence three days following the date of mailing.

c. If the notice is sent by certified mail, the sixty-day period for receipt of a response is deemed to commence on the date of mailing.

d. The notice shall provide all of the following information:

(1) Current name, address, and telephone number of the seller.

(2) Full name of the deceased.

(3) Date of the deceased's death.

(4) Amount of funds remaining in the burial trust fund.

(5) Statement that any claim by the director must be received by the seller within sixty days after the date of mailing of the notice.

e. A notice in substantially the following form complies with this subsection:

> TO: THE DIRECTOR OF HUMAN SERVICES
>
> FROM: (SELLER'S NAME, CURRENT ADDRESS, AND TELEPHONE NUMBER)
>
> You are hereby notified that (name of deceased), who had an irrevocable burial trust fund, has died, that final payment for cemetery merchandise, funeral merchandise, and funeral services has been made, and that (remaining amount) remains in the irrevocable burial trust fund.
>
> The above-named seller must receive a written response regarding any claim by the director within sixty days after the mailing of this notice to the director.
>
> If the above-named seller does not receive a written response regarding a claim by the director within sixty days after the mailing of this notice, the seller may dispose of the remaining funds in accordance with section 523A.303, Code of Iowa.

3. Upon receipt of the seller's written notice, the director shall determine if a debt is due the department of human services pursuant to section 249A.53. If the director determines that a debt is owing, the director shall provide a written response to the seller within sixty days after the mailing of the seller's notice. If the director does not respond with a claim within the sixty-day period, any claim made by the director shall not be enforceable against the seller, the trust, or a trustee.

4. A personal representative who wishes to make a claim shall send written notice of the claim to the seller. If the seller does not receive any claim from a personal representative within the sixty-day period provided for response by the director regarding a claim, the claim of the personal representative shall not be enforceable against the seller, the trust, or a trustee.

5. Any person other than a personal representative or the director claiming an interest in the remaining funds shall submit an affidavit claiming an interest which provides the following information:

a. Full name, current address, and telephone number of the claimant.

b. Claimant's relationship to the deceased.

c. Name of any surviving next of kin of the deceased, and the relationship of any named surviving next of kin.

d. That the claimant has no knowledge of the existence of a personal representative for the deceased's estate.

6. The seller may retain not more than fifty dollars of the remaining funds in the burial trust fund for the administrative expenses associated with the requirements of this section.

7. If the funds remaining in a burial trust fund are disbursed under the requirements of this section, the seller, the provider, the burial trust fund, and any trustee shall not be liable to the director, the estate of the deceased, any personal representative, or any other interested person for the remaining funds and any lien imposed by the director shall be unenforceable against the seller, the burial trust fund, or any trustee.

2001 Acts, ch 118, §27
Referred to in §523A.301

523A.304 through 523A.400 Reserved.

SUBCHAPTER IV

TRUSTING ALTERNATIVES

523A.401 Purchase agreements funded by insurance proceeds.

1. A purchase agreement may be funded by insurance proceeds derived from a new or existing insurance policy issued by an insurance company authorized to do business and doing business within this state.

2. Such funding may be in lieu of the trusting requirements of this chapter when the purchaser assigns the proceeds of an existing insurance policy.

3. Such funding may be in lieu of the trusting requirements of this chapter when a new insurance policy is purchased to fund the purchase agreement, with a face amount equal to or greater than the current retail price of the cemetery merchandise, funeral merchandise, and funeral services to be delivered under the purchase agreement or, if less, a face amount equal to the total of all payments to be submitted by the purchaser pursuant to the purchase agreement.

4. The premiums of any new insurance policy shall be fully paid within thirty days after execution of the purchase agreement or, with respect to a purchase agreement that provides for periodic payments, the premiums shall be paid directly by the purchaser to the insurance company issuing the policy.

5. Any new insurance policy shall satisfy the following conditions:

a. Except as necessary and appropriate to satisfy the requirements regarding burial trust funds under Tit. XIX of the federal Social Security Act, the policy shall not be owned by the seller, the policy shall not be irrevocably assigned to the seller, and the assignment of proceeds from the insurance policy to the seller shall be limited to the seller's interests as they appear in the purchase agreement, and conditioned on the seller's delivery of cemetery merchandise, funeral merchandise, and funeral services pursuant to a purchase agreement.

b. The policy shall provide that any assignment of benefits is contingent upon the seller's delivery of cemetery merchandise, funeral merchandise, and funeral services pursuant to a purchase agreement.

c. The policy shall have an increasing death benefit or similar feature that provides some means for increasing the funding as the cost of cemetery merchandise, funeral merchandise, and funeral services increases.

6. With the written consent of the purchaser, an existing prepaid purchase agreement with trust-funded benefits may be converted to a prepaid purchase agreement with insurance-funded benefits provided the seller and the insurance benefits comply with the following provisions:

a. The transfer of the trust funds to the insurance company must be at least equal to the full sum required to be deposited as trust principal under the trust-funded prepaid purchase agreement plus all net earnings accumulated with respect thereto, as of the transfer date. Commissions, allowances, surrender charges or other forms of compensation or expense loads, premium expense, administrative charges or expenses, or policy fees shall not be deducted from the trust funds transferred pursuant to the conversion.

b. The face amount of any insurance policy issued on an individual must be no less than the amount of principal and interest transferred for that individual to the insurance company, and any supplemental insurance policy issued to cover the unfunded portion of the purchase agreement must have a face amount that is at least as great as the unfunded principal balance. The face amount of the insurance purchased shall not, under any circumstances, be less than the total of all payments made by the purchaser pursuant to the agreement plus all net earnings accumulated with respect thereto, as of the transfer date.

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

d. The seller shall maintain a copy of any prepaid trust-funded purchase agreement that was converted to a prepaid insurance-funded purchase agreement and retain the payment history records for each converted purchase agreement prior to conversion until the cemetery merchandise, funeral merchandise, and funeral services have been delivered.

7. The seller of a purchase agreement subject to this chapter which is to be funded by insurance proceeds shall obtain all licenses required to be obtained and comply with all reporting requirements under this chapter. A parent company, provider, or seller shall not pledge, borrow from, or otherwise encumber an insurance policy funding a purchase agreement.

8. An insurance company issuing policies funding purchase agreements subject to this chapter shall file an annual report with the commissioner on a form prescribed by the commissioner. The report shall list the applicable insurance policies outstanding for each seller.

9. The commissioner, by rule, may require written trust agreements and establish conditions for trusts holding insurance policies or maintaining ownership rights under insurance policies. The seller or any officer, director, agent, employee, or affiliate of the seller shall not serve as a trustee. The commissioner may require amendments to a trust agreement that is not in accord with the provisions of this chapter or rules adopted under this chapter.

10. All records maintained by the commissioner under this section shall be confidential pursuant to section 22.7, subsection 58, and shall not be made available for inspection or copying except upon approval of the commissioner or the attorney general, or except when sought by the insurance company to whom the records relate. Such records shall be privileged and confidential in any judicial or administrative proceeding except any of the following:

a. An action commenced by the commissioner.

b. An administrative proceeding brought by the insurance division.

c. An action or proceeding which arises out of the criminal provisions of the laws of this state or of the United States.

d. An action brought by the insurance division or the attorney general to recover moneys for embezzlement, misappropriation, or misuse of trust funds.

2001 Acts, ch 118, §28; 2001 Acts, ch 176, §73; 2004 Acts, ch 1110, §64; 2007 Acts, ch 175, §54 – 57; 2008 Acts, ch 1123, §44; 2010 Acts, ch 1061, §180; 2010 Acts, ch 1121, §24; 2015 Acts, ch 128, §33, 34, 50, 51

Referred to in §22.7(58), 523A.201, 523A.807

523A.402 Purchase agreements funded by annuity proceeds.

1. A purchase agreement may be funded by proceeds derived from a new or existing annuity issued by an insurance company authorized to do business and doing business within this state.

2. Such funding may be in lieu of the trust requirements of this chapter when the purchaser assigns the proceeds of an existing annuity.

3. Such funding may be in lieu of the trust requirements of this chapter when a new

annuity is purchased to fund the purchase agreement, with a face amount equal to or greater than the current retail price of the cemetery merchandise, funeral merchandise, and funeral services to be delivered under the purchase agreement or, if less, a face amount equal to the total of all payments to be submitted by the purchaser pursuant to the purchase agreement.

4. The premiums of any new annuity shall be fully paid within thirty days after execution of the purchase agreement or, with respect to a purchase agreement that provides for periodic payments, the premiums shall be paid directly by the purchaser to the insurance company issuing the annuity.

5. The annuity shall satisfy the following conditions:

a. Except as necessary and appropriate to satisfy the requirements regarding burial trust funds under Tit. XIX of the federal Social Security Act, the annuity shall not be owned by the seller or irrevocably assigned to the seller and any designation of the seller as a beneficiary shall not be made irrevocable.

b. The annuity shall provide that any assignment of benefits is contingent upon the seller's delivery of cemetery merchandise, funeral merchandise, and funeral services pursuant to a purchase agreement.

c. The annuity shall have an increasing death benefit or similar feature that provides some means for increasing the funding as the cost of cemetery merchandise, funeral merchandise, and funeral services increases.

6. With the written consent of the purchaser, an existing prepaid purchase agreement with trust-funded benefits may be converted to a prepaid purchase agreement with annuity-funded benefits provided the seller and the annuity benefits comply with the following provisions:

a. The transfer of the trust funds to the insurance company must be at least equal to the full sum required to be deposited as trust principal under the trust-funded prepaid purchase agreement plus all net earnings accumulated with respect thereto, as of the transfer date. Commissions, allowances, surrender charges or other forms of compensation or expense loads, premium expense, administrative charges or expenses, or fees shall not be deducted from the trust funds transferred pursuant to the conversion.

b. The face amount of any annuity issued on an individual must be no less than the amount of principal and interest transferred for that individual to the insurance company, and any supplemental annuity issued to cover the unfunded portion of the purchase agreement must have a face amount that is at least as great as the unfunded principal balance. The face amount of the annuity purchased shall not, under any circumstances, be less than the total of all payments made by the purchaser pursuant to the agreement plus all net earnings accumulated with respect thereto, as of the transfer date.

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

d. The seller shall maintain a copy of any prepaid trust-funded purchase agreement that was converted to a prepaid annuity-funded purchase agreement and retain the payment history records for each converted purchase agreement prior to conversion until the cemetery merchandise, funeral merchandise, and funeral services have been delivered.

7. The seller of a purchase agreement subject to this chapter which is to be funded by annuity proceeds shall obtain all licenses required to be obtained and comply with all reporting requirements under this chapter. A parent company, provider, or seller shall not pledge, borrow from, or otherwise encumber an annuity funding a purchase agreement.

8. An insurance company issuing annuities funding purchase agreements subject to this chapter shall file an annual report with the commissioner on a form prescribed by the commissioner. The report shall list the applicable annuities outstanding for each seller.

9. The commissioner, by rule, may require written trust agreements and establish conditions for trusts holding annuities or maintaining ownership rights under annuities. The seller or any officer, director, agent, employee, or affiliate of the seller shall not serve as

a trustee. The commissioner may require amendments to a trust agreement that is not in accord with the provisions of this chapter or rules adopted under this chapter.

2001 Acts, ch 118, §29; 2002 Acts, ch 1119, §81; 2004 Acts, ch 1110, §65; 2005 Acts, ch 19, §107; 2005 Acts, ch 70, §50; 2007 Acts, ch 175, §58 – 61; 2008 Acts, ch 1123, §45; 2010 Acts, ch 1061, §180; 2010 Acts, ch 1121, §25; 2015 Acts, ch 128, §35, 50, 51

Referred to in §523A.201, 523A.807

523A.403 Purchase agreements funded by certificates of deposit.

1. A purchase agreement may be funded by proceeds derived from a certificate of deposit in the name of the purchaser made payable to the seller upon the purchaser's death.

2. The seller of a purchase agreement subject to this chapter which is to be funded by a certificate of deposit shall obtain all permits required to be obtained and comply with all reporting requirements under this chapter, implementing rules, and orders.

2001 Acts, ch 118, §30

Referred to in §523A.201, 523A.203, 523A.807

523A.404 Merchandise delivered to the purchaser or warehoused.

1. Trust requirements do not apply to payments made pursuant to a purchase agreement executed prior to July 1, 2007, for outer burial containers made of either polystyrene or polypropylene or cemetery merchandise delivered to the purchaser or stored in an independent third-party storage facility not owned or controlled by the seller when approved by the commissioner. The seller or the storage facility must demonstrate that they will do all of the following:

a. Issue a receipt of ownership in the name of the purchaser and deliver it to the purchaser.

b. Insure the merchandise against loss.

c. Protect the merchandise against damage.

d. Transfer title to the purchaser.

e. Appropriately identify and describe the merchandise in a manner that it can be distinguished from other similar items.

f. Use a method of storage that allows for visual examinations of the merchandise.

g. Have adequate, computerized recordkeeping systems in place to identify, describe, and count each item in storage, including the ownership of each item, and provide an aggregate listing with numerical totals.

h. File a consent to be examined and inspected by the commissioner.

i. Provide reports to the commissioner, annually, by an independent certified public accountant, which shall include a physical count of merchandise held in storage and a review of information, including the seller's revenue and sales records, as necessary to verify the adequacy of the number of items held at the storage facility.

j. Satisfy the annual reporting requirements of section 523A.204.

2. Lawn crypts may be delivered in lieu of trusting. For this purpose, delivery means installation in a grave owned by the purchaser. The seller shall do all of the following:

a. Notify the administrator before the lawn crypts are installed.

b. Identify the intended location of the lawn crypts within the cemetery.

c. Provide documentation adequately demonstrating delivery has occurred. Adequate documentation includes but is not limited to photographs and third-party certifications.

3. Cemetery merchandise and funeral merchandise shall not be deemed delivered to the purchaser or warehoused if the merchandise is subject to a lien or security interest by any party other than the seller.

4. A seller is prohibited from requiring delivery as a condition of the sale.

5. A seller shall provide services necessary for the installation or burial of outer burial containers sold by the seller. This subsection shall not require the seller to provide for the opening or closing of the interment or entombment space, unless the purchase agreement provides otherwise.

2001 Acts, ch 118, §31; 2007 Acts, ch 175, §14, 15, 62

Referred to in §523A.503, 523A.807

523A.405 Bond in lieu of trust fund.

The commissioner shall, by rule, establish terms and conditions under which a seller may, in lieu of trust requirements, file with the commissioner a surety bond issued by a surety company authorized to do business and doing business in this state.

2001 Acts, ch 118, §32; 2001 Acts, ch 176, §74; 2007 Acts, ch 175, §63, 64; 2008 Acts, ch 1103, §4; 2008 Acts, ch 1123, §46; 2011 Acts, ch 62, §3; 2015 Acts, ch 128, §36, 50, 51

Referred to in §523A.807

523A.406 through 523A.500 Reserved.

SUBCHAPTER V

PRENEED SELLER AND SALES LICENSES

523A.501 Preneed sellers — licenses.

1. A person shall not advertise, sell, promote, or offer to furnish cemetery merchandise, funeral merchandise, funeral services, or a combination thereof when performance or delivery may be more than one hundred twenty days following the initial payment on the account without a preneed seller's license.

2. An application for a preneed seller's license shall be filed on a form and in a format prescribed by the commissioner and be accompanied by a filing fee in an amount set by the commissioner by rule. The application shall include the name of the natural person or legal entity to be licensed as the preneed seller and, if applicable, any other name under which the preneed seller will be transacting business, including any names registered with the secretary of state or a county clerk. The application shall be updated as necessary to ensure that the commissioner has been notified of all names under which the preneed seller is operating and doing business.

3. *a.* The commissioner shall request and obtain, notwithstanding section 692.2, subsection 5, criminal history data for any director of, or person with a financial interest in, a preneed seller who is an applicant for an initial license issued pursuant to this section, an applicant for reinstatement of a license issued pursuant to this section, or a licensee who is being monitored as a result of an order of the commissioner or agreement resolving an administrative disciplinary action, for the purpose of evaluating the applicant's or licensee's eligibility for licensure or suitability for continued practice as a preneed seller, as required by the commissioner by rules adopted pursuant to chapter 17A. The commissioner may limit this requirement to those persons who have the ability to control or direct control of trust funds under this chapter. The commissioner shall inform an applicant or licensee to whom the criminal history requirement applies and obtain a signed waiver from the applicant or licensee prior to submitting a criminal history data request.

b. A request for criminal history data shall be submitted to the department of public safety, division of criminal investigation, pursuant to section 692.2, subsection 1. The commissioner may also require such applicants or licensees to provide a full set of fingerprints, in a form and manner prescribed by the commissioner. Such fingerprints may be submitted to the federal bureau of investigation through the state criminal history repository for a national criminal history check. The commissioner may authorize alternate methods or sources for obtaining criminal history record information. The commissioner may, in addition to any other fees, charge and collect such amounts as may be incurred by the commissioner, the department of public safety, or the federal bureau of investigation in obtaining criminal history information. Amounts collected shall be considered repayment receipts as defined in section 8.2.

c. Criminal history information relating to an applicant or licensee obtained by the commissioner pursuant to this section is confidential. The commissioner may, however, use such information in a license denial proceeding.

4. The commissioner shall request and obtain a financial history for any director of, or person with a financial interest in, a preneed seller who is an applicant for an initial license

issued pursuant to this section, an applicant for reinstatement of a license issued pursuant to this section, or a licensee who is being monitored as a result of an order of the commissioner or agreement resolving an administrative disciplinary action, for the purpose of evaluating the applicant's or licensee's eligibility for licensure or suitability for continued practice as a preneed seller, as required by the commissioner by rules adopted pursuant to chapter 17A. The commissioner may limit this requirement to those persons who have the ability to control or direct control of trust funds under this chapter. *"Financial history"* means the record of a person's current loans, the date of a person's loans, the amount of the loans, the person's payment record on the loans, current liens against the person's property, and the person's most recent financial statement setting forth the assets, liabilities, and the net worth of the person.

5. A preneed seller's license is not assignable or transferable. A licensee selling all or part of a business entity that has a preneed seller's license shall cancel the license, and the purchaser shall apply for a new license in the purchaser's name within thirty days of the sale.

6. If no denial order is in effect and no proceeding is pending under section 523A.503, the application becomes effective at noon of the thirtieth day after a completed application or an amendment completing the application is filed, unless waived by the applicant. The commissioner may specify an earlier effective date. Automatic effectiveness under this subsection shall not be deemed approval of the application. If the commissioner does not grant the license, the commissioner shall notify the person in writing of the reasons for the denial.

7. A preneed seller's license expires annually on April 15. If the preneed seller has filed a complete annual report and paid the required fees as required in section 523A.204, the commissioner shall renew the preneed seller's license until April 15 of the following year.

8. The commissioner may by rule create or accept a multijurisdiction preneed seller's license. If the preneed seller's license is issued by another jurisdiction, the rules shall require the filing of an application or notice form and payment of the applicable filing fee of fifty dollars for an application. The application or notice form utilized and the effective dates and terms of the license may vary from the provisions set forth in this section.

9. Fees collected under this section shall be deposited as provided in section 505.7.

2001 Acts, ch 118, §33; 2002 Acts, ch 1119, §82; 2004 Acts, ch 1104, §2; 2004 Acts, ch 1110, §66; 2007 Acts, ch 175, §16; 2008 Acts, ch 1103, §5, 6; 2008 Acts, ch 1123, §47, 48; 2009 Acts, ch 181, §92; 2015 Acts, ch 128, §37, 38, 50, 51

Referred to in §523A.503, 523A.704, 523A.807

523A.502 Sales agents — licenses.

1. A person shall not advertise, sell, promote, or offer to furnish cemetery merchandise, funeral merchandise, funeral services, or a combination thereof when performance or delivery may be more than one hundred twenty days following initial payment on the account unless the person has a sales license and is a sales agent of a person holding a preneed seller's license. The preneed seller licensee is liable for the acts of its sales agents performed in advertising, selling, promoting, or offering to furnish, upon the future death of a person named or implied in a purchase agreement, cemetery merchandise, funeral merchandise, funeral services, or a combination thereof.

2. This chapter does not permit a person to practice mortuary science without a license. A person holding a current sales license may advertise, sell, promote, or offer to furnish a funeral director's services as an employee or agent of a funeral establishment furnishing the funeral services under chapter 156.

3. An application for a sales license shall be filed on a form prescribed by the commissioner and be accompanied by a filing fee in an amount set by the commissioner by rule. The fees collected under this subsection shall be deposited as provided in section 505.7.

4. *a.* The commissioner shall request and obtain, notwithstanding section 692.2, subsection 5, criminal history data for any applicant for an initial license issued pursuant to this section, any applicant for reinstatement of a license issued pursuant to this section, or any licensee who is being monitored as a result of an order of the commissioner or agreement resolving an administrative disciplinary action, for the purpose of evaluating

the applicant's or licensee's eligibility for licensure or suitability for continued practice as a sales agent. The commissioner shall adopt rules pursuant to chapter 17A to implement this section. The commissioner shall inform the applicant or licensee of the criminal history requirement and obtain a signed waiver from the applicant or licensee prior to submitting a criminal history data request.

b. A request for criminal history data shall be submitted to the department of public safety, division of criminal investigation, pursuant to section 692.2, subsection 1. The commissioner may also require such applicants or licensees, to provide a full set of fingerprints, in a form and manner prescribed by the commissioner. Such fingerprints may be submitted to the federal bureau of investigation through the state criminal history repository for a national criminal history check. The commissioner may authorize alternate methods or sources for obtaining criminal history record information. The commissioner may, in addition to any other fees, charge and collect such amounts as may be incurred by the commissioner, the department of public safety, or the federal bureau of investigation in obtaining criminal history information. Amounts collected shall be considered repayment receipts as defined in section 8.2.

c. Criminal history information relating to an applicant or licensee obtained by the commissioner pursuant to this section is confidential. The commissioner may, however, use such information in a license denial proceeding.

5. A sales license shall expire annually on April 15. If the sales agent has filed a substantially complete annual report as required in section 523A.502A, the commissioner shall renew the sales license until April 15 of the following year.

6. A sales agent licensed pursuant to this section shall satisfactorily fulfill continuing education requirements for the license as prescribed by the commissioner by rule. However, this continuing education requirement is not applicable to a sales agent who is also a licensed insurance producer under chapter 522B or a licensed funeral director under chapter 156.

7. A sales licensee shall inform the commissioner of changes in the information required to be provided in the application within thirty days of the change.

8. A sales license is not assignable or transferable.

9. If no denial order is in effect and no proceeding is pending under section 523A.503, the application becomes effective at noon of the thirtieth day after a completed application or an amendment completing the application is filed, unless waived by the applicant. The commissioner may specify an earlier effective date. Automatic effectiveness under this subsection shall not be deemed approval of the application. If the commissioner does not grant the license, the commissioner shall notify the applicant in writing of the reasons for the denial.

10. The commissioner may by rule create or accept a multijurisdiction sales license. If the sales license is issued by another jurisdiction, the rules shall require the filing of an application or notice form and payment of the applicable filing fee. The application or notice form utilized and the effective dates and terms of the license may vary from the provisions set forth in subsections 3 and 5.

2001 Acts, ch 118, §34; 2002 Acts, ch 1119, §83; 2004 Acts, ch 1104, §3; 2007 Acts, ch 175, §17; 2008 Acts, ch 1103, §7; 2008 Acts, ch 1123, §49, 50; 2009 Acts, ch 181, §93; 2015 Acts, ch 128, §39, 50, 51

Referred to in §523A.503, 523A.704, 523A.807

523A.502A Sales agent annual reporting requirements.

1. A sales agent shall file with the commissioner not later than April 1 of each year an annual report on a form prescribed by the commissioner describing each purchase agreement sold by the sales agent during the year. An annual report must be filed whether or not sales were made during the year and even if the sales agent is no longer an agent of a preneed seller or licensed by the commissioner.

2. All records maintained by the commissioner under this section shall be confidential pursuant to section 22.7, subsection 58, and shall not be made available for inspection or copying except upon the approval of the commissioner or the attorney general, or except

when sought by the sales agent to whom the records relate. Such records shall be privileged and confidential in any judicial or administrative proceeding except any of the following:

a. An action commenced by the commissioner.

b. An administrative proceeding brought by the insurance division.

c. An action or proceeding which arises out of the criminal provisions of the laws of this state or of the United States.

d. An action brought by the insurance division or the attorney general to recover moneys for embezzlement, misappropriation, or misuse of trust funds.

2007 Acts, ch 175, §18; 2009 Acts, ch 102, §2, 3; 2009 Acts, ch 181, §94; 2010 Acts, ch 1121, §26; 2015 Acts, ch 128, §40, 41, 50, 51

Referred to in §22.7(58), 523A.502

523A.503 Denial, suspension, revocation, and surrender of licenses.

1. The commissioner may, pursuant to chapter 17A, deny any license application, or immediately suspend, revoke, or otherwise impose disciplinary action related to any license issued under section 523A.501 or 523A.502 for several reasons, including but not limited to:

a. Committing a fraudulent act, engaging in a fraudulent practice, or violating any provision of this chapter or any implementing rule or order issued under this chapter.

b. Violating any other state or federal law applicable to the conduct of the applicant's or licensee's business.

c. Insolvency or financial condition.

d. The licensee, for the purpose of avoiding the trust requirement for funeral services, attributes amounts paid under the purchase agreement to cemetery merchandise or funeral merchandise that is delivered under section 523A.404 rather than to funeral services sold to the purchaser. The sale of funeral services at a lower price when the sale is made in conjunction with the sale of cemetery merchandise or funeral merchandise to be delivered under section 523A.404 than the services are regularly and customarily sold for when not sold in conjunction with cemetery merchandise or funeral merchandise is evidence that the licensee is acting with the purpose of avoiding the trust requirement for funeral services under section 523A.201.

e. Engaging in a deceptive act or practice or deliberately misrepresenting or omitting a material fact regarding the sale of cemetery merchandise, funeral merchandise, funeral services, or a combination thereof under this chapter.

f. Conviction of a criminal offense involving dishonesty or a false statement including but not limited to fraud, theft, misappropriation of funds, falsification of documents, deceptive acts or practices, or other related offenses.

g. Inability to provide the cemetery merchandise, funeral merchandise, funeral services, or a combination thereof which the applicant or licensee purports to sell.

h. The applicant or licensee sells the business without filing a prior notice of sale with the commissioner. The license shall be revoked thirty days following such sale.

i. Selling by a person who is not a licensed sales agent.

j. The applicant or licensee is named in an order issued pursuant to section 523A.807, subsection 3, paragraph "*b*".

2. The commissioner may, for good cause shown, suspend any license for a period not exceeding thirty days, pending investigation.

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

4. Any licensee may surrender a license by delivering to the commissioner written notice that the licensee surrenders the license, but the surrender shall not affect the licensee's civil or criminal liability for acts committed before the surrender.

5. Denial, revocation, suspension, or surrender of a license does not impair or affect the obligation of any preexisting lawful agreement between the licensee and any person.

2001 Acts, ch 118, §35; 2004 Acts, ch 1110, §68 – 70; 2007 Acts, ch 175, §19

Referred to in §523A.501, 523A.502

523A.504 Appointment of sales agents — fee. Repealed by 2015 Acts, ch 128, §50, 51, 53.

523A.505 through 523A.600 Reserved.

SUBCHAPTER VI

PURCHASE AGREEMENTS

523A.601 Disclosures.

1. A purchase agreement for cemetery merchandise, funeral merchandise, funeral services, or a combination thereof shall be written in clear, understandable language, and shall be printed or typed in an easy-to-read font, size, and style, and shall:

a. Identify the preneed seller by name and license number, the sales agent by name and license number, the purchaser, and the person for whom the cemetery merchandise, funeral merchandise, funeral services, or a combination thereof is purchased, if other than the purchaser.

b. Specify the cemetery merchandise, funeral merchandise, funeral services, or a combination thereof to be provided, and the cost of each merchandise item or service.

c. State clearly the conditions upon which substitution will be allowed.

d. State the total purchase price and the terms under which it is to be paid.

e. State clearly whether the purchase agreement is a guaranteed price agreement or a nonguaranteed price agreement. A nonguaranteed price agreement shall contain in twelve point boldface type an explanation of the consequences of such agreement in substantially the following language:

> The prices of merchandise and services under this agreement are subject to change in the future. Any funds paid under this agreement are only a deposit to be applied, together with accrued income, toward the final costs of the merchandise or services agreed upon. Additional charges may be incurred when additional merchandise or services or both are provided or when prices have increased more than accrued income.

f. State that the purchase of the cemetery merchandise, funeral merchandise, and funeral services is revocable and specify the damages for cancellation, if any.

g. State clearly who has the authority to cancel, amend, or revoke the purchase agreement to purchase cemetery merchandise, funeral merchandise, and funeral services.

h. State clearly that the purchaser is entitled to rescind the purchase agreement under terms and conditions specified by section 523A.602.

i. Include an explanation of regulatory oversight by the insurance division in twelve point boldface type, in substantially the following language:

> This agreement is subject to rules administered by the Iowa insurance division. You may call the insurance division at (telephone number). Written inquiries or complaints should be mailed to the Iowa securities and regulated industries bureau, (street address), (city), Iowa (zip code).

2. A purchase agreement that is funded by a trust shall also:

a. State the percentage of money to be placed in trust.

b. Explain the disposition of the income generated from investments and include a statement of the purchaser's responsibility for income taxes owed on the income if applicable.

c. State that if, after all payments are made under the conditions and terms of the purchase agreement for cemetery merchandise, funeral merchandise, funeral services, or a combination thereof, any funds remain in the nonguaranteed irrevocable burial trust fund, the seller shall disburse the remaining funds according to law.

d. State clearly the terms of the funeral and burial trust agreement and whether it is revocable or irrevocable.

e. State clearly that the purchaser is entitled to transfer the trust funding, insurance funding, or other trust assets or select another seller to receive the trust funding, insurance funding, or any other trust assets.

f. State clearly who has the authority to amend or revoke the trust agreement, if revocable, and who has the authority to appoint successor trustees if the purchase agreement is canceled.

3. The commissioner may adopt rules establishing disclosure and format requirements to promote consumer understanding of the merchandise and services purchased and the available funding mechanisms for a purchase agreement under this chapter.

4. A purchase agreement shall be signed by the purchaser, the seller, and if the agreement is for mortuary science services as mortuary science is defined in section 156.1, a person licensed to deliver funeral services.

5. The seller shall disclose the following information prior to accepting the initial payment under a purchase agreement:

a. The specific method or methods (trust deposits, certificates of deposit, life insurance or an annuity, a surety bond, or warehousing) that will be used to fund the purchase agreement.

b. The relationship between the soliciting agent or agents, the provider of the cemetery merchandise, funeral merchandise, or funeral services, or combination thereof, the commissioner, and any other person.

c. The relationship of the life insurance policy or other trust assets to the funding of the purchase agreement and the nature and existence of any guarantees regarding the purchase agreement.

d. The impact on the purchase agreement of the following:

(1) Changes in the funding, including but not limited to changes in the assignment, beneficiary designation, trustee, or use of proceeds.

(2) Any penalties to be incurred by the purchaser as a result of the failure to make any additional payments required.

(3) Penalties to be incurred upon cancellation.

e. A list of cemetery merchandise, funeral merchandise, and funeral services which are agreed upon under the purchase agreement and all relevant information concerning the price of the cemetery merchandise, funeral merchandise, funeral services, or a combination thereof, including a statement that the purchase price is either guaranteed at the time of purchase or to be determined at the time of need.

f. All relevant information concerning what occurs and whether any entitlements or obligations arise if there is a difference between the funding and the amount actually needed to fund the purchase agreement.

g. Any penalties or restrictions, including but not limited to geographic restrictions or the inability of the provider to perform, upon delivery of cemetery merchandise, funeral merchandise, or funeral services, or the purchase agreement guarantee.

h. If the funding is being transferred from another seller, any material facts related to the revocation of the prior purchase agreement and the transfer of the existing trust funds.

6. *a.* (1) A guaranteed purchase agreement that is funded by a trust shall include a conspicuous statement in language substantially similar to the following language:

> For your prearranged funeral agreement, we will deposit not less than eighty percent of your payments in trust at (name of financial institution), (street address), (city), (state) (zip code) within fifteen days following receipt of the funds. For your protection, you will be notified within sixty days from the date of deposit by the financial institution, if acting as a trustee of trust funds under this chapter, to confirm that the deposit of these funds has been made establishing a trust fund as required by law. If you do not receive this notification, you may contact the Iowa insurance division for assistance by calling the insurance division at (telephone number) or by mail at (street address), (city), Iowa (zip code), or you may

contact the financial institution by calling the financial institution at (telephone number) or by mail at the address indicated above.

(2) A nonguaranteed purchase agreement that is funded by a trust shall include a conspicuous statement in language substantially similar to the following language:

For your prearranged funeral agreement, we will deposit all of your payments in trust at (name of financial institution), (street address), (city), (state) (zip code) within fifteen days following receipt of the funds. For your protection, you will be notified within sixty days from the date of deposit by the financial institution, if acting as a trustee of trust funds under this chapter, to confirm that the deposit of these funds has been made establishing a trust fund as required by law. If you do not receive this notification, you may contact the Iowa insurance division for assistance by calling the insurance division at (telephone number) or by mail at (street address), (city), Iowa (zip code), or you may contact the financial institution by calling the financial institution at (telephone number) or by mail at the address indicated above.

b. A purchase agreement that is funded with an insurance policy or an annuity shall include a conspicuous statement in language substantially similar to the following language:

An (insurance policy or annuity) will be purchased from (name of issuer of the policy or annuity), (street address), (city), (state) (zip code). You should receive confirmation of the purchase of an insurance policy or certificate or an annuity within sixty days of making payment. Delivery of the actual insurance policy or certificate or annuity shall also constitute confirmation. For your protection, you have the right to confirm that the insurance policy or annuity is issued as required by law. If you do not receive confirmation that an insurance policy or certificate or an annuity has been purchased or receive the insurance policy or certificate or the annuity, you should report this fact to the Iowa insurance division by calling the insurance division at (telephone number). Written reports should be mailed to the Iowa insurance division at (street address), (city), Iowa (zip code).

c. A purchase agreement that is funded with a surety bond shall include a conspicuous statement in language substantially similar to the following language:

Coverage under a surety bond in the amount of $(amount) will be purchased from (name of issuer of surety bond), (street address), (city), (state) (zip code) to fund your purchase. If you pay pursuant to your purchase agreement with a single payment, you should receive confirmation of the purchase of a surety bond within sixty days of making the payment. If you pay pursuant to your purchase agreement with multiple, periodic payments, you should receive confirmation of the purchase of a surety bond within sixty days of making the first payment and within sixty days of making the last payment pursuant to the agreement. For your protection, you have the right to confirm that the surety bond is issued as required by law. If you do not receive confirmation of coverage under a surety bond within sixty days of making the first payment and within sixty days of making the last payment, you should report this fact to the Iowa insurance division by calling the insurance division at

(telephone number). Written reports should be mailed to the Iowa insurance division at (street address), (city), Iowa (zip code).

2001 Acts, ch 118, §36; 2002 Acts, ch 1119, §84; 2006 Acts, ch 1117, §116; 2007 Acts, ch 175, §21, 22, 65, 66; 2008 Acts, ch 1103, §8; 2008 Acts, ch 1191, §140; 2010 Acts, ch 1121, §27; 2011 Acts, ch 62, §4; 2013 Acts, ch 90, §157
Referred to in §523A.602

523A.602 Consumer rescission, cancellation, and refund rights — purchase agreement compliance with other laws.

1. A seller shall furnish the purchaser with a completed copy of a purchase agreement pertaining to the sale at the time the purchase agreement is signed. The seller shall comply with the following terms:

a. The same language shall be used in both the oral sales representation and the written purchase agreement.

b. The seller shall give notice in the purchase agreement of the purchaser's right to rescind after signing the purchase agreement. The rescission period must be, but may be greater than, three business days after the date of the purchase agreement. The notice must:

(1) Be located close to the signature line.

(2) Be printed in twelve point boldface type.

(3) State in language that is substantially similar to the following language:

You, the purchaser, have the right to rescind this agreement at any time prior to midnight of the (insert relevant number, not less than three) business days after the date of this agreement.

c. All moneys shall be refunded without penalty within ten days after rescission.

2. *Cancellation refund.*

a. A purchase agreement must include a statement that the purchaser has the right to cancel the agreement for the purchase of cemetery merchandise, funeral merchandise, and funeral services upon written demand and designate or appoint a trustee to hold, manage, invest, and distribute the trust assets.

b. (1) If a purchase agreement is canceled, a purchaser requests a transfer of the trust assets upon cancellation of a purchase agreement, or another seller provides merchandise or services designated in a purchase agreement, the seller shall refund or transfer within thirty days of receiving a written demand no less than the purchase price of the applicable cemetery merchandise, funeral merchandise, and funeral services adjusted for inflation, using the consumer price index amounts announced by the commissioner annually, less any actual expenses incurred by the seller pursuant to the purchase agreement as set forth in the purchase agreement under section 523A.601, subsection 1, paragraph *"f"*. The amount of the actual expenses deducted by the seller shall not exceed ten percent of the purchase price of the applicable cemetery merchandise, funeral merchandise, and funeral services. The seller may also deduct the value of the cemetery merchandise, funeral merchandise, and funeral services already received by, delivered to, or warehoused for the purchaser.

(2) If a purchase agreement is canceled before the purchase price is paid in full, a purchaser requests a transfer of the trust assets upon cancellation of a purchase agreement before the purchase price is paid in full, or another seller provides cemetery merchandise, funeral merchandise, funeral services, or a combination thereof, designated in a purchase agreement before the purchase price is paid in full, the seller shall refund or transfer within thirty days of receiving a written demand no less than the amount paid by the purchaser, less any actual expenses incurred by the seller pursuant to the purchase agreement as set forth in the purchase agreement under section 523A.601, subsection 1, paragraph *"f"*. The amount of the actual expenses deducted by the seller shall not exceed ten percent of the total original purchase price of the applicable cemetery merchandise, funeral merchandise, funeral services, or a combination thereof. The seller may also deduct the value of the cemetery merchandise, funeral merchandise, and funeral services already received by, delivered to, or warehoused for the purchaser.

(3) For the purposes of this paragraph *"b"*, *"actual expenses"* means all reasonable

business expenses of a seller that are associated with the sale of cemetery merchandise, funeral merchandise, funeral services, or a combination thereof. *"Actual expenses"* includes but is not limited to the following:

(a) Marketing and promotional expenses.

(b) Investment management fees.

(c) Annual reporting fees related to accounting and regulatory requirements.

(d) Licensing fees of the seller.

(e) Administration, regulatory reporting, and custody expenses related to purchase agreements.

(f) Computer and software expenses.

(g) Expenses related to employees of the seller such as licensing fees, continuing education, and salaries and commissions.

(h) Miscellaneous office expenses.

c. A purchase agreement must include a statement that the purchaser is entitled to a refund of the purchase price of the applicable funeral merchandise adjusted for inflation, using the consumer price index amounts announced by the commissioner annually for any item of funeral merchandise that cannot be delivered to the location specified in the purchase agreement within forty-eight hours of notice of the individual's death, unless the delay is caused by weather conditions or a natural disaster. The seller must return such refund to the purchaser within thirty days of receiving the written demand.

3. This section does not prohibit a purchaser who is or may become eligible for benefits under Tit. XIX of the federal Social Security Act from making a guaranteed price purchase agreement irrevocable to the extent that federal law or regulations require that such an agreement be irrevocable for purposes of a purchaser's eligibility for benefits under Tit. XIX of the federal Social Security Act, as permitted under federal law. The seller of credit sale agreements shall comply with the requirements of chapter 537, the Iowa consumer credit code, and is subject to the remedies and penalties provided in that chapter for noncompliance.

2001 Acts, ch 118, §37; 2003 Acts, ch 58, §1; 2006 Acts, ch 1117, §117; 2007 Acts, ch 175, §67 – 69; 2010 Acts, ch 1061, §180; 2013 Acts, ch 90, §158; 2017 Acts, ch 54, §76

Referred to in §523A.601

523A.603 Security and notice requirements.

1. If a purchase agreement is funded with an insurance policy or an annuity, the purchaser shall receive a notice thereof from the insurance company within sixty days of making payment. The notice shall include the name and address of the insurance company, the policy number of the insurance policy that secures the agreement, the name of the insured under the insurance policy or annuity, and the amount of the accumulated death benefit. Delivery of the insurance policy or certificate or annuity shall satisfy this notice requirement.

2. If a purchase agreement is funded by a surety bond, the purchaser shall receive a notice from the surety company that evidences coverage under the bond, the name of the purchaser or beneficiary, and the amount of coverage. If the purchase agreement is paid with a single payment, the purchaser shall receive notice of the surety bond within sixty days of making the payment. If the purchase agreement is being paid with multiple, periodic payments, the purchaser shall receive notice of the surety bond within sixty days of making the first payment and within sixty days of making the last payment. Compliance with this notice requirement does not require a seller to purchase individual surety bonds for each purchaser and beneficiary. A seller may file a single bond with the commissioner.

2007 Acts, ch 175, §23; 2008 Acts, ch 1123, §51

523A.604 Purchase agreements — numbering.

Purchase agreements for cemetery merchandise, funeral merchandise, funeral services, or a combination thereof shall be sequentially numbered by each seller in compliance with procedures specified by the commissioner by rules adopted under chapter 17A.

2007 Acts, ch 175, §24

523A.605 through 523A.700 Reserved.

SUBCHAPTER VII

FRAUDULENT PRACTICES
AND OTHER VIOLATIONS

523A.701 Misleading filings.

It is unlawful for a person to make or cause to be made, in any document filed with the commissioner or in any proceeding under this chapter, any statement of material fact which is, at the time and in the light of the circumstances under which it is made, false or misleading, or in connection with such statement, to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading.

2001 Acts, ch 118, §38

523A.702 Misrepresentations of government approval.

It is unlawful for a seller under this chapter to represent or imply in any manner that the seller has been sponsored, recommended, or approved, or that the seller's abilities or qualifications have in any respect been passed upon, by the commissioner.

2001 Acts, ch 118, §39

523A.703 Fraudulent practices.

Except as otherwise provided in section 523A.704, a person who willfully commits any of the following acts commits a fraudulent practice and is punishable as provided in chapter 714:

1. Fails to comply with any requirement of this chapter, or any rule adopted or order issued under this chapter.
2. Makes, causes to be made, or subscribes to a false statement or representation in a report or other document required under this chapter, implementing rules, or orders, or renders such a report or document misleading through the deliberate omission of information properly belonging in the report or document.
3. In connection with the sale of cemetery merchandise, funeral merchandise, funeral services, or a combination thereof, directly or indirectly makes an untrue statement of a material fact or omits to state a material fact that is necessary to make the statements made, in light of the circumstances under which they were made, not misleading.
4. Unless the purchase agreement expressly provides otherwise, excludes in the sale of cemetery merchandise, funeral merchandise, or a combination thereof, funeral services that are necessary for the delivery, use, or installation of the cemetery merchandise or funeral merchandise at the time of the burial or funeral.

2001 Acts, ch 118, §40; 2007 Acts, ch 175, §25

523A.704 Violations.

A person who willfully violates section 523A.501, subsection 1, or section 523A.502, subsection 1, is guilty of a class "D" felony.

2007 Acts, ch 175, §26
Referred to in §523A.703

523A.705 through 523A.800 Reserved.

SUBCHAPTER VIII

ADMINISTRATION AND ENFORCEMENT

523A.801 Administration.

1. This chapter shall be administered by the commissioner. The commissioner may employ officers, attorneys, accountants, and other employees as needed for administering this chapter.

2. It is unlawful for the commissioner or any administrative staff to use for personal benefit any information which is filed with or obtained by the commissioner and which is not made public. This chapter does not authorize the commissioner or any such staff member to disclose any such information except among themselves or to other cemetery and funeral administrators, regulatory authorities, or governmental agencies, or when necessary and appropriate in a proceeding or investigation under this chapter or as required by chapter 22. This chapter neither creates nor derogates any privileges that exist at common law or otherwise when documentary or other evidence is sought under a subpoena directed to the commissioner or any administrative staff.

3. The commissioner shall submit an annual report to the general assembly's standing committees on government oversight by October 1 of each year reporting on the administration of this chapter. The report shall set forth any recommendations for changes in the law that the commissioner deems necessary or desirable to prevent abuses or evasions of this chapter or rules implementing this chapter or to rectify undesirable conditions in connection with the administration of this chapter or rules implementing this chapter.

2001 Acts, ch 118, §41; 2007 Acts, ch 175, §27, 28; 2009 Acts, ch 86, §5

523A.802 Scope.

1. This chapter applies to any advertisement, sale, promotion, or offer made by a person to furnish, upon the future death of a person named or implied in a purchase agreement, cemetery merchandise, funeral merchandise, funeral services, or a combination thereof. Burial accounts and insurance policies are included if the account records or related documents identify the seller that will provide the cemetery merchandise, funeral merchandise, funeral services, or a combination thereof.

2. This chapter applies when a purchase agreement is executed within this state or an advertisement, promotion, or offer to furnish is made or accepted within this state. An offer to furnish is made within this state, whether or not either party is then present in this state, when the offer originates from this state or is directed by the offeror to this state and received by the offeree in this state through the mail, over the telephone, by the internet, or through any other means of commerce.

3. If a foreign person does not have a registered agent or agents in the state of Iowa, doing business within this state shall constitute the person's appointment of the secretary of state of the state of Iowa to be its true and lawful attorney upon whom may be served all lawful process of original notice in actions or proceedings arising or growing out of any contract or tort.

2001 Acts, ch 118, §42; 2007 Acts, ch 175, §70

523A.802A Service of process made on the commissioner as the agent for service of process.

Service of process made on the commissioner as the agent for service of process shall be made as provided in section 505.30.

2018 Acts, ch 1018, §15
NEW section

523A.803 Investigations and subpoenas.

1. The commissioner may, for the purpose of discovering violations of this chapter, implementing rules, or orders issued under this chapter:

a. Make such public or private investigations within or outside of this state as the

commissioner deems necessary to determine whether any person has violated or is about to violate this chapter, implementing rules, or orders issued under this chapter, or to aid in enforcement of this chapter or in the prescribing of rules and forms under this chapter.

b. Require or permit any person to file a statement in writing, under oath or otherwise as the commissioner or attorney general determines, as to all the facts and circumstances concerning the matter to be investigated.

c. Investigate the seller and examine the books, accounts, papers, correspondence, memoranda, purchase agreements, files, or other documents or records used by every applicant and licensee under this chapter.

d. Administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, accounts, papers, correspondence, memoranda, purchase agreements, files, or other documents or records which the commissioner deems relevant or material to any investigation or proceeding under this chapter and implementing rules, all of which may be enforced under chapter 17A.

e. Apply to the district court for an order requiring a person's appearance before the commissioner or attorney general, or a designee of either or both, in cases where the person has refused to obey a subpoena issued by the commissioner or attorney general. The person may also be required to produce documentary evidence germane to the subject of the investigation. Failure to obey a court order under this subsection constitutes contempt of court.

2. All records maintained by the commissioner under this section, including work papers, notes, recorded information, documents, and copies thereof that are produced or obtained by or disclosed to the commissioner or another person in the course of an investigation, shall be confidential pursuant to section 22.7, subsection 58, and shall not be made available for inspection and copying except upon the approval of the commissioner or the attorney general. Such records shall be privileged and confidential in any judicial or administrative proceeding except any of the following:

a. An action commenced by the commissioner.

b. An administrative proceeding brought by the insurance division.

c. An action or proceeding which arises out of the criminal provisions of the laws of this state or of the United States.

d. An action brought by the insurance division or the attorney general to recover moneys for embezzlement, misappropriation, or misuse of trust funds.

3. The commissioner may issue and bring an action in district court to enforce subpoenas within this state at the request of an agency or administrator of another state, if the activity constituting an alleged violation for which the information is sought would be a violation of this chapter had the activity occurred in this state.

2001 Acts, ch 118, §43; 2007 Acts, ch 175, §71; 2015 Acts, ch 128, §42, 43, 50, 51
Referred to in §22.7(58)

523A.804 Mediation.

1. The commissioner may order a seller to participate in mediation in any dispute regarding a purchase agreement. Mediation performed under this section shall be conducted by a mediator appointed by the commissioner and shall comply with the provisions of chapter 679C.

2. Mediation of these disputes shall include attendance at a mediation session with the mediator and the parties to the dispute, listening to the mediator's explanation of the mediation process, presentation of one party's view of the dispute, and listening to the response of the other party. Participation in mediation does not require that the parties reach a mediation agreement.

3. Parties to the mediation shall have the right to advice and presence of counsel at all times. The parties to the mediation shall present any mediation agreement reached through the mediation to the commissioner. If a mediation agreement is not reached, the mediator shall file a report with the commissioner. The costs of the mediation shall be approved by the commissioner and shall be borne by the insurance division's regulatory fund.

2001 Acts, ch 118, §44; 2007 Acts, ch 175, §72

523A.805 Cease and desist orders — injunctions.

If it appears to the commissioner that a person has engaged or is about to engage in an act or practice constituting a violation of this chapter, implementing rules, or orders issued under this chapter, the commissioner or the attorney general may do either or both of the following:

1. Issue a summary order directed at the person requiring the person to cease and desist from engaging in such act or practice. A person may request a hearing within thirty days of issuance of the summary order. If a hearing is not timely requested, the summary order shall become final by operation of law. The order shall remain effective from the date of issuance until the date the order becomes final by operation of law or is overturned by a presiding officer following a request for hearing. Section 17A.18A is inapplicable to summary cease and desist orders issued under this section.

2. Bring an action in the district court in any county of the state for an injunction to restrain a person subject to this chapter and any agents, employees, or associates of the person from engaging in conduct or practices deemed contrary to the public interest. In any proceeding for an injunction, the commissioner or attorney general may apply to the court for a subpoena to require the appearance of a defendant and the defendant's agents and for any books, accounts, papers, correspondence, memoranda, purchase agreements, files, or other documents or records germane to the hearing upon the petition for an injunction. Upon a proper showing, a permanent or temporary injunction, restraining order, or writ of mandamus shall be granted and a receiver may be appointed for the defendant or the defendant's assets. The commissioner or attorney general shall not be required to post a bond.

2001 Acts, ch 118, §45

523A.806 Court action for failure to cooperate.

1. If a person fails or refuses to file any statement or report or to produce any books, accounts, papers, correspondence, memoranda, purchase agreements, files, or other documents or records, or to obey any subpoena issued by the commissioner, the commissioner may refer the matter to the attorney general, who may apply to a district court to enforce compliance. The court may order any or all of the following:

a. Injunctive relief, restricting or prohibiting the offer or sale of cemetery merchandise, funeral merchandise, funeral services, or a combination thereof.

b. Revocation or suspension of any license issued under this chapter.

c. Production of documents or records including but not limited to books, accounts, papers, correspondence, memoranda, purchase agreements, files, or other documents or records.

d. Such other relief as may be required.

2. Such an order shall be effective until the person files the statement or report or produces the documents requested, or obeys the subpoena.

2001 Acts, ch 118, §46; 2007 Acts, ch 175, §73

523A.807 Prosecution for violations of law.

1. A violation of this chapter or rules adopted or orders issued under this chapter is a violation of section 714.16, subsection 2, paragraph *"a"*. The remedies and penalties provided by section 714.16, including but not limited to injunctive relief and penalties, apply to violations of this chapter.

2. If the commissioner believes that grounds exist for the criminal prosecution of persons subject to this chapter for violations of this chapter or any other law of this state, the commissioner may forward to the attorney general or the county attorney the grounds for the belief, including all evidence in the commissioner's possession, so that the attorney general or the county attorney may proceed with the matter as deemed appropriate.

3. If the commissioner finds that a person has violated section 523A.201, 523A.202, 523A.203, 523A.207, 523A.401, 523A.402, 523A.403, 523A.404, 523A.405, 523A.501, or 523A.502, or any rule adopted pursuant thereto, the commissioner may order any or all of the following:

a. Payment of a civil penalty of not more than one thousand dollars for each violation, but not exceeding an aggregate of ten thousand dollars during any six-month period, except that if the commissioner finds that the person knew or reasonably should have known that the person was in violation of such provisions or rules adopted pursuant thereto, the penalty shall be not more than five thousand dollars for each violation, but not exceeding an aggregate of fifty thousand dollars during any six-month period. The commissioner shall assess the penalty on the employer of an individual and not on the individual, if the commissioner finds that the violations committed by the individual were directed, encouraged, condoned, ignored, or ratified by the individual's employer. Any civil penalties collected under this subsection shall be deposited as provided in section 505.7.

b. Issuance of an order prohibiting the person committing a violation from selling funeral merchandise, cemetery merchandise, funeral services, or a combination thereof, and from managing, operating, or otherwise exercising control over any business entity that is subject to regulation under this chapter or chapter 523I. A person who has been named in such an order may contest the order by filing a request for a contested case proceeding as provided in chapter 17A and in accordance with rules adopted by the commissioner. The commissioner may, pursuant to chapter 17A, deny any application filed under section 523A.501 or 523A.502 if the applicant, or an officer, director, or owner of the applicant, is named in a final order issued pursuant to this subsection.

4. The commissioner shall post on the internet site of the division of insurance of the department of commerce a list of all persons licensed under this chapter and an index of orders issued by the commissioner pertaining to such persons.

2001 Acts, ch 118, §47; 2007 Acts, ch 175, §29; 2008 Acts, ch 1123, §52; 2009 Acts, ch 181, §96; 2010 Acts, ch 1121, §28; 2013 Acts, ch 90, §257; 2015 Acts, ch 128, §44, 50, 51; 2016 Acts, ch 1073, §159

Referred to in §523A.503

523A.808 Cooperation with other agencies.

1. To encourage uniform interpretation and administration of this chapter and effective regulation of the sale of cemetery merchandise, funeral merchandise, and funeral services, the commissioner may cooperate with any governmental law enforcement or regulatory agency.

2. This cooperation includes but is not limited to:

a. Making a joint examination or investigation.

b. Holding a joint administrative hearing.

c. Filing and prosecuting a joint civil or administrative proceeding.

d. Sharing and exchanging personnel.

e. Sharing and exchanging relevant information and documents.

f. Formulating, in accordance with chapter 17A, rules or proposed rules on matters such as statements of policy, regulatory standards, guidelines, and interpretive opinions.

2001 Acts, ch 118, §48

523A.809 Rules, forms, and orders.

1. Under chapter 17A, the commissioner may from time to time make, amend, and rescind such rules, forms, and orders as are necessary or appropriate for the protection of purchasers and the public and to administer the provisions of this chapter, its implementing rules, and orders issued under this chapter.

2. A rule, form, or order shall not be made, amended, or rescinded unless the commissioner finds that the action is necessary or appropriate in the public interest or for the protection of purchasers and consistent with the purposes fairly intended by the policies and provisions of this chapter, its implementing rules, and orders issued under this chapter.

3. A provision of this chapter imposing any liability does not apply to any act done or omitted in good faith in conformity with any rule, form, or order of the commissioner, notwithstanding that the rule, form, or order may later be amended or rescinded or be determined by judicial or other authority to be invalid for any reason.

2001 Acts, ch 118, §49

523A.810 Date of filing — interpretive opinions.

1. A document is filed when it is received by the commissioner.
2. Requests for interpretive opinions may be granted in the commissioner's discretion.

2001 Acts, ch 118, §50

523A.810A Electronic filing.

The commissioner shall, by rule, develop a system and procedures and a format for electronic filing of documents required to be filed with the commissioner under this chapter.

2008 Acts, ch 1103, §9

523A.811 Receiverships.

1. The commissioner may notify the attorney general of the potential need for establishment of a receivership if a receivership is requested or consented to by a seller subject to this chapter.
2. The commissioner shall notify the attorney general of the potential need for establishment of a receivership if the commissioner finds that a seller subject to this chapter meets one or more of the following conditions:

a. Is insolvent.

b. Has utilized trust funds for personal or business purposes in a manner inconsistent with this chapter.

c. The amount of funds currently held in trust for cemetery merchandise, funeral merchandise, and funeral services is less than the amount required in section 523A.201, subsection 2 or 3, as applicable.

d. Has refused to pay any just claim or demand based on a purchase agreement referred to in section 523A.201.

e. The commissioner finds upon investigation that a seller is unable to pay any claim or demand based on a purchase agreement which has been legally determined to be just and outstanding.

f. A receivership has been established for a cemetery subject to chapter 523I that is owned or operated by a seller who is subject to this chapter.

3. The commissioner or attorney general may apply to the district court in any county of the state for the establishment of a receivership. Upon proof of any of the grounds for a receivership described in this section, the court may grant a receivership.
4. If a seller who is subject to this chapter owns or operates a cemetery subject to chapter 523I, for which a receivership has been established, the receivership provisions of section 523I.212 shall apply to any receivership established under this section.

2001 Acts, ch 118, §51; 2007 Acts, ch 175, §30, 31; 2008 Acts, ch 1103, §10; 2017 Acts, ch 14, §1

Referred to in §523A.812

523A.812 Insurance division regulatory fund.

The insurance division may authorize the creation of a special revenue fund in the state treasury, to be known as the insurance division regulatory fund. The commissioner shall allocate annually from the fees paid pursuant to section 523A.204, two dollars for each purchase agreement reported on a preneed seller's annual report filed pursuant to section 523A.204 for deposit to the regulatory fund. The remainder of the fees collected pursuant to section 523A.204 shall be deposited as provided in section 505.7. The commissioner shall also allocate annually the examination fees paid pursuant to section 523A.814 and any examination expense reimbursement for deposit to the regulatory fund. The moneys in the regulatory fund shall be retained in the fund. The moneys are appropriated and, subject to authorization by the commissioner, may be used to pay examiners, examination expenses, investigative expenses, the expenses of mediation ordered by the commissioner, consumer education expenses, the expenses of a toll-free telephone line to receive consumer complaints, and the expenses of receiverships established under section 523A.811. If the commissioner determines that funding is not otherwise available to reimburse the expenses of a person who receives title to a cemetery subject to chapter 523I, pursuant to such a

receivership, the commissioner shall use moneys in the regulatory fund as necessary to preserve, protect, restore, and maintain the physical integrity of that cemetery and to satisfy claims or demands for cemetery merchandise, funeral merchandise, and funeral services based on purchase agreements which the commissioner determines are just and outstanding. An annual allocation to the regulatory fund shall not be imposed if the current balance of the fund exceeds five hundred thousand dollars.

2001 Acts, ch 118, §52; 2005 Acts, ch 128, §4; 2007 Acts, ch 175, §32; 2009 Acts, ch 181, §97

523A.813 License revocation — recommendation by commissioner to board of mortuary science.

Upon a determination by the commissioner that grounds exist for an administrative license revocation or suspension action by the board of mortuary science under chapter 156, the commissioner may forward to the board the grounds for the determination, including all evidence in the possession of the commissioner, so that the board may proceed with the matter as deemed appropriate.

2001 Acts, ch 118, §53; 2007 Acts, ch 10, §178

523A.814 Examination fee.

In addition to the filing fee paid pursuant to section 523A.204, subsection 2, a seller filing an annual report shall pay an examination fee in the amount of five dollars for each purchase agreement subject to a filing fee that is sold between July 1, 2005, and December 31, 2007, and in the amount of ten dollars for each purchase agreement subject to a filing fee that is sold after December 31, 2007.

2005 Acts, ch 128, §5; 2007 Acts, ch 175, §33

Referred to in §523A.812

523A.815 through 523A.900 Reserved.

SUBCHAPTER IX

LIQUIDATION PROCEDURES

523A.901 Liquidation.

1. *Grounds for liquidation.* The commissioner may petition the district court for an order directing the commissioner to liquidate the business of a seller on either of the following grounds:

a. The seller did not deposit funds pursuant to section 523A.201 or withdrew funds in a manner inconsistent with this chapter and is insolvent.

b. The seller did not deposit funds pursuant to section 523A.201 or withdrew funds in a manner inconsistent with this chapter and the condition of the seller is such that further transaction of business would be hazardous, financially or otherwise, to purchasers or the public.

2. *Liquidation order.*

a. An order to liquidate the business of a seller shall appoint the commissioner as liquidator and shall direct the liquidator to immediately take possession of the assets of the seller and to administer them under the general supervision of the court. The liquidator is vested with the title to the property, contracts, and rights of action and the books and records of the seller ordered liquidated, wherever located, as of the entry of the final order of liquidation. The filing or recording of the order with the clerk of court and the recorder of deeds of the county in which its principal office or place of business is located, or in the case of real estate, with the recorder of deeds of the county where the property is located, is notice as a deed, bill of sale, or other evidence of title duly filed or recorded with the recorder of deeds.

b. Upon issuance of an order, the rights and liabilities of a seller and of the seller's creditors, purchasers, owners, and other persons interested in the seller's estate shall

become fixed as of the date of the entry of the order of liquidation, except as provided in subsection 14.

c. At the time of petitioning for an order of liquidation, or at any time after the time of petitioning, the commissioner, after making appropriate findings of a seller's insolvency, may petition the court for a declaration of insolvency. After providing notice and hearing as it deems proper, the court may make the declaration.

d. An order issued under this section shall require accounting to the court by the liquidator. Accountings, at a minimum, must include all funds received or disbursed by the liquidator during the current period. An accounting shall be filed within one year of the liquidation order and at such other times as the court may require.

e. Within five days after the initiation of an appeal of an order of liquidation, which order has not been stayed, the commissioner shall present for the court's approval a plan for the continued performance of the seller's obligations during the pendency of an appeal. The plan shall provide for the continued performance of purchase agreements in the normal course of events, notwithstanding the grounds alleged in support of the order of liquidation including the ground of insolvency. If the defendant seller's financial condition, in the judgment of the commissioner, will not support the full performance of all obligations during the appeal pendency period, the plan may prefer the claims of certain purchasers and claimants over creditors and interested parties as well as other purchasers and claimants, as the commissioner finds to be fair and equitable considering the relative circumstances of such purchasers and claimants. The court shall examine the plan submitted by the commissioner and if it finds the plan to be in the best interests of the parties, the court shall approve the plan. An action shall not lie against the commissioner or any of the commissioner's deputies, agents, clerks, assistants, or attorneys by any party based on preference in an appeal pendency plan approved by the court.

3. *Powers of liquidator.*

a. The liquidator may do any of the following:

(1) Appoint a special deputy to act for the liquidator under this chapter and determine the special deputy's reasonable compensation. The special deputy shall have all the powers of the liquidator granted by this section. The special deputy shall serve at the pleasure of the liquidator.

(2) Hire employees and agents, legal counsel, accountants, appraisers, consultants, and other personnel as the commissioner may deem necessary to assist in the liquidation.

(3) With the approval of the court, fix reasonable compensation of employees and agents, legal counsel, accountants, appraisers, and consultants.

(4) Pay reasonable compensation to persons appointed and defray from the funds or assets of the seller all expenses of taking possession of, conserving, conducting, liquidating, disposing of, or otherwise dealing with the business and property of the seller. If the property of the seller does not contain sufficient cash or liquid assets to defray the costs incurred, the commissioner may advance the costs so incurred out of the insurance division regulatory fund. Amounts so advanced for expenses of administration shall be repaid to the insurance division regulatory fund for the use of the division out of the first available moneys of the seller.

(5) Hold hearings, subpoena witnesses and compel their attendance, administer oaths, examine a person under oath, and compel a person to subscribe to the person's testimony after it has been correctly reduced to writing, and in connection to the proceedings require the production of books, accounts, papers, correspondence, memoranda, purchase agreements, files, or other documents or records which the liquidator deems relevant to the inquiry.

(6) Collect debts and moneys due and claims belonging to the seller, wherever located. Pursuant to this subparagraph, the liquidator may do any of the following:

(a) Institute timely action in other jurisdictions to forestall garnishment and attachment proceedings against debts.

(b) Perform acts as are necessary or expedient to collect, conserve, or protect its assets or property, including the power to sell, compound, compromise, or assign debts for purposes of collection upon terms and conditions as the liquidator deems best.

(c) Pursue any creditor's remedies available to enforce claims.

(7) Conduct public and private sales of the property of the seller.

(8) Use assets of the seller under a liquidation order to transfer obligations of purchase agreements to a solvent seller, if the transfer can be accomplished without prejudice to the applicable priorities under subsection 18.

(9) Acquire, hypothecate, encumber, lease, improve, sell, transfer, abandon, or otherwise dispose of or deal with property of the seller at its market value or upon terms and conditions as are fair and reasonable. The liquidator shall also have power to execute, acknowledge, and deliver deeds, assignments, releases, and other instruments necessary to effectuate a sale of property or other transaction in connection with the liquidation.

(10) Borrow money on the security of the seller's assets or without security and execute and deliver documents necessary to that transaction for the purpose of facilitating the liquidation. Money borrowed pursuant to this subparagraph shall be repaid as an administrative expense and shall have priority over any other class 1 claims under the priority of distribution established in subsection 18.

(11) Enter into contracts as necessary to carry out the order to liquidate and affirm or disavow contracts to which the seller is a party.

(12) Continue to prosecute and to institute in the name of the seller or in the liquidator's own name any and all suits and other legal proceedings, in this state or elsewhere, and to abandon the prosecution of claims the liquidator deems unprofitable to pursue further.

(13) Prosecute an action on behalf of the creditors, purchasers, or owners against an officer of the seller or any other person.

(14) Remove records and property of the seller to the offices of the commissioner or to other places as may be convenient for the purposes of efficient and orderly execution of the liquidation.

(15) Deposit in one or more banks in this state sums as are required for meeting current administration expenses and distributions.

(16) Unless the court orders otherwise, invest funds not currently needed.

(17) File necessary documents for recording in the office of the recorder of deeds or record office in this state or elsewhere where property of the seller is located.

(18) Assert defenses available to the seller against third persons including statutes of limitations, statutes of fraud, and the defense of usury. A waiver of a defense by the seller after a petition in liquidation has been filed shall not bind the liquidator.

(19) Exercise and enforce the rights, remedies, and powers of a creditor, purchaser, or owner, including the power to avoid transfer or lien that may be given by the general law and that is not included within subsections 7 through 9.

(20) Intervene in a proceeding wherever instituted that might lead to the appointment of a receiver or trustee, and act as the receiver or trustee whenever the appointment is offered.

(21) Exercise powers now held or later conferred upon receivers by the laws of this state which are not inconsistent with this chapter.

b. This subsection does not limit the liquidator or exclude the liquidator from exercising a power not listed in paragraph *"a"* that may be necessary or appropriate to accomplish the purposes of this chapter.

4. *Notice to creditors and others.*

a. Unless the court otherwise directs, the liquidator shall give notice of the liquidation order as soon as possible by doing both of the following:

(1) Mailing notice, by first-class mail, to all persons known or reasonably expected to have claims against the seller, including purchasers, at their last known address as indicated by the records of the seller.

(2) Publication of notice in a newspaper of general circulation in the county in which the seller has its principal place of business and in other locations as the liquidator deems appropriate.

b. Notice to potential claimants under paragraph *"a"* shall require claimants to file with the liquidator their claims together with proper proofs of the claim under subsection 13 on or before a date the liquidator shall specify in the notice. Claimants shall keep the liquidator informed of their changes of address, if any.

c. If notice is given pursuant to this subsection, the distribution of assets of the seller under

this chapter shall be conclusive with respect to claimants, whether or not a claimant actually received notice.

5. *Actions by and against liquidator.*

a. After issuance of an order appointing a liquidator of the business of a seller, an action at law or equity shall not be brought against the seller within this state or elsewhere, and existing actions shall not be maintained or further presented after issuance of the order. Whenever in the liquidator's judgment, protection of the estate of the seller necessitates intervention in an action against the seller that is pending outside this state, the liquidator may intervene in the action. The liquidator may defend, at the expense of the estate of the seller, an action in which the liquidator intervenes under this section.

b. Within two years or such additional time as applicable law may permit, the liquidator, after the issuance of an order for liquidation, may institute an action or proceeding on behalf of the estate of the seller upon any cause of action against which the period of limitation fixed by applicable law has not expired at the time of the filing of the petition upon which the order is entered. If a period of limitation is fixed by agreement for instituting a suit or proceeding upon a claim, or for filing a claim, proof of claim, proof of loss, demand, notice, or the like, or if in a proceeding, judicial or otherwise, a period of limitation is fixed in the proceeding or pursuant to applicable law for taking an action, filing a claim or pleading, or doing an act, and if the period has not expired at the date of the filing of the petition, the liquidator may, for the benefit of the estate, take any action or do any act, required of or permitted to the seller, within a period of one hundred eighty days subsequent to the entry of an order for liquidation, or within a further period as is shown to the satisfaction of the court not to be unfairly prejudicial to the other party.

c. A statute of limitations or defense of laches shall not run with respect to an action against a seller between the filing of a petition for liquidation against the business of a seller and the denial of the petition. An action against the seller that might have been commenced when the petition was filed may be commenced within sixty days after the petition is denied.

6. *Collection and list of assets.*

a. As soon as practicable after the liquidation order but not later than one hundred twenty days after such order, the liquidator shall prepare in duplicate a list of the seller's assets. The list shall be amended or supplemented as the liquidator may determine. One copy shall be filed in the office of the clerk of court, and one copy shall be retained for the liquidator's files. Amendments and supplements shall be similarly filed.

b. The liquidator shall reduce the assets to a degree of liquidity that is consistent with the effective execution of the liquidation.

c. A submission of a proposal to the court for distribution of assets in accordance with subsection 11 fulfills the requirements of paragraph *"a"*.

7. *Fraudulent transfers prior to petition.*

a. A transfer made and an obligation incurred by a seller whose business is within one year prior to the filing of a successful petition for liquidation under this chapter is fraudulent as to then existing and future creditors if made or incurred without fair consideration, or with actual intent to hinder, delay, or defraud either existing or future creditors. A fraudulent transfer made or an obligation incurred by a seller whose business is ordered to be liquidated under this chapter may be avoided by the liquidator, except as to a person who in good faith is a purchaser, lienor, or obligee for a present fair equivalent value. A purchaser, lienor, or obligee, who in good faith has given a consideration less than present fair equivalent value for such transfer, lien, or obligation, may retain the property, lien, or obligation as security for repayment. The court may, on due notice, order any such transfer, lien, or obligation to be preserved for the benefit of the estate, and in that event, the receiver shall succeed to and may enforce the rights of the purchaser, lienor, or obligee.

b. (1) A transfer of property other than real property is made when it becomes perfected so that a subsequent lien obtainable by legal or equitable proceedings on a simple contract could not become superior to the rights of the transferee under subsection 9, paragraph *"c"*.

(2) A transfer of real property is made when it becomes perfected so that a subsequent bona fide purchaser from the seller could not obtain rights superior to the rights of the transferee.

(3) A transfer which creates an equitable lien is not perfected if there are available means by which a legal lien could be perfected.

(4) A transfer not perfected prior to the filing of a petition for liquidation is deemed to be made immediately before the filing of the successful petition.

(5) This subsection applies whether or not there are or were creditors who might have obtained a lien or persons who might have become bona fide purchasers.

8. *Fraudulent transfer after petition.*

a. After a petition for liquidation has been filed, a transfer of real property of the seller made to a person acting in good faith is valid against the liquidator if made for a present fair equivalent value. If the transfer is not made for a present fair equivalent value, then the transfer is valid to the extent of the present consideration actually paid for which amount the transferee shall have a lien on the property transferred. The commencement of a proceeding in liquidation is constructive notice upon the recording of a copy of the petition for or order of liquidation with the recorder of deeds in the county where any real property in question is located. The exercise by a court of the United States or a state or jurisdiction to authorize a judicial sale of real property of the seller within a county in a state shall not be impaired by the pendency of a proceeding unless the copy is recorded in the county prior to the consummation of the judicial sale.

b. After a petition for liquidation has been filed and before either the liquidator takes possession of the property of the seller or an order of liquidation is granted:

(1) A transfer of the property, other than real property, of the seller made to a person acting in good faith is valid against the liquidator if made for a present fair equivalent value. If the transfer was not made for a present fair equivalent value, then the transfer is valid to the extent of the present consideration actually paid for which amount the transferee shall have a lien on the property transferred.

(2) If acting in good faith, a person indebted to the seller or holding property of the seller may pay the debt or deliver the property, or any part of the property, to the seller or upon the seller's order as if the petition were not pending.

(3) A person having actual knowledge of the pending liquidation is not acting in good faith.

(4) A person asserting the validity of a transfer under this subsection has the burden of proof. Except as provided in this subsection, a transfer by or on behalf of the seller after the date of the petition for liquidation by any person other than the liquidator is not valid against the liquidator.

c. A person receiving any property from the seller or any benefit of the property of the seller which is a fraudulent transfer under paragraph *"a"* is personally liable for the property or benefit and shall account to the liquidator.

d. This chapter does not impair the negotiability of currency or negotiable instruments.

9. *Voidable preferences and liens.*

a. (1) A preference is a transfer of the property of a seller to or for the benefit of a creditor for an antecedent debt made or suffered by the seller within one year before the filing of a successful petition for liquidation under this chapter, the effect of which transfer may be to enable the creditor to obtain a greater percentage of this debt than another creditor of the same class would receive. If a liquidation order is entered while the seller is already subject to a receivership, then the transfers are preferences if made or suffered within one year before the filing of the successful petition for the receivership, or within two years before the filing of the successful petition for liquidation, whichever time is shorter.

(2) A preference may be avoided by the liquidator if any of the following exist:

(a) The seller was insolvent at the time of the transfer.

(b) The transfer was made within four months before the filing of the petition.

(c) At the time the transfer was made, the creditor receiving it or to be benefited by the transfer or the creditor's agent acting with reference to the transfer had reasonable cause to believe that the seller was insolvent or was about to become insolvent.

(d) The creditor receiving the transfer was an officer, or an employee, attorney, or other person who was in fact in a position of comparable influence in the business of the seller to an officer whether or not the person held the position of an officer, owner, or other person,

firm, corporation, association, or aggregation of persons with whom the seller did not deal at arm's length.

(3) Where the preference is voidable, the liquidator may recover the property. If the property has been converted, the liquidator may recover its value from a person who has received or converted the property. However, if a bona fide purchaser or lienor has given less than the present fair equivalent value, the purchaser or lienor shall have a lien upon the property to the extent of the consideration actually given. Where a preference by way of lien or security interest is voidable, the court may on due notice order the lien or security interest to be preserved for the benefit of the estate, in which event the lien or title shall pass to the liquidator.

b. (1) A transfer of property other than real property is made when it becomes perfected so that a subsequent lien obtainable by legal or equitable proceedings on a simple contract could not become superior to the rights of the transferee.

(2) A transfer of real property is made when it becomes perfected so that a subsequent bona fide purchaser from the seller could not obtain rights superior to the rights of the transferee.

(3) A transfer which creates an equitable lien is not perfected if there are available means by which a legal lien could be created.

(4) A transfer not perfected prior to the filing of a petition for liquidation is deemed to be made immediately before the filing of the successful petition.

(5) This subsection applies whether or not there are or were creditors who might have obtained liens or persons who might have become bona fide purchasers.

c. (1) A lien obtainable by legal or equitable proceedings upon a simple contract is one arising in the ordinary course of the proceedings upon the entry or docketing of a judgment or decree, or upon attachment, garnishment, execution, or like process, whether before, upon, or after judgment or decree and whether before or upon levy. It does not include liens which under applicable law are given a special priority over other liens which are prior in time.

(2) A lien obtainable by legal or equitable proceedings may become superior to the rights of a transferee, or a purchaser may obtain rights superior to the rights of a transferee within the meaning of paragraph *"b"*, if such consequences follow only from the lien or purchase itself, or from the lien or purchase followed by a step wholly within the control of the respective lienholder or purchaser, with or without the aid of ministerial action by public officials. However, a lien could not become superior and a purchase could not create superior rights for the purpose of paragraph *"b"* through an act subsequent to the obtaining of a lien or subsequent to a purchase which requires the agreement or concurrence of any third party or which requires further judicial action or ruling.

d. A transfer of property for or on account of a new and contemporaneous consideration, which is under paragraph *"b"* made or suffered after the transfer because of delay in perfecting it, does not become a transfer for or on account of an antecedent debt if any acts required by the applicable law to be performed in order to perfect the transfer as against liens or a bona fide purchaser's rights are performed within twenty-one days or any period expressly allowed by the law, whichever is less. A transfer to secure a future loan, if a loan is actually made, or a transfer which becomes security for a future loan, shall have the same effect as a transfer for or on account of a new and contemporaneous consideration.

e. If a lien which is voidable under paragraph *"a"*, subparagraph (2), has been dissolved by the furnishing of a bond or other obligation, the surety of which has been indemnified directly or indirectly by the transfer or the creation of a lien upon property of a seller before the filing of a petition under this chapter which results in the liquidation order, the indemnifying transfer or lien is also voidable.

f. The property affected by a lien voidable under paragraphs *"a"* and *"e"* is discharged from the lien. The property and any of the indemnifying property transferred to or for the benefit of a surety shall pass to the liquidator. However, the court may on due notice order a lien to be preserved for the benefit of the estate and the court may direct that the conveyance be executed to evidence the title of the liquidator.

g. The court shall have summary jurisdiction in a proceeding by a liquidator to hear and determine the rights of the parties under this section. Reasonable notice of hearing in the

proceeding shall be given to all parties in interest, including the obligee of a releasing bond or other like obligation. Where an order is entered for the recovery of indemnifying property in kind or for the avoidance of an indemnifying lien, upon application of any party in interest, the court shall in the same proceeding ascertain the value of the property or lien. If the value is less than the amount for which the property is indemnified or less than the amount of the lien, the transferee or lienholder may elect to retain the property or lien upon payment of its value, as ascertained by the court, to the liquidator within the time as fixed by the court.

h. The liability of a surety under a releasing bond or other like obligation is discharged to the extent of the value of the indemnifying property recovered or the indemnifying lien nullified and avoided by the liquidator. Where the property is retained under paragraph "*g*", the liability of the surety is discharged to the extent of the amount paid to the liquidator.

i. If a creditor has been preferred for property which becomes a part of the seller's estate, and afterward in good faith gives the seller further credit without security of any kind, the amount of the new credit remaining unpaid at the time of the petition may be set off against the preference which would otherwise be recoverable from the creditor.

j. If within four months before the filing of a successful petition for liquidation under this chapter, or at any time in contemplation of a proceeding to liquidate, a seller, directly or indirectly, pays money or transfers property to an attorney for services rendered or to be rendered, the transaction may be examined by the court on its own motion or shall be examined by the court on petition of the liquidator. The payment or transfer shall be held valid only to the extent of a reasonable amount to be determined by the court. The excess may be recovered by the liquidator for the benefit of the estate. However, where the attorney is in a position of influence in the business of the seller or an affiliate, payment of any money or the transfer of any property to the attorney for services rendered or to be rendered shall be governed by the provisions of paragraph "*a*", subparagraph (2), subparagraph division (d).

k. (1) An officer, manager, employee, shareholder, subscriber, attorney, or other person acting on behalf of the seller who knowingly participates in giving any preference when the person has reasonable cause to believe the seller is or is about to become insolvent at the time of the preference is personally liable to the liquidator for the amount of the preference. There is an inference that reasonable cause exists if the transfer was made within four months before the date of filing of this successful petition for liquidation.

(2) A person receiving property from the seller or the benefit of the property of the seller as a preference voidable under paragraph "*a*" is personally liable for the property and shall account to the liquidator.

(3) This subsection shall not prejudice any other claim by the liquidator against any person.

10. *Claims of holder of void or voidable rights.*

a. A claim of a creditor who has received or acquired a preference, lien, conveyance, transfer, assignment, or encumbrance, voidable under this chapter, shall not be allowed unless the creditor surrenders the preference, lien, conveyance, transfer, assignment, or encumbrance. If the avoidance is effected by a proceeding in which a final judgment has been entered, the claim shall not be allowed unless the money is paid or the property is delivered to the liquidator within thirty days from the date of the entering of the final judgment. However, the court having jurisdiction over the liquidation may allow further time if there is an appeal or other continuation of the proceeding.

b. A claim allowable under paragraph "*a*" by reason of a voluntary or involuntary avoidance, preference, lien, conveyance, transfer, assignment, or encumbrance may be filed as an excused late filing under subsection 12, if filed within thirty days from the date of the avoidance or within the further time allowed by the court under paragraph "*a*".

11. *Liquidator's proposal to distribute assets.*

a. From time to time as assets become available, the liquidator shall make application to the court for approval of a proposal to disburse assets out of marshaled assets.

b. The proposal shall at least include provisions for all of the following:

(1) Reserving amounts for the payment of all the following:

(a) Expenses of administration.

(b) To the extent of the value of the security held, the payment of claims of secured creditors.

(c) Claims falling within the priorities established in subsection 18, paragraphs *"a"* and *"b"*.

(2) Disbursement of the assets marshaled to date and subsequent disbursement of assets as they become available.

c. Action on the application may be taken by the court provided that the liquidator's proposal complies with paragraph *"b"*.

12. *Filing of claims.*

a. Proof of all claims shall be filed with the liquidator in the form required by subsection 13 on or before the last day for filing specified in the notice required under subsection 4.

b. The liquidator may permit a claimant making a late filing to share in distributions, whether past or future, as if the claimant were not late, to the extent that the payment will not prejudice the orderly administration of the liquidation under any of the following circumstances:

(1) The existence of the claim was not known to the claimant and the claimant filed the claim as promptly as reasonably possible after learning of it.

(2) A transfer to a creditor was avoided under subsections 7 through 9, or was voluntarily surrendered under subsection 10, and the filing satisfies the conditions of subsection 10.

(3) The valuation under subsection 17 of security held by a secured creditor shows a deficiency, which is filed within thirty days after the valuation.

c. The liquidator may consider any claim filed late and permit the claimant to receive distributions which are subsequently declared on any claims of the same or lower priority if the payment does not prejudice the orderly administration of the liquidation. The late-filing claimant shall receive at each distribution the same percentage of the amount allowed on the claim as is then being paid to claimants of any lower priority. This shall continue until the claim has been paid in full.

13. *Proof of claim.*

a. Proof of claim shall consist of a statement signed by the claimant that includes all of the following that are applicable:

(1) The particulars of the claim, including the consideration given for it.

(2) The identity and amount of the security on the claim.

(3) The payments, if any, made on the debt.

(4) A statement that the sum claimed is justly owing and that there is no setoff, counterclaim, or defense to the claim.

(5) Any right of priority of payment or other specific right asserted by the claimant.

(6) A copy of the written instrument which is the foundation of the claim.

(7) The name and address of the claimant and the attorney who represents the claimant, if any.

b. A claim need not be considered or allowed if it does not contain all the information identified in paragraph *"a"* which is applicable. The liquidator may require that a prescribed form be used and may require that other information and documents be included.

c. At any time the liquidator may request the claimant to present information or evidence supplementary to that required under paragraph *"a"*, and may take testimony under oath, require production of affidavits or depositions, or otherwise obtain additional information or evidence.

d. A judgment or order against a seller entered after the date of filing of a successful petition for liquidation, or a judgment or order against the seller entered at any time by default or by collusion need not be considered as evidence of liability or of the amount of damages. A judgment or order against a seller before the filing of the petition need not be considered as evidence of liability or of the amount of damages.

14. *Special claims.*

a. A claim may be allowed even if contingent, if it is filed pursuant to subsection 12. The claim may be allowed and the claimant may participate in all distributions declared after it is filed to the extent that it does not prejudice the orderly administration of the liquidation.

b. Claims that are due except for the passage of time shall be treated as absolute claims are treated. However, the claims may be discounted at the legal rate of interest.

c. Claims made under employment contracts by directors, principal officers, or persons in fact performing similar functions or having similar powers are limited to payment for services rendered prior to the issuance of an order of liquidation under subsection 2.

15. *Disputed claims.*

a. If a claim is denied in whole or in part by the liquidator, written notice of the determination shall be given to the claimant or the claimant's attorney by first-class mail at the address shown in the proof of claim. Within sixty days from the mailing of the notice, the claimant may file objections with the liquidator. Unless a filing is made, the claimant shall not further object to the determination.

b. If objections are filed with the liquidator and the liquidator does not alter the denial of the claim as a result of the objections, the liquidator shall ask the court for a hearing as soon as practicable and give notice of the hearing by first-class mail to the claimant or the claimant's attorney and to any other persons directly affected. The notice shall be given not less than ten nor more than thirty days before the date of hearing. The matter shall be heard by the court or by a court-appointed referee. The referee shall submit findings of fact along with a recommendation.

16. *Claims of other person.* If a creditor, whose claim against a seller is secured in whole or in part by the undertaking of another person, fails to prove and file that claim, then the other person may do so in the creditor's name and shall be subrogated to the rights of the creditor, whether the claim has been filed by the creditor or by the other person in the creditor's name to the extent that the other person discharges the undertaking. However, in the absence of an agreement with the creditor to the contrary, the other person is not entitled to any distribution until the amount paid to the creditor on the undertaking plus the distributions paid on the claim from the seller's estate to the creditor equal the amount of the entire claim of the creditor. An excess received by the creditor shall be held by the creditor in trust for the other person.

17. *Secured creditor's claims.*

a. The value of the security held by a secured creditor shall be determined in one of the following ways, as the court may direct:

(1) By converting the security into money according to the terms of the agreement pursuant to which the security was delivered to the creditors.

(2) By agreement, arbitration, compromise, or litigation between the creditor and the liquidator.

b. The determination shall be under the supervision and control of the court with due regard for the recommendation of the liquidator. The amount so determined shall be credited upon the secured claim. A deficiency shall be treated as an unsecured claim. If the claimant surrenders the security to the liquidator, the entire claim shall be allowed as if unsecured.

18. The priority of distribution of claims from the seller's estate shall be in accordance with the order in which each class of claims is set forth. Claims in each class shall be paid in full or adequate funds retained for the payment before the members of the next class receive any payment. Subclasses shall not be established within a class. The order of distribution of claims is as follows:

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

(1) Actual and necessary costs of preserving or recovering the assets of the seller.

(2) Compensation for all authorized services rendered in the liquidation.

(3) Necessary filing fees.

(4) Fees and mileage payable to witnesses.

(5) Authorized reasonable attorney fees and other professional services rendered in the liquidation.

b. Class 2. Reasonable compensation to employees for services performed to the extent that they do not exceed two months of monetary compensation and represent payment for services performed within one year before the filing of the petition for liquidation. Officers

and directors are not entitled to the benefit of this priority. The priority is in lieu of other similar priority which may be authorized by law as to wages or compensation of employees.

c. Class 3. Claims under purchase agreements.

d. Class 4. Claims of general creditors.

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

f. Class 6. Claims filed late or any other claims other than claims under paragraph *"g"*.

g. Class 7. The claims of shareholders or other owners.

19. *Liquidator's recommendations to the court.*

a. The liquidator shall review claims duly filed in the liquidation and shall make further investigation as necessary. The liquidator may compound, compromise, or in any other manner negotiate the amount for which claims will be recommended to the court except where the liquidator is required by law to accept claims as settled by a person or organization. Unresolved disputes shall be determined under subsection 15. As soon as practicable, the liquidator shall present to the court a report of the claims against the seller with the liquidator's recommendations. The report shall include the name and address of each claimant and the amount of the claim finally recommended.

b. The court may approve, disapprove, or modify the report on claims by the liquidator. Reports not modified by the court within sixty days following submission by the liquidator shall be treated by the liquidator as allowed claims, subject to later modification or to rulings made by the court pursuant to subsection 15. A claim under a policy of insurance shall not be allowed for an amount in excess of the applicable policy limits.

20. *Distribution of assets.* Under the direction of the court, the liquidator shall pay distributions in a manner that will ensure the proper recognition of priorities and a reasonable balance between the expeditious completion of the liquidation and the protection of unliquidated and undetermined claims, including third-party claims. Distribution of assets in kind may be made at valuations set by agreement between the liquidator and the creditor and approved by the court.

21. *Unclaimed and withheld funds.*

a. Unclaimed funds subject to distribution remaining in the liquidator's hands when the liquidator is ready to apply to the court for discharge, including the amount distributable to a creditor, owner, or other person who is unknown or cannot be found, shall be deposited with the treasurer of state, and shall be paid without interest, except as provided in subsection 18, to the person entitled or to the person's legal representative upon proof satisfactory to the treasurer of state of the right to the funds. Any amount on deposit not claimed within six years from the discharge of the liquidator is deemed to have been abandoned and shall become the property of the state without formal escheat proceedings and be transferred to the insurance division regulatory fund.

b. Funds withheld under subsection 14 and not distributed shall upon discharge of the liquidator be deposited with the treasurer of state and paid pursuant to subsection 18. Sums remaining which under subsection 18 would revert to the undistributed assets of the seller shall be transferred to the insurance division regulatory fund and become the property of the state as provided under paragraph *"a"*, unless the commissioner in the commissioner's discretion petitions the court to reopen the liquidation pursuant to subsection 23.

c. Notwithstanding any other provision of this chapter, funds as identified in paragraph *"a"*, with the approval of the court, shall be made available to the commissioner for use in the detection and prevention of future insolvencies. The commissioner shall hold these funds in the insurance division regulatory fund and shall pay without interest, except as provided in subsection 18, to the person entitled to the funds or to the person's legal representative upon proof satisfactory to the commissioner of the person's right to the funds. The funds shall be held by the commissioner for a period of two years at which time the rights and duties to the unclaimed funds shall vest in the commissioner.

22. *Termination of proceedings.*

a. When all assets justifying the expense of collection and distribution have been collected and distributed under this chapter, the liquidator shall apply to the court for discharge. The court may grant the discharge and make any other orders, including an order to transfer remaining funds that are uneconomical to distribute, as appropriate.

b. Any other person may apply to the court at any time for an order under paragraph "*a*". If the application is denied, the applicant shall pay the costs and expenses of the liquidator in resisting the application, including a reasonable attorney fee.

23. *Reopening liquidation.* At any time after the liquidation proceeding has been terminated and the liquidator discharged, the commissioner or other interested party may petition the court to reopen the proceedings for good cause including the discovery of additional assets. The court shall order the proceeding reopened if it is satisfied that there is justification for the reopening.

24. *Disposition of records during and after termination of liquidation.* If it appears to the commissioner that the records of the business of a seller in the process of liquidation or completely liquidated are no longer useful, the commissioner may recommend to the court and the court shall direct what records shall be retained for future reference and what records shall be destroyed.

25. *External audit of liquidator's books.* The court may order audits to be made of the books of the commissioner relating to a liquidation established under this chapter, and a report of each audit shall be filed with the commissioner and with the court. The books, records, and other documents of the liquidation shall be made available to the auditor at any time without notice. The expense of an audit shall be considered a cost of administration of the liquidation.

2001 Acts, ch 118, §54; 2002 Acts, ch 1050, §50; 2002 Acts, ch 1119, §85, 86; 2007 Acts, ch 175, §74 – 94; 2008 Acts, ch 1123, §53; 2009 Acts, ch 41, §263

CHAPTER 523B

BUSINESS OPPORTUNITY PROMOTIONS

Transferred to chapter 551A; 2004 Acts, ch 1104, §30, 31

CHAPTER 523C

RESIDENTIAL SERVICE CONTRACTS

Referred to in §87.4, 296.7, 331.301, 364.4, 423.2, 423.5, 505.28, 505.29, 669.14, 670.7

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523C.1 Definitions.

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

1. *"Commissioner"* means the commissioner of insurance.

2. *"Custodial account"* means an account established by agreement between a licensed service company and a custodian under section 523C.5.

3. *"Custodial agreement"* means an agreement entered into between a licensed service company and a custodian under section 523C.5.

4. *"Custodian"* means an institution meeting the requirements established by the commissioner which institution has entered into a custodial agreement or reserve account agreement with a licensed service company.

5. *"Depository"* means an institution designated by the commissioner as an authorized custodian for purposes of sections 523C.5 and 523C.11.

6. *"Licensed service company"* means a service company which is licensed by the commissioner pursuant to this chapter.

7. *"Record"* means the same as defined in section 516E.1.

8. *"Reserve account agreement"* means an agreement entered into between a licensed service company and a depository under section 523C.11.

9. *"Residential service contract"* means a contract or agreement between a residential customer and a service company which undertakes, for a predetermined fee and for a specified period of time, to maintain, repair, or replace all or any part of the structural components, appliances, or electrical, plumbing, heating, cooling, or air-conditioning systems of residential property containing not more than four dwelling units.

10. *"Service company"* means a person who issues and performs, or arranges to perform, services pursuant to a residential service contract.

83 Acts, ch 87, §2; 88 Acts, ch 1112, §703; 2000 Acts, ch 1147, §28; 2006 Acts, ch 1010, §145

523C.2 License required.

A person shall not issue a residential service contract or undertake or arrange to perform services pursuant to a residential service contract unless the person is a corporation or other form of organization approved by the commissioner by rule and is a licensed service company.

83 Acts, ch 87, §3; 93 Acts, ch 60, §7

523C.3 Application for license.

1. Application for a license as a service company shall be made to and filed with the commissioner on forms approved by the commissioner and shall include all of the following information:

a. The name and principal address of the applicant.

b. The state of incorporation of the applicant.

c. The name and address of the applicant's registered agent for service of process within Iowa.

2. The application shall be accompanied by all of the following:

a. A certificate of good standing for the applicant issued by the secretary of state and dated not more than thirty days prior to the date of the application.

b. A surety bond, a copy of the receipt from the treasurer of state that a cash deposit has been made, or a copy of a custodial agreement as provided in section 523C.5.

c. A copy of the most recent financial statement, including balance sheets and related statements of income, of the applicant, prepared in accordance with generally accepted accounting principles, audited by a certified public accountant and dated not more than twelve months prior to the date of the application.

d. An affidavit of an authorized officer of the service company stating the number of contracts issued by the service company in the preceding calendar year, and stating that the net worth of the service company satisfies the requirements of section 523C.6.

e. A license fee in the amount of two hundred fifty dollars.

3. If the application contains the required information and is accompanied by the items set forth in subsection 2, and if the net worth requirements of section 523C.6 are satisfied, as evidenced by the audited financial statements, the commissioner shall issue the license. If the form of application is not properly completed or if the required accompanying documents are not furnished or in proper form, the commissioner shall not issue the license and shall give the applicant written notice of the grounds for not issuing the license. A notice of license denial shall be accompanied by a refund of fifty percent of the fee submitted with the application.

4. Fees collected under this section shall be deposited as provided in section 505.7.

83 Acts, ch 87, §4; 88 Acts, ch 1112, §704; 92 Acts, ch 1078, §2; 2009 Acts, ch 181, §98

Referred to in §523C.4, 523C.5

523C.4 License expiration and renewal.

Each license issued under this chapter shall expire on June 30 next following the date of issuance. If the service company maintains in force the surety bond described in section 523C.5 and if its license is not subject to or under suspension or revocation under section 523C.9, its license shall be renewed by the commissioner upon receipt by the commissioner on or before the expiration date of a renewal application accompanied by the items required by section 523C.3, subsection 2, paragraphs *"b"*, *"c"*, *"d"*, and *"e"*, and section 523C.15. If the commissioner denies renewal of the license, the denial shall be in writing setting forth the grounds for denial and shall be accompanied by a refund of fifty percent of the license renewal fee.

83 Acts, ch 87, §5

523C.5 Required bond, cash deposit, or custodial account.

1. *a.* To assure the faithful performance of obligations under residential service contracts issued and outstanding in this state, a service company shall, prior to the issuance or renewal of a license, file with the commissioner a surety bond in the amount of one hundred thousand dollars, which has been issued by an authorized surety company and approved by the commissioner as to issuer, form, and contents or establish a custodial account in the amount of one hundred thousand dollars at an authorized depository. The bond or custodial account shall not be canceled or be subject to cancellation unless thirty days' advance notice in writing is filed with the commissioner. Notwithstanding chapter 17A, if a bond or custodial account is canceled for any reason and a new bond or notice that a new custodial account has been established in the required amount is not received by the commissioner on or before the effective date of cancellation, the license of the service company is automatically revoked as of the date the bond or custodial account ceases to be in effect. A service company whose license is revoked under this section may file an application for a new license pursuant to section 523C.3.

b. The bond or custodial account posted by a service company pursuant to this section

shall be for the benefit of, and subject to recovery thereon by any residential service contract holder sustaining actionable injury due to the failure of the service company to faithfully perform its obligations under a residential service contract because of insolvency of the service company.

c. If a service company ceases to do business in this state and furnishes to the commissioner satisfactory proof that it has discharged all obligations to contract holders, the surety bond or custodial account shall be released.

d. The commissioner may by rule designate institutions authorized to act as a depository under this section and establish requirements for custodians, custodial agreements, custodial accounts, or the method of valuing noncash assets held in a custodial account which the commissioner believes necessary to protect the holders of residential service contracts issued and outstanding in this state.

2. In lieu of the bond or custodial account required by this section, the service company may deposit with the treasurer of state a cash deposit in the same amount. The treasurer of state shall not refund a deposit until sixty days after the service company has ceased doing business in this state, a bond has been filed with the commissioner which complies with this section, or a custodial account is established which complies with this section.

83 Acts, ch 87, §6; 88 Acts, ch 1112, §705; 92 Acts, ch 1078, §3; 2012 Acts, ch 1023, §157
Referred to in §523C.1, 523C.3, 523C.4, 523C.9, 523C.18

523C.6 Net worth requirement.

A service company that has issued or renewed in the aggregate one thousand or less residential service contracts during the preceding calendar year shall maintain a minimum net worth of forty thousand dollars, and the minimum net worth to be maintained shall be increased by an additional twenty thousand dollars for each additional five hundred contracts or fraction thereof issued or renewed, up to a maximum required net worth of four hundred thousand dollars. At least twenty thousand dollars of net worth shall consist of paid-in capital.

83 Acts, ch 87, §7; 88 Acts, ch 1112, §706; 92 Acts, ch 1078, §4; 99 Acts, ch 166, §12
Referred to in §523C.3, 523C.9

523C.7 Filing of forms of contract — fee.

1. A residential service contract shall not be issued or used in this state unless it has been filed with and approved by the commissioner. If the commissioner fails to inform the service company of objections to the form of the residential service contract within thirty days after filing, the residential contract shall be deemed to have been approved by the commissioner provided it otherwise complies with this section.

2. Residential service contracts shall:

a. Be written in nontechnical, readily understood language, using words with common and everyday meanings.

b. Clearly, conspicuously, and plainly specify all of the following:

(1) The services to be performed by the service company, and the terms and conditions of performance.

(2) The fee, if any, to be charged for a service call.

(3) Each of the systems, appliances, and components covered by the contract.

(4) Any exclusions and limitations respecting the extent of coverage.

(5) The period during which the contract will remain in effect.

(6) All limitations respecting the performance of services, including any restrictions as to the time periods when services may be requested or will be performed.

(7) The following statement:

> The issuer of this contract is subject to regulation by the insurance division of the department of commerce of the state of Iowa. Complaints which are not settled by the issuer may be sent to the insurance division.

c. Provide for the performance of services only. A residential service contract shall not provide for a payment to, or reimbursement or indemnification of the holder of the contract.

d. Provide for the performance of services upon a request by telephone to the service company without a requirement that claim forms or applications be filed prior to the rendition of services.

e. Provide for the initiation of services by or under the direction of the service company within forty-eight hours of the request for the services by the holder of the contract.

3. Any application for a residential service contract shall notify the purchaser that the person submitting the application to the service company for the purchaser is acting as the representative of the service company and not of the purchaser in that transaction.

4. To the extent necessary to administer the provisions of this chapter, the commissioner may, after notice and hearing, institute a residential service contract form approval or form review fee. If the commissioner establishes a fee, the amount of the fee shall be set by rule adopted pursuant to chapter 17A. The fee may be by dollar amount or based upon a percentage of the sale value of the contract. However, the fee shall not exceed fifty thousand dollars.

5. A complete copy of the terms of the residential service contract shall be delivered to the prospective service contract holder at or before the time that the prospective service contract holder makes application for the service contract. If there is no separate application procedure, then a complete copy of the residential service contract shall be delivered to the service contract holder at or before the time the service contract holder becomes bound under the contract.

83 Acts, ch 87, §8; 87 Acts, ch 234, §434; 98 Acts, ch 1189, §21; 2000 Acts, ch 1147, §29

523C.8 Rebates and commissions.

1. Except as provided in subsection 2, a service company shall not pay a commission or any other consideration to any person as an inducement or compensation for the issuance, purchase, or acquisition of a residential service contract.

2. This section does not prohibit any of the following:

a. The payment of an override commission or marketing fee to an employee or commission sales agent who is a marketing or sales representative of the service company or its parent company, subsidiary, or affiliate on the sale or marketing of a residential service contract, provided the employee or commission sales agent is not a real estate licensee sharing in or entitled to share in, or affiliated with, a company or organization which is entitled to share in any real estate commission generated by the underlying real property transaction.

b. Fees, payments, or reimbursements for a bona fide inspection, if an inspection of the property to be the subject of a residential service contract is required by a service company and if the inspection fee is reasonably related to the services performed.

3. The division may adopt rules identifying types of fees, payments, or reimbursements that do not constitute an inducement or compensation for the issuance, purchase, or acquisition of a residential service contract.

83 Acts, ch 87, §9; 92 Acts, ch 1078, §5; 93 Acts, ch 60, §8; 99 Acts, ch 166, §13

523C.8A Issuance of residential service contract without consideration prohibited.

1. Except as provided in subsection 2, furnishing a residential service contract to any person without charge for the applicable contract fees constitutes a violation of this chapter. A residential service contract providing for listing period coverage shall not be issued or delivered unless it provides for consideration for such coverage. The consideration may consist of a bona fide promise to pay the applicable residential service contract fees at the close of the sale. However, if a contract is subsequently canceled as a result of the failure to close such a sale, including such failure due to cancellation, expiration, or other termination of any real estate listing agreement on the residence, the residential service contract holder shall pay to the service company, at the time of cancellation of the residential service contract, the lesser of the actual costs of such service or a pro rata portion of the applicable annual residential service contract fees based on the number of days the residential service contract remained in effect, together with administrative costs incurred by the service company as a result of the cancellation.

2. *a.* Notwithstanding subsection 1, a service company may offer a residential service contract providing for listing period coverage for consideration which consists of both of the following:

(1) The contract holder's bona fide promise to pay, upon the close of sale, the applicable residential service contract fees for coverage of the residence for at least one year from the close of sale.

(2) Actual payment of the costs of any and all services performed under the residential service contract during the term of the listing period coverage by the contract holder to the service contractor.

b. Upon the close of sale and actual payment of the contract fees referred to in paragraph *"a"*, subparagraph (1), the service company shall reimburse the listing period coverage contract holder for all legitimate service costs incurred and paid under the residential service contract during the term of the listing period coverage with offset only for any deductible or service call fees remaining due and payable with respect to service performed under the residential service contract during the term of the listing period coverage.

3. For purposes of this section:

a. "Close of sale" means the time an interest in, or title to, a home to which the interest or title attaches is sold or transferred.

b. "Listing period coverage" means coverage provided prior to the close of sale.

93 Acts, ch 60, §9

523C.9 Suspension or revocation of license.

1. In addition to the license revocation provisions of section 523C.5, the commissioner may suspend or revoke or refuse to renew the license of a service company for any of the following grounds:

a. The service company violated a lawful order of the commissioner or any provision of this chapter.

b. The service company failed to pay any final judgment rendered against it in this state within sixty days after the judgment became final.

c. The service company has without just cause refused to perform or negligently or incompetently performed services required to be performed under its residential service contracts and the refusal, or negligent or incompetent performance has occurred with such frequency, as the commissioner determines, as to indicate the general business practices of the service company.

d. The service company violated section 523C.13.

e. The service company failed to maintain the net worth required by section 523C.6.

f. The service company failed to maintain the reserve account required by section 523C.11.

g. The service company failed to maintain its corporate certificate of good standing with the secretary of state.

2. If the license of a service company is terminated under section 523C.5 because of failure to maintain bond, the commissioner shall give written notice of termination to the service company. The notice shall include the effective date of the termination.

83 Acts, ch 87, §10; 2006 Acts, ch 1010, §146

Referred to in §523C.4

523C.10 Rules.

The commissioner may adopt rules under chapter 17A to implement this chapter.

83 Acts, ch 87, §11

523C.11 Reserve account.

1. A service company shall maintain in an independent depository a reserve account consisting of unencumbered assets in an amount equal to fifty percent of aggregate annual fees collected on residential service contracts issued and outstanding in this state, if any, less actual expenditures for services rendered under those contracts. The assets shall be held in the form of cash or marketable securities.

2. The depository shall make its records concerning the service company reserve accounts

available to the commissioner or a designee for inspection on the premises of the depository and, upon request, shall produce documents and records which the commissioner determines are necessary to verify the value and safety of the assets of the reserve account.

3. The commissioner may by rule designate institutions authorized to act as a depository under this section and may establish requirements for reserve accounts, reserve account agreements, or the method of valuing marketable securities which the commissioner believes necessary to protect the holders of residential service contracts issued and outstanding in this state.

4. For purposes of this section, *"aggregate annual fees"* does not include the annual fees collected on residential service contracts for which the service company has purchased contractual liability insurance which demonstrates to the satisfaction of the commissioner that one hundred percent of the service company's claim exposure related to such service contracts is covered by the insurance. The contractual liability insurance must be obtained from an insurer authorized to do business in this state and shall contain the following provisions:

a. If the service company is unable to fulfill its obligations under its contracts issued in this state for any reason, including insolvency, bankruptcy, or dissolution, the contractual liability insurer will pay losses and unearned premiums under such plans directly to the persons making claims under the contracts.

b. The insurer issuing the policy shall assume full responsibility for the administration of claims in the event of the inability of the association to do so.

c. The insurer shall not cancel or refuse to renew the policy unless sixty days' written notice has been given to the commissioner by the insurer before the date of the cancellation or nonrenewal.

83 Acts, ch 87, §12; 88 Acts, ch 1112, §707, 708; 92 Acts, ch 1078, §6
Referred to in §523C.1, 523C.9

523C.12 Optional examination.

The commissioner or a designee of the commissioner may make an examination of the books and records of a service company, including copies of contracts and records of claims and expenditures, and verify its assets, liabilities, and reserves. The actual costs of the examination shall be borne by the service company.

83 Acts, ch 87, §13; 94 Acts, ch 1031, §18

523C.13 Prohibited acts or practices — penalty.

The commissioner shall adopt rules which regulate residential service contracts to prohibit misrepresentation, false advertising, defamation, boycotts, coercion, intimidation, false statements and entries and unfair discrimination or practices. If the commissioner finds that a person has violated the rules adopted under this section, the commissioner may order any or all of the following:

1. Payment of a civil penalty of not more than one thousand dollars for each and every act or violation, but not to exceed an aggregate of ten thousand dollars, unless the person knew or reasonably should have known the person was in violation of this section, in which case the penalty shall be not more than five thousand dollars for each and every act or violation, but not to exceed an aggregate penalty of fifty thousand dollars in any one six-month period. The commissioner shall, if it finds the violations of this section were directed, encouraged, condoned, ignored, or ratified by the employer of such person, assess such penalty to the employer and not such person. Any civil penalties collected under this subsection shall be deposited as provided in section 505.7.

2. Suspension or revocation of the license of a person, if the person knew or reasonably should have known the person was in violation of this section.

83 Acts, ch 87, §14; 92 Acts, ch 1078, §7; 2009 Acts, ch 181, §99; 2012 Acts, ch 1021, §101
Referred to in §523C.9, 523C.17

523C.14 Rate review.

Using the information obtained in the annual reports and any additional information requested by the commissioner, the commissioner shall evaluate the fees charged for the

residential service contract to determine if they are reasonable in relation to the value of the claims made. The commissioner may order an adjustment of the fees if the commissioner determines that the fees are not reasonable in relation to the value of the claims made.

83 Acts, ch 87, §15

523C.15 Annual report.

A licensed service company shall file with the commissioner an annual report within ninety days of the close of its fiscal year. The annual report shall be in a form prescribed by the commissioner and contain all of the following:

1. A current financial statement including a balance sheet and statement of operations prepared in accordance with generally accepted accounting principles and certified by an independent certified public accountant.
2. The number of residential service contracts issued during the preceding fiscal year, the number canceled or expired during the year, the number in effect at year end and the amount of residential service contract fees received.
3. Any other information relating to the performance and solvency of the residential service company required by the commissioner.

83 Acts, ch 87, §16

Referred to in §523C.4

523C.16 Exclusions.

This chapter does not apply to any of the following:

1. A performance guarantee given by a builder of a residence or the manufacturer or seller or lessor of residential property if no identifiable charge is made for the guarantee.
2. A service contract, guarantee or warranty between a residential customer and a service company which will perform the work itself and not through subcontractors for the service, repair or replacement of appliances or electrical, plumbing, heating, cooling or air-conditioning systems.
3. A contract between a service company and a person who actually performs the maintenance, repairs, or replacements of structural components, or appliances, or electrical, plumbing, heating, cooling, or air-conditioning systems, if someone other than the service company actually performs these functions.
4. A service contract, guarantee or warranty issued by a retail merchant to a retail customer, guaranteeing or warranting the repair, service or replacement of appliances or electrical, plumbing, heating, cooling or air-conditioning systems sold by said retail merchant.
5. A service contract, guarantee, or warranty issued by a manufacturer, third party, or retail company, covering the repair, maintenance, or replacement of individual appliances and other individual items of merchandise marketed and sold by a retail company, in the ordinary course of business.

83 Acts, ch 87, §17; 96 Acts, ch 1160, §10

523C.17 Lending institutions, service companies, and insurance companies.

A bank, savings association, insurance company, or other lending institution shall not require the purchase of a residential service contract as a condition of a loan. A service company or an insurer, either directly or indirectly, as a part of any real property transaction in which a residential service contract will be issued, purchased, or acquired, shall not require that a residential service contract be issued, purchased, or acquired in conjunction with or as a condition precedent to the issuance, purchase, or acquisition, by any person, of a policy of insurance. A lending institution shall not sell a residential service contract to a borrower unless the borrower signs an affidavit acknowledging that the purchase is not required. Violation of this section is punishable as provided in section 523C.13.

83 Acts, ch 87, §18; 93 Acts, ch 60, §10; 2012 Acts, ch 1017, §102

523C.18 Violations.

A person who willfully violates section 523C.5 is, upon conviction, guilty of a class "D" felony.

92 Acts, ch 1078, §8

523C.19 Cease and desist orders.

1. Upon the commissioner's determination that a person has engaged, is engaging, or is about to engage in any act or practice constituting a violation of this chapter or any rule adopted pursuant to this chapter, the commissioner may issue an order directing the person to cease and desist from engaging in the act or practice resulting in the violation or to take other affirmative action as in the judgment of the commissioner is necessary to comply with the requirements of this chapter.

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

3. A person violating a summary order issued under this section shall be deemed in contempt of that order. The commissioner may petition the district court to enforce the order as certified by the commissioner. The district court shall adjudge the person in contempt of the order if the court finds after hearing that the person is not in compliance with the order. The court shall assess a civil penalty against the person in an amount not less than three thousand dollars but not greater than ten thousand dollars per violation, and may issue further orders as it deems appropriate.

92 Acts, ch 1078, §9; 2000 Acts, ch 1147, §30; 2000 Acts, ch 1232, §82

Referred to in §523C.23

523C.20 Consent to service of process.

If a person engages in conduct subject to regulation under this chapter, the conduct shall constitute the appointment of the commissioner of insurance as the person's attorney to receive service of process in a noncriminal proceeding against the person, a successor, or personal representative, which grows out of that conduct, with the same force and validity as if made personally. Service of process made on the commissioner as the attorney for service of process shall be made as provided in section 505.30.

93 Acts, ch 60, §11; 2018 Acts, ch 1018, §16

Section amended

523C.21 Service of process.

The commissioner shall be the agent for service of process upon a service company. Service of process made on the commissioner as the agent for service of process shall be made as provided in section 505.30.

94 Acts, ch 1031, §19; 2018 Acts, ch 1018, §17

Section amended

523C.22 Claim procedures.

A service company shall promptly provide a written explanation to the residential customer, describing the reasons for denying a claim or for the offer of a compromise settlement, based on all relevant facts or legal requirements and referring to applicable provisions of the residential service contract.

94 Acts, ch 1031, §20

523C.23 Investigations and subpoenas.

1. *a.* In enforcing this chapter, the commissioner may conduct a public or private investigation in order to do any of the following:

(1) Determine whether a person has violated or is about to violate a provision of this chapter or a rule or order under this chapter.

(2) Aid in the enforcement of this chapter or in the prescribing of rules and forms under this chapter.

b. In carrying out this subsection, the commissioner may do all of the following:

(1) Conduct the investigation within or outside of this state.

(2) Require or allow a person to file a statement in writing regarding the facts or circumstances concerning a matter to be investigated. The commissioner may require that the statement be made under oath.

(3) Apply to the district court for the issuance of an order requiring a person's appearance before the commissioner or the attorney general. The person may also be required to produce documentary evidence germane to the subject of the investigation. The failure to obey an order under this subsection constitutes contempt of court.

c. Information obtained in the course of an investigation is confidential as provided in section 22.7. However, upon a determination that disclosure of the information is necessary or appropriate in the public interest or for the protection of consumers, the commissioner may do any of the following:

(1) Share information obtained during the course of the investigation with another regulatory authority or government agency.

(2) Publish information obtained during the course of the investigation which concerns a violation of this chapter or a rule or order under this chapter.

2. Except as provided in section 523C.19, a proceeding instituted under this chapter shall be conducted pursuant to chapter 17A and rules adopted by the commissioner pursuant to chapter 17A.

3. In an investigation or proceeding conducted under this chapter, the commissioner or any designee of the commissioner may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any records which the commissioner deems relevant or material to the inquiry.

4. A person is not excused from attending and testifying or from producing a document or record before the commissioner or in obedience to a subpoena of the commissioner or an officer designated by the commissioner, or in a proceeding instituted by the commissioner, on the grounds that the testimony or evidence, documentary or otherwise, required of the person may tend to incriminate or subject the person to a penalty or forfeiture. However, a person shall not be prosecuted or subjected to any penalty or forfeiture due to a transaction or matter about which the person is compelled, after claiming privilege against self-incrimination, to testify or produce evidence, documentary or otherwise. The person testifying, however, is not exempt from prosecution and punishment for perjury or contempt committed while testifying.

2000 Acts, ch 1147, §31

Referred to in §22.7(42)

CHAPTER 523D

RETIREMENT FACILITIES

Referred to in §105.11, 505.28, 505.29, 669.14

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523D.1 Definitions.

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

1. *"Commissioner"* means the commissioner of insurance or the deputy appointed under section 502.601.

2. *"Continuing care"* means housing together with supportive services, nursing services, medical services, or other health related services, furnished to a resident, regardless of whether or not the lodging and services are provided at the same location, with or without other periodic charges, and pursuant to one or more contracts effective for the life of the resident or a period in excess of one year, including mutually cancelable contracts, and in consideration of an entrance fee.

3. *"Continuing care retirement community"* means a facility which provides continuing care to residents other than residents related by consanguinity or affinity to the person furnishing their care.

4. *"Entrance fee"* means an initial or deferred transfer to a provider of a sum of money or other property made or promised to be made as full or partial consideration for acceptance of a specified individual in a facility if the amount exceeds either of the following:

a. Five thousand dollars.

b. The sum of the regular periodic charges for six months of residency.

5. *"Facility"* means the place or places in which a provider undertakes to provide continuing care or senior adult congregate living services to an individual.

6. *"Living unit"* means a room, apartment, cottage, or other area within a facility set aside for the exclusive use or control of one or more identified residents.

7. *"New construction"* means construction of a new facility or the expansion of an existing facility if the expansion involves an increase in the number of living units in excess of twenty-five percent.

8. *"Provider"* means a person undertaking through a lease or other type of agreement to provide care in a continuing care retirement community or senior adult congregate living facility, even if that person does not own the facility.

9. *"Resident"* means an individual, sixty years of age or older, entitled to receive care in a continuing care retirement community or a senior adult congregate living facility.

10. *"Senior adult congregate living facility"* means a facility which provides senior adult congregate living services to residents other than residents related by consanguinity or affinity to the person furnishing their care.

11. *"Senior adult congregate living services"* means housing and one or more supportive services furnished to a resident, with or without other periodic charges, in consideration of an entrance fee.

12. *"Supportive services"* includes but is not limited to one or any combination of the following services: laundry, maintenance, housekeeping, emergency nursing care, activity services, security, dining options, transportation, beauty and barber services, health care, and personal care, including personal hygiene, eating, bathing, dressing, and supervised medication administration.

89 Acts, ch 217, §1; 91 Acts, ch 205, §11

Referred to in §231C.17

523D.2 Application of chapter.

This chapter applies to a provider who executes a contract to provide continuing care or senior adult congregate living services in a facility, or extend the term of an existing contract to provide continuing care or senior adult congregate living services in a facility, if the contract requires or permits the payment of an entrance fee to a person, and any of the following apply:

1. The facility is or will be located in this state.
2. The provider or a person acting on the provider's behalf solicits the contract within this state for a facility located in this state and the person to be provided with continuing care or senior adult congregate living services under the contract resides within this state at the time of the solicitation.

89 Acts, ch 217, §2; 2004 Acts, ch 1104, §32

523D.2A Annual certification.

On or before March 1 of each year, a provider shall file a certification with the commissioner in a manner and according to requirements established by the commissioner. The certification shall be accompanied by a one hundred dollar administrative fee which fee shall be deposited as provided in section 505.7. The certification shall attest that according to the best knowledge and belief of the attesting party, the facility administered by the provider is in compliance with the provisions of this chapter, including rules adopted by the commissioner or orders issued by the commissioner as authorized under this chapter. The attesting person may be any of the following:

1. A person serving as the president or chief executive officer of a corporation.
2. A person acting as the general partner of a limited partnership.
3. A person acting as the general partner of a limited liability partnership.
4. A person acting in a fiduciary capacity or as a trustee on behalf of a provider.
5. A person who is a manager of a limited liability company.

2004 Acts, ch 1104, §33; 2009 Acts, ch 181, §100

523D.3 Disclosure statement.

1. At the time of, or prior to, the execution of a contract to provide continuing care or senior adult congregate living services, or at the time of, or prior to the provider's acceptance of part or all of the entrance fee by or on behalf of a prospective resident, whichever occurs first, the provider shall deliver a disclosure statement to the person, and to the person's personal representative if one is appointed, with whom the contract is to be entered into. Unless incorporated by reference, in whole or in part, the disclosure statement shall not constitute part of the contract between the resident and provider. The disclosure statement shall contain all of the following information unless the information is in the contract, a copy of which must be attached to the statement:

a. The name and business address of the provider and a statement of whether the provider is a partnership, corporation, or other legal entity.

b. The names and business addresses of the officers, directors, trustees, managing or general partners, and any person having a ten percent or greater equity or beneficial interest in the provider and a description of such person's interest in or occupation with the provider.

c. With respect to each person covered by paragraph *"b"*, and if the facility will be managed on a day-to-day basis by a person identified pursuant to paragraph *"b"*, or with respect to the proposed manager, the following information:

(1) A description of the business experience of the person, if any, in the operation or management of similar facilities.

(2) The name and address of any professional service, or other entity in which the person has, or which has in the person, a ten percent or greater interest and which has provided goods, leases, or services to the facility of a value of five hundred dollars or more within the prior twelve months or which has contracted to provide goods, leases, or services to the facility of a value of five hundred dollars or more within a year, including a description of the goods, leases, or services and their actual or anticipated cost to the facility or provider.

(3) A description of any matter resulting in the person's conviction of a felony or a plea of nolo contendere to a felony charge, or a description of any matter where the person was

found to be liable or enjoined in a civil action by final judgment if the felony or civil action involved fraud, embezzlement, fraudulent conversion, misappropriation of property, or a similar felony involving theft or dishonesty.

(4) A description of any matter in which the person is subject to a currently effective injunctive or restrictive order of a court, or a description of any matter within the past five years where the person has had a state or federal license or permit suspended or revoked as a result of an action brought by a governmental agency of this or any state or the division of insurance, arising out of or relating to business activity or health care, including, without limitation, actions affecting a license to operate a foster care facility, health care facility, retirement home, home for the aged, or facility licensed under this chapter or a similar law of another state.

d. A statement, if applicable, containing the following:

(1) Whether the provider is or ever has been affiliated with a for-profit organization or with a religious, charitable, or other nonprofit organization.

(2) The nature of the affiliation.

(3) The extent to which the affiliate organization is responsible for the financial and contractual obligations of the provider.

(4) The provision of the federal Internal Revenue Code, if any, under which the provider or affiliate is exempt from the payment of federal income tax.

e. The location and description of the physical property or properties of the facility, existing or proposed, and, to the extent proposed, the estimated completion date or dates, whether or not construction has begun, and the contingencies subject to which construction may be deferred.

f. The services provided or proposed to be provided under contracts for continuing care or senior adult congregate living services at the facility, including the extent to which medical care is furnished. The disclosure statement shall clearly state which services are included in basic contracts and which services are made available at or by the facility at extra charge.

g. A description of all fees required of residents, including the entrance fee and periodic charges, if any. The description shall include the manner by which the provider may adjust periodic charges or other recurring fees and the limitations on such adjustments, if any.

h. The provisions which have been made or will be made, if any, to provide reserve funding or security to enable the provider to fully perform its obligations under contracts to provide continuing care or senior adult congregate living services at the facility, including the establishment of escrow accounts, trusts, or reserve funds, together with the manner in which the funds will be invested and the names and experience of persons who will make the investment decisions.

i. Certified financial statements of the provider, for all parts of an operation covered by the contract, including the health center or nursing home portion of the continuing care retirement community, if those services are included in the contract, but the disclosure statement may exclude services or operations not provided to residents as senior adult congregate living services under the contract, which shall include the following:

(1) A balance sheet as of the end of the two most recent fiscal years.

(2) Income statements of the provider for the two most recent fiscal years or the shorter period of time the provider has been in existence.

j. If operation of the facility has not yet commenced, a statement of the anticipated source and application of the funds used or to be used in the purchase or construction of the facility, including the following:

(1) An estimate of the cost of purchasing or constructing and equipping the facility, including related costs such as financing expense, legal expense, land costs, occupancy development costs, and all other similar costs the provider expects to incur or become obligated for prior to the commencement of operations.

(2) A description of any mortgage loan or other long-term financing intended to be used for the financing of the facility, including the anticipated terms and costs of the financing.

(3) An estimate of the total entrance fees to be received from or on behalf of residents at or prior to commencement of operation of the facility.

(4) An estimate of the funds, if any, anticipated to be necessary to fund start-up losses

and provide reserve funds to assure full performance of the obligations of the provider under contracts for the provision of continuing care or senior adult congregate living services.

(5) A projection of estimated income from fees and charges other than entrance fees, showing individual rates presently anticipated to be charged and including a description of the assumptions used for calculating the estimated occupancy rate of the facility and the effect on the income of the facility of government subsidies for health care services, if any, to be provided pursuant to contracts for continuing care or senior adult congregate living services.

(6) A projection of estimated operating expenses of the facility, including a description of the assumptions used in calculating the expenses and separate allowances, if any, for the replacement of equipment and furnishings and anticipated major structural repairs or additions.

(7) Identification of any assets pledged as collateral for any purpose.

(8) An estimate of annual payments of principal and interest required by a mortgage loan or other long-term financing.

k. Other material information concerning the facility or the provider required by the division of insurance or which the provider wishes to include.

l. The cover page of the disclosure statement shall state, in a prominent location and typeface, the date of the disclosure statement.

m. A copy of the standard form or forms of contract for continuing care or senior adult congregate living services used by the provider, attached as an exhibit to each disclosure statement.

n. (1) A description of transactions in which the provider obtains real or personal property or construction services from any of the following:

(a) The developer of the facility, or a person who is under the control of the developer.

(b) If the provider is a business entity, any person holding an executive position in the business entity, including but not limited to a member of a board of directors or an officer of a corporation, a manager of a limited liability company, a general partner of a limited partnership, or a trustee of a trust.

(c) If the provider is a business entity, any person who holds a ten percent or greater equity or beneficial interest in the business entity.

(d) Any person who directly or indirectly by acting through one or more intermediaries controls management decisions of the facility.

(2) A transaction shall include each purchase or lease of real property or personal property by the provider, and any construction services provided to the provider. The description shall include transactions which have occurred or which are planned to occur. The description shall also include whether the terms of the transaction were or will be on terms which are at least as favorable to the provider as those terms which would be generally available from an unaffiliated third party.

2. The provider shall prepare an annual disclosure statement which shall contain the information required by this chapter for the initial disclosure statement. The annual disclosure statement shall also be accompanied by a narrative describing:

a. Any material differences between the pro forma cash flow projection prepared pursuant to this chapter as part of the most recent annual disclosure statement and the actual results of operations during the fiscal year, if the material differences substantially affect the financial safety or soundness of the community.

b. A revised pro forma cash flow projection for the next fiscal year.

3. The provider shall prepare the annual disclosure statement not later than five months following the end of the provider's fiscal year. The provider shall retain a record of each annual disclosure statement prepared under this section for at least five years.

4. If an amendment is prepared pursuant to subsection 5, the provider shall deliver a copy of the amendment or the amended disclosure statement to a prospective resident and to a prospective resident's personal representative if one is appointed prior to the provider's acceptance of part or all of the entrance fee or the execution of the continuing care or senior congregate living services contract by the prospective resident.

5. The provider may amend its current annual disclosure statement at any other time if, in the opinion of the provider, an amendment is necessary to prevent the disclosure

statement and annual disclosure statement from containing any material misstatement of fact or omission to state a material fact required to be included in the statement. The amendment or amended disclosure statement shall be kept with the records of the provider's annual disclosure statements. The provider shall deliver a copy of the amendment to a resident or prospective resident and a personal representative of a resident or prospective resident in the same manner as the annual disclosure statement.

89 Acts, ch 217, §3; 90 Acts, ch 1168, §54; 91 Acts, ch 205, §12, 13; 92 Acts, ch 1078, §10; 2004 Acts, ch 1104, §34, 35; 2012 Acts, ch 1023, §157

Referred to in §523D.6

523D.4 False information.

1. A provider shall not make, publish, disseminate, circulate, or place before the public, or cause, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over any radio or television station, or in any other way, an advertisement, announcement, or statement of any sort containing any assertion, representation, or statement which is untrue, deceptive, or misleading.

2. A provider shall not publish, disseminate, circulate, or deliver to any person or place before the public, or cause, directly or indirectly, to be published, disseminated, circulated, or delivered to any person or placed before the public, a financial statement which does not meet generally accepted accounting principles.

89 Acts, ch 217, §4; 2004 Acts, ch 1104, §36

523D.5 New construction.

1. *Prerequisite information.* A provider shall not enter into a contract to provide continuing care or senior adult congregate living services that applies to a living unit that is part of a new facility or proposed expansion that is or will be located in this state unless the provider has prepared or acquired all of the following information:

a. A description of the new facility or the proposed expansion, including a description of the goods and services that will be offered to prospective residents.

b. A statement of the financial resources of the provider available for this project.

c. A statement of the capital expenditures necessary to accomplish this project.

d. A statement of financial feasibility for the new facility or proposed expansion which includes a statement of future funding sources and shall identify the qualifications of the person or persons preparing the study.

e. A statement of the market feasibility for the new facility or proposed expansion which identifies the qualifications of the person or persons preparing the study.

f. If the new facility or proposed expansion offers a promise to provide nursing or health care services to residents in the future pursuant to contracts effective for the life of the resident or a period in excess of one year in consideration for an entrance fee, an actuarial forecast which identifies the qualifications of the actuary or actuaries preparing the forecast.

g. Copies of the escrow agreements executed pursuant to this chapter or proof that an escrow is not required.

2. *Determination of feasibility.*

a. For an expansion of an existing facility, the determination of feasibility shall be based on consolidated information for the existing facility and the proposed expansion.

b. For a new facility, not part of an existing facility that will be constructed in more than one stage or phase, the initial stage or phase must evidence feasibility independent of any subsequent stage or phase and contain all of the facilities or components necessary to provide residents with all of the services and amenities promised by the provider.

3. *Construction.*

a. New construction shall not begin until at least fifty percent of the proposed number of independent living units in the initial stage or phase have been reserved pursuant to executed contracts and at least ten percent of the entrance fees required by those contracts are held in escrow pursuant to this chapter. However, the requirements of this subsection may be waived by the commissioner by rule or order upon a showing of good cause.

b. For purposes of this subsection, *"good cause"* includes, but is not limited to, evidence of the following:

(1) Secured financing adequate in an amount and term to complete the project.

(2) Cash reserves adequate in an amount to operate the facility for twenty-four months based upon reasonable projections of income and expenses.

(3) Creation of an escrow account in which a resident's entrance fee or purchase price will be deposited, if the terms of the escrow agreement provide reasonable protection from loss until at least fifty percent of the proposed number of independent living units in the initial stage or phase have been reserved.

4. *Escrow requirements.* Unless conditions for the release of escrowed funds set forth in this section have already been met, the provider shall establish an interest-bearing escrow account at a state or federally regulated financial institution located within this state to receive any deposits or entrance fees or portions of deposits or fees for a living unit which has not been previously occupied by a resident for which an entry fee arrangement is used. The escrow account agreement shall be entered into between the financial institution and the provider with the financial institution as the escrow agent and as a fiduciary for the resident or prospective resident. The agreement shall state that the purpose of the escrow account is to protect the resident or prospective resident and that the funds deposited shall be kept and maintained in an account separate and apart from the provider's business accounts.

5. *Release of escrowed funds.* Funds held in escrow shall be released only as follows:

a. If the provider fails to meet the requirements for release of funds held in escrow pursuant to this section within a time period specified in the escrow agreement, which shall not exceed thirty-six months, these funds shall be returned by the escrow agent to the persons who have made payment to the provider.

b. Upon notice from the provider that a resident is entitled to a refund, the escrow agent shall refund the amount directly to the resident. The amount of the refund shall be included in the provider's notice to the escrow agent and shall be determined in compliance with this chapter and any applicable terms of the resident's contract.

c. Except as provided by paragraphs *"a"* and *"b"*, amounts held in escrow shall not be released unless at least one of the following conditions has been satisfied:

(1) The facility has a minimum of fifty percent of the units reserved for which the provider is charging an entrance fee and the aggregate amount of the entrance fees received by or pledged to the provider, plus anticipated proceeds from any long-term financing commitment, plus funds from all other sources in the actual possession of the provider, equal not less than ninety percent of the aggregate cost of constructing or purchasing, equipping, and furnishing the facility.

(2) The resident has moved into the living unit, the cancellation period required by section 523D.6, subsection 2, has expired, construction of the facility or the portion of the facility under construction is complete, the facility has been adequately equipped and furnished, a certificate of occupancy or the equivalent has been issued by the appropriate local jurisdiction, and the provider has been issued all the appropriate licenses or permits needed to operate the facility and provide all of the promised services.

d. Upon receipt by the escrow agent of a request by the provider for the release of these escrowed funds, the escrow agent shall approve release of the funds within five working days unless the escrow agent finds that the requirements of this section have not been met and notifies the provider of the basis for this finding. The request for release of the escrowed funds shall be accompanied by any documentation the escrow agent requires.

6. *Retention of records.* The provider shall maintain information required by this section for at least five years. The information shall be made available for inspection during normal business hours.

89 Acts, ch 217, §5; 91 Acts, ch 205, §14; 92 Acts, ch 1078, §11; 93 Acts, ch 60, §12; 2004 Acts, ch 1104, §37 – 44; 2012 Acts, ch 1023, §157

523D.6 Contracts.

1. *Disclosure.* In addition to any other provisions prescribed by rules adopted under this chapter, each contract providing for continuing care or senior adult congregate living services

by a provider shall be written in nontechnical language easily understood by a lay person and shall include all of the following:

a. The name and business address of the provider.

b. The name and address of the facility or facilities.

c. The identification of the living unit which the prospective resident will occupy.

d. A description of the total consideration paid by the resident, including the value of all property transferred.

e. A list of all of the continuing care or senior adult congregate living services which are to be provided by the provider to each resident. The list shall clearly identify the manner in which continuing care or senior adult congregate living services will be provided, including a statement whether the items will be provided for a designated time period or for life, and shall indicate which continuing care and senior adult congregate living services, if any, will be provided through an affiliate or third party. The description of any service charges or fees shall, in the event of multiple residents, be provided on an individual basis and shall include a description of any additional charges that will be assessed for occupancy by more than one resident.

f. A statement of the policy of the facility with regard to any health or financial conditions upon which the provider may require the resident to relinquish the resident's space in the designated facility.

g. A statement of the policy of the facility with regard to the health and financial conditions required for a person to continue as a resident.

h. A statement of the policy of the facility with regard to the conditions under which the resident is permitted to remain in the facility in the event of financial difficulties affecting the resident.

i. A statement of the terms concerning the entry of a person to the living unit and the consequences if a person does not meet the requirements for entry.

j. A statement of the policy of the facility with regard to changes in accommodations and a description of the procedures to be followed by the provider when the provider temporarily or permanently changes the resident's accommodations within the facility, transfers the resident from one level of care to another, or transfers the resident to another health facility.

k. A description in clear and understandable language, in at least ten point type, of the terms governing the refund of any portion of the entrance fee in the event of discharge by the provider, or cancellation by the resident, and a statement that the provider shall not dismiss or discharge a resident from a facility prior to the expiration of a resident contract without just cause and sixty days written notice of intent to cancel. The notice of dismissal or discharge shall only be given upon a good faith determination that just cause exists, and the notice shall be given in writing, signed by the medical director, if any, and the administrator of the facility. In an emergency situation only such notice as is reasonable under the circumstances is required.

l. A description in clear and understandable language, in at least ten point type, whether monthly fees, if charged, are subject to periodic increases.

m. A description of the facility's policies and procedures for handling grievances between the provider and residents.

n. A statement that residents living in the facility have the right of self-organization.

o. A statement that a prospective resident or resident shall be given the opportunity to appoint a personal representative in the prospective resident's or resident's contract. The personal representative shall receive copies of the contract and all notices, disclosures, or forms required by this chapter to be delivered to a prospective resident or resident. A personal representative appointed under this section has no legal authority to make any decision for the prospective resident or resident appointing the person to be a personal representative. The personal representative may advise the prospective resident or resident as to the materials provided. A personal representative shall not be affiliated or associated with a provider or any person identified in section 523D.3, subsection 1, paragraph *"b"* or *"c"*, and shall not be a prospective resident or resident.

p. A statement that if a resident dies or through illness, injury, or incapacity is precluded from becoming a resident under the terms of the contract before occupying the living unit,

the contract is automatically rescinded and the resident or the resident's legal representative shall receive a full refund of all payments of money or transferred property to the facility, except those costs specifically incurred by the facility at the request of the resident and set forth in writing in a separate addendum, signed by both parties to the contract.

q. A statement that a resident has the right to rescind a contract for continuing care or senior adult congregate living services, without penalty or forfeiture, within three business days of the date the contract was executed or within thirty days after the date the resident received the disclosure statement required by section 523D.3, whichever is later.

2. *Cancellation.* The contract required by this section shall state the terms under which the contract can be canceled by the provider or the resident, including a statement of the refund rights of a resident, and shall include a completed, easily detachable form in duplicate, captioned "Notice of Cancellation", as an attachment, in ten point boldface type, containing the following information and statements in substantially the following form and language:

NOTICE OF CANCELLATION

.....

Date contract was executed.

.....

Date disclosure statement was provided to resident.

You may rescind and cancel your contract, without any penalty or obligation, within three business days of the date the contract was executed or within thirty days after the date you received the disclosure statement required by Iowa Code section 523D.3, whichever is later. You are not required to move into the facility before the expiration of this cancellation period. However, if you do, the provider may retain the reasonable value of care and services actually provided to you, the resident, prior to your vacating the provider's facility. If you cancel this contract and you have already moved into the provider's facility, you must vacate your living unit within ten days after receipt by the provider of your cancellation notice.

If you cancel this contract, any payments of money or transfers of property you made to the provider must be returned as soon as reasonably possible by the provider following receipt by the provider of your cancellation notice, and any security interest arising out of the transaction is canceled, except that, as stated above, the provider may retain the reasonable value of care and services actually provided to you prior to your vacating the provider's facility.

To cancel this contract, mail by certified mail or hand deliver a signed and dated copy of this cancellation notice or any other written notice clearly indicating your intent to cancel the contract, or send a telegram, to ..... (name of provider) at ..... (address of provider's place of business). Your cancellation is effective upon mailing by certified mail, when transmitted by telegraph, or when actual notice is given to the provider, whichever is earlier.

I hereby cancel this contract.

.....

(Date)

.....

(Resident's signature)

89 Acts, ch 217, §6; 90 Acts, ch 1168, §55; 90 Acts, ch 1233, §34; 91 Acts, ch 205, §15; 92 Acts, ch 1163, §102

Referred to in §523D.5

523D.7 Civil liability.

1. A provider is liable to the person contracting for continuing care or senior adult congregate living services for damages and repayment of all fees paid to the provider, facility, or person violating this chapter, less the reasonable value of care and lodging provided to the resident by or on whose behalf the contract for continuing care or senior adult congregate living services was entered into prior to discovery of the violation, misstatement, or omission, or the time the violation, misstatement, or omission should reasonably have been discovered, together with interest at the legal rate for judgments and court costs and reasonable attorney fees, if the provider does any of the following:

a. Enters into a contract to provide continuing care or senior adult congregate living services at a facility without having first delivered a disclosure statement meeting the requirements of this chapter to the person contracting for continuing care or senior adult congregate living services and to the person's personal representative if one is appointed by the person.

b. Enters into a contract to provide continuing care or senior adult congregate living services at a facility with a person who has relied on a disclosure statement which contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading.

2. Liability under this section exists regardless of whether or not the provider or person liable had actual knowledge of the misstatement or omission.

3. A person shall not file or maintain an action under this section if the person, before filing the action, received an offer to refund, payable upon acceptance, all amounts paid the provider, facility, or person violating this chapter, together with interest from the date of payment, less the reasonable value of care and lodging provided prior to receipt of the offer, and the person failed to accept the offer within thirty days of its receipt. At the time a provider makes a written offer of refund, the provider shall file a copy with the division of insurance. The refund offer shall refer to the provisions of this section.

4. An action shall not be maintained to enforce a liability created under this chapter unless brought before the expiration of six years after the execution of the contract for continuing care or senior adult congregate living services which gave rise to the violation.

5. Except as expressly provided in this chapter, civil liability in favor of a private party shall not arise against a person, by implication, from or as a result of the violation of this chapter. This chapter does not limit a liability which may exist by virtue of any other statute or under common law if this chapter were not in effect.

89 Acts, ch 217, §7

523D.8 Criminal penalties.

1. A person who violates a provision of this chapter or a rule adopted or order entered pursuant to this chapter commits a fraudulent practice as provided in chapter 714.

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

89 Acts, ch 217, §8; 2004 Acts, ch 1104, §45

523D.9 Initial filing. Repealed by 2004 Acts, ch 1104, §51.

523D.10 Rules.

The division of insurance may adopt rules pursuant to chapter 17A as necessary and appropriate to implement this chapter, and may make further recommendations to the general assembly for the protection of residents and prospective residents of facilities under this chapter.

89 Acts, ch 217, §10; 2004 Acts, ch 1104, §46

523D.11 Reserved.

523D.12 Investigations.

The commissioner may, for the purpose of discovering or investigating violations of this chapter or rules adopted pursuant to this chapter do any or all of the following:

1. Investigate the business and examine the books, accounts, records, and files used by a provider. With the exception of an examination involving new construction, an examination involving a complaint by a resident or a prospective resident or where good cause exists for the lack of prior notice, as determined by the commissioner, the division of insurance shall provide at least seven days' prior notice to the facility before conducting an on-site examination.

2. Administer oaths and affirmations, subpoena witnesses, receive evidence, and require the production of documents and records in connection with an investigation or proceeding being conducted pursuant to this chapter.

3. Apply to the district court for issuance of an order requiring a person's appearance before the commissioner. The person may also be required to produce documentary evidence germane to the subject of the investigation. Failure to obey a court order under this section constitutes contempt of court.

91 Acts, ch 205, §16; 2004 Acts, ch 1104, §47 – 49

523D.13 Compliance — summary orders.

1. Upon the commissioner's determination that a provider has engaged, is engaging, or is about to engage in any act or practice constituting a violation of this chapter or a rule adopted pursuant to this chapter, the commissioner may issue a summary order directing the provider to cease and desist from engaging in the act or practice resulting in the violation or to take other affirmative action as in the judgment of the commissioner is necessary to comply with the requirements of this chapter.

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

3. A person violating a summary order issued under this section shall be deemed in contempt of that order. The commissioner may petition the district court to enforce the order as certified by the commissioner. The district court shall adjudge the person in contempt of the order if the court finds after hearing that the person is not in compliance with the order. The court shall assess a civil penalty against the person in an amount not less than three thousand dollars but not greater than ten thousand dollars per violation, and may issue further orders as it deems appropriate.

91 Acts, ch 205, §17; 2000 Acts, ch 1147, §32

523D.14 Injunctions.

The commissioner may petition the district court in any county of the state for an injunction to restrain a person subject to this chapter and any agents, employees, or associates of the person from engaging in conduct or practices in violation of this chapter or rules adopted pursuant to this chapter. In a proceeding for an injunction, the commissioner may apply to the court for the issuance of a subpoena to require the appearance of a defendant and the defendant's agents and any documents, books, or records germane to the hearing upon the petition for an injunction. Upon proof of any of the violations described in the petition for injunction, the court may grant the injunction.

91 Acts, ch 205, §18; 2004 Acts, ch 1104, §50

CHAPTER 523E

CEMETERY MERCHANDISE

Repealed by 2001 Acts, ch 118, §57; see chapter 523A

CHAPTER 523F

LEGAL EXPENSE INSURANCE

Repealed by 2001 Acts, ch 16, §36, 37

CHAPTER 523G

INVENTION DEVELOPMENT SERVICES

Referred to in §505.28, 505.29, 669.14

Legislative findings; 92 Acts, ch 1114, §1

523G.1 Short title.
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523G.9 Compliance with other laws, violations and penalties.
523G.10 and 523G.11 Repealed by 98 Acts, ch 1119, §6.

523G.1 Short title.

This chapter shall be known and may be cited as the "*Invention Development Services Act*".

92 Acts, ch 1114, §2

523G.2 Purpose of the chapter.

The general assembly declares that the purpose of this chapter is to safeguard the public against fraud, deceit, imposition, and financial hardship, and to foster and encourage competition, fair dealing, and prosperity in the field of invention development services by prohibiting or restricting deceptive practices, misleading advertising, onerous contract terms, harmful financial practices, and other unfair, dishonest, deceptive, destructive, unscrupulous, fraudulent, or discriminatory practices which threaten the public welfare.

92 Acts, ch 1114, §3

523G.3 Definitions.

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

1. "*Business record*" means a record maintained by an invention developer relating to invention development services, including but not limited to contracts, files, accounts, books, papers, photographs, and audio or visual tapes.
2. "*Commissioner*" means the commissioner of insurance or a person designated by the commissioner to act on the commissioner's behalf.
3. "*Contract*" means an agreement between an invention developer and a customer under which the invention developer promises to perform invention development services for the customer.
4. "*Customer*" means a person who is solicited by, inquires about, seeks the services of, or enters into a contract with an invention developer.
5. "*Deceptive practice*" means communicating a false or fraudulent statement, providing false pretense, making a false promise or misleading statement, misrepresenting a fact, omitting a material fact, or failing to make all disclosures required by this chapter.

6. *"Fee"* means a payment made by a customer to an invention developer, including reimbursements for expenditures made or costs incurred by the invention developer. However, *"fee"* does not include a payment made from a portion of the income received by the customer which resulted from invention development services performed by the invention developer.

7. *"Invention"* means an original concept which may be rendered into an artistic, educational, or technological expression, including works, compositions, designs, machines, manufacturing or engineering techniques, analyses, or processes.

8. *"Invention developer"* means a person who performs invention development services in this state or offers, through any means of communication, to perform invention development services in this state. However, an invention developer does not include the following:

a. A person licensed by a state or the United States to render legal advice, if the person acts within the scope of the license. However, if the person is a corporation, all of its stockholders or members must be licensed. If the person is a partnership, all of its partners must be licensed.

b. A department or agency of a federal or state government.

c. A political subdivision.

d. A nonprofit organization registered pursuant to state law.

e. A charitable, scientific, educational, or religious organization registered pursuant to state law.

f. A person who does not charge a fee for invention development services.

g. A person who provides researching, marketing, surveying, or other kinds of consulting services to professional manufacturers, marketers, publishers, or others purchasing such services as an adjunct to their traditional commercial enterprises.

9. *"Invention development services"* or *"services"* means acts required, promised to be performed, or actually performed by an invention developer for a customer pursuant to a contract which involves facilitating the development, promotion, licensing, publishing, exhibiting, or marketing of an invention.

92 Acts, ch 1114, §4

523G.4 Initial disclosures.

1. If an invention developer contemplates entering into a contract or if the invention developer contemplates performance of a phase covered in a contract, the invention developer shall notify the customer by a written statement. The invention developer shall deliver to the customer the written notice together with a copy of each contract or a written summary of the general terms of each contract, including the total cost or consideration required from the customer, before the customer first executes the contract.

2. The invention developer shall make a written disclosure to the customer of the information required in this section. The disclosure shall be made in either the first written communication from the invention developer to a specific customer or at the first meeting between the invention developer and a customer. The written disclosure shall contain all of the following:

a. The median fee based on fees charged to all customers who have executed contracts with the invention developer in the preceding six months, excluding customers who have executed a contract in the preceding thirty days.

b. A single statement setting forth both of the following:

(1) The total number of customers who have executed contracts with the invention developer, except that the number need not reflect those customers who have executed contracts within the preceding thirty days.

(2) The number of customers who have received from the invention developer's services an amount of money in excess of the amount of money paid by those customers to the invention developer pursuant to a contract. The amount received by a customer reported on the statement shall only include income earned from the successful development, promotion, licensing, publishing, exhibiting, or marketing of the customer's invention pursuant to the contract executed between the invention developer and the customer.

c. A notice appearing in substantially the following form:

WARNING

The following disclosure is required by section 523G.4 of the Iowa Code:

The person you are dealing with is an invention developer regulated under chapter 523G of the Iowa Code. Unless an invention developer is an attorney licensed to practice in this state, the invention developer is prohibited from providing you legal advice concerning patent, copyright, or trademark law or to advise you of whether your creation, idea, or invention may be patentable or may be protected under the patent, copyright, or trademark laws of the United States or any other law. A registered patent agent may give advice as to patentability and protection available under the patent laws.

A patent, copyright, or trademark protection cannot be acquired for you by the invention developer. Your potential patent rights may be adversely affected by any attempt to commercialize your idea or invention before a patent application covering it is filed. Nonconfidential disclosures of your creation, idea, or invention may also trigger a one-year statutory deadline for filing a patent application in the United States, after which you would be banned from receiving any patent protection in the United States, and would prevent you from obtaining valid patent rights in countries whose law provides that patent applications must be filed before there is a public disclosure.

Your failure to identify and investigate existing patents, trademarks, or registered copyrights may place you in jeopardy of infringing the copyright, patent, or trademark rights of other persons if you proceed to make, use, or sell your creation, idea, or invention.

If you assign even a partial interest in the invention to the invention developer, the invention developer may have the right to assign or license its interest in the invention, or make, use, and sell the creation, idea, or invention without your consent and may not have to share the profits with you.

92 Acts, ch 1114, §5; 99 Acts, ch 96, §48
Referred to in §523G.9

523G.5 Contracts.

1. A contract shall set forth information required in this section in at least ten point type.

2. The contract shall describe fully and in detail the services that the invention developer contracts to perform for the customer.

3. The contract shall state the following information:

a. If the invention developer contracts to construct one or more prototypes, models, or devices embodying the invention of the customer, the total number of prototypes to be constructed and whether the invention developer contracts to sell or distribute such prototypes, models, or devices.

b. If an oral or written estimate of customer earnings is made, the estimate and the data upon which it is based.

c. A single statement setting forth both of the following:

(1) The total number of customers who have executed contracts with the invention developer, except that the number need not reflect those customers who have contracted within the preceding thirty days.

(2) The number of customers who have received from the invention developer's services an amount of money in excess of the amount of money paid by those customers to the invention developer pursuant to a contract. The amount received by a customer reported on the statement shall only include payments for services performed by the invention developer

involving the development, promotion, licensing, publishing, exhibiting, or marketing of the customer's invention pursuant to their contract.

d. The expected date of completion of the invention development services.

e. The extent to which the terms of the contract effectuate or make possible the purchase by the invention developer of an interest in the title to an invention.

f. A statement explaining that the invention developer is required to maintain all records and correspondence relating to the invention development services performed for that customer for a period not less than three years after expiration of the contract.

g. A statement explaining that the records and correspondence required to be maintained pursuant to section 523G.8 shall be made available to the customer or representative for review and copying at the expense of the customer on the premises of the invention developer during normal business hours upon seven days' written notice from the date of delivery sent by certified mail.

h. The name of the person contracting to perform the invention development services, all names under which the person is doing or has done business as an invention developer during the previous ten years, the names of all parent and subsidiary entities to the person, and the names of all entities that have a contractual obligation to perform invention development services for the person.

i. The principal business address of the invention developer and the name and address of its agent in this state authorized to receive service of process in this state.

4. *a.* The customer has an unconditional right to cancel a contract for invention development services at any time before the third business day following the date the customer receives an executed copy of the contract.

b. The customer must notify the invention developer of a cancellation by written notice delivered personally or by certified mail. A notice delivered personally must be delivered to the invention developer's place of business by the end of the third business day following the date that the contract was executed, and the cancellation shall take effect upon delivery. Upon delivery of the personal notice, the invention developer shall return a receipt to the customer acknowledging receipt of the cancellation. A notice delivered by certified mail must be mailed by midnight of the third day following the date that the contract was executed, and the cancellation shall become effective upon the date the receipt is signed. A notice of cancellation may take any form which indicates that the customer no longer intends to be bound by the contract.

c. Within ten business days after receipt of the notice of cancellation, the invention developer shall deliver to the customer, personally or by certified mail, all moneys paid, any note or other evidence of indebtedness, and all materials provided by the customer. The invention developer may condition payment upon a receipt by the customer acknowledging personal delivery.

5. The following shall be included in the contract:

a. A disclosure statement in substantially the following form shall appear in boldface type and be located conspicuously on a cover sheet that contains no other writing:

NOTICE

The following disclosure is required by section 523G.5 of the Iowa Code and is expressly made a part of this contract:

You have the right to cancel this contract for any reason at any time within three (3) business days from the date you and the invention developer sign the contract and you receive a fully executed copy. To exercise this option you may use certified mail or personally deliver to this invention developer written notice of your cancellation. The method and time for notification is set forth in this contract immediately above the place for your signature. The invention developer must return by certified mail or personal delivery, within ten business days after receipt of the cancellation notice, all money paid and all materials provided either by you or by another party on your behalf.

Unless the invention developer is an attorney, the invention developer is prohibited from giving you legal advice concerning patent, copyright, or trademark law, whether your creation, idea, or invention may be patentable, or protected under the patent, copyright, or trademark laws of the United States or any other law. A registered patent agent may give advice as to patentability and protection available under the patent laws.

A patent, copyright, or trademark protection will not be acquired for you by the invention developer or by this contract. Your potential patent rights may be adversely affected by any attempt to commercialize your idea or invention before a patent application covering it is filed. Nonconfidential disclosures of your idea or invention may also trigger certain statutory deadlines for filing a patent application in the United States and would prevent you from obtaining valid patent rights in countries whose law provides that patent applications must be filed before there is a public disclosure. Your failure to identify and investigate existing patents, trademarks, or registered copyrights may place you in jeopardy of infringing the copyright, patent, or trademark rights of other persons if you proceed to make, use, or sell your idea or invention.

b. A disclosure statement in substantially the following form shall appear in ten point boldface type immediately above the place where the customer is to sign:

ATTENTION!
(READ CAREFULLY)

You have three (3) business days during which you may cancel this contract for any reason. You must deliver written notice of the cancellation by certified mail or personally to the invention developer. This opportunity to cancel the contract will expire on the last date that you are allowed to mail or deliver notice. If you choose to use certified mail to deliver your notice, it must be placed in the United States mail addressed to (insert name of invention developer), at (insert address of invention developer's place of business) with first class postage prepaid before midnight of (insert proper date). If you choose to personally deliver your notice to the invention developer, it must be delivered by the end of the normal business day on (insert proper date). You are advised to obtain a written statement from the invention developer acknowledging receipt.

92 Acts, ch 1114, §6

523G.6 Evidence of financial responsibility.

1. An invention developer shall maintain as security evidence of financial responsibility as approved by the commissioner. The security shall be either a bond or cash deposit in an amount which is equal to the greater of either ten percent of the invention developer's gross income from the invention development business in this state during the invention developer's preceding fiscal year, or twenty-five thousand dollars. The commissioner shall approve the security before the invention developer renders or offers to render invention development services in this state. The invention developer shall have ninety days beginning on the first day of the invention developer's new fiscal year to change the security as necessary to conform to the requirements of this subsection.

2. A surety who issues a bond must be approved by the commissioner. A copy of the bond shall be filed in a manner and according to procedures approved by the commissioner. A cash deposit shall be filed with the treasurer of state in a manner and according to procedures approved by the treasurer of state in consultation with the commissioner. The treasurer of state shall not refund a deposit until sixty days following either the date that the

invention developer has ceased doing business in the state or a bond has been filed with the commissioner in compliance with this section.

3. *a.* The security shall be in favor of the state for the benefit of any person entering into a contract with and damaged by an invention developer, if the damages are caused by one of the following:

(1) A failure by the invention developer to perform the terms of the contract.

(2) The insolvency of the invention developer or the cessation of the invention developer's business.

(3) The intentional violation of a provision of this chapter by the invention developer.

b. A person claiming against the security may maintain an action at law against the invention developer. An action against a bond may also include the surety. The aggregate liability of the surety to all persons for all breaches of conditions of the bond shall not exceed the amount of the bond.

92 Acts, ch 1114, §7, 13; 2012 Acts, ch 1023, §157
Implementation contingent upon appropriation; 92 Acts, ch 1114, §13; 94 Acts, ch 1031, §21

523G.7 Negotiable instruments.

An invention developer shall not take a negotiable instrument from a customer as part of a contract, unless the negotiable instrument is a check constituting evidence of the customer's obligation. A person in possession of a negotiable instrument is not a holder in due course as defined in section 554.3302, if the person takes a negotiable instrument from a customer in violation of this section.

92 Acts, ch 1114, §8

523G.8 Records and correspondence.

An invention developer shall maintain all records and correspondence relating to performance of each invention development contract for not less than three years after expiration of the contract.

92 Acts, ch 1114, §9
Referred to in §523G.5

523G.9 Compliance with other laws, violations and penalties.

1. The provisions of this chapter are not exclusive and do not relieve persons or a contract from compliance with other applicable law.

2. A contract which fails to comply with the applicable provisions of this chapter is unenforceable against the customer as contrary to public policy, unless the invention developer proves all of the following:

a. The noncompliance resulted from an error.

b. The invention developer followed reasonable procedures adopted to avoid such errors.

c. The invention developer promptly made an appropriate correction upon discovery of the noncompliance.

3. A contract executed by an invention developer is unenforceable against the customer, if the invention developer used deceptive practices, with an intent to cause reliance, regardless of whether the customer was actually misled, deceived, or damaged.

4. A provision of a contract which waives a provision of this chapter is contrary to public policy and is void and unenforceable.

5. A person may bring a civil action against an invention developer that uses a deceptive practice. The person may be awarded damages together with costs and disbursements, including reasonable attorney fees. The court in its discretion may increase the award of damages to an amount not to exceed three times the damages or two thousand five hundred dollars, whichever is greater.

6. Failure to make an initial disclosure required by section 523G.4 shall render any contract subsequently entered into between the customer and the invention developer voidable by the customer.

7. A violation of this chapter or a rule adopted by the commissioner pursuant to this chapter is a violation of section 714.16. The remedies and penalties provided by section

714.16, including but not limited to provisions relating to injunctive relief and penalties, apply to violations of this chapter.

92 Acts, ch 1114, §10

523G.10 and 523G.11 Repealed by 98 Acts, ch 1119, §6.

CHAPTER 523H

FRANCHISES

Referred to in §669.14

Agreements entered into on or after July 1, 2000, are subject to §537A.10; see §523H.2A

523H.1 Definitions.
523H.2 Applicability.
523H.2A Applicability — limitation.
523H.3 Jurisdiction and nonjudicial resolution of disputes.
523H.4 Waivers void.
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523H.7 Termination.
523H.8 Nonrenewal of a franchise.
523H.9 Franchisee's right to associate.
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523H.11 Repurchase of assets.
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523H.15 Construction with other law.
523H.16 Construction.
523H.17 Severability.

523H.1 Definitions.

When used in this chapter, unless the context otherwise requires:

1. *"Affiliate"* means a person controlling, controlled by, or under common control with another person, every officer or director of such a person, and every person occupying a similar status or performing similar functions.

2. *"Business day"* means a day other than a Saturday, Sunday, or federal holiday.

3. *a. "Franchise"* means either of the following:

(1) An oral or written agreement, either express or implied, which provides all of the following:

(a) Grants the right to distribute goods or provide services under a marketing plan prescribed or suggested in substantial part by the franchisor.

(b) Requires payment of a franchise fee to a franchisor or its affiliate.

(c) Allows the franchise business to be substantially associated with a trademark, service mark, trade name, logotype, advertisement, or other commercial symbol of or designating the franchisor or its affiliate.

(2) A master franchise.

b. "Franchise" does not include any business that is operated under a lease or license on the premises of the lessor or licensor as long as such business is incidental to the business conducted by the lessor or licensor on such premises, including, without limitation, leased departments, licensed departments, and concessions and the leased or licensed department operates only under the trademark, trade name, service mark, or other commercial symbol designating the lessor or licensor.

c. "*Franchise*" also does not include any contract under which a petroleum retailer or petroleum distributor is authorized or permitted to occupy leased marketing premises, which premises are to be employed in connection with the sale, consignment, or distribution of motor fuel under a trademark which is owned or controlled by a refiner which is regulated by the federal Petroleum Marketing Practices Act, 15 U.S.C. §2801 et seq. The term *"refiner"* means any person engaged in the refining of crude oil to produce motor fuel, and includes any affiliate of such person. *"Franchise"* also does not include a contract entered into by any person regulated under chapter 103A, subchapter IV, or chapter 123, 322, 322A, 322C, 322D,

322F, 522B, or 543B, or a contract establishing a franchise relationship with respect to the sale of construction equipment, lawn or garden equipment, or real estate.

4. *"Franchise fee"* means a direct or indirect payment to purchase or operate a franchise. Franchise fee does not include any of the following:

a. Payment of a reasonable service charge to the issuer of a credit card by an establishment accepting the credit card.

b. Payment to a trading stamp company by a person issuing trading stamps in connection with a retail sale.

c. An agreement to purchase at a bona fide wholesale price a reasonable quantity of tangible goods for resale.

d. The purchase or agreement to purchase, at a fair market value, any fixtures, equipment, leasehold improvements, real property, supplies, or other materials reasonably necessary to enter into or continue a business.

e. Payments by a purchaser pursuant to a bona fide loan from a seller to the purchaser.

f. Payment of rent which reflects payment for the economic value of leased real or personal property.

g. The purchase or agreement to purchase promotional or demonstration supplies, materials, or equipment furnished at fair market value and not intended for resale.

5. *"Franchisee"* means a person to whom a franchise is granted. Franchisee includes the following:

a. A subfranchisor with regard to its relationship with a franchisor.

b. A subfranchisee with regard to its relationship with a subfranchisor.

6. *"Franchisor"* means a person who grants a franchise or master franchise, or an affiliate of such a person. Franchisor includes a subfranchisor with regard to its relationship with a franchisee, unless stated otherwise in this chapter.

7. *"Marketing plan"* means a plan or system concerning a material aspect of conducting business. Indicia of a marketing plan include any of the following:

a. Price specification, special pricing systems, or discount plans.

b. Sales or display equipment or merchandising devices.

c. Sales techniques.

d. Promotional or advertising materials or cooperative advertising.

e. Training regarding the promotion, operation, or management of the business.

f. Operational, managerial, technical, or financial guidelines or assistance.

8. *"Master franchise"* means an agreement by which a person pays a franchisor for the right to sell or negotiate the sale of franchises.

9. *"Offer"* or *"offer to sell"* means every attempt to offer or to dispose of, or solicitation of an offer to buy, a franchise or interest in a franchise for value.

10. *"Person"* means a person as defined in section 4.1, subsection 20.

11. *"Sale"* or *"sell"* means every contract or agreement of sale of, contract to sell or disposition of, a franchise or interest in a franchise for value.

12. *"Subfranchise"* means an agreement by which a person pays a franchisor for the right to sell or negotiate the sale of franchises.

13. *"Subfranchisee"* means a person who is granted a franchise from a subfranchisor.

14. *"Subfranchisor"* means a person who is granted a master franchise.

92 Acts, ch 1134, §1; 2001 Acts, ch 16, §13, 37; 2006 Acts, ch 1090, §21, 26

523H.2 Applicability.

This chapter applies to a new or existing franchise that is operated in the state of Iowa. For purposes of this chapter, the franchise is operated in this state only if the premises from which the franchise is operated is physically located in this state. For purposes of this chapter, a franchise including marketing rights in or to this state, is deemed to be operated in this state only if the franchisee's principal business office is physically located in this state. This chapter does not apply to a franchise solely because an agreement relating to the franchise provides that the agreement is subject to or governed by the laws of this state. The provisions

of this chapter do not apply to any existing or future contracts between Iowa franchisors and franchisees who operate franchises located out of state.

92 Acts, ch 1134, §2; 95 Acts, ch 117, §1
Referred to in §523H.2A, 537A.10

523H.2A Applicability — limitation.

1. Notwithstanding section 523H.2, this chapter does not apply to a franchise agreement which is entered into on or after July 1, 2000. A franchise agreement which is entered into on or after July 1, 2000, shall be subject to section 537A.10.

2. This chapter shall govern all actions with respect to a franchise agreement entered into prior to July 1, 2000, no matter when the occurrence giving rise to such action occurs.

2000 Acts, ch 1093, §2

523H.3 Jurisdiction and nonjudicial resolution of disputes.

1. A provision in a franchise agreement restricting jurisdiction to a forum outside this state is void with respect to a claim otherwise enforceable under this chapter.

2. A civil action or proceeding arising out of a franchise may be commenced wherever jurisdiction over the parties or subject matter exists, even if the agreement limits actions or proceedings to a designated jurisdiction.

3. Parties to a franchise may agree to independent arbitration, mediation, or other nonjudicial resolution of an existing or future dispute.

4. Venue for a civil action commenced under this chapter shall be determined in accordance with chapter 616.

92 Acts, ch 1134, §3

523H.4 Waivers void.

A condition, stipulation, or provision requiring a franchisee to waive compliance with or relieving a person of a duty or liability imposed by or a right provided by this chapter or a rule or order under this chapter is void. This section shall not affect the settlement of disputes, claims, or civil lawsuits arising or brought pursuant to this chapter.

92 Acts, ch 1134, §4

523H.5 Transfer of franchise.

1. A franchisee may transfer the franchised business and franchise to a transferee, provided that the transferee satisfies the reasonable current qualifications of the franchisor for new franchisees. For the purposes of this section, a reasonable current qualification for a new franchisee is a qualification based upon a legitimate business reason. If the proposed transferee does not meet the reasonable current qualifications of the franchisor, the franchisor may refuse to permit the transfer, provided that the refusal of the franchisor to consent to the transfer is not arbitrary or capricious.

2. Except as otherwise provided in this section, a franchisor may exercise a right of first refusal contained in a franchise agreement after receipt of a proposal from the franchisee to transfer the franchise.

3. A franchisor may require as a condition of a transfer any of the following:

a. That the transferee successfully complete a reasonable training program.

b. That a reasonable transfer fee be paid to reimburse the franchisor for the franchisor's reasonable and actual expenses directly attributable to the transfer.

c. That the franchisee pay or make provision reasonably acceptable to the franchisor to pay any amount due the franchisor or the franchisor's affiliate.

d. That the financial terms of the transfer comply at the time of the transfer with the franchisor's current financial requirements for franchisees.

4. A franchisee may transfer the franchisee's interest in the franchise, for the unexpired term of the franchise agreement, and a franchisor shall not require the franchisee or the transferee to enter into a new or different franchise agreement as a condition of the transfer.

5. A franchisee shall give the franchisor no less than sixty days' written notice of a transfer which is subject to the provisions of this section, and on request from the franchisor

shall provide in writing the ownership interests of all persons holding or claiming an equitable or beneficial interest in the franchise subsequent to the transfer or the franchisee, as appropriate. A franchisee shall not circumvent the intended effect of a contractual provision governing the transfer of the franchise or an interest in the franchise by means of a management agreement, lease, profit-sharing agreement, conditional assignment, or other similar device.

6. A franchisor shall not transfer its interest in a franchise unless the franchisor makes reasonable provision for the performance of the franchisor's obligations under the franchise agreement by the transferee. For purposes of this subsection, "*reasonable provision*" means that upon the transfer, the entity assuming the franchisor's obligations has the financial means to perform the franchisor's obligations in the ordinary course of business, but does not mean that the franchisor transferring the franchise is required to guarantee obligations of the underlying franchise agreement.

7. A transfer by a franchisee is deemed to be approved sixty days after the franchisee submits the request for consent to the transfer unless the franchisor withholds consent to the transfer as evidenced in writing, specifying the reason or reasons for withholding the consent. The written notice must be delivered to the franchisee prior to the expiration of the sixty-day period. Any such notice is privileged and is not actionable based upon a claim of defamation.

8. A franchisor shall not discriminate against a proposed transferee of a franchise on the basis of race, color, national origin, religion, sex, or disability.

9. A franchisor, as a condition to a transfer of a franchise, shall not obligate a franchisee to undertake obligations or relinquish any rights unrelated to the franchise proposed to be transferred, or to enter into a release of claims broader than a similar release of claims by the franchisor against the franchisee which is entered into by the franchisor.

10. A franchisor, after a transfer of a franchise, shall not seek to enforce any covenant of the transferred franchise against the transferor which prohibits the transferor from engaging in any lawful occupation or enterprise. However, this subsection does not prohibit the franchisor from enforcing a contractual covenant against the transferor not to exploit the franchisor's trade secrets or intellectual property rights, unless otherwise agreed to by the parties.

11. For purposes of this section, "*transfer*" means any change in ownership or control of a franchise, franchised business, or a franchisee.

12. The following occurrences shall not be considered transfers requiring the consent of the franchisor under a franchise agreement, and shall not result in the imposition of any penalties or make applicable any right of first refusal by the franchisor:

a. The succession of ownership of a franchise upon the death or disability of a franchisee, or of an owner of a franchise, to the surviving spouse, heir, or a partner active in the management of the franchisee unless the successor fails to meet within one year the then current reasonable qualifications of the franchisor for franchisees and the enforcement of the reasonable current qualifications is not arbitrary or capricious.

b. Incorporation of a proprietorship franchisee, provided that such incorporation does not prohibit a franchisor from requiring a personal guaranty by the franchisee of obligations related to the franchise.

c. A transfer within an existing ownership group of a franchise provided that more than fifty percent of the franchise is held by persons who meet the franchisor's reasonable current qualifications for franchisees. If less than fifty percent of the franchise would be owned by persons who meet the franchisor's reasonable current qualifications, the franchisor may refuse to authorize the transfer, provided that enforcement of the reasonable current qualifications is not arbitrary or capricious.

d. A transfer of less than a controlling interest in the franchise to the franchisee's spouse or child or children, provided that more than fifty percent of the entire franchise is held by those who meet the franchisor's reasonable current qualifications. If less than fifty percent of the franchise would be owned by persons who meet the franchisor's reasonable current qualifications, the franchisor may refuse to authorize the transfer, provided that enforcement of the reasonable current qualifications is not arbitrary or capricious.

e. A transfer of less than a controlling interest in the franchise of an employee stock

ownership plan, or employee incentive plan, provided that more than fifty percent of the entire franchise is held by those who meet the franchisor's reasonable current qualifications for franchisees. If less than fifty percent would be owned by persons who meet the franchisor's reasonable current qualifications, the franchisor may refuse to authorize the transfer, provided that enforcement of the reasonable current qualifications is not arbitrary or capricious.

f. A grant or retention of a security interest in the franchised business or its assets, or an ownership interest in the franchisee, provided the security agreement establishes an obligation on the part of the secured party enforceable by the franchisor to give the franchisor notice of the secured party's intent to foreclose on the collateral simultaneously with notice to the franchisee, and a reasonable opportunity to redeem the interests of the secured party and recover the secured party's interest in the franchise or franchised business by paying the secured obligation.

13. A franchisor shall not interfere or attempt to interfere with any disposition of an interest in a franchise or franchised business as described in subsection 12, paragraphs *"a"* through *"f"*.

92 Acts, ch 1134, §5; 95 Acts, ch 117, §2

523H.6 Encroachment.

1. If a franchisor develops, or grants to a franchisee the right to develop, a new outlet or location which sells essentially the same goods or services under the same trademark, service mark, trade name, logotype, or other commercial symbol as an existing franchisee and the new outlet or location has an adverse effect on the gross sales of the existing franchisee's outlet or location, the existing adversely affected franchisee has a cause of action for monetary damages in an amount calculated pursuant to subsection 3, unless any of the following apply:

a. The franchisor has first offered the new outlet or location to the existing franchisee on the same basic terms and conditions available to the other potential franchisee, or, if the new outlet or location is to be owned by the franchisor, on the terms and conditions that would ordinarily be offered to a franchisee for a similarly situated outlet or location.

b. The adverse impact on the existing franchisee's annual gross sales, based on a comparison to the annual gross sales from the existing outlet or location during the twelve-month period immediately preceding the opening of the new outlet or location, is determined to have been less than five percent during the first twelve months of operation of the new outlet or location.

c. The existing franchisee, at the time the franchisor develops, or grants to a franchisee the right to develop, a new outlet or location, is not in compliance with the franchisor's then current reasonable criteria for eligibility for a new franchise. A franchisee determined to be ineligible pursuant to this paragraph shall be afforded the opportunity to seek compensation pursuant to the formal procedure established under paragraph *"d"*, subparagraph (2). Such procedure shall be the franchisee's exclusive remedy.

d. The franchisor has established both of the following:

(1) A formal procedure for hearing and acting upon claims by an existing franchisee with regard to a decision by the franchisor to develop, or grant to a franchisee the right to develop, a new outlet or location, prior to the opening of the new outlet or location.

(2) A reasonable formal procedure for awarding compensation or other form of consideration to a franchisee to offset all or a portion of the franchisee's lost profits caused by the establishment of the new outlet or location. The procedure shall involve, at the option of the franchisee, one of the following:

(a) A panel, comprised of an equal number of members selected by the franchisee and the franchisor, and one additional member to be selected unanimously by the members selected by the franchisee and the franchisor.

(b) A neutral third-party mediator or an arbitrator with the authority to make a decision or award in accordance with the formal procedure. The procedure shall be deemed reasonable if approved by a majority of the franchisor's franchisees in the United States, either individually or by an elected representative body.

(c) Arbitration of any dispute before neutral arbitrators pursuant to the rules of the American arbitration association. The award of an arbitrator pursuant to this subparagraph division is subject to judicial review pursuant to chapter 679A.

2. A franchisor shall establish and make available to its franchisees a written policy setting forth its reasonable criteria to be used by the franchisor to determine whether an existing franchisee is eligible for a franchise for an additional outlet or location.

3. *a.* In establishing damages under a cause of action brought pursuant to this section, the franchisee has the burden of proving the amount of lost profits attributable to the compensable sales. In any action brought under this section, the damages payable shall be limited to no more than three years of the proven lost profits. For purposes of this subsection, *"compensable sales"* means the annual gross sales from the existing outlet or location during the twelve-month period immediately preceding the opening of the new outlet or location less both of the following:

(1) Five percent.

(2) The actual gross sales from the operation of the existing outlet or location for the twelve-month period immediately following the opening of the new outlet or location.

b. Compensable sales shall exclude any amount attributable to factors other than the opening and operation of the new outlet or location.

4. Any cause of action brought under this section must be filed within eighteen months of the opening of the new outlet or location or within three months after the completion of the procedure under subsection 1, paragraph *"d"*, subparagraph (2), whichever is later.

5. Upon petition by the franchisor or the franchisee, the district court may grant a permanent or preliminary injunction to prevent injury or threatened injury for a violation of this section or to preserve the status quo pending the outcome of the formal procedure under subsection 1, paragraph *"d"*, subparagraph (2).

92 Acts, ch 1134, §6; 95 Acts, ch 117, §3; 2009 Acts, ch 41, §263

523H.7 Termination.

1. Except as otherwise provided by this chapter, a franchisor shall not terminate a franchise prior to the expiration of its term except for good cause. For purposes of this section, *"good cause"* is cause based upon a legitimate business reason. *"Good cause"* includes the failure of the franchisee to comply with any material lawful requirement of the franchise agreement, provided that the termination by the franchisor is not arbitrary or capricious when compared to the actions of the franchisor in other similar circumstances. The burden of proof of showing that action of the franchisor is arbitrary or capricious shall rest with the franchisee.

2. Prior to termination of a franchise for good cause, a franchisor shall provide a franchisee with written notice stating the basis for the proposed termination. After service of written notice, the franchisee shall have a reasonable period of time to cure the default, which in no event shall be less than thirty days or more than ninety days. In the event of nonpayment of moneys due under the franchise agreement, the period to cure need not exceed thirty days.

3. Notwithstanding subsection 2, a franchisor may terminate a franchisee upon written notice and without an opportunity to cure if any of the following apply:

a. The franchisee or the business to which the franchise relates is declared bankrupt or judicially determined to be insolvent.

b. All or a substantial part of the assets of the franchise or the business to which the franchisee relates are assigned to or for the benefit of any creditor which is subject to chapter 681. An assignment for the benefit of any creditor pursuant to this paragraph does not include the granting of a security interest in the normal course of business.

c. The franchisee voluntarily abandons the franchise by failing to operate the business for five consecutive business days during which the franchisee is required to operate the business under the terms of the franchise, or any shorter period after which it is not unreasonable under the facts and circumstances for the franchisor to conclude that the franchisee does not intend to continue to operate the franchise, unless the failure to operate is due to circumstances beyond the control of the franchisee.

d. The franchisor and franchisee agree in writing to terminate the franchise.

e. The franchisee knowingly makes any material misrepresentations or knowingly omits to state any material facts relating to the acquisition or ownership or operation of the franchise business.

f. After three material breaches of a franchise agreement occurring within a twelve-month period, for which the franchisee has been given notice and an opportunity to cure, the franchisor may terminate upon any subsequent material breach within the twelve-month period without providing an opportunity to cure, provided that the action is not arbitrary and capricious.

g. The franchised business or business premises of the franchisee are lawfully seized, taken over, or foreclosed by a government authority or official.

h. The franchisee is convicted of a felony or any other criminal misconduct which materially and adversely affects the operation, maintenance, or goodwill of the franchise in the relevant market.

i. The franchisee operates the franchised business in a manner that imminently endangers the public health and safety.

92 Acts, ch 1134, §7; 95 Acts, ch 117, §4

523H.8 Nonrenewal of a franchise.

1. A franchisor shall not refuse to renew a franchise unless both of the following apply:

a. The franchisee has been notified of the franchisor's intent not to renew at least six months prior to the expiration date or any extension of the franchise agreement.

b. Any of the following circumstances exist:

(1) Good cause exists, provided that the refusal of the franchisor to renew is not arbitrary or capricious. For purposes of this section, *"good cause"* means cause based on a legitimate business reason.

(2) The franchisor and franchisee agree not to renew the franchise.

(3) The franchisor completely withdraws from directly or indirectly distributing its products or services in the geographic market served by the franchisee, provided that upon expiration of the franchise, the franchisor agrees not to seek to enforce any covenant of the nonrenewed franchisee not to compete with the franchisor or franchisees of the franchisor.

2. As a condition of renewal of the franchise, a franchise agreement may require that the franchisee meet the then current requirements for franchises and that the franchisee execute a new agreement incorporating the then current terms and fees for new franchises.

92 Acts, ch 1134, §8; 95 Acts, ch 117, §5

523H.9 Franchisee's right to associate.

A franchisor shall not restrict a franchisee from associating with other franchisees or from participating in a trade association, and shall not retaliate against a franchisee for engaging in these activities.

92 Acts, ch 1134, §9

523H.10 Duty of good faith.

A franchise imposes on the parties a duty of good faith in performance and enforcement of the franchise agreement. *"Good faith"* means honesty in fact and the observance of reasonable commercial standards of fair dealing in the trade.

92 Acts, ch 1134, §10

523H.11 Repurchase of assets.

A franchisor shall not prohibit a franchisee from, or enforce a prohibition against a franchisee, engaging in any lawful business at any location after a termination or refusal to renew by a franchisor, unless it is one which relies on a substantially similar marketing program as the terminated or nonrenewed franchise or unless the franchisor offers in writing no later than ten business days before expiration of the franchise to purchase the assets of the franchised business for its fair market value as a going concern. The value of the assets shall not include the goodwill of the business attributable to the trademark

licensed to the franchisee in the franchise agreement. The offer may be conditioned upon the ascertainment of a fair market value by an impartial appraiser. This section does not apply to assets of the franchised business which the franchisee did not purchase from the franchisor, or the agent of the franchisor.

92 Acts, ch 1134, §11; 95 Acts, ch 117, §6

523H.12 Independent sourcing.

1. Except as provided in subsection 2, a franchisor shall allow a franchisee to obtain equipment, fixtures, supplies, and services used in the establishment and operation of the franchised business from sources of the franchisee's choosing, provided that such goods and services meet standards as to their nature and quality promulgated by the franchisor.

2. Subsection 1 of this section does not apply to reasonable quantities of inventory goods or services, including display and sample items, that the franchisor requires the franchisee to obtain from the franchisor or its affiliate, but only if the goods or services are central to the franchised business and either are actually manufactured or produced by the franchisor or its affiliate, or incorporate a trade secret owned by the franchisor or its affiliate.

92 Acts, ch 1134, §12

523H.13 Private civil action.

A person who violates a provision of this chapter or order issued under this chapter is liable for damages caused by the violation, including, but not limited to, costs and reasonable attorneys' and experts' fees, and subject to other appropriate relief including injunctive and other equitable relief.

92 Acts, ch 1134, §13

523H.14 Choice of law.

A condition, stipulation, or provision requiring the application of the law of another state in lieu of this chapter is void.

92 Acts, ch 1134, §14

523H.15 Construction with other law.

This chapter does not limit any liability that may exist under another statute or at common law. Prior law governs all actions based on facts occurring before July 1, 1992.

92 Acts, ch 1134, §15

523H.16 Construction.

This chapter shall be liberally construed to effectuate its purposes.

92 Acts, ch 1134, §16

523H.17 Severability.

If any provision or clause of this chapter or any application of this chapter to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are declared to be severable.

92 Acts, ch 1134, §17

CHAPTER 523I

IOWA CEMETERY ACT

Referred to in §459.102, 505.28, 505.29, 523A.807, 523A.811, 523A.812, 669.14

Former ch 523I repealed effective July 1, 2005;
2005 Acts, ch 128, §74

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SUBCHAPTER I

TITLE — DEFINITIONS — APPLICABILITY

523I.101 Short title.

This chapter may be cited as the *"Iowa Cemetery Act"*.

2005 Acts, ch 128, §6

523I.102 Definitions.

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

1. *"Authorized to do business within this state"* means a person licensed, registered, or subject to regulation by an agency of the state of Iowa.

2. *"Burial site"* means any area, except a cemetery, that is used to inter or scatter remains.

3. *"Capital gains"* means appreciation in the value of trust assets for which a market value may be determined with reasonable certainty after deduction of investment losses, taxes, expenses incurred in the sale of trust assets, any costs of the operation of the trust, examination expenses, and any audit expenses.

4. *"Care fund"* means funds set aside for the care of a perpetual care cemetery, including all of the following:

a. Money or real or personal property impressed with a trust by the terms of this chapter.

b. Contributions in the form of a gift, grant, or bequest.

c. Any accumulated income that the trustee of the fund or the cemetery allocates to principal.

5. *"Casket"* means a rigid container which is designed for the encasement of human remains and which is usually constructed of wood, metal, fiberglass, plastic, or like material and ornamented and lined with fabric.

6. *"Cemetery"* means any area that is or was open to use by the public in general or any segment thereof and is used or is intended to be used to inter or scatter remains. *"Cemetery"* does not include the following:

a. A private burial site where use is restricted to members of a family, if the interment rights are conveyed without a monetary payment, fee, charge, or other valuable form of compensation or consideration.

b. A private burial site where use is restricted to a narrow segment of the public, if the interment rights are conveyed without a monetary payment, fee, charge, or other valuable form of compensation or consideration.

c. A pioneer cemetery.

7. *"Columbarium"* means a structure, room, or space in a mausoleum or other building containing niches or recesses for disposition of cremated remains.

8. *"Commissioner"* means the commissioner of insurance.

9. *"Common business enterprise"* means a group of two or more business entities that share common ownership in excess of fifty percent.

10. *"Disinterment"* means to remove human remains from their place of final disposition.

11. *"Doing business in this state"* means issuing or performing wholly or in part any term of an interment rights agreement executed within the state of Iowa.

12. *"Financial institution"* means a state or federally insured bank, savings association, credit union, trust department thereof, or a trust company that is authorized to do business within this state, that has been granted trust powers under the laws of this state or the United States, and that holds funds under a trust agreement. *"Financial institution"* does not include a cemetery or any person employed by or directly involved with a cemetery.

13. *"Garden"* means an area within a cemetery established by the cemetery as a subdivision for organizational purposes, not for sale purposes.

14. *"Grave space"* means a space of ground in a cemetery that is used or intended to be used for an in-ground burial.

15. *"Gross selling price"* means the aggregate amount a purchaser is obligated to pay for interment rights, exclusive of finance charges.

16. *"Inactive cemetery"* means a cemetery that is not operating on a regular basis, is not offering to sell or provide interments or other services reasonably necessary for interment, and does not provide or permit reasonable ingress or egress for the purposes of visiting interment spaces.

17. *"Income"* means the return in money or property derived from the use of trust principal after deduction of investment losses, taxes, and expenses incurred in the sale of trust assets, any cost of the operation of the trust, examination expenses or fees, and any audit expenses. *"Income"* includes but is not limited to:

a. Rent of real or personal property, including sums received for cancellation or renewal of a lease and any royalties.

b. Interest on money lent, including sums received as consideration for prepayment of principal.

c. Cash dividends paid on corporate stock.

d. Interest paid on deposit funds or debt obligations.

e. Gain realized from the sale of trust assets.

18. *"Insolvent"* means the inability to pay debts as they become due in the usual course of business.

19. *"Interment rights"* means the rights to place remains in a specific location for use as a final resting place or memorial.

20. *"Interment rights agreement"* means an agreement to furnish memorials, memorialization, opening and closing services, or interment rights.

21. *"Interment space"* means a space used or intended to be used for the interment of remains including but not limited to a grave space, lawn crypt, mausoleum crypt, and niche.

22. *"Lawn crypt"* means a preplaced enclosed chamber, which is usually constructed of reinforced concrete and poured in place, or a precast unit installed in quantity, either side-by-side or at multiple depths, and covered by earth or sod.

23. *"Lot"* means an area in a cemetery containing more than one interment space which is uniquely identified by an alphabetical, numeric, or alphanumerical identification system.

24. *"Maintenance fund"* means funds set aside for the maintenance of a nonperpetual care cemetery, including all of the following:

a. Money or real or personal property impressed with a trust by the terms of this chapter.

b. Contributions in the form of a gift, grant, or bequest.

c. Any accumulated income that the trustee of the fund or the cemetery allocates to principal.

25. *"Mausoleum"* means an aboveground structure designed for the entombment of human remains.

26. *"Mausoleum crypt"* means a chamber in a mausoleum of sufficient size to contain casketed human remains.

27. *"Memorial"* means any product, including any foundation other than a mausoleum or columbarium, used for identifying an interment space or for commemoration of the life, deeds, or career of a decedent including but not limited to a monument, marker, niche plate, urn garden plaque, crypt plate, cenotaph, marker bench, and vase.

28. *"Memorial care"* means any care provided or to be provided for the general

maintenance of memorials including foundation repair or replacement, resetting or straightening tipped memorials, repairing or replacing inadvertently damaged memorials, and any other care clearly specified in the purchase agreement.

29. *"Memorial dealer"* means any person offering or selling memorials retail to the public.

30. *"Memorialization"* means any permanent system designed to mark or record the name and other data pertaining to a decedent.

31. *"Merchandise"* means any personal property offered or sold for use in connection with the funeral, final disposition, memorialization, or interment of human remains, but which is exclusive of interment rights.

32. *"Neglected cemetery"* means a cemetery where there has been a failure to cut grass or weeds or care for graves, memorials or memorialization, walls, fences, driveways, and buildings, or for which proper records of interments have not been maintained.

33. *"Niche"* means a recess or space in a columbarium or mausoleum used for placement of cremated human remains.

34. *"Opening and closing services"* means one or more services necessarily or customarily provided in connection with the interment or entombment of human remains or a combination thereof.

35. *"Operating a cemetery"* means offering to sell or selling interment rights, or any service or merchandise necessarily or customarily provided for a funeral, or for the entombment or cremation of a dead human, or any combination thereof, including but not limited to opening and closing services, caskets, memorials, vaults, urns, and interment receptacles.

36. *"Outer burial container"* means any container which is designed for placement in the ground around a casket or an urn including but not limited to containers commonly known as burial vaults, urn vaults, grave boxes, grave liners, and lawn crypts.

37. *"Perpetual care cemetery"* includes all of the following:

a. Any cemetery that was organized or commenced business in this state on or after July 1, 1995.

b. Any cemetery that has established a care fund in compliance with section 523I.810.

c. Any cemetery that represents that it is a perpetual care cemetery in its interment rights agreement.

d. Any cemetery that represents in any other manner that the cemetery provides perpetual, permanent, or guaranteed care.

38. *"Person"* means an individual, firm, corporation, partnership, joint venture, limited liability company, association, trustee, government or governmental subdivision, agency, or other entity, or any combination thereof.

39. *"Pioneer cemetery"* means a cemetery where there were twelve or fewer burials in the preceding fifty years.

40. *"Purchaser"* means a person who purchases memorials, memorialization, opening and closing services, scattering services, interment rights, or a combination thereof. A purchaser need not be a beneficiary of the interment rights agreement.

41. *"Relative"* means a great-grandparent, grandparent, father, mother, spouse, child, brother, sister, nephew, niece, uncle, aunt, first cousin, second cousin, third cousin, or grandchild connected to a person by either blood or affinity.

42. *"Religious cemetery"* means a cemetery that is owned, operated, or controlled by a recognized church or denomination, or a cemetery designated as such in the official Catholic directory on file with the insurance division or in a similar publication of a recognized church or denomination, or a cemetery that the commissioner determines is operating as a religious cemetery upon review of an application by the cemetery that includes a description of the cemetery's affiliation with a recognized church or denomination, the extent to which the affiliate organization is responsible for the financial and contractual obligations of the cemetery, or the provision of the Internal Revenue Code, if any, that exempts the cemetery from the payment of federal income tax.

43. *"Relocation"* means the act of taking remains from the place of interment or the place where the remains are being held to another designated place.

44. *"Remains"* means the body of a deceased human or a body part, or limb that has

been removed from a living human, including a body, body part, or limb in any stage of decomposition, or cremated remains.

45. *"Scattering services provider"* means a person in the business of scattering human cremated remains.

46. *"Seller"* means a person doing business within this state, including a person doing business within this state who advertises, sells, promotes, or offers to furnish memorials, memorialization, opening and closing services, scattering services, or interment rights, or a combination thereof, whether the transaction is completed or offered in person, through the mail, over the telephone, by the internet, or through any other means of commerce.

47. *"Special care"* means any care provided or to be provided that supplements or exceeds the requirements of this chapter in accordance with the specific directions of any donor of funds for such purposes.

48. *"Undeveloped space"* means a designated area or building within a cemetery that has been mapped and planned for future development but is not yet fully developed.

49. *"Veterans cemetery"* means a cemetery that is owned or operated by the state of Iowa or by the United States for the burial of veterans.

2005 Acts, ch 128, §7; 2006 Acts, ch 1117, §118; 2007 Acts, ch 175, §34, 35; 2008 Acts, ch 1123, §54; 2009 Acts, ch 132, §5; 2012 Acts, ch 1017, §103; 2018 Acts, ch 1018, §18

Referred to in §37A.1
Subsection 1 amended

523I.103 Applicability of chapter.

1. This chapter applies to all of the following:

a. All cemeteries, except religious cemeteries that commenced business prior to July 1, 2005, and veterans cemeteries.

b. All persons advertising or offering memorials, memorialization, opening and closing services, scattering services at a cemetery, interment rights, or a combination thereof for sale.

c. Interments made in areas not dedicated as a cemetery, by a person other than the state archaeologist.

2. This chapter applies when a purchase agreement is executed within this state or an advertisement, promotion, or offer to furnish memorials, memorialization, opening and closing services, scattering services, interment rights, or a combination thereof is made or accepted within this state. An offer to furnish memorials, memorialization, opening and closing services, scattering services, interment rights, or a combination thereof is made within this state, whether or not either party is then present in this state, when the offer originates from this state or is directed by the offeror to this state and received by the offeree in this state through the mail, over the telephone, by the internet, or through any other means of commerce.

3. If a foreign person does not have a registered agent or agents in the state of Iowa, doing business within this state shall constitute the person's appointment of the secretary of state of the state of Iowa to be the person's true and lawful attorney upon whom may be served all lawful process of original notice in actions or proceedings arising or growing out of any contract or tort.

2005 Acts, ch 128, §8; 2006 Acts, ch 1010, §147; 2006 Acts, ch 1117, §119

523I.104 through 523I.200 Reserved.

SUBCHAPTER II

ADMINISTRATION AND ENFORCEMENT

523I.201 Administration.

1. This chapter shall be administered by the commissioner. The commissioner may employ officers, attorneys, accountants, and other employees as needed for administering this chapter.

2. It is unlawful for the commissioner or any administrative staff to use for personal benefit any information which is filed with or obtained by the commissioner and which is not made public. This chapter does not authorize the commissioner or any staff member to disclose any such information except among themselves or to other cemetery and funeral administrators, regulatory authorities, or governmental agencies, or when necessary and appropriate in a proceeding or investigation under this chapter or as required by chapter 22. This chapter neither creates nor derogates any privileges that exist at common law or otherwise when documentary or other evidence is sought under a subpoena directed to the commissioner or any administrative staff.

3. The commissioner shall submit an annual report to the general assembly's standing committees on government oversight by October 1 of each year reporting on the administration of this chapter. The report shall set forth any recommendations for changes in the law that the commissioner deems necessary or desirable to prevent abuses or evasions of this chapter or rules implementing this chapter or to rectify undesirable conditions in connection with the administration of this chapter or rules implementing this chapter.

2005 Acts, ch 128, §9; 2006 Acts, ch 1030, §64; 2006 Acts, ch 1117, §120; 2007 Acts, ch 175, §36, 37; 2008 Acts, ch 1123, §55; 2009 Acts, ch 86, §6

523I.202 Investigations and subpoenas.

1. The commissioner may, for the purpose of discovering a violation of this chapter or implementing rules or orders issued under this chapter, do any of the following:

a. Make such public or private investigations within or outside of this state as the commissioner deems necessary to determine whether any person has violated or is about to violate this chapter, or implementing rules or orders issued under this chapter, or to aid in the enforcement of this chapter, or in the prescribing of rules and forms under this chapter.

b. Require or permit any person to file a statement in writing, under oath or otherwise as the commissioner or attorney general determines, as to all the facts and circumstances concerning the matter being investigated.

c. Notwithstanding chapter 22, keep confidential the information obtained in the course of an investigation. However, if the commissioner determines that it is necessary or appropriate in the public interest or for the protection of the public, the commissioner may share information with other administrators, regulatory authorities, or governmental agencies, or may publish information concerning a violation of this chapter, or implementing rules or orders issued under this chapter.

d. Investigate a cemetery and examine the books, accounts, papers, correspondence, memoranda, purchase agreements, files, or other documents or records of the cemetery.

e. Administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, accounts, papers, correspondence, memoranda, purchase agreements, files, or other documents or records which the commissioner deems relevant or material to any investigation or proceeding under this chapter and implement rules, all of which may be enforced under chapter 17A.

f. Apply to the district court for an order requiring a person's appearance before the commissioner or attorney general, or a designee of either or both, in cases where the person has refused to obey a subpoena issued by the commissioner or attorney general. The person may also be required to produce documentary evidence germane to the subject of the investigation. Failure to obey a court order under this subsection constitutes contempt of court.

2. The commissioner may issue and bring an action in district court to enforce subpoenas within this state at the request of an agency or administrator of another state, if the activity constituting an alleged violation for which the information is sought would be a violation of this chapter had the activity occurred in this state.

2005 Acts, ch 128, §10

523I.203 Cease and desist orders — injunctions.

If it appears to the commissioner that a person has engaged or is about to engage in an act or practice constituting a violation of this chapter, or implementing rules or orders issued under this chapter, the commissioner or the attorney general may do any of the following:

1. Issue a summary order directed to the person that requires the person to cease and desist from engaging in such an act or practice. A person may request a hearing within thirty days of issuance of the summary order. If a hearing is not timely requested, the summary order shall become final by operation of law. The order shall remain effective from the date of issuance until the date the order becomes final by operation of law or is overturned by a presiding officer following a request for hearing. Section 17A.18A is inapplicable to summary cease and desist orders issued under this section.

2. Bring an action in the district court in any county of the state for an injunction to restrain a person subject to this chapter and any agents, employees, or associates of the person from engaging in conduct or practices deemed contrary to the public interest. In any proceeding for an injunction, the commissioner or attorney general may apply to the court for a subpoena to require the appearance of a defendant and the defendant's agents, employees, or associates and for the production of any books, accounts, papers, correspondence, memoranda, purchase agreements, files, or other documents or records germane to the hearing upon the petition for an injunction. Upon a proper showing, a permanent or temporary injunction, restraining order, or writ of mandamus shall be granted and a receiver may be appointed for the defendant or the defendant's assets. The commissioner or attorney general shall not be required to post a bond.

2005 Acts, ch 128, §11

523I.204 Court action for failure to cooperate.

1. If a person fails or refuses to file a statement or report or to produce any books, accounts, papers, correspondence, memoranda, purchase agreements, files, or other documents or records, or to obey a subpoena issued by the commissioner, the commissioner may refer the matter to the attorney general, who may apply to a district court to enforce compliance. The court may order any or all of the following:

a. Injunctive relief restricting or prohibiting the offer or sale of memorials, memorialization, opening and closing services, scattering services, interment rights, or a combination thereof.

b. Production of documents or records including but not limited to books, accounts, papers, correspondence, memoranda, purchase agreements, files, or other documents or records.

c. Such other relief as may be required.

2. A court order issued pursuant to subsection 1 is effective until the person files the statement or report or produces the documents requested, or obeys the subpoena.

2005 Acts, ch 128, §12

523I.205 Prosecution for violations of law — civil penalties.

1. A violation of this chapter or rules adopted or orders issued under this chapter is a violation of section 714.16, subsection 2, paragraph *"a"*. The remedies and penalties provided by section 714.16, including but not limited to injunctive relief and penalties, apply to violations of this chapter.

2. If the commissioner believes that grounds exist for the criminal prosecution of persons subject to this chapter for violations of this chapter or any other law of this state, the commissioner may forward to the attorney general or the county attorney the grounds for the belief, including all evidence in the commissioner's possession, so that the attorney general or the county attorney may proceed with the matter as deemed appropriate. At the request of the attorney general, the county attorney shall appear and prosecute the action when brought in the county attorney's county.

3. A person who violates a provision of this chapter or rules adopted or orders issued under this chapter may be subject to civil penalties in addition to criminal penalties. The commissioner may impose, assess, and collect a civil penalty not exceeding ten thousand

dollars for each violation. For the purposes of computing the amount of each civil penalty, each day of a continuing violation constitutes a separate violation. All civil penalties collected pursuant to this section shall be deposited as provided in section 505.7.

2005 Acts, ch 128, §13; 2009 Acts, ch 181, §101

523I.206 Cooperation with other agencies.

1. The commissioner may cooperate with any governmental law enforcement or regulatory agency to encourage uniform interpretation and administration of this chapter and effective enforcement of this chapter and effective regulation of the sale of memorials, memorialization, and cemeteries.

2. Cooperation with other agencies may include but is not limited to:

a. Making a joint examination or investigation.

b. Holding a joint administrative hearing.

c. Filing and prosecuting a joint civil or administrative proceeding.

d. Sharing and exchanging personnel.

e. Sharing and exchanging relevant information and documents.

f. Formulating, in accordance with chapter 17A, rules or proposed rules on matters such as statements of policy, regulatory standards, guidelines, and interpretive opinions.

2005 Acts, ch 128, §14

523I.207 Rules, forms, and orders.

1. Under chapter 17A, the commissioner may from time to time make, amend, and rescind such rules, forms, and orders as are necessary or appropriate for the protection of purchasers and the public and to administer the provisions of this chapter, its implementing rules, and orders issued under this chapter.

2. A rule, form, or order shall not be made, amended, or rescinded unless the commissioner finds that the action is necessary or appropriate to protect purchasers and the public and is consistent with the policies and provisions of this chapter, its implementing rules, and orders issued under this chapter.

3. A provision of this chapter imposing any liability does not apply to an act done or omitted in good faith in conformity with any rule, form, or order of the commissioner.

2005 Acts, ch 128, §15

523I.208 Date of filing — interpretive opinions.

1. A document is filed when it is received by the commissioner.

2. Requests for interpretive opinions may be granted in the commissioner's discretion.

2005 Acts, ch 128, §16

523I.209 Misleading filings.

It is unlawful for a person to make or cause to be made, in any document filed with the commissioner, or in any proceeding under this chapter, any statement of material fact which is, at the time and in the light of the circumstances under which it is made, false or misleading, or, in connection with such statement, to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading.

2005 Acts, ch 128, §17

523I.210 Misrepresentations of government approval.

It is unlawful for a seller under this chapter to represent or imply in any manner that the seller has been sponsored, recommended, or approved, or that the seller's abilities or qualifications have in any respect been passed upon by the commissioner.

2005 Acts, ch 128, §18

523I.211 Fraudulent practices.

A person who commits any of the following acts commits a fraudulent practice which is punishable as provided in chapter 714:

1. Knowingly fails to comply with any requirement of this chapter.
2. Knowingly makes, causes to be made, or subscribes to a false statement or representation in a report or other document required under this chapter, or implementing rules or orders, or renders such a report or document misleading through the deliberate omission of information properly belonging in the report or document.
3. Conspires to defraud in connection with the sale of memorials, memorialization, opening and closing services, scattering services, interment rights, or a combination thereof under this chapter.
4. Fails to deposit funds under this chapter or withdraws funds in a manner inconsistent with this chapter.
5. Knowingly sells memorials, memorialization, opening and closing services, scattering services, interment rights, or a combination thereof without the permits required under this chapter.
6. Deliberately misrepresents or omits a material fact relative to the sale of memorials, memorialization, opening and closing services, scattering services, interment rights, or a combination thereof.

2005 Acts, ch 128, §19

523I.212 Receiverships.

1. The commissioner may notify the attorney general of the potential need for establishment of a receivership if a receivership is requested or consented to by a cemetery subject to this chapter.
2. The commissioner shall notify the attorney general of the potential need for establishment of a receivership if the commissioner finds that a cemetery subject to this chapter meets one or more of the following conditions:

a. Is insolvent.

b. Has utilized trust funds for personal or business purposes in a manner inconsistent with this chapter.

c. The amount held in trust in a maintenance fund or care fund is less than the amount required by this chapter.

d. A receivership has been established for a seller subject to chapter 523A who owns or operates a cemetery that is subject to this chapter.

3. The commissioner or attorney general may apply to the district court in any county of the state for the establishment of a receivership. Upon proof that any of the conditions described in this section have occurred, the court may grant a receivership. The commissioner may request that the insurance division be named as a receiver or that the court appoint a third party as a receiver. If the division is appointed as a receiver, the division shall not be subject to the requirements concerning an oath and surety bond contained in section 680.3.
4. In addition to the powers granted to receivers under chapter 680, a receiver appointed under this section shall be granted all powers necessary to locate and to temporarily preserve and protect perpetual care trust funds, consumer and business assets, interment records, records of consumer purchases of interment rights, and records of consumer purchases of funeral services and funeral or cemetery merchandise as defined in chapter 523A. The receiver shall also be granted such powers as are necessary in the course of the receivership to temporarily preserve and protect a cemetery or burial site and to temporarily restore or sustain cemetery operations, including interments, as operating funds or trust funds become available.
5. The commissioner may petition the court to terminate a receivership at any time and to enter such orders as are necessary to transfer the duty to preserve and protect the physical integrity of the cemetery or burial site, the interment records, and other records documenting consumer purchases of interment rights to the applicable governmental subdivision, as provided in section 523I.316, subsection 3. The court shall grant the petition

if following the first one hundred twenty days of the receivership such duty to preserve and protect cannot be reasonably assumed by a private entity, association, or by other means.

2005 Acts, ch 128, §20; 2007 Acts, ch 175, §38 – 40; 2017 Acts, ch 14, §2
Referred to in §523A.811, 523I.213

523I.213 Insurance division's enforcement fund.

A special revenue fund in the state treasury, to be known as the insurance division's enforcement fund, is created under the authority of the commissioner. The commissioner shall allocate annually from the examination fees paid pursuant to section 523I.808, an amount not exceeding fifty thousand dollars, for deposit to the insurance division's enforcement fund. The moneys in the enforcement fund shall be retained in the fund. The moneys are appropriated and, subject to authorization by the commissioner, shall be used to pay examiners, examination expenses, investigative expenses, the expenses of consumer education, compliance, and education programs for filers and other regulated persons, and educational or compliance program materials, the expenses of a toll-free telephone line for consumer complaints, and the expenses of receiverships of perpetual care cemeteries established under section 523I.212.

2005 Acts, ch 128, §21; 2007 Acts, ch 175, §41

523I.213A Examinations — authority and scope.

1. The commissioner or the commissioner's designee may conduct an examination under this chapter of any cemetery as often as the commissioner deems appropriate. If a cemetery has a trust arrangement, the commissioner shall conduct an examination not less than once every five years.

2. A cemetery shall reimburse the division for the expense of conducting the examination unless the commissioner waives this requirement or the seller has previously provided to the commissioner a certified copy of an audit conducted by an independent certified public accountant verifying compliance with this chapter for each year in question and the examination conducted by the commissioner does not disclose that the seller has not complied with this chapter for the years in question. The expense of an examination involving multiple cemeteries or other persons shall be prorated among them upon any reasonable basis as determined by the commissioner.

3. For purposes of completing an examination pursuant to this chapter, the commissioner may examine or investigate any person, or the business of any person, if the examination or investigation is, in the sole discretion of the commissioner, necessary or material to the examination of the cemetery.

4. Upon determining that an examination should be conducted, the commissioner or the commissioner's designee may appoint one or more examiners to perform the examination and instruct them as to the scope of the examination.

5. A cemetery or person from whom information is sought, and its officers, directors, and agents shall provide to the examiners appointed under subsection 4, timely, convenient, and free access at their offices, at all reasonable hours, to all books, records, accounts, papers, documents, and all electronic or other recordings related to the property, assets, business, and affairs of the cemetery being examined and shall facilitate the examination as much as possible. If a cemetery, by its officers, directors, employees, or agents, refuses to submit to an examination as provided in this chapter, the commissioner shall immediately report the refusal to the attorney general, who shall then immediately apply to district court for the appointment of a receiver to administer the final affairs of the cemetery.

6. This section shall not be construed to limit the commissioner's authority to terminate or suspend any examination in order to pursue other legal or regulatory actions pursuant to this chapter. Findings of fact and conclusions made pursuant to an examination are deemed to be prima facie evidence in any legal or regulatory action.

7. Notwithstanding chapter 22, the commissioner shall not make information obtained in the course of an examination public, except when a duty under this chapter requires the

commissioner to take action against a cemetery or to cooperate with another law enforcement agency, or when the commissioner is called as a witness in a civil or criminal proceeding.

2007 Acts, ch 175, §42; 2010 Acts, ch 1121, §29; 2011 Acts, ch 70, §47
Referred to in §22.7(64)

523I.213B Venue.

All actions relating to the enforcement of this chapter shall be governed by the laws of the state of Iowa. Venue of any action relating to enforcement of this chapter may be in a court of competent jurisdiction in Polk county, at the discretion of the commissioner.

2007 Acts, ch 175, §43

523I.214 Violations of law — referrals to the Iowa department of public health.

If the commissioner discovers a violation of a provision of this chapter or any other state law or rule concerning the disposal or transportation of human remains, the commissioner shall forward all evidence in the possession of the commissioner concerning such a violation to the Iowa department of public health for such proceedings as the Iowa department of public health deems appropriate.

2005 Acts, ch 128, §22

523I.215 through 523I.300 Reserved.

SUBCHAPTER III

CEMETERY MANAGEMENT

523I.301 Disclosure requirements — prices and fees.

1. A cemetery shall disclose, prior to the sale of interment rights, whether opening and closing of the interment space is included in the purchase of the interment rights. If opening and closing services are not included in the sale and the cemetery offers opening and closing services, the cemetery must disclose that the price for this service is subject to change and disclose the current prices for opening and closing services provided by the cemetery.

2. The cemetery shall fully disclose all fees required for interment, entombment, or inurnment of human remains.

3. A person owning interment rights may sell those rights to third parties. The cemetery shall fully disclose, in the cemetery's rules, any requirements necessary to transfer title of interment rights to a third party.

2005 Acts, ch 128, §23

523I.302 Installation of outer burial containers.

A cemetery shall provide services necessary for the installation of outer burial containers or other similar merchandise sold by the cemetery. This section shall not require the cemetery to provide for opening and closing of interment or entombment space, unless an agreement executed by the cemetery expressly provides otherwise.

2005 Acts, ch 128, §24

523I.303 Access by funeral directors.

A cemetery shall not deny access to a licensed funeral director who is conducting funeral services or supervising the interment or disinterment of human remains.

2005 Acts, ch 128, §25

523I.304 Rulemaking and enforcement.

1. A cemetery may adopt, amend, and enforce rules for the use, care, control, management, restriction, and protection of the cemetery, as necessary for the proper conduct of the business of the cemetery, including but not limited to the use, care, and transfer of any interment space or right of interment.

2. A cemetery may restrict and limit the use of all property within the cemetery by rules that do, but are not limited to doing, all of the following:

a. Prohibit the placement of memorials or memorialization, buildings, or other types of structures within any portion of the cemetery.

b. Regulate the uniformity, class, and kind of memorials and memorialization and structures within the cemetery.

c. Regulate the scattering or placement of cremated remains within the cemetery.

d. Prohibit or regulate the placement of nonhuman remains within the cemetery.

e. Prohibit or regulate the introduction or care of trees, shrubs, and other types of plants within the cemetery.

f. Regulate the right of third parties to open, prepare for interment, and close interment spaces.

g. Prohibit interment in any part of the cemetery not designated as an interment space.

h. Prevent the use of space for any purpose inconsistent with the use of the property as a cemetery.

3. A cemetery shall not adopt or enforce a rule that prohibits interment because of the race, color, or national origin of a decedent. A provision of a contract or a certificate of ownership or other instrument conveying interment rights that prohibits interment in a cemetery because of the race, color, or national origin of a decedent is void.

4. A cemetery's rules shall be plainly printed or typewritten and maintained for inspection in the office of the cemetery or, if the cemetery does not have an office, in another suitable place within the cemetery. The cemetery's rules shall be provided to owners of interment spaces upon request.

5. A cemetery's rules shall specify the cemetery's obligations in the event that interment spaces, memorials, or memorialization are damaged or defaced by acts of vandalism. The rules may specify a multiyear restoration of an interment space, or a memorial or memorialization when the damage is extensive or when money available from the cemetery's trust fund is inadequate to complete repairs immediately. The owner of an interment space, or a memorial or memorialization that has been damaged or defaced shall be notified by the cemetery by restricted certified mail at the owner's last known address within sixty days of the discovery of the damage or defacement. The rules shall specify whether the owner is liable, in whole or in part, for the cost to repair or replace an interment space or a damaged or defaced memorial or memorialization.

6. The cemetery shall not approve any rule which unreasonably restricts competition, or which unreasonably increases the cost to the owner of interment rights in exercising these rights.

7. A cemetery owned and controlled by a governmental subdivision shall adopt and enforce a rule allowing any veteran who is a landowner or who lives within the governmental subdivision to purchase an interment space and to be interred within the cemetery. The rule shall also allow any veteran who purchases an interment space within the cemetery to purchase an interment space for interment of the spouse of the veteran if such a space is available and shall allow the surviving spouse of a veteran interred within the cemetery to purchase an interment space and be interred within the cemetery if such a space is available. For the purposes of this section, "*veteran*" means the same as defined in section 35.1.

2005 Acts, ch 128, §26; 2007 Acts, ch 175, §44; 2009 Acts, ch 164, §5, 7; 2012 Acts, ch 1067, §1

523I.305 Memorials and memorialization.

1. *Authorization.* A cemetery is entitled to determine whether a person requesting installation of a memorial is authorized to do so, to the extent that this can be determined from the records of the cemetery, as is consistent with the cemetery's rules. The owner of an interment space or the owner's agent may authorize a memorial dealer or independent third party to perform all necessary work related to preparation and installation of a memorial.

2. *Conformity with cemetery rules.* A person selling a memorial shall review the rules of the cemetery where the memorial is to be installed to ensure that the memorial will comply with those rules prior to ordering or manufacturing the memorial.

3. *Specifications.* Upon request, a cemetery shall provide reasonable written specifications and instructions governing installation of memorials, which shall apply to all installations whether performed by the cemetery or another person. The written specifications shall include provisions governing hours of installation or any other relevant administrative requirements of the cemetery. A copy of these specifications and instructions shall be provided upon request, without charge, to the owner of the interment space, next of kin, or a personal representative or agent of the owner, including the person installing the memorial. The person installing the memorial shall comply with the cemetery's written installation specifications and instructions. In order to verify that a memorial is installed on the proper interment space in accordance with cemetery rules and regulations, the cemetery shall mark the place on the interment space where the memorial is to be installed and shall inspect the installation when completed. This subsection shall not be construed to require that a cemetery lay out or engineer an interment space for the installation of a memorial. A cemetery shall not adopt or enforce any rule prohibiting the installation of a memorial by a memorial dealer or independent third party, unless the rule is applicable to all memorials from whatever source obtained and enforced uniformly for all memorials installed in the cemetery.

4. *Written notice.* A memorial dealer or independent third party shall provide the cemetery with at least seven business days' prior written notice of intent to install a memorial at the cemetery, or such lesser notice as the cemetery deems acceptable. The notice shall contain the full name, address, and relationship of the memorial's purchaser to the person interred in the interment space or the owner of the interment space, if different. The notice shall also contain the color, type, and size of the memorial, the material, the inscription, and the full name and interment date of the person interred in the interment space.

5. *Preparation and installation.*

a. A person installing a memorial shall be responsible to the cemetery for any damage caused to the cemetery grounds, including roadways, other than normal use during installation of the memorial.

b. Installation work shall cease during any nearby funeral procession or committal service.

c. Installation work shall be done during the cemetery's normal weekday hours or at such other times as may be arranged with the cemetery.

d. A memorial must comply with the cemetery's rules. In the event of noncompliance, the person installing a memorial is responsible for removal of the memorial and shall pay any reasonable expenses incurred by the cemetery in connection with the memorial's removal.

e. The cemetery shall, without charge, provide information as described on the cemetery's map or plat necessary to locate the place where a memorial is to be installed and any other essential information the person installing the memorial needs to locate the proper interment space.

f. A person installing a memorial shall follow the cemetery's instructions regarding the positioning of the memorial.

g. During the excavation, all sod and dirt shall be carefully removed with no sod or dirt left on the interment space except the amount needed to fill the space between the memorial and the adjacent lawn.

h. A person installing a memorial shall carefully fill in any areas around the memorial with topsoil or sand, in accordance with the cemetery's written instructions.

i. A person installing a memorial shall remove all equipment and any debris which has accumulated during installation of the memorial.

j. A person installing a memorial shall check to see if any adjacent memorials have become soiled or dirty during installation of the memorial and, if so, clean the adjacent memorials.

k. If the person who is installing a memorial damages any cemetery property, the person shall notify the cemetery immediately. The person installing the memorial shall then repair the damage as soon as possible, upon approval by the cemetery. The cemetery may require a person installing a memorial to provide current proof of workers' compensation insurance as required by state law and current proof of liability insurance, sufficient to indemnify the cemetery against claims resulting from installation of the memorial. Proof of liability

insurance in an amount of one million dollars or more shall preclude the cemetery from requiring a person installing a memorial to obtain a performance bond.

l. If a cemetery has an office, a person installing a memorial shall immediately leave notice at the cemetery office when the memorial has been installed and all work related to the installation is complete.

6. *Inspection.* A cemetery may inspect the installation site of a memorial at any time. If the cemetery determines that cemetery rules are not being followed during the installation, the cemetery may order the installation to stop until the infraction is corrected. The cemetery shall provide written notice to the installer as soon as possible if the cemetery believes that any of the following have occurred:

a. The memorial has not been installed correctly.

b. The person installing the memorial has damaged property at the cemetery.

c. Other cemetery requirements for installation have not been met, such as removal of debris or equipment.

7. *Location and service charge.* A cemetery may charge a reasonable service charge for allowing the installation of a memorial purchased or obtained from and installed by a person other than the cemetery or its agents. This service charge shall be based on the cemetery's actual labor costs, including fringe benefits, of those employees whose normal duty is to inspect the installation of memorials, in accordance with generally accepted accounting practices. General administrative and overhead costs and any other functions not related to actual inspection time shall be excluded from the service charge.

8. *Faulty installation.* If a memorial sinks, tilts, or becomes misaligned within twelve months of its installation and the cemetery believes the cause is faulty installation, the cemetery shall notify the person who installed the memorial in writing and the person who installed the memorial shall be responsible to correct the damage, unless the damage is caused by inadequate written specifications and instructions from the cemetery or acts of the cemetery and its agents or employees, including but not limited to running a backhoe over the memorial, carrying a vault or other heavy equipment over the memorial, or opening or closing an interment space adjacent to the memorial.

9. *Perpetual care.* A cemetery may require contributions from the purchaser of a memorial for perpetual care, if a perpetual care fund deposit is uniformly charged on every memorial installed in the cemetery.

2005 Acts, ch 128, §27; 2007 Acts, ch 175, §45

523I.306 Commission or bonus unlawful.

It shall be unlawful for any organization subject to the provisions of this chapter to pay or offer to pay to, or for any person, firm, or corporation to receive directly or indirectly, a commission or bonus or rebate or other thing of value, for or in connection with the sale of any interment space, lot, or part thereof, in any cemetery. The provisions of this section shall not apply to a person regularly employed and supervised by such organization or to a person, firm, corporation, or other entity licensed under chapter 523A that contracts with the cemetery to sell interment spaces or lots. The conduct of any person, firm, corporation, or other entity described in this section is the direct responsibility of the cemetery.

2005 Acts, ch 128, §28

523I.307 Discrimination prohibited.

It shall be unlawful for any organization subject to the provisions of this chapter to deny the privilege of interment of the remains of any deceased person in any cemetery solely because of the race, color, or national origin of such deceased person. Any contract, agreement, deed, covenant, restriction, or charter provision at any time entered into, or bylaw, rule, or regulation adopted or put in force, either subsequent or prior to July 4, 1953, authorizing, permitting, or requiring any organization subject to the provisions of this chapter to deny such privilege of interment because of race, color, or national origin of such deceased person is hereby declared to be null and void and in conflict with the public policy of this state. An organization subject to the provisions of this chapter or any director, officer, agent, employee, or trustee thereof, shall not be liable for damages or other relief, or be subjected to any action

in any court of competent jurisdiction for refusing to commit any act unlawful under this chapter.

2005 Acts, ch 128, §29

523I.308 Speculation prohibited.

A cemetery or any person representing a cemetery in a sales capacity shall not advertise or represent, in connection with the sale or attempted sale of any interment space, that the same is or will be a desirable speculative investment for resale purposes.

2005 Acts, ch 128, §30

Similar provision, see §523I.802

523I.309 Interment, relocation, or disinterment of remains.

1. A person authorized to control the deceased person's remains under section 144C.5 shall have the right to control the interment, relocation, or disinterment of a decedent's remains within or from a cemetery.

2. A person who represents that the person knows the identity of a decedent and, in order to procure the interment, relocation, or disinterment of the decedent's remains, signs an order or statement, other than a death certificate, that warrants the identity of the decedent is liable for all damages that result, directly or indirectly, from that representation.

3. In the event of a dispute concerning the right to control the interment, relocation, or disinterment of a decedent's remains, the dispute may be resolved by a court of competent jurisdiction. A cemetery or entity maintaining a columbarium shall not be liable for refusing to accept the decedent's remains, relocate or disinter, inter or otherwise dispose of the decedent's remains, until the cemetery or entity maintaining a columbarium receives a court order or other suitable confirmation that the dispute has been resolved or settled.

4. *a.* If good cause exists to relocate or disinter remains interred in a cemetery, the remains may be removed from the cemetery pursuant to a disinterment permit as required under section 144.34, with the written consent of the cemetery, the current interment rights owner, and the person entitled to control the interment, relocation, or disinterment of the decedent's remains under section 144C.5.

b. If the consent required pursuant to paragraph "*a*" is not refused but cannot otherwise be obtained, the remains may be relocated or disinterred by permission of the district court of the county in which the cemetery is located upon a finding by the court that clear and convincing evidence of good cause exists to relocate or disinter the remains. Before the date of application to the court for permission to relocate or disinter remains under this subsection, notice must be given to the cemetery in which the remains are interred, each person whose consent is required for relocation or disinterment of the remains under paragraph "*a*", and any other person that the court requires to be served.

c. For the purposes of this subsection, personal notice must be given not later than the eleventh day before the date of hearing on an application to the court for permission to relocate or disinter the remains, or notice by certified mail or restricted certified mail must be given not later than the sixteenth day before the date of hearing.

d. This subsection does not apply to the removal of remains from one interment space to another interment space in the same cemetery to correct an error, or relocation of the remains by the cemetery from an interment space for which the purchase price is past due and unpaid, to another suitable interment space.

5. A person who removes remains from a cemetery shall keep a record of the removal, and provide a copy to the cemetery, that includes all of the following:

a. The date the remains are removed.

b. The name of the decedent and age at death if those facts can be conveniently obtained.

c. The place to which the remains are removed.

d. The name of the cemetery and the location of the interment space from which the remains are removed.

6. A cemetery may disinter and relocate remains interred in the cemetery for the purpose of correcting an error made by the cemetery after obtaining a disinterment permit as required by section 144.34. The cemetery shall provide written notice describing the error to the

commissioner and to the person who has the right to control the interment, relocation, or disinterment of the remains erroneously interred, by restricted certified mail at the person's last known address and sixty days prior to the disinterment. The notice shall include the location where the disinterment will occur and the location of the new interment space. A cemetery is not civilly or criminally liable for an erroneously made interment that is corrected in compliance with this subsection unless the error was the result of gross negligence or intentional misconduct.

7. Relocations and disinterments of human remains shall be done in compliance with sections 144.32 and 144.34. Relocations of human remains held in a columbarium shall be in compliance with the laws regulating the entity maintaining the columbarium.

2005 Acts, ch 128, §31; 2006 Acts, ch 1117, §121; 2008 Acts, ch 1051, §21, 22

523I.310 Sale of interment rights.

1. For sales or transfers of interment rights made on or after July 1, 2005, a cemetery shall issue a certificate of interment rights or other instrument evidencing the conveyance of exclusive rights of interment upon payment in full of the purchase price.

2. The interment rights in an interment space that is conveyed by a certificate of ownership or other instrument shall not be divided without the consent of the cemetery.

3. A conveyance of exclusive rights of interment shall be filed and recorded in the cemetery office. Any transfer of the ownership of interment rights shall be filed and recorded in the cemetery office. The cemetery may charge a reasonable recording fee to record the transfer of interment rights.

2005 Acts, ch 128, §32

523I.311 Records of interment rights and interment.

1. For sales or transfers of interment rights made on or after July 1, 2005, a cemetery shall keep complete records identifying the owners of all interment rights sold by the cemetery and historical information regarding any transfers of ownership. The records shall include all of the following:

a. The name and last known address of each owner or previous owner of interment rights.

b. The date of each purchase or transfer of interment rights.

c. A unique numeric or alphanumeric identifier that identifies the location of each interment space sold by the cemetery.

2. For interments made on or after July 1, 2005, a cemetery shall keep a record of each interment in a cemetery. The records shall include all of the following:

a. The date the remains are interred.

b. The name, date of birth, and date of death of the decedent interred, if those facts can be conveniently obtained.

c. A unique numeric or alphanumeric identifier that identifies the location of the interment space where the remains are interred.

2005 Acts, ch 128, §33

523I.312 Disclosure requirements — interment agreements.

1. Each nonperpetual care cemetery shall have printed or stamped at the head of all of its contracts, deeds, statements, letterheads, and advertising material, the legend: "This is a nonperpetual care cemetery", and shall not sell any lot or interment space in the cemetery unless the purchaser of the interment space is informed that the cemetery is a nonperpetual care cemetery.

2. An agreement for interment rights under this chapter shall be written in clear, understandable language and do all of the following:

a. Identify the seller and purchaser.

b. Identify the salesperson.

c. Specify the interment rights to be provided and the cost of each item.

d. State clearly the conditions on which substitution will be allowed.

e. Set forth the total purchase price and the terms under which it is to be paid.

f. State clearly whether the agreement is revocable or irrevocable, and if revocable, which parties have the authority to revoke the agreement.

g. State the amount or percentage of money to be placed in the cemetery's care or maintenance fund.

h. If the cemetery has a care fund, set forth an explanation that the care fund is an irrevocable trust, that deposits cannot be withdrawn even in the event of cancellation, and that the trust's income shall be used by the cemetery for its care.

i. Set forth an explanation of any fees or expenses that may be charged.

j. Set forth an explanation of whether amounts for perpetual care will be deposited in trust upon payment in full or on an allocable basis as payments are made.

k. Set forth an explanation of whether initial payments on agreements for multiple items of funeral and cemetery merchandise or services, or both, will be allocated first to the purchase of an interment space. If such an allocation is to be made, the agreement shall provide for the immediate transfer of such interment rights upon payment in full and prominently state that any applicable trust deposits under chapter 523A will not be made until the cemetery has received payment in full for the interment rights. The transfer of an undeveloped interment space may be deferred until the interment space is ready for interment.

l. If the transfer of an undeveloped interment space will be deferred until the interment space is ready for interment as permitted in paragraph *"k"*, the agreement shall provide for some form of written acknowledgement upon payment in full, specify a reasonable time period for development of the interment space, describe what happens in the event of a death prior to development of the interment space, and provide for the immediate transfer of the interment rights when development of the interment space is complete.

m. Specify the purchaser's right to cancel and the damages payable for cancellation, if any.

n. Include an explanation of regulatory oversight by the insurance division in twelve point boldface type, in substantially the following language:

> This agreement is subject to rules administered by the Iowa insurance division. You may call the insurance division with inquiries or complaints at (insert telephone number). Written inquiries or complaints should be mailed to: Iowa Securities and Regulated Industries Bureau, (insert address).

2005 Acts, ch 128, §34; 2006 Acts, ch 1117, §122; 2010 Acts, ch 1121, §30; 2015 Acts, ch 30, §169

523I.313 New cemeteries and gardens and cemetery registry.

1. A person that dedicates property for a new cemetery on or after July 1, 2005, and a cemetery that dedicates an additional garden on or after July 1, 2005, shall:

a. In the case of land, survey and subdivide the property into gardens with descriptive names or numbers and make a map or plat of the cemetery or garden.

b. In the case of a mausoleum or a columbarium, make a map or plat of the property delineating sections or other divisions with descriptive names and numbers.

c. File the map or plat with the commissioner, including a written certificate or declaration of dedication of the property delineated by the map or plat, dedicating the property for cemetery purposes.

2. A map or plat and a certificate or declaration of dedication that is filed pursuant to this section dedicates the property for cemetery purposes and constitutes constructive notice of that dedication.

3. The commissioner shall maintain a registry of perpetual care and nonperpetual care cemeteries, to the extent that information is available. A cemetery selling interment rights on or after July 1, 2005, shall file a written notice with the commissioner that includes the legal description of the property with boundary lines of the land, the name of the cemetery, the status of the cemetery as either perpetual care or nonperpetual care, the status of the cemetery as either religious or nonreligious, and the cemetery's ownership in a form approved by the

commissioner. A cemetery shall notify the commissioner of any changes in this information within sixty days of the change.

2005 Acts, ch 128, §35

523I.314 New construction.

1. A person shall not offer to sell interment rights in a mausoleum or columbarium that will be built or completed in the future unless the person has notified the commissioner of the offer to sell on a form prescribed by the commissioner.

2. The notice of an offer to sell interment rights in such a mausoleum or columbarium shall include the following information:

a. A description of the new facility or the proposed expansion, including a description of the interment rights to be offered to prospective purchasers.

b. A statement of the financial resources available for the project.

c. A copy of the proposed interment rights agreement to be used, which shall include the following:

(1) That purchase payments will be held in trust in accordance with the requirements of chapter 523A until construction of the mausoleum or columbarium is complete.

(2) That the purchaser may request a refund of the purchase amount, if construction does not begin within five years of the purchaser's first payment.

(3) That the new facility will operate as a perpetual care cemetery in compliance with this chapter, even if the facility is located at a nonperpetual care cemetery.

(4) That the purchaser will receive an ownership certificate upon payment in full or, if later, when construction is complete.

3. Unless financing has been secured that is adequate in amount and terms to complete the facility proposed, new construction of a mausoleum or columbarium shall not begin until the notice required by this section has been approved by the commissioner.

2005 Acts, ch 128, §36

523I.314A Standards for interment spaces.

1. A standard interment space for full body interment developed on or after July 1, 2007, shall measure at least forty inches in width and ninety-six inches in length.

2. Prior to the sale of interment rights in an undeveloped area of a cemetery, internal reference markers shall be installed and maintained no more than one hundred feet apart. The internal reference markers shall be established with reference to survey markers that are no more than two hundred feet apart, have been set by a licensed professional land surveyor, and have been documented in a plat of survey. Both the map and the plat of survey shall be maintained by the cemetery and made available upon request to the commissioner and to members of the public.

2007 Acts, ch 175, §46; 2012 Acts, ch 1009, §9

523I.315 Unpaid care assessments and unoccupied interment spaces.

1. *Foreclosure — unpaid assessments.* Unpaid care assessments for an unoccupied interment space not under perpetual care shall create a lien by the cemetery against the applicable interment space. The cemetery may, following notice, foreclose on the interment space if the amount of the lien exceeds the amount paid for the interment space. If the lien is not paid within one year from the date that notice of foreclosure is served on the owner of record or the owner of record's heirs, the ownership in or right to the unoccupied interment space shall revert to the cemetery that owns the cemetery in which the unoccupied interment space is located.

2. *Abandonment — quiet title action.* A cemetery may file an action to quiet title to determine whether an interment space has been abandoned if the interment space is unoccupied and has not been occupied in the preceding seventy-five years. An action to quiet title shall commence when the cemetery serves notice on the owner of record or the owner of record's heirs declaring that the interment space is considered to be abandoned. If the owner of record or the owner of record's heirs do not respond within three years from the date that notice is served, the abandonment is considered to be complete. The

ownership in or right to an abandoned interment space shall revert to the cemetery in which the abandoned interment space is located and the cemetery may sell and convey title to the interment space.

3. *Service of notice.* Notice under this section shall be served personally on the owner of record or the owner of record's heirs, or may be served by mailing notice by certified mail to the owner of record or to the owner of record's heirs at the last known address. If the address of the owner of record or the owner of record's heirs cannot be ascertained, notice of abandonment shall be given by one publication of the notice in the official newspaper of the county in which the cemetery is located.

2005 Acts, ch 128, §37

523I.316 Protection of cemeteries and burial sites.

1. *Existence of cemetery or burial site — notification.* If a governmental subdivision is notified of the existence of a cemetery, or a marked burial site that is not located in a dedicated cemetery, within its jurisdiction and the cemetery or burial site is not otherwise provided for under this chapter, the governmental subdivision shall, as soon as is practicable, notify the owner of the land upon which the cemetery or burial site is located of the cemetery's or burial site's existence and location. The notification shall include an explanation of the provisions of this section. If there is a basis to believe that interment may have occurred more than one hundred fifty years earlier, the governmental subdivision shall also notify the state archaeologist.

2. *Disturbance of interment spaces — penalty.* A person who knowingly and without authorization damages, defaces, destroys, or otherwise disturbs an interment space commits criminal mischief in the third degree under section 716.5. Criminal mischief in the third degree is an aggravated misdemeanor.

3. *Duty to preserve and protect.*

a. A governmental subdivision having a cemetery, or a burial site that is not located within a dedicated cemetery, within its jurisdiction, for which preservation is not otherwise provided, shall preserve and protect the cemetery or burial site as necessary to restore or maintain its physical integrity as a cemetery or burial site. The governmental subdivision may enter into a written agreement to delegate the responsibility for the preservation and protection of the cemetery or burial site to the owner of the property on which the cemetery or burial site is located or to a public or private organization interested in historical preservation. The governmental subdivision shall not enter into an agreement with a public or private organization to preserve and protect the cemetery or burial site unless the property owner has been offered the opportunity to enter into such an agreement and has declined to do so.

b. A governmental subdivision is authorized to expend public funds, in any manner authorized by law, in connection with such a cemetery or burial site.

c. If a governmental subdivision proposes to enter into an agreement with a public or private organization pursuant to this subsection to preserve and protect a cemetery or burial site that is located on property owned by another person within the jurisdiction of the governmental subdivision, the proposed agreement shall be written, and the governmental subdivision shall provide written notice by ordinary mail of the proposed agreement to the property owner at least fourteen days prior to the date of the meeting at which such proposed agreement will be authorized. The notice shall include the location of the cemetery or burial site and a copy of the proposed agreement, and explain that the property owner is required to permit members of the public or private organization reasonable ingress and egress for the purposes of preserving and protecting the cemetery or burial site pursuant to the proposed agreement. The notice shall also include the date, time, and place of the meeting and a statement that the property owner has a right to attend the meeting and to comment regarding the proposed agreement.

d. (1) Subject to chapter 670, a governmental subdivision that enters into an agreement with a public or private organization pursuant to this subsection is liable for any personal injury or property damage that occurs in connection with the preservation or protection of the cemetery or burial site or access to the cemetery or burial site by the governmental subdivision or the public or private organization.

(2) For the purposes of this paragraph, *"liable"* means liability for every civil wrong which results in wrongful death or injury to a person or injury to property or injury to personal or property rights and includes but is not restricted to actions based upon negligence; error or omission; nuisance; breach of duty, whether statutory or other duty; or denial or impairment of any right under any constitutional provision, statute, or rule of law.

e. A property owner who is required to permit members of a public or private organization reasonable ingress and egress for the purpose of preserving or protecting a cemetery or burial site on that owner's property and who acts in good faith and in a reasonable manner pursuant to this subsection is not liable for any personal injury or property damage that occurs in connection with the preservation or protection of the cemetery or burial site or access to the cemetery or burial site.

f. For the purposes of this subsection, reasonable ingress and egress to a cemetery or burial site shall include the following:

(1) A member of a public or private organization that has entered into a written agreement with the governmental subdivision who desires to visit such a cemetery or burial site shall give the property owner at least ten days' written notice of the intended visit.

(2) If the property owner cannot provide reasonable access to the cemetery or burial site on the desired date, the property owner shall provide reasonable alternative dates when the property owner can provide access to the member.

(3) A property owner is not required to make any improvements to that person's property to satisfy the requirement to provide reasonable access to a cemetery or burial site pursuant to this subsection.

4. *Confiscation and return of memorials.* A law enforcement officer having reason to believe that a memorial or memorialization is in the possession of a person without authorization or right to possess the memorial or memorialization may take possession of the memorial or memorialization from that person and turn it over to the officer's law enforcement agency. If a law enforcement agency determines that a memorial or memorialization the agency has taken possession of rightfully belongs on an interment space, the agency shall return the memorial or memorialization to the interment space, or make arrangements with the person having jurisdiction over the interment space for its return.

5. *Burial sites located on private property.* If a person notifies a governmental subdivision that a burial site of the person's relative is located on property owned by another person within the jurisdiction of the governmental subdivision, the governmental subdivision shall notify the property owner of the location of the burial site and that the property owner is required to permit the person reasonable ingress and egress for the purposes of visiting the burial site of the person's relative.

6. *Discovery of human remains.* Any person discovering human remains shall notify the county or state medical examiner or a city, county, or state law enforcement agency as soon as is reasonably possible unless the person knows or has good reason to believe that such notice has already been given or the discovery occurs in a cemetery. If there is reason to believe that interment may have occurred more than one hundred fifty years earlier, the governmental subdivision notified shall also notify the state archaeologist. A person who does not provide notice required pursuant to this subsection commits a serious misdemeanor.

7. *Adverse possession.* A cemetery or a pioneer cemetery is exempt from seizure, appropriation, or acquisition of title under any claim of adverse possession, unless it is shown that all remains in the cemetery or pioneer cemetery have been disinterred and removed to another location.

2005 Acts, ch 128, §38; 2006 Acts, ch 1117, §123; 2009 Acts, ch 179, §144; 2012 Acts, ch 1023, §157; 2017 Acts, ch 54, §63

Referred to in §523I.212

523I.317 Duty to provide public access.

A cemetery shall provide or permit public access to the cemetery, at reasonable times and subject to reasonable regulations, so that owners of interment rights and other members of the public have reasonable ingress and egress to the cemetery.

2006 Acts, ch 1117, §124

523I.318 through 523I.400 Reserved.

SUBCHAPTER IV

COUNTY CEMETERY COMMISSIONS AND NEGLECTED CEMETERIES

523I.401 Neglected cemeteries.

The commissioner shall create a form that interested persons may use to report neglected cemeteries to the commissioner. The commissioner shall catalog and review the neglected cemetery reports received on or before December 31, 2007, conduct site visits as warranted to determine the nature or extent of any neglect, and publish a report of findings on or before December 31, 2008.

2005 Acts, ch 128, §39

523I.402 Removal of remains.

1. Upon a showing of good cause, a county cemetery commission may file suit in the district court in that county to have remains interred in a cemetery owned and operated by the commission removed to another cemetery. All persons in interest, known or unknown, other than the plaintiffs, shall be made defendants to the suit. If any parties are unknown, notice may be given by publication. After hearing and a showing of good cause for the removal, the court may order the removal of the remains and the remains shall be properly interred in another cemetery, at the expense of the county. The removal and reinterment of the remains shall be done pursuant to a disinterment permit issued under section 144.34 with due care and decency. In deciding whether to order the removal of interred remains, a court shall consider present or future access to the cemetery, the historical significance of the cemetery, and the wishes of the parties concerned if they are brought to the court's attention, including the desire of any beneficiaries to reserve their rights to waive a reservation of rights in favor of removal, and shall exercise the court's sound discretion in granting or refusing the removal of interred remains.

2. Any heir at law or descendent of a deceased person interred in a neglected cemetery may file suit in the district court in the county where the cemetery is located to have the deceased person's remains interred in the cemetery removed to another cemetery. The owner of the land, any beneficiaries of any reservation of rights, and any other persons in interest, known or unknown, other than the plaintiffs shall be made defendants. If any parties are unknown, notice may be given by publication. After hearing and upon a showing of good cause, the court may order removal and the proper interment of the remains in another cemetery, at the expense of the petitioner. The removal and reinterment shall be done with due care and decency.

2005 Acts, ch 128, §40

523I.403 through 523I.500 Reserved.

SUBCHAPTER V

GOVERNMENTAL SUBDIVISIONS

523I.501 Cemetery authorized.

The governing body of a governmental subdivision may purchase, establish, operate, enclose, improve, or regulate a cemetery. A cemetery owned or operated by a governmental subdivision may sell interment rights subject to the provisions of this chapter.

2005 Acts, ch 128, §41

523I.502 Trust for cemetery.

1. A governmental subdivision that owns or operates a cemetery or has control of cemetery property may act as a permanent trustee for the perpetual maintenance of interment spaces in the cemetery.

2. To act as a trustee, a majority of the governmental subdivision's governing body must adopt an ordinance or resolution stating the governmental subdivision's willingness and intention to act as a trustee for the perpetual maintenance of cemetery property. When the ordinance or resolution is adopted and the trust is accepted, the trust is perpetual.

2005 Acts, ch 128, §42

523I.503 Authority to receive gifts and deposits for care — certificates.

1. A governmental subdivision that is a trustee for the perpetual maintenance of a cemetery may adopt reasonable rules governing the receipt of a gift or grant from any source.

2. A governmental subdivision that is a trustee for a person shall accept the amount the governmental subdivision requires for permanent maintenance of an interment space on behalf of that person or a decedent.

3. A governmental subdivision's acceptance of a deposit for permanent maintenance of an interment space constitutes a perpetual trust for the designated interment space.

4. Upon acceptance of a deposit, a governmental subdivision's secretary, clerk, or mayor shall issue a certificate in the name of the governmental subdivision to the trustee or depositor. The certificate shall state all of the following:

a. The depositor's name.

b. The amount and purpose of the deposit.

c. The location, with as much specificity as possible, of the interment space to be maintained.

d. Other information required by the governmental subdivision.

5. An individual, association, foundation, or corporation that is interested in the maintenance of a neglected cemetery in a governmental subdivision's possession and control may donate funds to the cemetery's perpetual trust fund to beautify and maintain the entire cemetery or burial grounds generally.

2005 Acts, ch 128, §43

523I.504 Appointment of successor trustee.

A district judge of a county in which a cemetery is located shall appoint a suitable successor or trustee to faithfully execute a trust in accordance with this subchapter if a governmental subdivision renounces a trust assumed under this subchapter, fails to act as its trustee, a vacancy occurs, or the appointment of a successor or trustee is otherwise necessary.

2005 Acts, ch 128, §44

523I.505 County auditor as trustee.

1. In the absence of a trustee for care funds, unless otherwise provided by law, the care funds shall be placed in the hands of the county auditor, who shall provide a receipt for, loan, and make annual reports of the care funds.

2. The county auditor shall not be required to post a bond.

3. The county auditor shall serve without compensation, but may, out of the income

received, pay all proper items of expense incurred in the performance of the auditor's duties as trustee, if any.

4. The county auditor shall make a full report of the trustee's actions and trust funds annually in January. The net proceeds for care funds received by the county auditor as trustee shall be apportioned and credited to each of any separate care funds assigned to the auditor.

5. The county auditor shall turn over the accrued income from each care fund annually to the person having control of the cemetery.

2005 Acts, ch 128, §45
Referred to in §331.502

523I.506 Commingling of care funds by governmental subdivisions.

A governmental subdivision subject to this section may commingle care funds for more than one cemetery for the purposes of investment and administration and may file a single report, if each cemetery is appropriately identified and separate records are maintained for each cemetery.

2005 Acts, ch 128, §46

523I.507 Investment of care funds by governmental subdivisions.

Notwithstanding section 12B.10, a perpetual care cemetery owned by a governmental subdivision may invest and reinvest deposits pursuant to the requirements of this chapter. The trustee shall use the judgment and care under the circumstances then prevailing that persons of prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital. The trustee of the trust funds has a fiduciary duty to make reasonable investment decisions and to properly oversee and manage the funds entrusted to the trust fund.

2005 Acts, ch 128, §47

523I.508 Management by governmental subdivisions.

1. *Political subdivisions as trustees.* Counties, cities, irrespective of their form of government, boards of trustees of cities to whom the management of municipal cemeteries has been transferred by ordinance, and civil townships wholly outside of any city, are trustees in perpetuity, and are required to accept, receive, and expend all moneys and property donated or left to them by bequest for perpetual care, and that portion of interment space sales or permanent charges made against interment spaces which has been set aside in a perpetual care fund for which there is no other acting trustee, shall be used in caring for the property of the donor or lot owner who by purchase or otherwise has provided for the perpetual care of an interment space in any cemetery, or in accordance with the terms of the donation, bequest, or agreement for sale and purchase of an interment space, and the money or property thus received shall be used for no other purpose.

2. *Authority to invest funds — current care charge payments.*

a. The board of supervisors, mayor and council, or other elected governmental body, as the case may be, may receive and invest all moneys and property, donated or bequeathed, and that portion of cemetery lot sales and permanent charges made against cemetery lots which have been set aside in a perpetual care fund, and in so investing, shall use the judgment and care under the circumstances then prevailing that persons of prudence, discretion, and intelligence exercise in the management of their own affairs not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital. The trustee of the trust funds has a fiduciary duty to make reasonable investment decisions and to properly oversee and manage the funds entrusted to the trust fund. The income from the investment shall be used in caring for the property of the donor in any cemetery, or as provided in the terms of the gift or donations or agreement for sale and purchase of a cemetery lot.

b. All current care charge payments received shall be allocated to the perpetual care fund or to the fund paying the costs of cemetery operations. Care charge payments received one year or more after the date they were incurred shall be used to fund the cost of operating the

cemetery. Care charge payments received one year or more in advance of their due date shall be deposited in the perpetual care fund. Interest from the perpetual care fund shall be used for the maintenance of both occupied and unoccupied lots or spaces. Any remaining interest may be used for costs of access roads and paths, fencing, and general maintenance of the cemetery. Lots under perpetual care shall be maintained in accordance with the cemetery covenants of sale.

3. *Resolution of acceptance — interest.*

a. Before any part of the principal may be invested or used, the county, city, board of trustees of a city to whom the management of a municipal cemetery has been transferred by ordinance, or civil township shall, by resolution, accept the moneys described in subsection 1 and, by resolution, shall provide for the payment of interest annually to the appropriate fund, or to the cemetery, or the person in charge of the cemetery, to be used in caring for or maintaining the individual property of the donor in the cemetery, or interment spaces which have been sold if provision was made for perpetual care, all in accordance with the terms of the donation or bequest, or the terms of the sale or purchase of an interment space.

b. If there is no person in charge of the cemetery, the income from the fund shall be expended under the direction of the board of supervisors, city council, board of trustees, or civil township trustees, as the case may be, in accordance with the terms of the donation or bequest, or the terms of the sale or purchase of an interment space.

4. *Delegates to conventions.* A township having one or more cemeteries under its control may designate up to two officials from each cemetery as delegates to attend meetings of cemetery officials, and certain expenses of the delegates not exceeding twenty-five dollars for each delegate, including association dues, may be paid out of the cemetery fund of the township.

5. *Subscribing to publications.* The cemetery officials of every township having a cemetery under its control may subscribe to one or more publications devoted exclusively to cemetery management, and the subscriptions may be paid out of the cemetery fund of the township.

2005 Acts, ch 128, §48; 2006 Acts, ch 1117, §125; 2012 Acts, ch 1023, §157
Referred to in §636.23

523I.509 through 523I.600 Reserved.

SUBCHAPTER VI

GENERAL PROVISIONS

523I.601 Settlement of estates — maintenance fund.

The court in which the estate of a deceased person is administered, before final distribution, may allow and set apart from the estate a sum sufficient to provide an income adequate to pay for the perpetual care and upkeep of the interment space in which the body of the deceased is buried, except where perpetual care has otherwise been provided for. The sum so allowed and set apart shall be paid to a trustee as provided by this chapter.

2005 Acts, ch 128, §49; 2006 Acts, ch 1010, §148

523I.602 Management by trustee.

1. *Trustee appointed — trust funds.* The owners of, or any party interested in, a cemetery may, by petition presented to the district court of the county where the cemetery is situated, have a trustee appointed with authority to receive any and all moneys or property that may be donated for and on account of the cemetery and to invest, manage, and control the moneys or property under the direction of the court. However, the trustee shall not be authorized to receive any gift, except with the understanding that the principal sum is to be a permanent fund, and only the net proceeds therefrom shall be used in carrying out the purpose of the trust created, and all such funds shall be exempt from taxation.

2. *Requisites of petition.* The petition shall state the amount proposed to be placed in

such trust fund, the manner of investment thereof, and the provisions made for the disposition of any surplus income not required for the care and upkeep of the property described in such petition.

3. *Approval of court — surplus fund.* Such provisions shall be subject to the approval of the court and when so approved the trust fund and the trustee thereof shall, at all times, be subject to the orders and control of the court and such surplus arising from the trust fund shall not be used except for charitable, eleemosynary, or public purposes under the direction of the court.

4. *Receipt — record.* Every such trustee shall execute and deliver to the donor a receipt showing the amount of money or other property received, and the use to be made of the net proceeds from the same, duly attested by the clerk of the court granting letters of trusteeship, and the trustee shall keep a signed and attested copy of the receipt.

5. *Investments.* Any such trustee may receive and invest all moneys and property, so donated or bequeathed, and that portion of cemetery lot sales and permanent charges made against interment spaces which has been set aside in a perpetual care fund, in such authorized investments and in the manner prescribed in section 636.23.

6. *Bond — approval — oath.* Every such trustee before entering upon the discharge of the trustee's duties or at any time thereafter when required by the court shall give a bond in an amount as may be required by the court, approved by the clerk, and conditioned for the faithful discharge of the trustee's duties, and take and subscribe an oath the same in substance as the condition of the bond, which bond and oath must be filed with the clerk.

7. *Clerk — duty of.* At the time of filing each bond and oath the clerk shall at once advise the court as to the amount of the principal fund in the hands of such trustee, the amount of the bond filed, and whether it is good and sufficient for the amount given.

8. *Compensation — costs.* Such trustee shall serve without compensation, but may, out of the income received, pay all proper items of expense incurred in the performance of the trustee's duties, including cost of the bond, if any.

9. *Annual report.* Such trustee shall make a full report of the trustee's doings in the month of January following appointment and in January of each successive year. In each report the trustee shall apportion the net proceeds received from the sum total of the permanent funds assigned to the trustee in trust.

10. *Removal — vacancy filled.* Any such trustee may be removed by the court at any time for cause, and in the event of removal or death, the court shall appoint a new trustee and require the new trustee's predecessor or the predecessor's personal representative to make a full accounting.

2005 Acts, ch 128, §50; 2009 Acts, ch 21, §8
Referred to in §602.8102(81)

523I.603 Owners of interment rights.

1. An interment space in which exclusive rights of interment are conveyed is presumed to be the separate property of the person named as grantee in the certificate of interment rights or other instrument of conveyance.

2. Two or more owners of interment rights may designate a person to represent the interment space and file notice of the designation of a representative with the cemetery. If notice is not filed, the cemetery may inter or permit an interment in the interment space at the request or direction of a registered co-owner of the interment space.

2005 Acts, ch 128, §51

523I.604 Lien against cemetery property.

1. A cemetery, by contract, may incur indebtedness as necessary to conduct its business and may secure the indebtedness by mortgage, deed of trust, or other lien against its property.

2. A mortgage, deed of trust, or other lien placed on dedicated cemetery property, or on cemetery property that is later dedicated with the consent of the holder of the lien, does not affect the dedication and is subject to the dedication. A sale on foreclosure of the lien is subject to the dedication of the property for cemetery purposes.

2005 Acts, ch 128, §52

523I.605 Private care of graves.

This subchapter does not affect the right of a person who has an interest in an interment space, or who is a relative of a decedent interred in a cemetery, to beautify or maintain an interment space individually or at the person's own expense in accordance with reasonable rules established by the cemetery.

2005 Acts, ch 128, §53

523I.606 through 523I.700 Reserved.

SUBCHAPTER VII

LAWN CRYPTS

523I.701 Requirements for lawn crypts.

A lawn crypt shall not be installed unless all of the following apply:

1. The lawn crypt is constructed of concrete and reinforced steel or other comparable durable material.
2. The lawn crypt is installed on not less than six inches of rock, gravel, or other drainage material.
3. The lawn crypt provides a method to drain water out of the lawn crypt.
4. The lawn crypt is capable of withstanding the weight of the soil and sod above the top surface and the weight of machinery and equipment normally used in the maintenance of the cemetery.
5. Except as provided by section 523I.702, the lawn crypt is installed in multiple units of ten or more.
6. The lawn crypt shall be installed in compliance with any applicable law or rule adopted by the Iowa department of public health.

2005 Acts, ch 128, §54
Referred to in §523I.702

523I.702 Request to install lawn crypts in fewer than ten units.

1. A lawn crypt may be installed in fewer than ten units if it is installed in an interment space pursuant to a written request to the commissioner signed by the owner or owners of the interment space.
2. The written request shall be filed on a form prescribed by the commissioner and shall contain substantially all of the following information:

a. The owner's name and address.
b. The name of the cemetery and the owner of the cemetery.
c. The number of lawn crypt units to be installed.
d. A description of the interment spaces.
e. A statement that the lawn crypt meets the requirements of section 523I.701, including all of the following:

(1) A statement that the lawn crypt will be constructed of concrete and reinforced steel or other comparable durable materials.
(2) A statement that the lawn crypt will be installed on not less than six inches of rock, gravel, or other drainage material.
(3) A statement that the lawn crypt will provide a method to drain water out of the lawn crypt.
(4) A statement that the outside top surface of the lawn crypt at the time of installation will be capable of withstanding the weight of the soil and sod above the top surface and the weight of machinery and equipment normally used in the maintenance of the cemetery.

f. A statement that the space in which the lawn crypt is to be installed is located in a garden.
g. The date on which a representative of the cemetery signed the form.

2005 Acts, ch 128, §55
Referred to in §523I.701

523I.703 through 523I.800 Reserved.

SUBCHAPTER VIII

PERPETUAL CARE CEMETERIES — REQUIREMENTS

523I.801 Applicability and conversion by nonperpetual care cemeteries.

1. All cemeteries are designated as either "perpetual care cemeteries" or "nonperpetual care cemeteries" for the purposes of this chapter. A cemetery that represents that it is offering perpetual care on or after July 1, 2005, is subject to this subchapter.

2. A cemetery that operates a nonperpetual care cemetery may elect to become a perpetual care cemetery if at all times subsequent to the date of the election, the cemetery complies with the other requirements of this subchapter except section 523I.805.

2005 Acts, ch 128, §56

523I.802 Advertising.

1. A cemetery shall not advertise, represent, guarantee, promise, or contract to provide or offer perpetual care or use terms or phrases like permanent care, permanent maintenance, care forever, continuous care, eternal care, or everlasting care to imply that a certain level of care and financial security will be furnished or is guaranteed except in compliance with the provisions of this subchapter.

2. A cemetery or person advertising or selling interment rights shall not represent that the purchase of the interment rights is or will be a desirable speculative investment for resale purposes.

2005 Acts, ch 128, §57

Similar provision, see §523I.308

523I.803 Perpetual care registry.

1. A cemetery that operates a perpetual care cemetery shall maintain a registry of individuals who have purchased interment rights in the cemetery subject to the care fund requirements of this subchapter.

2. The registry shall include the amount deposited in trust for each interment rights agreement entered into on or after July 1, 1995.

2005 Acts, ch 128, §58

523I.804 Use of gift for special care.

A trustee may accept and hold money or property transferred to the trustee in trust for the purpose of applying the principal or income of the money or property transferred for a purpose consistent with the purpose of a perpetual care cemetery, including the following:

1. Improvement or embellishment of any part of the cemetery.

2. Erection, renewal, repair, or preservation of a monument, fence, building, or other structure in the cemetery.

3. Planting or cultivation of plants in or around the cemetery.

4. Special care of or embellishment of an interment space, section, or building in the cemetery.

2005 Acts, ch 128, §59

523I.805 Initial deposit.

1. A cemetery owned or operated by a political subdivision of this state is not required to make a minimum initial deposit in a care fund. Any other cemetery commencing business in this state on or after July 1, 2005, shall not sell interment spaces unless the cemetery has a care fund of at least twenty-five thousand dollars in cash.

2. If an initial deposit is made by a cemetery to satisfy subsection 1, the initial twenty-five thousand dollar deposit may be withdrawn by the cemetery when the care fund balance reaches one hundred thousand dollars. An affidavit shall be filed with the commissioner

providing prior notice of the intended withdrawal of the initial deposit and attesting that the money has not previously been withdrawn. Upon a showing by the cemetery that the initial deposit has not previously been withdrawn, the commissioner shall approve withdrawal of the money and the withdrawal shall take place within one year after the care fund balance reaches one hundred thousand dollars.

2005 Acts, ch 128, §60
Referred to in §523I.801

523I.806 Irrevocable trust.

1. A perpetual care cemetery shall establish a care fund as an irrevocable trust to provide for the care of the cemetery, which shall provide for the appointment of a trustee, with perpetual succession.

2. The care fund shall be administered under the jurisdiction of the district court of the county where the cemetery is located. Notwithstanding chapter 633A, annual reports shall not be required unless specifically required by the district court. Reports shall be filed with the court when necessary to receive approval of appointments of trustees, trust agreements and amendments, changes in fees or expenses, and other matters within the court's jurisdiction. A court having jurisdiction over a care fund shall have full jurisdiction to approve the appointment of trustees, the amount of surety bond required, if any, and investment of funds.

2005 Acts, ch 128, §61; 2006 Acts, ch 1030, §65

523I.807 Care fund deposits.

1. To continue to operate as a perpetual care cemetery, a cemetery shall set aside and deposit in the care fund an amount equal to or greater than fifty dollars or twenty percent of the gross selling price received by the cemetery for each sale of interment rights, whichever is more.

2. A cemetery may require a contribution to the care fund for perpetual care of a memorial or memorialization placed in the cemetery. A cemetery may establish a separate care fund for this purpose. The contributions shall be nonrefundable and shall not be withdrawn from the trust fund once deposited. The amount charged shall be uniformly charged on every installation of a memorial, based on the height and width of the memorial or the size of the ground surface area used for the memorial. A fee for special care of a memorial may be collected if the terms of the special care items and arrangements are clearly specified in the interment rights agreement. Except as otherwise provided in an interment rights agreement, a cemetery is not liable for repair or maintenance of memorials or vandalism. A cemetery may use income from a care fund to repair or replace memorials or interment spaces damaged by vandalism or acts of God.

3. Moneys shall be deposited in the care fund no later than the fifteenth day after the close of the month when the cemetery receives the final payment from a purchaser of interment rights.

2005 Acts, ch 128, §62

523I.808 Examination fee.

An examination fee shall be submitted with the cemetery's annual report in an amount equal to five dollars for each certificate of interment rights issued during the time period covered by the report. The cemetery may charge the examination fee directly to the purchaser of the interment rights.

2005 Acts, ch 128, §63; 2007 Acts, ch 175, §47; 2016 Acts, ch 1122, §12
Referred to in §523I.213

523I.809 Trust agreement provisions.

1. A trust agreement shall provide for the appointment of at least one trustee, with perpetual succession, in case the cemetery is dissolved or ceases to be responsible for the cemetery's care.

2. A cemetery and the trustee or trustees of the care fund may, by agreement, amend the

instrument that established the fund to include any provision that is necessary to comply with the requirements of this chapter.

3. A cemetery is responsible for the deposit of all moneys required to be placed in a care fund.

4. The commissioner may require the amending of a trust agreement that is not in accord with the provisions of this chapter.

2005 Acts, ch 128, §64

523I.810 Care funds.

1. A trustee of a care fund shall use the judgment and care under the circumstances then prevailing that persons of prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital. The trustee of a care fund has a fiduciary duty to make reasonable investment decisions and to properly oversee and manage the funds entrusted to the care fund.

a. A financial institution may serve as a trustee if granted those powers under the laws of this state or of the United States. A financial institution acting as a trustee of a care fund under this chapter shall invest the funds in accordance with applicable law.

b. A financial institution acting as a trustee of a care fund under this chapter has a fiduciary duty to make reasonable investment decisions and to properly oversee and manage the funds entrusted to the financial institution. The commissioner may take enforcement action against a financial institution in its capacity as trustee for a breach of fiduciary duty under this chapter.

c. Care fund moneys may be deposited pursuant to a master trust agreement, if each care fund is treated as a separate beneficiary of the trust and each care fund is separable. The master trust shall maintain a separate accounting of principal and income for each care fund. Moneys deposited under a master trust agreement may be commingled by the financial institution for investment purposes.

d. Subject to a master trust agreement, the cemetery may appoint an independent investment advisor to advise the financial institution about investment of the care fund.

e. Subject to an agreement between the cemetery and the financial institution, the financial institution may receive a reasonable fee from the care fund for services rendered as trustee.

f. If the amount of a care fund exceeds two hundred thousand dollars, the cemetery or any officer, director, agent, employee, or affiliate of the cemetery shall not serve as trustee unless the cemetery is a cemetery owned or operated by a governmental subdivision of this state. A financial institution holding care funds shall not do any of the following:

(1) Be owned, under the control of, or affiliated with the cemetery.

(2) Use any funds required to be held in trust under this chapter to purchase an interest in a contract or agreement to which the cemetery is a party.

(3) Otherwise invest care funds, directly or indirectly, in the cemetery's business operations.

2. All moneys required to be deposited in the care fund shall be deposited in the name of the trustee, as trustee, under the terms of a trust agreement and the trustee may invest, reinvest, exchange, retain, sell, and otherwise manage the care fund trust for the benefit and protection of the cemetery.

3. This section does not prohibit a cemetery from moving care funds from one financial institution to another.

4. A care fund may receive and hold as part of the care fund or as an incident to the care fund any property contributed to the care fund.

5. A contribution to a care fund is considered to be for charitable purposes if the care financed by the care fund is for the following purposes:

a. The discharge of a duty due from the cemetery to persons interred and to be interred in the cemetery.

b. The benefit and protection of the public by preserving and keeping the cemetery in a

dignified condition so that the cemetery does not become a nuisance or a place of disorder, reproach, and desolation in the community in which the cemetery is located.

6. A contribution to a care fund is not invalid because of the following:

a. Indefiniteness or uncertainty as to the person designated as a beneficiary in the instrument establishing the care fund.

b. A violation of the law against perpetuities or the law against the suspension of the power of alienation of title to or use of property.

7. A care fund shall pay the fund's operation costs and any annual audit fees. The principal of a care fund is intended to remain available perpetually as a funding source for care of the cemetery. The principal of a care fund shall not be reduced voluntarily and shall remain inviolable, except as provided in this section. The trustee or trustees of a care fund shall maintain the principal of the care fund separate from all operating funds of the cemetery.

8. In establishing a care fund, the cemetery may adopt plans for the care of the cemetery and installed memorials and memorialization.

9. A cemetery may, by resolution adopted by a vote of at least two-thirds of the members of its board at any authorized meeting of the board, authorize the withdrawal and use of not more than twenty percent of the principal of the care fund to acquire additional land for cemetery purposes, to repair a mausoleum or other building or structure intended for cemetery purposes, to build, improve, or repair boundaries, roads and walkways in the cemetery, to construct a columbarium, mausoleum, or similar structure to create additional interment spaces, to purchase equipment for tree, shrub, and lawn care, to purchase backhoes or similar equipment used to open and close interment spaces, or to purchase recordkeeping software used to maintain ownership records or interment records. The resolution shall establish a reasonable repayment schedule, not to exceed five years. However, the care fund shall not be diminished below an amount equal to the greater of twenty-five thousand dollars or five thousand dollars per acre of land in the cemetery. The resolution, and if the deposit of care fund income over five years is unlikely to fund replenishment of the principal of the care fund, either a bond or proof of insurance to guarantee replenishment of the care fund, shall be filed with the commissioner thirty days prior to the withdrawal of funds.

2005 Acts, ch 128, §65; 2007 Acts, ch 175, §48; 2015 Acts, ch 128, §45, 50, 51
Referred to in §523I.102

523I.811 Use of distributions from care fund.

1. Care fund distributions may be used in any manner determined to be in the best interests of the cemetery if authorized by a resolution, bylaw, or other action or instrument establishing the care fund, including but not limited to the general care of memorials, memorialization, and any of the following:

a. Cutting and trimming lawns, shrubs, and trees at reasonable intervals.

b. Maintaining drains, water lines, roads, buildings, boundaries, fences, and other structures.

c. Maintaining machinery, tools, and equipment.

d. Compensating maintenance employees, paying insurance premiums, and making payments to employees' pension and benefit plans.

e. Paying overhead expenses incidental to such purposes.

f. Paying expenses necessary to maintain ownership, transfer, and interment records of the cemetery.

g. To purchase equipment to maintain the cemetery.

h. To purchase backhoes or similar equipment used to open and close interment spaces.

i. To purchase equipment used to construct a columbarium, mausoleum, or similar structure to create additional interment spaces.

2. The commissioner may, by rule, establish terms and conditions under which a cemetery may withdraw capital gains from the care fund.

2005 Acts, ch 128, §66; 2015 Acts, ch 128, §46, 47, 50, 51

523I.811A Emergency use of care funds.

1. Notwithstanding any other provision of this chapter, a perpetual care cemetery may apply to the commissioner to withdraw funds from the cemetery's care fund for a financial emergency. The commissioner shall, by rule, establish standards and procedures for such applications and for withdrawals from care funds.

2. Upon application, the commissioner may allow a perpetual care cemetery to withdraw funds from the care fund if the commissioner finds that the cemetery has an urgent financial need and the withdrawal is deemed reasonable and prudent to fund a necessary expense of the cemetery. The commissioner shall establish conditions for the specific use of the funds withdrawn and may require repayment of all or part of the amount withdrawn.

2015 Acts, ch 128, §48, 50, 51

523I.812 Suit by commissioner.

1. If the person or persons in control of a cemetery do not care for and maintain the cemetery, the district court of the county in which the cemetery is located may do the following:

a. By injunction compel the cemetery to expend the net income of the care fund as required by this chapter.

b. Appoint a receiver to take charge of the care fund and expend the net income of the care fund as required by this chapter.

c. Grant relief on a petition for relief filed pursuant to this section by the commissioner.

2. *a.* Inadequate care and maintenance of a cemetery includes but is not limited to the following:

(1) Failure to adequately mow grass.

(2) Failure to adequately edge and trim bushes, trees, and memorials.

(3) Failure to keep walkways and sidewalks free of obstructions.

(4) Failure to adequately maintain the cemetery's equipment and fixtures.

b. This subsection is not intended to prevent the establishment of a cemetery as a nature park or preserve.

2005 Acts, ch 128, §67; 2012 Acts, ch 1023, §157

523I.813 Annual report by perpetual care cemeteries.

1. A perpetual care cemetery shall file an annual report at the end of each reporting period of the cemetery.

2. The report shall be filed with the commissioner within four months following the end of the cemetery's reporting period in the form required by the commissioner.

3. The commissioner shall levy an administrative penalty in the amount of up to five hundred dollars against a cemetery that fails to file the annual report when due, payable to the state for deposit as provided in section 505.7. However, the commissioner may waive the administrative penalty upon a showing of good cause or financial hardship.

2005 Acts, ch 128, §68; 2007 Acts, ch 175, §49, 50; 2009 Acts, ch 181, §102; 2010 Acts, ch 1121, §31; 2016 Acts, ch 1122, §13

523I.814 Unified annual reports.

The commissioner shall permit the filing of a unified report in the event of commonly owned or affiliated cemeteries if each cemetery is separately identified and separate records are maintained for each cemetery.

2005 Acts, ch 128, §69

SUBTITLE 2

FINANCIAL INSTITUTIONS

Referred to in §491.39

CHAPTER 524

BANKS

Referred to in §12C.6A, 12C.13, 216.10, 261A.19, 331.602, 422.11, 423.2, 445.5, 490.1701, 501A.601, 527.4, 533.301, 535.2, 535.8, 535C.2, 536A.24, 536C.3, 537.1301, 537.2301, 537.6105, 537.6201, 546.3, 669.14

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SUBCHAPTER XVIII

BANK HOLDING COMPANIES

524.1801 Definitions.
524.1802 Limitation.
524.1803 Offer to purchase stock. Repealed by 2006 Acts, ch 1015, §22.

524.1804 Notice of acquisition.
524.1805 Restrictions on acquisitions and mergers.
524.1806 Banks owned or controlled — officers and directors.
524.1807 Penalties.
524.1808 Insurance sales.
524.1809 Mutual bank holding companies.
524.1810 through 524.1900 Reserved.

SUBCHAPTER XIX

REGIONAL BANKING

524.1901 through 524.1911 Repealed by 96 Acts, ch 1056, §24.
524.1912 Reserved.
524.1913 Prohibited acquisitions. Repealed by 90 Acts, ch 1266, §61(3).
524.1914 through 524.2000 Reserved.

SUBCHAPTER XX

APPLICABILITY

524.2001 Applicability of other chapters.

SUBCHAPTER I

GENERAL PROVISIONS

524.101 Short title.

This chapter shall be known and may be cited as the *"Iowa Banking Act"*.

[C71, 73, 75, 77, 79, 81, §524.101]
84 Acts, ch 1067, §41

524.102 Statement of intent.

The general assembly declares as its purpose in adopting this chapter to provide for:

1. The safe and sound conduct of the business of banking.
2. The conservation of the assets of state banks.
3. The maintenance of public confidence in state banks.
4. The protection of the interests of depositors, creditors, shareholders and of the interest of the public in a sound and strong banking system.
5. The opportunity for state banks to be competitive with each other and with banks existing under the laws of other states and the United States.
6. The opportunity for state banks to effectively serve the convenience and banking needs of their depositors, borrowers, and other customers and to participate in and promote the economic progress of Iowa and of the United States.
7. The opportunity for the management of a state bank to exercise its business judgment, in conducting the affairs of the state bank, to the extent compatible with, and subject to the purposes of this chapter.
8. The delegation to the superintendent of adequate rulemaking power and administrative discretion, in order that the supervision and regulation of state banks may be flexible and readily responsive to changes in economic conditions and changes in banking and fiduciary practices.
9. The simplification and modernization of the law governing the business of banking and the exercise of certain fiduciary powers.

[C71, 73, 75, 77, 79, 81, §524.102]

524.103 Definitions.

As used in this chapter, unless the context otherwise requires, the term:

1. *"Account"* means any account with a state bank and includes a demand, time or savings deposit account or any account for the payment of money to a state bank.
2. *"Administrator"* means the person designated in section 537.6103.
3. *"Aggregate capital"* means the sum of capital, surplus, undivided profits, and reserves as of the most recent calculation date.
4. *"Agreement for the payment of money"* means a monetary obligation, other than an obligation in the form of an evidence of indebtedness or an investment security; including, but

not limited to, amounts payable on open book accounts receivable and executory contracts and rentals payable under leases of personal property.

5. *"Agricultural credit corporation"* means as defined in section 535.12, subsection 4.

6. *"Articles of incorporation"* means the original or restated articles of incorporation and all amendments thereto and includes articles of merger. *"Articles of incorporation"* also means the original or restated articles of organization and all amendments including articles of merger if a state bank is organized as a limited liability company under this chapter.

7. *"Assets"* means all the property and rights of every kind of a state bank.

8. *"Bank"* means a corporation or limited liability company organized under this chapter or 12 U.S.C. §21.

9. *"Bankers' bank"* means a bank which is organized under the laws of any state or under federal law, and whose shares are owned exclusively by other banks or by a bank holding company whose shares are owned exclusively by other banks, except for directors' qualifying shares when required by law, and which engages exclusively in providing services for depository institutions and officers, directors and employees of those depository institutions.

10. *"Board of directors"* means the board of directors of a state bank as provided in section 524.601. For a state bank organized as a limited liability company under this chapter, *"board of directors"* means a board of directors or board of managers as designated by the limited liability company in its articles of organization or operating agreement.

11. *"Borrower"* means a person named as a borrower or debtor in a loan or extension of credit, or any other person, including a drawer, endorser, or guarantor, deemed to be a borrower under section 524.904, subsection 3.

12. *"Business of banking"* means the business generally done by banks.

13. *"Calculation date"* means the most recent of the following:

a. The date the bank's statement of condition is required to be filed pursuant to section 524.220, subsection 2.

b. The date an event occurs that reduces or increases the bank's aggregate capital by ten percent or more.

c. As the superintendent may direct.

14. *"Capital"* means the sum of the par value of the preferred and common shares of a state bank issued and outstanding.

15. *"Capital structure"* means the capital, surplus, and undivided profits of a state bank and shall include an amount equal to the sum of any capital notes and debentures issued and outstanding pursuant to section 524.404.

16. *"Chief executive officer"* means the person designated by the board of directors to be responsible for the implementation of and adherence to board policies and resolutions by all officers and employees of the bank.

17. *a. "Contractual commitment to advance funds"* means a bank's obligation to do either of the following:

(1) Advance funds under a standby letter of credit or other similar arrangement.

(2) Make payment, directly or indirectly, to a third person contingent upon default by a customer of the bank in performing an obligation and to make such payment in keeping with the agreed upon terms of the customer's contract with a third person, or to make payments upon some other stated condition.

b. The term does not include commercial letters of credit and similar instruments where the issuing bank expects the beneficiary to draw on the issuer, that do not guarantee payment, and that do not provide for payment in the event of a default by a third person.

18. *"Control"* means when a person, directly or indirectly or acting through or together with one or more persons, satisfies any of the following:

a. Owns, controls, or has the power to vote fifty percent or more of any class of voting securities or membership interests of another person.

b. Controls, in any manner, the election of a majority of the directors, managers, trustees, or other persons exercising similar functions of another person.

c. Has the power to exercise a controlling influence over the management or policies of another person.

19. *"Customer"* means a person with an account or other contractual arrangement with a state bank.

20. *"Director"* means a member of the board of directors and includes a manager of a state bank organized as a limited liability company under this chapter.

21. *"Evidence of indebtedness"* means a note, draft or similar negotiable or nonnegotiable instrument.

22. *"Executive officer"* means a person who participates or has authority to participate, other than in the capacity of a director or manager, in major policymaking functions of a state bank, whether or not the officer has an official title, whether or not such a title designates the officer as an assistant, or whether or not the officer is serving without salary or other compensation. The chief executive officer, chairperson of the board, the president, every vice president, and the cashier of a state bank are deemed to be executive officers, unless such an officer is excluded, by resolution of the board of directors of a state bank or by the bylaws of the state bank, from participation, other than in the capacity of a director, in major policymaking functions of the state bank, and the officer does not actually participate in the major policymaking functions. All officers who serve on a board of directors are deemed to be executive officers, except as provided for in section 524.701, subsection 3.

23. *"Fiduciary"* means an executor, administrator, guardian, conservator, receiver, trustee, or one acting in a similar capacity.

24. *"Insolvent"* means the inability of a state bank to pay its debts and obligations as they become due in the ordinary course of its business. A state bank is also considered to be insolvent if the ratio of its capital, surplus, and undivided profits to assets is at or close to zero or if its assets are of such poor quality that its continued existence is uncertain.

25. *"Insured bank"* means a state bank the deposits of which are insured in accordance with the provisions of the Federal Deposit Insurance Act.

26. *"Manager"* means a person designated by the members to manage a state bank organized as a limited liability company under this chapter as provided in the articles of organization or an operating agreement and may include a member of the board of directors.

27. *"Member"* means a person with a membership interest in a state bank organized as a limited liability company or incorporated as a mutual corporation under this chapter.

28. *"Member vote"* means one vote for each one hundred dollars, or fraction thereof, of the withdrawal value of a member's account with respect to a mutual corporation.

29. *"Membership interest"* means a member's share of the profits and losses, the right to receive distributions of assets, and any right to vote or participate in management of a state bank organized as a limited liability company under this chapter or of a state bank incorporated as a mutual corporation under this chapter.

30. *"Municipal corporation"* means an incorporated city.

31. *"Mutual bank holding company"* means a bank holding company that is a mutual corporation or that owns or controls a mutual corporation.

32. *"Mutual corporation"* means a corporation that is incorporated on a mutual ownership basis under this chapter or converted to become subject to this chapter and is not authorized to issue capital stock.

33. *"Officer"* means chief executive officer, executive officer, or any other administrative official of a bank elected by the bank's board of directors to carry out any of the bank's operating rules and policies.

34. *"Operations subsidiary"* means a wholly owned corporation incorporated and controlled by a bank that performs functions which the bank is authorized to perform.

35. *"Person"* means as defined in section 4.1.

36. *"Reserves"* means the amount of the allowance for loan and lease losses of a state bank.

37. *"Sale of federal funds"* means any transaction between depository institutions involving the transfer of immediately available funds resulting from credits to deposit balances at federal reserve banks, or from credits to new or existing deposit balances due from a correspondent depository institution.

38. *"Shareholder"* means one who is a holder of record of shares in a state bank. If a state bank is organized as a limited liability company under this chapter, *"shareholder"*

means a member of the limited liability company. If a state bank is incorporated as a mutual corporation under this chapter, *"shareholder"* means a member of the mutual corporation.

39. *"Shares"* means the units into which the proprietary interests in a state bank incorporated as a stock corporation are divided, including any membership interests of a state bank organized as a limited liability company under this chapter.

40. *"Standby letter of credit"* means a letter of credit, or similar arrangement, that represents an obligation to the beneficiary on the part of the issuer to do any of the following:

a. Repay money borrowed by or advanced to or for the account of the account holder.

b. Make payment on account of any indebtedness undertaken by the account holder.

c. Make payment on account of any default by the account holder in the performance of an obligation.

41. *"State bank"* means any bank incorporated pursuant to the provisions of this chapter after January 1, 1970, and any *"state bank"* incorporated pursuant to the laws of this state and doing business as such on January 1, 1970, or a bank organized as a limited liability company or a mutual corporation under this chapter.

42. *"Stock corporation"* means a corporation which is authorized to issue capital stock.

43. *"Superintendent"* means the superintendent of banking of this state.

44. *"Supervised financial organization"* as defined and used in the Iowa consumer credit code, chapter 537, includes a person organized pursuant to this chapter.

45. *"Surplus"* means the aggregate of the amount originally paid in as required by section 524.401, subsection 3, any amounts transferred to surplus pursuant to section 524.405 and any amounts subsequently designated as such by action of the board of directors of the state bank.

46. *"Trust company"* means a business organization which is authorized to engage in trust business pursuant to section 524.1005. A bank lawfully exercising trust powers under the laws of this state or of the United States is not a trust company by reason of having authority to engage in trust business in addition to its general business.

47. *"Undivided profits"* means the accumulated undistributed net profits of a state bank, including any residue from the fund established pursuant to section 524.401, subsection 4, after:

a. Payment or provision for payment of taxes and expenses of operations.

b. Transfers to reserves allocated to a particular asset or class of assets.

c. Losses estimated or sustained on a particular asset or class of assets in excess of the amount of reserves allocated therefor.

d. Transfers to surplus and capital.

e. Amounts declared as dividends to shareholders.

48. *"Unincorporated area"* means a village within which a state bank or national bank has its principal place of business.

[C71, 73, 75, 77, 79, 81, §524.103]

85 Acts, ch 252, §32; 89 Acts, ch 257, §2, 3; 90 Acts, ch 1228, §1; 95 Acts, ch 148, §1 – 3; 96 Acts, ch 1056, §1; 2003 Acts, ch 44, §114; 2004 Acts, ch 1141, §47, 48; 2005 Acts, ch 3, §86; 2007 Acts, ch 88, §2; 2012 Acts, ch 1017, §1 – 4, 18, 104; 2012 Acts, ch 1023, §157; 2016 Acts, ch 1011, §99

Referred to in §12.61, 12C.13, 252I.1, 421.17A, 422.61, 453A.8, 521C.4, 524.109, 524.904, 535B.6A, 536.7A, 537.7103, 633.89

524.104 Rules of construction.

In the interpretation and construction of this chapter:

1. Transactions or acts validly entered into or performed before July 1, 1995, and the rights, duties and interests flowing from them remain valid on and after July 1, 1995, and may be completed or terminated according to their terms and as permitted by any statute repealed or amended by this chapter, as though such repeal or amendment had not occurred.

2. All individuals who, on July 1, 1995, hold any office under a provision of law repealed by this chapter, and which offices are continued by this chapter shall continue to hold such offices according to their former tenure.

[C71, 73, 75, 77, 79, 81, §524.104]

95 Acts, ch 148, §4

524.105 Effect on existing banks.

1. The corporate existence of a state bank existing and operating on July 1, 1995, is not affected by the amendment of this chapter.

2. All state banks are subject to the provisions and requirements of this chapter in every particular, and all national banks, now or hereafter doing business in this state, are subject to the provisions of this chapter, to the extent applicable, from July 1, 1995.

[C71, 73, 75, 77, 79, 81, §524.105]

95 Acts, ch 148, §5

Referred to in §680.8

524.106 Renewal of the corporate existence of an existing state bank. Repealed by 95 Acts, ch 148, §135.

524.107 Persons authorized to engage in banking business — educational bank.

1. A person, other than a state bank which is subject to the provisions of this chapter and a national bank authorized by the laws of the United States to engage in the business of receiving money for deposit, and except as provided in subsection 2, shall not engage in this state in the business of receiving money for deposit, transact the business of banking, or establish in this state a place of business for such purpose.

2. A person doing business in this state shall not use the words "bank" or "trust" or use any derivative, plural, or compound of the words "bank", "banking", "bankers", or "trust" in any manner which would tend to create the impression that the person is authorized to engage in the business of banking or to act in a fiduciary capacity, except a state bank authorized to do so by this chapter or a bank authorized to do so by the laws of another state, a national bank to the extent permitted by the laws of the United States, a bank holding company as defined in section 524.1801, a savings and loan holding company as defined in 12 U.S.C. §1467a, or a federal association to the extent permitted by the laws of the United States, or, insofar as the word "trust" is concerned, an individual permissibly serving as a fiduciary in this state, pursuant to section 633.63, or, insofar as the words "trust" and "bank" are concerned, a nonresident corporate fiduciary permissibly serving as a fiduciary in this state pursuant to section 633.64.

3. Notwithstanding subsections 1 and 2, an organization formed for educational purposes in association with an accredited elementary or secondary school which engages in the receipt of deposits may use the words "educational bank", the use of which is otherwise restricted in subsection 2, and such an educational bank is not a bank within the meaning or scope of regulation of this chapter.

[C97, §1862, 1889; S13, §1889, 1889-i; C24, 27, 31, 35, 39, §**9151, 9203, 9258, 9259, 9296;** C46, 50, 54, 58, 62, 66, §524.24, 527.2, 528.50, 528.52, 532.13; C71, 73, 75, 77, 79, 81, §524.107]

89 Acts, ch 257, §4; 89 Acts, ch 319, §80; 95 Acts, ch 148, §6; 96 Acts, ch 1056, §2; 2008 Acts, ch 1160, §1; 2012 Acts, ch 1017, §105; 2014 Acts, ch 1001, §3

Referred to in §524.1005, 524.1603

524.108 Applicability of safe deposit provisions.

The provisions of sections 524.809 to 524.812 shall apply, to the extent applicable, to any person engaged in this state in the business of leasing safe deposit boxes for the storage of property.

[C71, 73, 75, 77, 79, 81, §524.108]

524.109 Bankers' bank authorized — authority to hold shares of bankers' bank.

1. A state bank may be organized under this chapter as a bankers' bank. The bankers' bank is subject to all rights, privileges, duties, restrictions, penalties, liabilities, conditions and limitations applicable to a state bank generally, except as limited in the definition of bankers' bank contained in section 524.103, subsection 9. However, a bankers' bank shall have the same powers as those granted by federal law and regulation to a national bank organized as a bankers' bank under 12 U.S.C. §27.

2. A state bank shall have the power to acquire and hold the shares in one or more bankers' banks or bank holding companies which own a bankers' bank in a total amount not to exceed

five percent of the state bank's aggregate capital. A state bank shall not own, directly or indirectly, more than five percent of any class of voting shares of a bankers' bank.

85 Acts, ch 252, §33; 95 Acts, ch 148, §7

524.110 through 524.200 Reserved.

SUBCHAPTER II

DIVISION OF BANKING

524.201 Superintendent of banking.

1. The governor shall appoint, subject to confirmation by the senate, a superintendent of banking. The appointee shall be selected solely with regard to qualification and fitness to discharge the duties of office, and a person shall not be appointed who has not had at least five years' experience as an executive officer in a bank.

2. The superintendent shall have an office at the seat of government. The regular term of office shall be four years beginning and ending as provided by section 69.19.

[C24, 27, 31, 35, 39, §**9130, 9131;** C46, 50, 54, 58, 62, 66, §524.1, 524.2; C71, 73, 75, 77, 79, 81, §524.201]

95 Acts, ch 148, §8; 2004 Acts, ch 1141, §2

Referred to in §535D.3, 546.3

Confirmation, see §2.32

524.202 Superintendent — salary.

The superintendent shall receive a salary to be fixed by the governor.

[C24, 27, 31, 35, 39, §**9137;** C46, 50, 54, 58, 62, 66, §524.7; C71, 73, 75, 77, 79, 81, §524.202]

95 Acts, ch 148, §9

524.203 Superintendent — vacancy.

If the office of the superintendent of banking is vacant, the chief of the bank bureau of the banking division shall be the acting superintendent until the governor appoints a new superintendent or acting superintendent. If the chief of the bank bureau is unable to serve, the chief of the finance bureau of the banking division shall be the acting superintendent until the governor appoints a new superintendent or acting superintendent. If both the chief of the bank bureau and the chief of the finance bureau are unable to serve, the chief of the professional licensing and regulation bureau of the banking division shall be the acting superintendent until the governor appoints a new superintendent or acting superintendent.

[C24, 27, 31, 35, 39, §**9133;** C46, 50, 54, 58, 62, 66, §524.3; C71, 73, 75, 77, 79, 81, §524.203]

2004 Acts, ch 1141, §3; 2008 Acts, ch 1160, §2

524.204 Deputy superintendent of banking.

The superintendent may appoint an employee of the division of banking as deputy to perform the duties of the superintendent during the absence or inability of the superintendent to act. Any deputy so appointed shall be removable at the pleasure of the superintendent.

[C24, 27, 31, 35, 39, §**9136, 9137;** C46, 50, 54, 58, 62, 66, §524.6, 524.7; C71, 73, 75, 77, 79, 81, §524.204]

95 Acts, ch 148, §10; 2004 Acts, ch 1141, §4

524.205 State banking council.

1. The state banking council shall consist of the superintendent, who shall be an ex officio member and chairperson, and six other members, appointed by the governor, who shall be appointed, where practical, from various parts of the state. Provided, however, that in no event shall more than five members of such council be engaged in the business of banking in any executive capacity.

2. The terms of office for members of the state banking council, other than the

superintendent, shall be four-year staggered terms. Each member shall hold office for the term for which the member is appointed or until a successor is appointed.

3. A member of the state banking council, other than the superintendent, shall not receive a salary but is entitled to reimbursement for actual expenses incurred by the member in connection with the member's duties. Each member of the council may also be eligible to receive compensation as provided in section 7E.6.

4. The state banking council shall act in an advisory capacity concerning matters submitted to the council by the superintendent pertaining to the conduct of the administration of this chapter.

5. The state banking council shall meet at least once each calendar quarter on such date and at such place as the council may decide, and shall meet at such other times as may be deemed necessary by the superintendent or a majority of the council members.

[C27, 31, 35, §9154-a1, -a2, -a3, -a4, -a7, -a8; C39, §**9154.04 – 9154.07, 9154.10, 9154.11;** C46, 50, 54, 58, 62, 66, §525.1 – 525.4, 525.7, 525.8; C71, 73, 75, 77, 79, 81, §524.205]

86 Acts, ch 1245, §747; 2004 Acts, ch 1141, §5

524.206 Banking division created.

The banking division is created within the department of commerce.

[C71, 73, 75, 77, 79, 81, §524.206]

86 Acts, ch 1245, §748

524.207 Expenses of the banking division — fees.

1. Except as otherwise provided by statute, all expenses required in the discharge of the duties and responsibilities imposed upon the banking division of the department of commerce, the superintendent, and the state banking council by the laws of this state shall be paid from fees provided by the laws of this state and appropriated by the general assembly from the department of commerce revolving fund created in section 546.12. All of these fees are payable to the superintendent. The superintendent shall pay all the fees and other moneys received by the superintendent to the treasurer of state within the time required by section 12.10 and the fees and other moneys shall be deposited into the department of commerce revolving fund created in section 546.12.

2. All fees and assessments generated as the result of a federally chartered bank or savings and loan association converting to a state-chartered bank on or after December 31, 2015, and thereafter, are payable to the superintendent. The superintendent shall pay all the fees and assessments received by the superintendent pursuant to this subsection to the treasurer of state within the time required by section 12.10 and the fees and assessments shall be deposited into the department of commerce revolving fund created in section 546.12. An amount equal to such fees and assessments deposited into the department of commerce revolving fund is appropriated from the department of commerce revolving fund to the banking division of the department of commerce for the fiscal year in which a federally chartered bank or savings and loan association converted to a state-chartered bank and an amount equal to such annualized fees and assessments deposited into the department of commerce revolving fund in succeeding years is appropriated from the department of commerce revolving fund to the banking division of the department of commerce for succeeding fiscal years for purposes related to the discharge of the duties and responsibilities imposed upon the banking division of the department of commerce, the superintendent, and the state banking council by the laws of this state. This appropriation shall be in addition to the appropriation of moneys otherwise described in this section. If a state-chartered bank converts to a federally chartered bank or savings and loan association, any appropriation made pursuant to this subsection for the following fiscal year shall be reduced by the amount of the assessment paid by the state-chartered bank during the fiscal year in which the state-chartered bank converted to a federally chartered bank or savings and loan association.

3. The superintendent shall account for receipts and disbursements according to the separate duties imposed upon the superintendent by the laws of this state and each separate duty shall be fiscally self-sustaining.

4. The banking division may expend additional funds, including funds for additional

personnel, if those additional expenditures are actual expenses which exceed the funds budgeted for bank or licensee examinations or investigations and directly result from examinations or investigations of banks or licensees. The amounts necessary to fund the excess examination or investigation expenses shall be collected from banks and licensees being regulated, and the collections shall be treated as repayment receipts as defined in section 8.2. The division shall notify in writing the legislative services agency and the department of management when hiring additional personnel. The written notification shall include documentation that any additional expenditure related to such hiring will be totally reimbursed as provided in section 546.12, subsection 2, and shall also include the division's justification for hiring such personnel. The division must obtain the approval of the department of management only if the number of additional personnel to be hired exceeds the number of full-time equivalent positions authorized by the general assembly.

5. All fees and moneys collected shall be deposited into the department of commerce revolving fund created in section 546.12 and expenses required to be paid under this section shall be paid from moneys in the department of commerce revolving fund and appropriated for those purposes.

6. All moneys received by the superintendent pursuant to a multi-state settlement with a provider of financial services such as a mortgage lender, a mortgage servicer, or any other person regulated by the banking division of the department of commerce shall be deposited into the department of commerce revolving fund created in section 546.12 and an amount equal to the amount deposited into the fund is appropriated to the banking division of the department of commerce for the fiscal year in which such moneys are received and in succeeding fiscal years for the purpose of supporting those duties of the banking division related to financial regulation that are limited to nonrecurring expenses such as equipment purchases, training, technology, and retirement payouts related to the oversight of mortgage lending, state-chartered banks, and other financial services regulated by the banking division. This appropriation shall be in addition to the appropriation of moneys otherwise described in this section. The superintendent shall submit a report to the department of management and to the legislative services agency detailing the expenditure of moneys appropriated to the banking division pursuant to this subsection during each fiscal year. The initial report shall be submitted on or before September 15, 2016, and each September 15 thereafter. Moneys appropriated pursuant to this subsection are not subject to section 8.33 and shall not be transferred, used, obligated, appropriated, or otherwise encumbered except as provided in this subsection.

[C24, 27, 31, 35, 39, §**9144, 9145, 9149;** C46, 50, 54, 58, 62, 66, §524.16, 524.17, 524.22; C71, 73, 75, 77, 79, 81, §524.207]

86 Acts, ch 1246, §616; 87 Acts, ch 234, §435; 90 Acts, ch 1247, §14; 91 Acts, ch 260, §1243; 93 Acts, ch 131, §22; 94 Acts, ch 1107, §85; 2003 Acts, ch 35, §45, 49; 2004 Acts, ch 1141, §6; 2009 Acts, ch 181, §103; 2016 Acts, ch 1130, §27, 29, 31

2016 amendment takes effect May 27, 2016, and applies retroactively to December 31, 2015; 2016 Acts, ch 1130, §29, 31

524.208 Examiners and other employees.

The superintendent may appoint examiners and other employees as the superintendent deems necessary to the proper discharge of the duties imposed upon the superintendent by the laws of this state. Pay plans shall be established for employees, other than clerical employees or employees of the professional licensing and regulation bureau of the banking division, who examine the accounts and affairs of state banks and who examine the accounts and affairs of other persons, subject to supervision and regulation by the superintendent, which are substantially equivalent to those paid by the federal deposit insurance corporation and other federal supervisory agencies in this area of the United States.

[C24, 27, 31, 35, 39, §**9136, 9137;** C46, 50, 54, 58, 62, 66, §524.6, 524.7; C71, 73, 75, 77, 79, 81, §524.208]

86 Acts, ch 1245, §749; 2004 Acts, ch 1141, §7; 2006 Acts, ch 1177, §32

524.209 Expenses.

The superintendent, examiners, and other employees of the banking division shall be entitled to receive reimbursement for expenses incurred in the performance of their duties. The superintendent, and when specifically authorized by the superintendent, examiners, and other employees of the banking division, shall be entitled to receive reimbursement for expenses incurred while attending conventions, meetings, conferences, schools, or seminars relating to the performance of their duties, and such expenses shall be paid by the treasurer of state on warrants drawn by the director of the department of administrative services.

[C24, 27, 31, 35, 39, §**9144;** C46, 50, 54, 58, 62, 66, §524.16; C71, 73, 75, 77, 79, 81, §524.209]

2003 Acts, ch 145, §286; 2004 Acts, ch 1141, §8

524.210 Insurance and surety bonds.

The superintendent shall acquire good and sufficient bond in a company authorized to do business in this state insuring the faithful performance of examiners and all other employees of the banking division and insuring against any liability which may accrue in the case of the loss of any property of a state bank, of a customer of a state bank, or of any other person in the course of any examination, investigation, or other function required or allowed by the laws of this state. The superintendent shall be bonded in accordance with the provisions of chapter 64.

[C24, 27, 31, 35, 39, §**9138, 9139;** C46, 50, 54, 58, 62, 66, §524.8, 524.9; C71, 73, 75, 77, 79, 81, §524.210]

2004 Acts, ch 1141, §9

524.211 Prohibitions relating to banking division personnel.

1. The superintendent, general counsel, examiners, and other employees assigned to the bank bureau of the banking division are prohibited from obtaining a loan of money or property from a state-chartered bank, or any person or entity affiliated with a state-chartered bank, unless they do not personally participate in the examination, oversight, or official review concerning the regulation of the bank.

2. The superintendent, general counsel, examiners, and other employees assigned to the finance bureau of the banking division are prohibited from obtaining a loan of money or property from a person or entity licensed pursuant to chapter 533A, 533D, 536, or 536A, or a person or entity affiliated with such licensee.

3. The superintendent, general counsel, examiners, and other employees of the banking division, who have credit relations with a person or entity licensed or registered pursuant to chapter 535B, 535D, or 536C, are prohibited from participating in decisions, oversight, and official review of matters concerning the regulation of the licensee or registrant.

4. Examiners and other employees assigned to the bank bureau of the banking division who have credit relations with a person or entity licensed pursuant to chapter 533A, 533D, 536, or 536A, or with a person or entity affiliated with such licensee, are prohibited from participating in decisions, oversight, and official review of matters concerning the regulation of the licensee.

5. An employee of the banking division, other than the superintendent or a member of the state banking council or one of the boards in the professional licensing and regulation bureau of the division, shall not perform any services for, and shall not be a shareholder, member, partner, owner, director, officer, or employee of, any enterprise, person, or affiliate subject to the regulatory purview of the banking division.

6. For the purposes of this section and section 524.212, an affiliate of a person other than a state bank shall include any corporation, trust, estate, association or other similar organization:

a. Of which such person, directly or indirectly, owns or controls either a majority of the voting shares or more than fifty percent of the number of shares voted for the election of its directors, trustees, or other individuals exercising similar functions at the preceding election, or controls in any manner the election of a majority of its directors, trustees or other individuals exercising similar functions.

b. Of which control is held, directly or indirectly, through share ownership or in any other

manner, by the shareholders of such person who own or control either a majority of the shares of such person or more than fifty percent of the number of shares voted for the election of directors of such person at the preceding election or by trustees for the benefit of the shareholders of any such person.

c. Of which a majority of its directors, trustees, or other individuals exercising similar functions are directors of any one such person.

d. Which owns or controls, directly or indirectly, either a majority of the voting shares of such person or more than fifty percent of the total number of shares voted for the election of directors of such person at the preceding election, or controls in any manner the election of a majority of the directors of such person, or for the benefit of whose shareholders or members all or substantially all of the outstanding voting shares of such person is held by trustees.

7. The superintendent, examiners, or other employees who are convicted of a felony while holding such position shall be immediately discharged from employment and shall be forever disqualified from holding any position in the banking division.

[C97, §1875, 1876; SS15, §1875; C24, 27, 31, 35, 39, §**9146;** C46, 50, 54, 58, 62, 66, §524.18; C71, 73, 75, 77, 79, 81, §524.211; 81 Acts, ch 172, §1]

95 Acts, ch 148, §11 – 13; 96 Acts, ch 1056, §3; 2004 Acts, ch 1141, §10; 2006 Acts, ch 1177, §33; 2007 Acts, ch 88, §3; 2008 Acts, ch 1160, §3; 2011 Acts, ch 102, §1; 2012 Acts, ch 1017, §106

Referred to in §524.1611

524.212 Prohibition against disclosure of regulatory information.

1. The superintendent, members of the state banking council, general counsel, examiners, or other employees of the banking division shall not disclose, in any manner, to any person other than the person examined and those regulatory agencies referred to in section 524.217, subsection 2, any information relating specifically to the supervision and regulation of any state bank, persons subject to the provisions of chapter 533A, 533C, 536, or 536A, any affiliate of any state bank, or an affiliate of a person subject to the provisions of chapter 533A, 533C, 536, or 536A, except when ordered to do so by a court of competent jurisdiction and then only in those instances referred to in section 524.215, subsection 2, paragraphs *"a"*, *"b"*, *"c"*, *"e"*, and *"f"*.

2. The superintendent may receive documents, materials, or other information, including otherwise confidential and privileged documents, materials, or other information, from other local, state, federal, and international regulatory agencies, the conference of state bank supervisors and its affiliates or subsidiaries, the American association of mortgage regulators and its affiliates or subsidiaries, and the national association of consumer credit administrators and its affiliates or subsidiaries, and shall maintain as confidential and privileged any such document, material, or other information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material, or other information. With respect to documents, materials, or other information that is shared or stored electronically, the superintendent is authorized to take any necessary steps to ensure the division's information technology systems comply with the information technology security requirements established by any of the regulatory agencies or associations of state regulatory agencies described in this section.

[C31, 35, §9146-c1; C39, §**9146.1;** C46, 50, 54, 58, 62, 66, §524.19; C71, 73, 75, 77, 79, 81, §524.212]

95 Acts, ch 148, §14; 2003 Acts, ch 96, §40, 42; 2004 Acts, ch 1141, §11; 2008 Acts, ch 1031, §56; 2008 Acts, ch 1160, §4; 2011 Acts, ch 102, §2

Referred to in §524.211, 524.1611

524.213 Duties and powers of superintendent.

The superintendent shall have general control, supervision and regulation of all state banks and shall be charged with the administration, interpretation, and execution of the laws, rules, and regulations of this state and any other state or federal law or regulation relating to banks and banking and with such other duties and responsibilities as are imposed upon the superintendent by the laws of this state. The superintendent shall have power to

adopt and promulgate such rules and regulations as necessary to carry out and enforce, properly and effectively, the provisions of this chapter and chapter 12C applicable to banks.

[C24, 27, 31, 35, 39, §**9140;** C46, 50, 54, 58, 62, 66, §524.10; C71, 73, 75, 77, 79, 81, §524.213]

2002 Acts, ch 1096, §15, 17; 2010 Acts, ch 1028, §6; 2017 Acts, ch 138, §1

524.214 Subpoena — contempt.

1. The superintendent and, upon the approval of the superintendent, any examiner or other employees of the banking division shall have the power to subpoena witnesses, to compel their attendance, to administer an oath, to examine any person under oath and to require the production of any relevant books or papers. Such examination may be conducted on any subject relating to the duties imposed upon, or powers vested in, the superintendent under the provisions of this chapter or any other chapter administered by the superintendent.

2. Whenever any person subpoenaed pursuant to subsection 1 of this section neglects or refuses to obey the terms of such subpoena, to produce books or papers or to give testimony, as required, the superintendent may apply to the district court of Polk county for the enforcement of such subpoena or the issuance of an order compelling such compliance as the court may direct.

3. The refusal of any person to obey an order of the district court, issued pursuant to subsection 2 of this section, without reasonable cause, shall be considered a contempt of that court.

[C97, §1877; S13, §1871; C24, 27, 31, 35, 39, §**9226, 9236;** C46, 50, 54, 58, 62, 66, §528.20, 528.30; C71, 73, 75, 77, 79, 81, §524.214]

2004 Acts, ch 1141, §12; 2007 Acts, ch 88, §4

Referred to in §524.217

524.215 Records of division of banking.

1. All records of the division of banking shall be public records subject to the provisions of chapter 22, except that all papers, documents, reports, reports of examinations, and other writings relating specifically to the supervision and regulation of any state bank or other person by the superintendent pursuant to the laws of this state shall not be public records and shall not be open for examination or copying by the public or for examination or publication by the news media.

2. The superintendent, members of the state banking council, examiners, or other employees of the banking division shall not be subpoenaed in any cause or proceeding to give testimony concerning information relating specifically to the supervision and regulation of any state bank or other person by the superintendent pursuant to the laws of this state, and the records of the banking division which relate specifically to the supervision and regulation of any such state bank or other such person shall not be offered in evidence in any court or subject to subpoena by any party except, where relevant:

a. In such actions or proceedings as are brought by the superintendent.

b. In any matter in which an interested and proper party seeks review of a decision of the superintendent.

c. In any action or proceeding which arises out of the criminal provisions of the laws of this state or the United States.

d. In any action brought as a shareholders derivative suit against a state bank or other entity regulated by the superintendent.

e. In an action brought to recover moneys for a loss in connection with an indemnity bond which was a result of embezzlement, misappropriation, or misuse of state bank funds by a director, officer, or employee of the state bank.

f. In an action brought to recover moneys for a loss in connection with an indemnity bond

which was a result of embezzlement, misappropriation, or misuse of funds, belonging to an entity regulated by the superintendent, by a director, officer, or employee of the entity.

[C31, 35, §9146-c1; C39, §**9146.1;** C46, 50, 54, 58, 62, 66, §524.19; C71, 73, 75, 77, 79, 81, §524.215]

95 Acts, ch 148, §15; 96 Acts, ch 1056, §4; 2004 Acts, ch 1141, §13; 2007 Acts, ch 88, §5, 6; 2016 Acts, ch 1011, §100

Referred to in §524.212

524.215A Preservation of division of banking records.

1. The division of banking may preserve records, papers, or documents kept by the division or in the possession or custody of the division by any of the following means:

a. Photographing or microphotographing, or otherwise reproducing upon film.

b. Preserving in any electronic medium or format capable of being read or scanned by computer and capable of being reproduced by printing or by any other form of reproduction of electronically stored data.

2. Photographs, microphotographs, or photographic films or copies thereof, or reproductions of electronically stored data, created pursuant to subsection 1 shall be deemed to be an original record for all purposes, including introduction in evidence in all state and federal courts or administrative hearings, and shall be admissible to prove any act, transaction, occurrence, or event therein recorded.

3. Photographs, microphotographs, or photographic films or copies thereof, or reproductions of electronically stored data, created pursuant to subsection 1 shall be preserved in such manner as the division prescribes, and the original photographs, microphotographs, photographic films, copies, and reproductions may be destroyed or otherwise disposed of as the division directs.

4. The division of banking may adopt a record retention policy authorizing the division to destroy communications received by electronic mail that are more than six months old.

2007 Acts, ch 170, §1; 2010 Acts, ch 1028, §7

524.216 Annual report of superintendent.

1. The superintendent shall make a report in writing annually to the governor in the manner and within the time required by chapter 7A.

2. In addition to the matters required by chapter 7A, the annual report of the superintendent shall contain:

a. A summary of applications approved or denied by the superintendent pursuant to this chapter since the superintendent's last previous report.

b. A summary of the assets, liabilities, and capital structure of all state banks as of June 30 of the year for which the report is made.

c. A statement of the receipts and disbursements of funds of the superintendent during the fiscal year ending on the preceding June 30 and of the funds on hand on such June 30.

d. Such other information as the superintendent may deem appropriate and advisable to fairly disclose the discharge of the duties imposed upon the superintendent by this chapter.

[C97, §1881; C24, 27, 31, 35, 39, §**9148;** C46, 50, 54, 58, 62, 66, §524.21; C71, 73, 75, 77, 79, 81, §524.216]

2004 Acts, ch 1141, §14; 2007 Acts, ch 88, §7; 2008 Acts, ch 1160, §5; 2012 Acts, ch 1017, §107

524.217 Examinations.

1. The superintendent may do all of the following:

a. Make or cause to be made an examination of every state bank and trust company whenever in the superintendent's judgment such examination is necessary or advisable, but in no event less frequently than once during each two-year period by either the banking division or the appropriate federal banking agency. During the course of each examination of a state bank or trust company, inquiry shall be made as to its financial condition, the security afforded to those to whom it is obligated, the policies of its management, whether

the requirements of law have been complied with in the administration of its affairs, and such other matters as the superintendent may prescribe.

b. Make or cause to be made such limited examinations at such times and with such frequency as the superintendent deems necessary and advisable to determine the condition of any state bank or trust company and whether any person has violated any of the provisions of this chapter.

c. Make or cause to be made an examination of any corporation in which the state bank or trust company owns shares.

d. Upon application to and order of the district court of Polk county, make or cause to be made an examination of any person having business transactions or a relationship with any state bank or trust company when such examination is deemed necessary and advisable in order to determine whether the capital of the state bank or trust company is impaired or whether the safety of its deposits has been imperiled. The fee for any such examination shall be paid by the state bank or trust company.

e. To the extent necessary for the purpose of any examination provided for by this section and section 524.1105, examine all relevant books, records, accounts, and documents and compel the production of the same in the manner prescribed by section 524.214.

2. The superintendent may furnish to the federal deposit insurance corporation, the federal reserve system, the United States department of the treasury, the national credit union administration, the federal home loan bank, and financial institution regulatory authorities of other states, or to any official or supervising examiner of such regulatory authorities, a copy of the report of any or all examinations made of any state bank and of any affiliate of a state bank.

3. A copy of the report of each examination of a state bank or trust company shall be transmitted by the superintendent to the board of directors of the state bank or trust company except to the extent that the report of any such examination may be confidential to the superintendent, and each member of the board of directors shall furnish to the superintendent, on forms to be supplied by the superintendent, a statement that the member has read the report of examination.

4. All reports of examinations, including any copies of such reports, in the possession of any person other than the superintendent or employee of the banking division, including any state bank or any agency to which any report of such examination may be furnished under subsection 2, shall be confidential communications, shall not be subject to subpoena from such persons, and shall not be published or made public by such persons.

5. The report of examination of any affiliate or of any person examined as provided for in subsection 1, paragraph *"c"* or *"d"*, shall not be transmitted by the superintendent to any such affiliate or person or to any state bank or trust company or to the board of directors of any state bank or trust company unless authorized or requested by such affiliate or person.

6. The superintendent may enter into contractual agreements with other state regulators of financial institutions to share examiners or to assist in each state's respective examinations. The division of banking shall be reimbursed for any costs incurred when providing services to other states pursuant to this subsection. Any division of banking personnel assisting another state with its examination shall be covered by the provisions of the other state's tort claims act, to the extent permitted by the laws of the other state. If the law of the other state does not extend coverage to the division of banking personnel working on the other state's examination, the provisions of chapter 669 shall apply.

[R60, §1637; C73, §1571; C97, §1873; S13, §1873; C24, 27, 31, 35, §9231, 9283-g4; C39, §**9231, 9283.47;** C46, 50, 54, 58, 62, 66, §528.25, 530.4; C71, 73, 75, 77, 79, 81, §524.217]

89 Acts, ch 257, §5; 90 Acts, ch 1228, §2; 92 Acts, ch 1161, §1; 95 Acts, ch 148, §16; 2004 Acts, ch 1141, §15; 2006 Acts, ch 1015, §2; 2007 Acts, ch 170, §2, 3

Referred to in §524.212, 524.219, 537.2305

524.218 Regulation and examination of services.

A state bank shall not cause to be performed by contract or otherwise, any bank services, of a type referred to in section 524.804 for itself or any affiliate, whether on or off its premises, unless the person performing such services will be subject to supervision, regulation,

and examination by the superintendent to the same extent as if such services were being performed by the state bank itself on its own premises.

[C71, 73, 75, 77, 79, 81, §524.218; 81 Acts, ch 173, §9]

2004 Acts, ch 1141, §16

524.219 Fees.

1. A state bank subject to examination, supervision, and regulation by the superintendent shall pay to the superintendent fees, established by the superintendent, based on the costs and expenses incurred in the discharge of the duties imposed upon the superintendent by this chapter. The fees shall include but are not limited to costs and expenses for salaries, expenses and travel for employees, office facilities, supplies, and equipment.

2. The fees for examination of any affiliate of a state bank as provided for in section 524.1105, and the examinations provided for in section 524.217, subsection 1, paragraphs *"c"* and *"d"*, shall be established by the superintendent, based on the time required for the examination and the administrative costs and expenses incurred in the discharge of the duties imposed upon the superintendent by this chapter. The fees shall include but not be limited to costs and expenses for salaries, expenses and travel for employees, office facilities, supplies, and equipment.

3. Failure to pay the amount of the fees to the superintendent within ten days after the date of billing shall subject the state bank or any affiliate of a state bank to an additional charge equal to five percent of the amount of the fees for each day the payment is delinquent.

[C97, §1875, 1876, 1877; SS15, §1875; C24, 27, 31, 35, 39, §**9143, 9150, 9237;** C46, 50, 54, 58, 62, 66, §524.15, 524.23, 528.31; C71, 73, 75, 77, 79, 81, §524.219]

86 Acts, ch 1246, §617; 95 Acts, ch 148, §17; 2004 Acts, ch 1141, §17

524.220 Reports to superintendent.

1. A state bank shall render a full, clear, and accurate statement of its condition to the superintendent, in a format prescribed by the superintendent, verified by the oath of two of its officers, and attested by at least two of the directors. The superintendent may, in the superintendent's discretion, use any form of statement of condition that is used by the federal deposit insurance corporation or the federal reserve system.

2. The statement shall be transmitted to the superintendent or the superintendent's designee within thirty days after the end of each calendar quarter.

3. The superintendent shall also have power to call for special reports from a state bank whenever in the superintendent's judgment the same are necessary in order to obtain a full and complete knowledge of its condition. Such reports shall be verified and attested in the same manner as required in subsection 1 of this section.

[R60, §1636, 1637; C73, §1570, 1571; C97, §1872, 1873, 1874; S13, §1873, 1889-m; C24, 27, 31, 35, 39, §**9228, 9229, 9231, 9232, 9234, 9305;** C46, 50, 54, 58, §528.22, 528.23, 528.25, 528.26, 528.28, 532.20; C62, 66, §528.22, 528.23, 528.25, 528.26, 528.28; C71, 73, 75, 77, 79, 81, §524.220]

95 Acts, ch 148, §18; 96 Acts, ch 1056, §5; 2006 Acts, ch 1015, §3, 4

Referred to in §524.103

524.221 Preservation of bank records — statute of limitations.

1. *a.* A state bank is not required to preserve its records for a period longer than seven years after the first day of January of the year following the time of the making or filing of such records, provided, however, that account records showing unpaid balances due to depositors shall not be destroyed. A copy of an original may be kept in lieu of any such original record. For purposes of this subsection, a copy includes any duplicate, rerecording or reproduction of an original record from any photograph, photostat, microfilm, microcard, miniature or microphotograph, computer printout, electronically stored data or image, or other process which accurately reproduces or forms a durable medium for accurately and legibly reproducing an unaltered image or reproduction of the original record.

b. A copy is deemed to be an original and shall be treated as an original record in a judicial or administrative proceeding for purposes of admissibility in evidence. A facsimile,

exemplification, or certified copy of any such copy reproduced from a film record is deemed to be a facsimile, exemplification, or certified copy of the original. A printout or other tangible output readable by sight shown to accurately reflect data contained in a promissory note, negotiable instrument, or letter of credit, which contains a signature made or created by electronic or digital means such that it is stored by a computer or similar device, is deemed to be an original of such note, instrument, or letter for purposes of presenting such note, instrument, or letter for payment, acceptance, or honor, or for purposes of a judicial proceeding involving a claim based upon such note, instrument, or letter.

2. All causes of action, other than actions for relief on the grounds of fraud or mistake, against a state bank based upon a claim or claims founded on a written contract, or a claim or claims inconsistent with an entry or entries in a state bank record, made in the regular course of business, shall be deemed to have accrued, and shall accrue for the purpose of the statute of limitations one year after the breach or failure of performance of a written contract, or one year after the date of such entry or entries. No action founded upon such a cause may be brought after the expiration of six years from the date of such accrual.

3. The provisions of this section, insofar as applicable, shall apply to the records of a national bank or a federally chartered savings bank or a federally chartered savings and loan association.

[C50, 54, 58, 62, 66, §528A.1 – 528A.5; C71, 73, 75, 77, 79, 81, §524.221]

91 Acts, ch 95, §1; 99 Acts, ch 34, §1; 2011 Acts, ch 87, §1, 2; 2012 Acts, ch 1023, §81

Referred to in §524.1314

524.222 Meetings of the board of directors called by superintendent.

1. Whenever the superintendent deems it necessary and advisable the superintendent may cause a meeting of the board of directors of a state bank to be held in such manner and at such time and place as the superintendent may direct. Any report of an examination required or allowed by this chapter, any conclusions drawn therefrom by the superintendent, any recommendations made relative thereto and any other matters concerning the operation and condition of the state bank may be presented to the board of directors by the superintendent. The state bank shall cause the recommendations of the superintendent to be recorded in the minutes of the board of directors of the state bank.

2. Each member of the board of directors shall furnish to the superintendent a statement, on forms to be supplied by the superintendent, that the member has read and is familiar with the recommendations of the superintendent.

[C71, 73, 75, 77, 79, 81, §524.222]

2018 Acts, ch 1041, §127

Code editor directive applied

524.223 Power of superintendent to issue orders.

1. Whenever it shall appear to the superintendent that a state bank is engaging or has engaged, or the superintendent has reasonable cause to believe that the state bank is about to engage, in an unsafe or unsound practice in conducting the business of such state bank, or is violating or has violated, or the superintendent has reasonable cause to believe that the state bank is about to violate, any provision of this chapter or of any regulation adopted pursuant to this chapter, or any condition imposed in writing by the superintendent in connection with the approval of any matter required by this chapter, or any written agreement entered into with the superintendent, or any provision of chapter 12C or any rules adopted pursuant to chapter 12C, the superintendent may issue and serve upon the state bank a notice containing a statement of the facts constituting the alleged violation or violations, or the unsafe or unsound practice or practices, and fixing a time and place at which a hearing will be held to determine whether an order to cease and desist should be issued to the state bank.

2. If the state bank fails to appear at the hearing it shall be deemed to have consented to the issuance of a cease and desist order. In the event of such consent, or if upon the record made at such hearing, the superintendent shall find that any violation or unsafe or unsound practice specified in the notice has been established, the superintendent may issue and serve upon the bank an order to cease and desist from any such violation or practice. Such order may require

the state bank and its directors, officers and employees to cease and desist from any such violation or practice and, further, to take affirmative action to correct the conditions resulting from any such violation or practice. In addition, if the violation or practice involves a failure to comply with chapter 12C or any rules adopted pursuant to chapter 12C, the superintendent may recommend to the committee established under section 12C.6 that the bank be removed from the list of financial institutions eligible to accept public funds under section 12C.6A and may require that during the current calendar quarter and up to the next succeeding eight calendar quarters that the bank do any one or more of the following:

a. Not accept public funds deposits.

b. Return to the depositors some or all uninsured public funds held in demand deposits and, when deposit instruments or agreements mature, return to the depositors some or all deposits representing proceeds of such instruments or agreements.

c. Pledge collateral to the treasurer of state having a value at all times up to one hundred ten percent of the public funds held by the bank.

d. Comply with such other requirements as the superintendent may impose.

3. Any order issued pursuant to this section shall become effective upon service of the order on the state bank and shall remain effective except to such extent that it is stayed, modified, terminated, or set aside by action of the superintendent or of the district court of the county in which the state bank has its principal place of business.

4. The superintendent may apply to the district court of the county in which the state bank has its principal place of business for the enforcement of any order pursuant to this section and such court shall have jurisdiction and power to order and require compliance.

[C73, §1572; C97, §1877; C24, 27, 31, 35, 39, §**9235;** C46, 50, 54, 58, 62, 66, §528.29; C71, 73, 75, 77, 79, 81, §524.223]

2002 Acts, ch 1096, §16, 17

Referred to in §524.228

524.224 Grounds for management of state bank by superintendent.

1. The superintendent may take over the management of the property and business of a state bank whenever it appears to the superintendent that:

a. The state bank has violated its articles of incorporation or any law of this state.

b. The capital of the state bank is impaired.

c. The state bank is conducting its business in an unsafe or unsound manner.

d. The state bank is in such condition that it is unsound, unsafe or inexpedient for it to transact business.

e. The state bank has suspended or refused payment of its deposits or other liabilities contrary to the terms thereof.

f. The state bank refuses to make its records available to the superintendent for examination or otherwise refuses to make available, through an officer or employee having knowledge thereof, information required by the superintendent for the proper discharge of the duties of the superintendent's office.

g. The state bank neglects or refuses to observe any order of the superintendent made pursuant to the provisions of this chapter, unless the enforcement of such order is stayed in a proceeding brought by the state bank.

h. The state bank has not transacted any business or performed any of the duties, contemplated by its authorization to do business, for a period of one year.

i. The state bank has failed to renew its corporate existence in the manner provided for in section 524.314 within one hundred eighty days prior to the expiration thereof.

2. The superintendent shall thereafter manage the property and business of the state bank until such time as the superintendent may relinquish to the state bank the management thereof, upon such conditions as the superintendent may prescribe, or until its affairs be finally dissolved as provided in this chapter.

[C73, §1572; C97, §1877; C24, 27, 31, 35, §9283-e1, -e2, -e3, -e4; C39, §**9235, 9285.05 – 9285.08;** C46, 50, 54, 58, 62, 66, §528.29, 528.90 – 528.93; C71, 73, 75, 77, 79, 81, §524.224]

95 Acts, ch 148, §19; 2012 Acts, ch 1023, §157

Referred to in §524.225, 524.226

524.225 Procedures — judicial review.

Judicial review of the actions of the superintendent may be sought in accordance with chapter 17A. However, contested case provisions of chapter 17A, the Iowa administrative procedure Act, do not apply to an action by the superintendent to take over the management of or to manage a state bank, as authorized by sections 524.224 and 524.226.

[C71, 73, 75, 77, 79, 81, §524.225]

89 Acts, ch 257, §6

524.226 Management of state bank by superintendent.

1. Upon taking over the management of the property and business of a state bank, the superintendent shall have the authority to operate and direct the affairs of the state bank in its regular course of business. The superintendent shall also have the authority to collect such amounts due to the state bank and to do such other acts as are necessary or expedient to conduct the affairs of the state bank and conserve or protect its assets, property and business.

2. If upon taking over the management of the business and property of the state bank, the superintendent concludes that the state bank is insolvent or should be dissolved for any other reason enumerated in section 524.224, the superintendent may immediately, or at any time within three years, order that the state bank cease to carry on its business and proceed to dissolve the affairs of the state bank in accordance with the provisions of this chapter. If the superintendent has not caused the state bank to cease to carry on its business within three years of taking over the management of the property and business of the state bank, the superintendent shall relinquish the management thereof to the state bank.

3. The superintendent may appoint one or more special deputies as agent or agents, with powers specified in the certificate of appointment, to assist the superintendent in the duty of management, conservation or dissolution and distribution of the business and property of a state bank.

4. The superintendent, during the period of the superintendent's management of the property and business of the state bank, may require reimbursement by the state bank to the extent of the expenses incurred by the superintendent in connection with such management.

[C73, §1572; C97, §1877; C24, 27, 31, 35, §9238, 9283-e2, -e4; C39, §**9238, 9283.06, 9283.08;** C46, 50, 54, 58, 62, 66, §528.32, 528.91, 528.93; C71, 73, 75, 77, 79, 81, §524.226]

2012 Acts, ch 1017, §19, 28

Referred to in §524.225, 524.1310

524.227 Enforcement of Iowa consumer credit code.

1. The superintendent shall enforce the Iowa consumer credit code, chapter 537, with respect to banks, as provided in sections 537.2303, 537.2305, and 537.6105.

2. The superintendent shall cooperate with the administrator, and shall assist the administrator whenever necessary to provide for the discharge of the duties of the administrator.

3. Notwithstanding other provisions of this chapter to the contrary, the superintendent shall authorize to be furnished to the administrator, access to or copies of records in the possession of the superintendent or other persons which relate to a bank when necessary to enable the administrator to enforce chapter 537.

4. The superintendent shall make an annual report in writing to the administrator. A copy of the report shall be furnished at cost by the superintendent to each bank or other person upon request. The annual report shall contain:

a. A summary of applications to engage in the business of banking approved or denied by the superintendent since the last report.

b. An estimate of the disbursements of agency funds for consumer credit protection during the calendar year ending the preceding December 31.

c. Information which the superintendent may deem appropriate and advisable to disclose.

d. Information which the administrator may require to be included.

[C75, 77, 79, 81, §524.227]

91 Acts, ch 118, §1; 2003 Acts, ch 44, §114

524.228 Interim cease and desist order — final order — suspension.

1. If it appears to the superintendent that a state bank, or any director, officer, employee, or substantial shareholder of the state bank is engaging in or is about to engage in an unsafe or unsound practice or dishonest act in conducting the business of the state bank that is likely to cause insolvency or substantial dissipation of assets or earnings of the state bank, or is likely to seriously weaken the condition of the state bank or otherwise seriously prejudice the interests of its depositors prior to the completion of the proceedings conducted pursuant to section 524.223, 524.606, subsection 2, or 524.707, subsection 2, the superintendent may issue an interim order requiring the bank, director, officer, employee, or substantial shareholder to cease and desist from any such practice or act, and to take affirmative action, including suspension of the director, officer, or employee to prevent such insolvency, dissipation, condition, or prejudice pending completion of the proceedings. The interim order becomes effective upon service upon the state bank, or upon the director, officer, employee, or substantial shareholder of the state bank and, unless set aside, limited, or suspended by a court as provided in this chapter, remains effective and enforceable pending the completion of the administrative proceedings pursuant to the interim order and until such time as the superintendent dismisses the charges specified in the interim order, or, if a final cease and desist order is issued against the state bank or the director, officer, employee, or substantial shareholder until the effective date of the final order.

2. Within ten days after the state bank concerned or any director, officer, employee, or substantial shareholder is served with an interim order, the bank or such director, officer, employee, or substantial shareholder may apply to the district court in the county in which the bank has its principal place of business, for an injunction setting aside, limiting, or suspending the enforcement, operation, or effectiveness of such interim order pending the completion of the administrative proceedings. If serious prejudice to the interests of the superintendent, the state bank, the officer, director, employee, or substantial shareholder would result from such hearing, the court may order the judicial proceeding to be conducted in camera.

3. The interim order shall contain a concise statement of the facts constituting the alleged unsafe or unsound practice or alleged dishonest act, and shall fix a time and place at which a hearing will be held to determine whether a final order to cease and desist should issue against the state bank or any director, officer, employee, or substantial shareholder. The hearing shall be fixed for a date not later than thirty days after service of the interim order unless a later date is set at the request of the party so served. If the state bank, or the director, officer, employee, or substantial shareholder fails to appear at the hearing, the state bank, or the director, officer, employee, or substantial shareholder is deemed to have consented to the issuance of a cease and desist order. In the event of such consent, or if upon the record made at the hearing the superintendent finds that any unsafe or unsound practice or dishonest act specified in the interim order has been established, the superintendent may issue and serve upon the bank, or the director, officer, employee, or substantial shareholder a final order to cease and desist from any such practice or act. The order may require the state bank, or the director, officer, employee, or substantial shareholder to cease and desist from any such practice or act and, further, to take affirmative action, including suspension of the director, officer, or employee.

4. A hearing provided for in this section shall be presided over by an administrative law judge appointed in accordance with section 17A.11. The hearing shall be private, unless the superintendent determines after full consideration of the views of the party afforded the hearing, that a public hearing is necessary to protect the public interest. After the hearing, and within thirty days after the case has been submitted for decision, the superintendent shall review the proposed order of the administrative law judge and render a final decision, including findings of fact upon which the decision is predicated, and issue and serve upon each party to the proceeding an order consistent with this section.

5. Any final order issued by the superintendent pursuant to subsection 3 becomes effective upon service of the final order on the state bank, director, officer, employee, or substantial shareholder and shall remain effective except to the extent that it is stayed, modified, terminated, or set aside by action of the superintendent or of the district court of

the county in which the state bank has its principal place of business in accordance with the terms of chapter 17A.

6. In the case of violation or threatened violation of, or failure to obey, an interim order issued pursuant to subsection 1 or a final order issued pursuant to subsection 3, the superintendent may apply to the district court of the county in which the state bank has its principal place of business for the enforcement of the order and such court shall have jurisdiction and power to order and require compliance with the interim order or final order.

7. For purposes of this section, "*substantial shareholder*" means a shareholder exercising a controlling influence over the management or policies of a state bank as determined by the superintendent.

91 Acts, ch 220, §2

524.229 Emergency powers of superintendent.

Whenever the superintendent determines that an emergency affecting one or more state-chartered banks or bank offices exists, or is impending, in this state or in any part or parts of this state, the superintendent may temporarily suspend applicable rules or statutes to the extent necessary to allow the affected bank or banks to respond to the emergency.

2008 Acts, ch 1160, §6

524.230 through 524.300 Reserved.

SUBCHAPTER III

INCORPORATION

524.301 Incorporators — organizers.

A state bank may be incorporated or organized as a limited liability company under this chapter by one or more individuals eighteen years of age or older, a majority of whom shall be residents of this state and citizens of the United States.

[C97, §1840, 1863; C24, 27, 31, 35, 39, §**9155, 9204;** C46, 50, 54, 58, 62, 66, §526.1, 527.3; C71, 73, 75, 77, 79, 81, §524.301]

95 Acts, ch 148, §20; 2004 Acts, ch 1141, §49

524.302 Articles of incorporation.

1. The articles of incorporation of a state bank, in the form prescribed by the superintendent, shall set forth the following:

a. The name of the state bank, that it is incorporated for the purpose of conducting the business of banking, and that it is incorporated under the provisions of this chapter.

b. The location of its proposed principal place of business including the name of the municipal corporation and county.

c. The duration of the state bank which shall be perpetual.

d. (1) If the state bank will be a stock corporation, the aggregate number of common and preferred shares which the state bank shall have authority to issue and the par value of such shares. If such shares are to be divided into classes or series, the number of shares of each class or series and a statement of the par value of the shares of each class or series.

(2) If the state bank will be a mutual corporation, that the corporation will be a mutual corporation.

e. The number of directors constituting the initial board of directors and the names and addresses of the individuals who are to serve as directors until the first annual meeting of shareholders or until their successors be elected and qualify.

f. The name and address of each incorporator.

g. The specific month in which the annual meeting of shareholders is to be held.

2. The articles of incorporation may set forth any or all of the following:

a. Provisions not inconsistent with law regarding:

(1) Managing the business and regulating the affairs of the corporation.

(2) Defining, limiting, and regulating the affairs of the corporation.

b. Any provision required or permitted by this chapter to be set forth in the bylaws.

c. A provision eliminating or limiting the personal liability of a director to the corporation or its shareholders for monetary damages for breach of fiduciary duty as a director, provided that the provision does not eliminate or limit the liability of a director for any breach of the director's duty of loyalty to the corporation or its shareholders, for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, for any transaction from which the director derives an improper personal benefit, or under section 524.605, subsection 1, paragraph *"a"* or *"b"*. A provision shall not eliminate or limit the liability of a director for any act or omission occurring prior to the date when the provision in the articles of incorporation becomes effective.

3. The articles of incorporation need not set forth any of the corporate powers enumerated in this chapter. The articles of incorporation shall be signed by all of the incorporators.

[C97, §1842, 1863; S13, §1842; C24, 27, 31, 35, 39, §**9157, 9204;** C46, 50, 54, 58, 62, 66, §526.3, 527.3; C71, 73, 75, 77, 79, 81, §524.302]

84 Acts, ch 1032, §1; 87 Acts, ch 212, §12; 88 Acts, ch 1170, §10; 89 Acts, ch 257, §7, 8; 95 Acts, ch 148, §21; 96 Acts, ch 1056, §6; 2012 Acts, ch 1017, §5, 18; 2012 Acts, ch 1023, §155

Referred to in §524.1411, 524.1508

524.302A Articles of incorporation — limited liability company.

1. The articles of incorporation of a state bank organized as a limited liability company under this chapter shall be in the form prescribed by the superintendent, and shall set forth all of the following:

a. The name of the state bank, that it is organized for the purpose of conducting the business of banking, and that it is organized under the provisions of this chapter.

b. The street address of the limited liability company's initial registered office and the name of its initial registered agent at that office.

c. The location of the state bank's proposed principal office of the limited liability company, which may be the same as the registered office, but need not be within this state.

d. The duration of the state bank, which shall be perpetual.

e. The aggregate number of common and preferred shares which the state bank shall have authority to issue and the par value of such shares. If such shares are to be divided into classes or series, the number of shares of each class or series and a statement of the par value of the shares of each class or series.

f. The number of managers constituting the initial board of directors and the names and addresses of the individuals who are to serve as directors until successors are elected and qualify. A statement that the exclusive authority to manage the state bank is vested in a board of directors that is elected or appointed by the members, that operates in substantially the same manner as, and has substantially the same rights, powers, privileges, duties, and responsibilities as, a board of directors of a state bank chartered as a corporation under this chapter.

g. A provision that the articles of incorporation, operating agreement, or other organizational documents of the state bank shall not require the consent of any other owner in order for an owner to transfer membership interests in the state bank, including voting rights.

2. The articles of incorporation may set forth any or all of the following:

a. Provisions not inconsistent with law regarding management of the business and regulation of the affairs of the state bank.

b. Any provision required or permitted by this chapter to be set forth in the operating agreement.

3. The articles of incorporation need not set forth any of the organizational powers enumerated in this chapter.

2004 Acts, ch 1141, §50

524.303 Application for approval.

The incorporators or organizers shall make an application to the superintendent for approval of a proposed state bank in the manner prescribed by the superintendent and shall deliver to the superintendent, together with such application:

1. The articles of incorporation.

2. Applicable fees, payable to the secretary of state as specified in section 489.117 or section 490.122, for the filing and recording of the articles of incorporation.

[C97, §1842, 1863; S13, §1842; C24, 27, 31, 35, §9140-c1; C39, §**9140.1, 9158, 9205;** C46, 50, 54, 58, 62, 66, §524.11, 526.4, 527.4; C71, 73, 75, 77, 79, 81, §524.303]

90 Acts, ch 1205, §37; 95 Acts, ch 148, §22; 2004 Acts, ch 1141, §51; 2008 Acts, ch 1162, §147, 154, 155

Referred to in §524.314

524.304 Publication of notice.

1. The incorporators or organizers of a state bank shall, within thirty days of the acceptance of the application for processing, publish notice of the proposed incorporation or organization once each week for two successive weeks in a newspaper of general circulation published in the municipal corporation which is proposed as the principal place of business of the state bank, or if there is none, a newspaper of general circulation published in the county, or in a county adjoining the county, in which the proposed state bank is to have its principal place of business. The notice shall set forth all of the following:

a. The name of the proposed state bank.

b. A statement that it is to be incorporated or organized under this chapter.

c. The purpose or purposes of the state bank.

d. The names and addresses of the incorporators or organizers and of the members of the initial board of directors or board of directors as they appear, or will appear, in the articles of incorporation.

e. The date the application was accepted for processing.

f. If the incorporation or organization of the state bank has been approved by the superintendent under section 524.305, subsection 8, the name and address of the bank with which the state bank will have merged, or the assets of which the state bank will have acquired or the condition of which in some other way provided a purpose for the incorporation or organization.

2. Proof of publication of the notice by affidavit of the publisher of the newspaper in which the notice appears shall be filed with the superintendent and is conclusive evidence of the publication.

[C97, §1842, 1863; S13, §1842; C24, 27, 31, 35, 39, §**9159, 9205;** C46, 50, 54, 58, 62, 66, §526.5, 527.4; C71, 73, 75, 77, 79, 81, §524.304]

95 Acts, ch 148, §23; 2004 Acts, ch 1141, §52

Referred to in §524.305, 524.314

524.305 Approval by superintendent.

1. Upon receipt of an application for approval of a state bank, the superintendent shall conduct an investigation as the superintendent deems necessary to ascertain whether:

a. The articles of incorporation and supporting items satisfy the requirements of this chapter.

b. The convenience and needs of the public will be served by the proposed state bank.

c. The population density or other economic characteristics of the area primarily to be served by the proposed state bank afford reasonable promise of adequate support for the state bank.

d. The character and fitness of the incorporators or organizers and of the members of the initial board of directors are such as to command the confidence of the community and to warrant the belief that the business of the proposed state bank will be honestly and efficiently conducted.

e. The capital structure of the proposed state bank is adequate in relation to the amount of the anticipated business of the state bank and the safety of prospective depositors.

f. The proposed state bank will have sufficient personnel with adequate knowledge and experience to conduct the business of the state bank, and to administer fiduciary accounts, if the state bank is to be authorized to act in a fiduciary capacity.

2. Within one hundred eighty days after the application is accepted for processing, the superintendent shall approve or disapprove the application on the basis of the investigation.

3. Within thirty days after the date of the second publication of the notice required under section 524.304, any interested person may submit written comments and information to the superintendent concerning the application. Comments challenging the legality of an application must be submitted separately in writing. The superintendent may extend the thirty-day comment period, if, in the judgment of the superintendent, extenuating circumstances which justify the extension exist.

4. Within thirty days after the date of the second publication of the notice required by section 524.304, any interested person may submit a written request of the superintendent for a hearing on the application. The request shall state the nature of the issues or facts to be presented and the reasons why written submissions would be insufficient to make an adequate presentation to the superintendent. If the reasons are related to factual disputes, the disputes shall be described. A written request for a hearing shall be evaluated by the superintendent, who may grant or deny the request in whole or in part. A hearing request shall generally be granted only if it is determined that written submissions would be inadequate or that a hearing would otherwise be beneficial to the decision-making process. A hearing may be limited to issues considered material by the superintendent.

5. If a request for a hearing is denied, the superintendent shall notify the applicant and all interested persons and shall state the reasons for the denial. An interested person may submit additional written comments or information on the application to the superintendent, with copies to the applicant at the time of submission to the superintendent, within fourteen days after the date of the notice of denial. The applicant shall be provided an additional seven days, after the fourteen-day deadline has expired, within which to respond to any comments submitted within the fourteen-day period after the notice of denial. The superintendent may waive this seven-day period if requested by the applicant. A copy of any response submitted by the applicant shall also be mailed by the applicant to the interested persons at the time the response is submitted to the superintendent.

6. If the superintendent approves the application, the superintendent shall notify the incorporators or organizers, and such other persons who requested in writing that they be notified, of the approval. If the superintendent disapproves the application, the superintendent shall notify the incorporators or organizers of the action and the reason for the decision.

7. The actions of the superintendent shall be subject to judicial review in accordance with chapter 17A. The court may award damages to the incorporators or organizers if it finds that review is sought frivolously or in bad faith.

8. Subsections 3, 4, and 5 shall not apply if the superintendent finds that one of the purposes of the proposed state bank is the merger with, or the purchase of some or all of the assets of and assumption of some or all of the liabilities of, a bank for which a receiver has been appointed or which has been ordered, by authorities of this state or the United States, to cease to carry on its business, or if the superintendent finds for any other reason that immediate action on the pending application is advisable in order to protect the interests of depositors or the assets of any other bank.

9. As a condition of receiving the decision of the superintendent with respect to the application, the incorporators or organizers shall reimburse the superintendent for all expenses incurred by the superintendent in connection with the application.

[C24, 27, 31, 35, §9140-c1, 9141, 9142; C39, §**9140.1, 9141, 9142;** C46, 50, 54, 58, 62, 66, §524.11, 524.12, 524.13; C71, 73, 75, 77, 79, 81, §524.305]

92 Acts, ch 1161, §2; 95 Acts, ch 148, §24; 2004 Acts, ch 1141, §53, 54

Referred to in §524.304, 524.312, 524.314, 524.1001, 533.305

524.306 Incorporation or organization of state bank.

1. Unless a delayed effective date or time is specified, the corporate or organizational

existence of a state bank begins when the articles of incorporation, with the superintendent's approval indicated on the articles of incorporation, are filed with the secretary of state. The secretary of state shall record the articles of incorporation and forward a copy of them to the county recorder of the county in which the state bank is to have its principal place of business.

2. The secretary of state's acknowledgment of filing of the articles of incorporation is conclusive proof that the incorporators or organizers satisfied all conditions precedent to incorporation or organization, except in a proceeding instituted by the superintendent to cancel or revoke the incorporation or involuntarily dissolve the corporation or organization.

[C97, §1842, 1863; S13, §1842; C24, 27, 31, 35, 39, §**9158, 9205;** C46, 50, 54, 58, 62, 66, §526.4, 527.4; C71, 73, 75, 77, 79, 81, §524.306]

90 Acts, ch 1205, §38; 91 Acts, ch 211, §11; 95 Acts, ch 148, §25; 96 Acts, ch 1034, §50; 2004 Acts, ch 1141, §55

Referred to in §524.314

524.307 Initial organization of state bank.

Upon incorporation, or organization as a limited liability company, of the state bank, the initial board of directors shall hold an organizational meeting within this state, at the call of a majority of the directors, to complete the organization of the state bank by electing officers, adopting bylaws, if any are to be adopted, and conducting any other business properly brought before the board at the meeting.

[C97, §1845; C24, 27, 31, 35, 39, §**9168;** C46, 50, 54, 58, 62, 66, §526.11; C71, 73, 75, 77, 79, 81, §524.307]

95 Acts, ch 148, §26; 2004 Acts, ch 1141, §56

Referred to in §524.314

524.308 Issuance of authorization to do business.

1. The state bank shall not accept deposits or transact any business except such business as is incident to commencement of business, or to the obtaining of subscriptions and payment for its shares until receipt of an authorization to do business from the superintendent. The superintendent shall issue an authorization to do business upon finding that the proposed state bank has complied with all the requirements of this chapter precedent to commencing business and has submitted to the superintendent a statement under oath, in the manner designated by the superintendent, showing that the capital, surplus and undivided profits required by the superintendent in accordance with this chapter have been fully paid in.

2. If a state bank transacts any business before receipt of an authorization to do business in violation of subsection 1, the directors, managers, and officers who willfully authorized or participated in the action are severally liable for the debts and liabilities of the state bank incurred prior to the receipt of the authorization to do business.

[C97, §1843, 1864; S13, §1843, 1864; C24, 27, 31, 35, 39, §**9161, 9207;** C46, 50, 54, 58, 62, 66, §526.6, 527.5; C71, 73, 75, 77, 79, 81, §524.308]

95 Acts, ch 148, §27, 28; 2004 Acts, ch 1141, §57

Referred to in §524.314

524.309 Publication of authorization to do business.

1. A state bank shall cause to be published once within two weeks after the issuance by the superintendent of the authorization to do business, in a newspaper of general circulation published in the municipal corporation which is the principal place of business of the state bank, or if there is none, a newspaper of general circulation published in the county, or in a county adjoining the county, in which the state bank has its principal place of business, a notice which shall state all of the following:

a. The name of the state bank, the address of its principal place of business, and the date of the issuance of the authorization to do business.

b. The names and addresses of the members of the initial board of directors as designated in the articles of incorporation.

c. That the shareholders shall not be personally liable for the debts and obligations of the state bank.

2. Proof of publication, by affidavit of the publisher of the newspaper in which it was made, shall be filed with the superintendent, and is conclusive evidence of the fact.

[C97, §1843, 1864; S13, §1843, 1864; C24, 27, 31, 35, 39, §**9161, 9208;** C46, 50, 54, 58, 62, 66, §526.6, 527.6; C71, 73, 75, 77, 79, 81, §524.309]

95 Acts, ch 148, §29

Referred to in §524.314

524.310 Name of state bank.

1. The name of a state bank originally incorporated or organized after the effective date of this chapter shall include the word "bank" and may include the word "state" or "trust" in its name. A state bank using the word "trust" in its name must be authorized under this chapter to act in a fiduciary capacity. A national bank or federal savings association shall not use the word "state" in its legally chartered name.

2. The provisions of this section shall not require any state bank existing and operating on January 1, 1970, to add to, modify or otherwise change its corporate or organizational name, either on January 1, 1970, or upon renewal of its corporate existence pursuant to section 524.314.

3. If a state bank existing and operating on January 1, 1970, causes its corporate or organizational name to be changed, the name as changed shall comply with subsection 1 of this section.

4. *a.* A person may reserve the exclusive use of a corporate or organizational name for a state bank by delivering an application to the secretary of state for filing. The application must set forth the name and address of the applicant and the name proposed to be reserved. If the secretary of state finds that the corporate or organizational name applied for is available, the secretary of state shall reserve the name for the applicant's exclusive use for a nonrenewable one hundred twenty-day period.

b. The owner of a reserved corporate or organizational name may transfer the reservation to another person by delivering to the secretary of state a signed notice of the transfer that states the name and address of the transferee.

5. A state bank using a fictitious name to transact business in this state may file its fictitious name with the secretary of state by delivering to the superintendent for filing with the secretary of state a copy of the resolution of its board of directors certified by its secretary, adopting the fictitious name. A state bank using a fictitious name shall comply with the requirements of section 524.1206 and with any other regulatory requirements governing use of its name. The fictitious name must be distinguishable upon the record of the secretary of state from all of the following:

a. The corporate name of a business or nonprofit corporation incorporated or authorized to transact business in this state.

b. A corporate or company name reserved, registered, or protected as provided in section 489.109, 490.402, 490.403, 504.402, or 504.403.

c. The fictitious name of another foreign business or nonprofit corporation authorized to transact business in this state.

[C97, §1861, 1889; S13, §1889, 1889-i; C24, 27, 31, 35, 39, §**9202, 9261, 9295, 9296;** C46, 50, 54, 58, 62, 66, §527.1, 528.54, 532.12, 532.13; C71, 73, 75, 77, 79, 81, §524.310]

84 Acts, ch 1202, §1; 91 Acts, ch 11, §1; 91 Acts, ch 258, §61; 95 Acts, ch 148, §30; 2004 Acts, ch 1141, §18, 58; 2005 Acts, ch 19, §108; 2010 Acts, ch 1028, §8; 2011 Acts, ch 34, §120; 2011 Acts, ch 131, §73, 158

Referred to in §524.1416

524.311 Commission for organizing state banks.

No person shall, directly or indirectly, receive or contract to receive any commission or bonus of any kind for organizing any state bank or for securing a subscription to the original capital of any state bank or to any increase thereof; provided that this section shall not be construed as prohibiting the payment of reasonable compensation for legal or accounting services in connection with organization.

[C24, 27, 31, 35, 39, §**9275;** C46, 50, 54, 58, 62, 66, §528.74; C71, 73, 75, 77, 79, 81, §524.311]

Referred to in §524.1610

524.312 Location of state bank — exceptions.

1. A state bank originally incorporated or organized pursuant to this chapter shall have its principal place of business within the city limits of a municipal corporation. The existence of a state bank shall not, however, be affected by the subsequent discontinuance of the municipal corporation. A state bank existing and operating on January 1, 1970, which does not have its principal place of business within the city limits of a municipal corporation, may renew its corporate or organizational existence pursuant to section 524.314 without regard to this section and may also operate as a bank or convert to and operate as a bank office when acquired by or merged into another state bank and approved by the superintendent.

2. A state bank may, with the prior written approval of the superintendent, change the location of its principal place of business to a new location within the state.

3. If a change in the location of the principal place of business of a state bank is proposed, application for approval of the superintendent shall be made as required by the superintendent pursuant to this section. A change in location of the principal place of business of a state bank, including a change from one municipal corporation to another municipal corporation within an urban complex, requires an amendment to the articles of incorporation pursuant to sections 524.1502, 524.1504, and 524.1506. A state bank seeking approval of a change of location pursuant to this subsection shall publish a notice of the proposed change of location in a newspaper of general circulation in the municipal corporation or unincorporated area in which the state bank has its principal place of business, or if there is none, in a newspaper of general circulation in the county, or in a county adjoining the county, in which the state bank has its principal place of business, and in the municipal corporation in which it seeks to establish its principal place of business, or if there is none, in a newspaper of general circulation in the county, or in a county adjoining the county, in which the municipal corporation is located. The notice shall be published within thirty days after the application to the superintendent for approval of the change in location is accepted for processing. The notice shall set forth the name of the state bank, the present location of its principal place of business, the location to which it proposes to move its principal place of business, and the date upon which the application was accepted for processing by the superintendent.

4. Within thirty days after acceptance of an application for approval of a change of location of the principal place of business of a state bank pursuant to subsection 3, the superintendent shall commence an investigation into the circumstances of the application as deemed necessary by the superintendent, giving due consideration to factors substantially similar to those set forth in section 524.305, subsection 1, paragraphs *"c"* through *"f"*. Within one hundred eighty days after the application has been accepted for processing, the superintendent shall approve or disapprove the application on the basis of the investigation. The superintendent shall give written notice of the decision to the state bank, and in the event of disapproval a statement of the reasons for the disapproval. If the superintendent approves the change in location the superintendent shall deliver the articles of amendment to the secretary of state. As a condition of receiving the decision of the superintendent with respect to the application, the state bank shall reimburse the superintendent for all expenses incurred by the superintendent in connection with the application.

5. A state bank approved under the provisions of section 524.305, subsection 8, shall not commence its business at any location other than within a municipal corporation or unincorporated area in which was located the principal place of business or an office of the bank the condition of which was the basis for the superintendent authorizing incorporation or organization of the new state bank.

[C71, 73, 75, 77, 79, 81, §524.312]

85 Acts, ch 13, §1; 95 Acts, ch 148, §31, 32; 2004 Acts, ch 1141, §59; 2006 Acts, ch 1015, §5; 2008 Acts, ch 1160, §7

524.313 Bylaws.

A state bank may adopt bylaws. The power to adopt, amend, or repeal bylaws or adopt new bylaws is vested in the board of directors unless reserved to the shareholders by the articles of incorporation. The bylaws may contain any provisions for the regulation and management

of the affairs of the state bank not inconsistent with law or the articles of incorporation. For a state bank organized as a limited liability company under this chapter, *"bylaws"* means the operating agreement of the state bank.

[C97, §1844; C24, 27, 31, 35, 39, §**9162;** C46, 50, 54, 58, 62, 66, §526.7; C71, 73, 75, 77, 79, 81, §524.313]

95 Acts, ch 148, §33; 2004 Acts, ch 1141, §60

524.314 Renewal of corporate existence of existing state bank.

1. The corporate existence of a state bank existing and operating on January 1, 1970, which expires subsequent to that date, may be renewed prior to the expiration date of the corporate existence, following the affirmative vote of the holders of at least a majority of the shares entitled to vote on the renewal, at a meeting held for that purpose and called as provided by section 524.533, and delivery to the superintendent of the articles of incorporation together with the applicable filing and recording fees for the filing and recording. If the superintendent finds that the articles of incorporation satisfy the requirements of this section, the superintendent shall deliver them to the secretary of state for filing and recording in the secretary of state's office. Following the receipt of the articles of incorporation, the secretary of state shall proceed as provided in section 524.306.

2. Sections 524.303, 524.304, 524.305, 524.307, 524.308, and 524.309 are not applicable to a state bank existing and operating on January 1, 1970, which renews its corporate existence as provided in subsection 1.

3. The renewal of the corporate existence of a state bank pursuant to this section shall not affect any right accrued or established, or any liability or penalty incurred, under the laws of this state or of the United States, prior to the issuance of a certificate of incorporation by the secretary of state.

95 Acts, ch 148, §34

Referred to in §524.224, 524.310, 524.312

524.315 State banks as limited liability companies.

1. A state bank organized as a limited liability company under this chapter shall also be subject to chapter 489, the revised uniform limited liability company Act. If a provision of chapter 489, the revised uniform limited liability company Act, conflicts with a provision of this chapter or any rule of the superintendent adopted pursuant to this chapter, the provisions of this chapter or rule of the superintendent shall control.

2. The superintendent shall possess the exclusive authority to regulate a state bank organized as a limited liability company under this chapter.

3. The superintendent may adopt rules to ensure that a state bank organized as a limited liability company under this chapter is operating in a safe and sound manner and is subject to the superintendent's authority in the same manner as a state bank organized as a corporation.

2004 Acts, ch 1141, §61; 2008 Acts, ch 1162, §148, 154, 155

524.316 State banks as mutual corporations.

The superintendent may adopt rules to ensure that a state bank incorporated as a mutual corporation is operating in a safe and sound manner and is subject to the superintendent's authority in the same manner as a state bank incorporated as a stock corporation.

2012 Acts, ch 1017, §6, 18

524.317 through 524.400 Reserved.

SUBCHAPTER IV

CAPITAL STRUCTURE

524.401 Minimum capital.

1. The minimum capital structure of a state bank existing and operating on July 1, 1995, shall not be less than the amount required by law prior to that date.

2. The minimum capital structure of a state bank incorporated after July 1, 1995, or organized after July 1, 2004, pursuant to the provisions of this chapter shall not be less than the amount required by the federal deposit insurance corporation, or its successor, or a greater amount which the superintendent may deem necessary in view of the deposit potential of the state bank and current banking standards relating to total capital requirements.

3. A state bank incorporated on or after July 1, 1995, or organized after July 1, 2004, pursuant to this chapter, prior to receiving authorization to do business from the superintendent, shall establish paid-in surplus and undivided profits as required by the superintendent.

4. A state bank originally incorporated or organized pursuant to this chapter shall establish, prior to receiving authorization to do business from the superintendent, paid-in surplus and undivided profits as required by the superintendent.

[C97, §1843, 1864; S13, §1843, 1864; C24, 27, §9160, 9206; C31, §9217-c1; C35, §9217-c1, 9283-f14; C39, §**9217.1, 9283.42;** C46, 50, 54, 58, 62, 66, §528.1, 528.127; C71, 73, 75, 77, 79, 81, §524.401]

95 Acts, ch 148, §35; 96 Acts, ch 1056, §7; 2004 Acts, ch 1141, §62

Referred to in §524.103

524.402 and 524.403 Repealed by 95 Acts, ch 148, §135.

524.404 Capital notes and debentures.

1. A state bank, with the prior approval of the superintendent and the affirmative vote of the holders of a majority of the shares entitled to vote, may issue capital notes or debentures. The amounts, maturities, rate of interest, relative rights with other creditors, and other terms and conditions shall be set forth on the face of the capital notes or debentures or in an attendant agreement, and all terms and conditions are subject to the prior approval of the superintendent provided that all such capital notes and debentures shall be subordinated to the rights of other persons to the extent provided for in section 524.1312. The aggregate amount of all capital notes and debentures issued and outstanding pursuant to this section shall not exceed, at any one time, twenty-five percent of the aggregate capital of the state bank.

2. A state bank shall not make any payment of principal on any capital notes or debentures without the prior approval of the superintendent nor shall any payment of principal and interest be made on any such capital or debentures by a state bank when its capital is impaired or which would cause its capital to become impaired. Subject to the provisions of this section a state bank may issue capital notes or debentures with provision for installment or serial payment of capital notes or debentures according to an established schedule which shall be approved by the superintendent prior to issuance.

3. A state bank shall not issue capital notes or debentures within five years after it is originally authorized to do business.

[C71, 73, 75, 77, 79, 81, §524.404]

95 Acts, ch 148, §36

Referred to in §524.103, 524.814, 524.818

524.405 Increase or decrease of capital structure.

1. A state bank incorporated as a stock corporation may increase its capital structure or effect an allocation of amounts within its capital structure by the use of any of the following methods:

a. Sale of authorized but unissued shares.

b. Transfer of surplus or undivided profits to capital for authorized but unissued shares.

c. Transfer of undivided profits to surplus.

d. Authorization and issuance of common shares, preferred shares, or capital notes or debentures.

2. The superintendent, whenever it appears necessary to do so in the interest of the safety of the deposits of a state bank incorporated as a stock corporation, may require that the capital

structure of the state bank be increased by either of the methods provided for in subsection 1, paragraphs *"a"* and *"d"*.

3. Capital or surplus shall not be decreased except with the approval of the superintendent.

4. A state bank incorporated as a mutual corporation may raise capital by accepting payments on savings and demand accounts and by any other means authorized by the superintendent. Whenever it appears necessary to do so in the interest of the safety of the deposits of a state bank incorporated as a mutual corporation, the superintendent may require that the capital structure of the state bank be increased by any means authorized by the superintendent.

[C97, §1856; C24, 27, 31, 35, 39, §**9194, 9262, 9264, 9265;** C46, 50, 54, 58, 62, 66, §526.38, 528.56, 528.59, 528.60; C71, 73, 75, 77, 79, 81, §524.405]

95 Acts, ch 148, §37; 2004 Acts, ch 1141, §19; 2012 Acts, ch 1017, §7, 18

Referred to in §524.103, 524.521, 524.543

524.406 through 524.500 Reserved.

SUBCHAPTER V

SHARES, SHAREHOLDERS, AND DIVIDENDS

524.501 through 524.517 Reserved.

524.518 Redemption of preferred shares. Repealed by 95 Acts, ch 148, §135.

524.519 and 524.520 Reserved.

524.521 Authorized shares.

1. The articles of incorporation of a stock corporation must prescribe the classes of shares and the number of shares of each class that the state bank is authorized to issue. If more than one class of shares is authorized, the articles of incorporation must prescribe a distinguishing designation for each class. Prior to the issuance of shares of a class, the preferences, limitations, and relative rights of that class must be described in the articles of incorporation. All shares of a class must have preferences, limitations, and relative rights identical with those of other shares of the same class except to the extent otherwise permitted by section 524.523.

2. The articles of incorporation of a stock corporation must authorize both of the following:

a. One or more classes of shares that together have unlimited voting rights.

b. One or more classes of shares, which may be the same class or classes as those with voting rights, that together are entitled to receive the net assets of the state bank upon dissolution.

3. The articles of incorporation of a stock corporation may authorize one or more classes of shares that have any of the following qualities:

a. Have special, conditional, or limited voting rights, or no right to vote, unless prohibited by this chapter.

b. Are redeemable or convertible as specified in the articles of incorporation in any of the following ways:

(1) At the option of the state bank, the shareholders, or another person or upon the occurrence of a designated event.

(2) For cash, indebtedness, securities, or other property.

(3) In a designated amount or in an amount determined in accordance with a designated formula or by reference to extrinsic data or events.

c. Preferred shares are redeemable only by resolution of the board of directors with the prior approval of the superintendent. Preferred shares which are redeemable according to the terms of their issuance shall be redeemed only in accordance with such terms. Preferred

shares which are redeemed shall be canceled and shall not be reissued. Preferred shares which are not redeemable according to the terms of their issuance are redeemable only pro rata, by lot, or by such other equitable method as determined by the board of directors.

d. (1) If preferred shares are redeemed by a state bank, the redemption effects a cancellation of the shares, and a statement of cancellation shall be filed as provided in this paragraph. The filing of the statement of cancellation constitutes an amendment to the articles of incorporation and reduces the number of preferred shares of the class which the state bank is authorized to issue by the number which are canceled.

(2) The statement of cancellation shall be executed by the state bank by its president or a vice president and by its cashier or an assistant cashier, and acknowledged by one of the officers signing such statement, and shall set forth all of the following:

(a) The name of the state bank and the effective date of its articles of incorporation.

(b) The number of preferred shares canceled through redemption, itemized by classes.

(c) The aggregate number of issued shares, itemized by classes, after giving effect to the cancellation.

(d) The amount, expressed in dollars, of the stated capital of the state bank after giving effect to the cancellation.

(e) The number of shares which the state bank has authority to issue, itemized by classes, after giving effect to the cancellation.

(3) The statement of cancellation, together with the applicable filing and recording fees, shall be delivered to the superintendent who shall, if the superintendent finds the statement of cancellation satisfies the requirements of this section, deliver it to the secretary of state for filing and recording in the secretary of state's office and the statement of cancellation shall also be filed and recorded in the office of the county recorder. The capital of the state bank is deemed to be reduced by the par value of the shares canceled upon the effective date of the redemption.

e. Entitle the holders to distributions calculated in any manner, including dividends that may be cumulative, noncumulative, or partially cumulative.

f. Have preference over any other class of shares with respect to distributions, including dividends and distributions upon the dissolution of the state bank.

4. The description of the designations, preferences, limitations, and relative rights of share classes in subsection 3 is not all-inclusive.

5. Unless the articles of incorporation or bylaws otherwise provide, the board of directors, by resolution duly adopted and with the approval of the superintendent as provided in section 524.405, may issue from time to time, in whole or in part, the shares authorized by the articles of incorporation.

[C97, §1853, 1865; C24, 27, §9192, 9209; C31, 35, §9192, 9209, 9261-c1; C39, §**9192, 9209, 9261.1;** C46, 50, 54, 58, 62, 66, §526.36, 527.7, 528.55; C71, 73, 75, 77, 79, 81, §524.501]

95 Acts, ch 148, §38

CS 95, §524.521

2012 Acts, ch 1017, §8, 18; 2013 Acts, ch 90, §159

Referred to in §524.522, 524.527

524.522 Terms of class or series determined by board of directors.

1. If the articles of incorporation provide for such, the board of directors may determine, in whole or in part, the preferences, limitations, and relative rights, within the limits set forth in section 524.521, of either of the following:

a. A class of shares before the issuance of any shares of that class.

b. One or more series within a class before the issuance of any shares of that series.

2. Each series of a class must be given a distinguishing designation.

3. All shares of a series must have preferences, limitations, and relative rights identical with those of other shares of the same series and, except to the extent otherwise provided in the description of the series, with those of other series of the same class.

4. Before issuing any shares of a class or series created under this section, the state bank shall deliver to the superintendent for filing with the secretary of state articles of amendment

on forms prescribed by the superintendent, which are effective without shareholder action, that set forth all of the following:

a. The name of the state bank and the effective date of its articles of incorporation.

b. The text of the amendment determining the terms of the class or series of shares.

c. The date it was adopted.

d. A statement that the amendment was duly adopted by the board of directors.

95 Acts, ch 148, §39

524.523 Certificates representing shares.

1. The shares of a state bank incorporated as a stock corporation shall be represented by certificates signed by such officers, employees, or agents as are authorized by the articles of incorporation or bylaws to sign. If no contrary provisions are made in the articles of incorporation or bylaws, the certificates shall be signed by the president or a vice president and the cashier or an assistant cashier of the state bank.

2. Each share certificate must state on its face, at a minimum, all of the following:

a. The name of the issuing state bank and that it is organized under the laws of this state.

b. The name of the person to whom issued.

c. The number and class of shares and the designation of the series, if any, which the certificate represents.

d. The par value of each share represented by the certificate.

3. A state bank which is authorized to issue different classes of shares or different series within a class must do one of the following:

a. Summarize on the front or back of each certificate the designations, relative rights, preferences, and limitations applicable to each class; the variations in rights, preferences, and limitations determined for each series; and the authority of the board of directors to determine variations for future series.

b. State conspicuously on the front or back of each certificate that the state bank will furnish the shareholder this information on request in writing and without charge.

4. Each share certificate must be signed either manually or in facsimile by two officers as set forth in subsection 1, and may bear the corporate seal or its facsimile.

5. If the person who signed a share certificate no longer holds office when the certificate is issued, the certificate is nevertheless valid.

6. A certificate shall not be issued for any share until such share is fully paid.

[C71, 73, 75, 77, 79, 81, §524.502]

95 Acts, ch 148, §40

CS 95, §524.523

2012 Acts, ch 1017, §9, 18

Referred to in §524.521, 524.526

524.524 Consideration for shares.

Except in the case of a distribution of shares authorized by section 524.543 or shares issued upon exchanges or conversion, common or preferred shares of a state bank may be issued only for cash in an amount not less than that determined by the superintendent.

[C97, §1853; C24, 27, 31, 35, 39, §**9192;** C46, 50, 54, 58, 62, 66, §526.36; C71, 73, 75, 77, 79, 81, §524.503]

95 Acts, ch 148, §41

CS 95, §524.524

524.525 Subscription for shares before incorporation or organization.

1. A subscription for shares entered into before incorporation or organization of the state bank is irrevocable for six months unless the subscription agreement provides a longer or shorter period, or all subscribers agree to revocation.

2. The board of directors may determine the payment terms of subscriptions for shares that were entered into before incorporation or organization of the state bank unless the subscription agreement specifies the terms. A call for payment by the board of directors

must be uniform so far as practicable as to all shares of the same class or series, unless the subscription agreement specifies otherwise.

3. Shares issued pursuant to subscriptions entered into before incorporation or organization of the state bank are fully paid and nonassessable when the state bank receives the consideration specified in the subscription agreement.

4. If a subscriber defaults in payment of money or property under a subscription agreement entered into before incorporation or organization of the state bank, the state bank may do either of the following:

a. Collect the amount owed as any other debt.

b. Unless the subscription agreement provides otherwise, the state bank may rescind the agreement and may sell the shares if the debt remains unpaid more than twenty days after the state bank sends written demand for payment to the subscriber.

[C71, 73, 75, 77, 79, 81, §524.504]
95 Acts, ch 148, §42
CS 95, §524.525
2004 Acts, ch 1141, §63
Referred to in §524.527

524.526 Fractional shares.

1. A state bank incorporated as a stock corporation may do any of the following:

a. Issue fractions of a share or pay in money the value of fractions of a share.

b. Arrange for disposition of fractional shares by the shareholders of the state bank.

c. Issue scrip in registered or bearer form entitling the holder to receive a full share upon surrendering enough scrip to equal a full share.

2. Each certificate representing scrip must be conspicuously labeled "scrip" and must contain the information required by section 524.523, subsection 2.

3. The holder of a fractional share is entitled to exercise the rights of a shareholder, including the right to vote, to receive dividends, and to participate in the assets of the state bank upon liquidation, but only if the scrip provides for such rights.

4. The board of directors may authorize the issuance of scrip subject to any condition considered desirable, including either of the following:

a. That the scrip will become void if not exchanged for full shares before a specified date.

b. That the shares for which the scrip is exchangeable may be sold and the proceeds paid to the scrip holders.

95 Acts, ch 148, §43; 2012 Acts, ch 1017, §10, 18

524.527 Liability of shareholders or members.

1. A purchaser of the shares of a state bank incorporated as a stock corporation is not liable to the bank, its creditors, or depositors with respect to the shares except to pay the consideration for which the shares were authorized to be issued under section 524.521, or the consideration specified in the subscription agreement authorized under section 524.525.

2. Unless otherwise provided in the articles of incorporation, a shareholder of a state bank is not personally liable for the acts or debts of the state bank, its creditors, or depositors.

3. A member of a state bank incorporated as a mutual corporation is not personally liable for the acts or debts of the state bank, its creditors, or depositors.

[C71, 73, 75, 77, 79, 81, §524.505]
95 Acts, ch 148, §44
CS 95, §524.527
2012 Acts, ch 1017, §11, 18

524.528 Shareholders' preemptive rights.

1. The shareholders of a state bank do not have a preemptive right to acquire the state bank's unissued shares except to the extent provided in the articles of incorporation.

2. A statement included in the articles of incorporation that "the state bank elects to have preemptive rights", or words of similar import, means that, except to the extent otherwise expressly provided in the articles of incorporation, the following principles apply:

a. A shareholder of a state bank has a preemptive right, granted on uniform terms and conditions prescribed by the board of directors to provide a fair and reasonable opportunity to exercise the right, to acquire a proportional amount of the state bank's unissued shares upon the decision of the board of directors to issue such shares.

b. A shareholder may waive the shareholder's preemptive right. A waiver evidenced in writing is irrevocable even though it is not supported by consideration.

c. There is no preemptive right with respect to any of the following:

(1) Shares issued as compensation to directors, managers, officers, agents, or employees of the state bank, its subsidiaries, or its affiliates.

(2) Shares issued to satisfy conversion or option rights created to provide compensation to directors, managers, officers, agents, or employees of the state bank, its subsidiaries, or its affiliates.

(3) Shares authorized in articles of incorporation that are issued within six months from the effective date of incorporation or organization.

d. A holder of shares of any class without general voting rights but with preferential rights to distributions or assets has no preemptive rights with respect to shares of any class.

e. A holder of shares of any class with general voting rights but without preferential rights to distributions or assets has no preemptive rights with respect to shares of any class with preferential rights to distributions or assets unless the shares with preferential rights are convertible into or carry a right to subscribe for or acquire shares without preferential rights.

f. Shares subject to preemptive rights that are not acquired by shareholders may be issued to any person for a period of one year after being offered to shareholders at a consideration set by the board of directors that is not lower than the consideration set for the exercise of preemptive rights. An offer at a lower consideration or after the expiration of one year is subject to the shareholders' preemptive rights.

3. For purposes of this section, *"shares"* includes a security convertible into or carrying a right to subscribe for or acquire shares.

[C71, 73, 75, 77, 79, 81, §524.506]
95 Acts, ch 148, §45
CS 95, §524.528
2004 Acts, ch 1141, §64; 2017 Acts, ch 29, §167

524.529 Preemptive rights for existing state banks. Repealed by 2017 Acts, ch 29, §164.

524.530 State bank's acquisition of its own shares.

1. With the prior approval of the superintendent, a state bank may acquire its own shares. Shares acquired pursuant to this section constitute authorized but unissued shares except as provided in subsection 2.

2. If the articles of incorporation prohibit the reissue of acquired shares, the number of authorized shares is reduced by the number of shares acquired, effective upon amendment of the articles of incorporation.

95 Acts, ch 148, §47

524.531 Loaning on its own shares.

A state bank shall not make any loan or extension of credit on the security of the shares of its own capital, unless such security is necessary to prevent loss upon a debt previously contracted in good faith.

[C97, §1850; S13, §1850; C24, 27, §9184; C31, 35, §9221-c2; C39, §**9221.2;** C46, 50, 54, 58, 62, 66, §528.9; C71, 73, 75, 77, 79, 81, §524.507]
95 Acts, ch 148, §48
CS 95, §524.531

524.532 Meetings of shareholders.

Meetings of shareholders may be held at a place, within this state, as provided in the articles of incorporation or the bylaws, or as fixed in accordance with their provisions. In the absence of any such provision, all meetings shall be held at the principal place of business of the

state bank. An annual meeting of the shareholders shall be held during the specific month as shall be provided in the articles of incorporation, at the date and time as stated in or fixed in accordance with the bylaws. Failure to hold the annual meeting during the month shall not work a forfeiture or dissolution of the state bank. Special meetings of the shareholders may be called by the president, the board of directors, the holders of not less than one-tenth of all the shares entitled to vote at the meeting, or other officers or persons as provided in the articles of incorporation or the bylaws.

[C71, 73, 75, 77, 79, 81, §524.508]
84 Acts, ch 1032, §2
CS 95, §524.532

524.533 Notice of shareholder meetings — waiver of notice generally.

1. Written notice stating the place, day and hour of a meeting of the shareholders and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered not less than ten nor more than sixty days before the date of the meeting, either personally or by mail, by or at the direction of the president, the cashier, or the officer or persons calling the meeting, to each shareholder of record entitled to vote at the meeting. If mailed, the notice is deemed to be delivered when deposited in the United States mail addressed to the shareholder at the shareholder's address as it appears on the stock transfer books of the state bank with postage prepaid.

2. A shareholder may waive any notice required by this chapter, the articles of incorporation, or bylaws before or after the date and time stated in the notice. The waiver must be in writing, be signed by the shareholder entitled to the notice, and be delivered to the state bank for inclusion in the minutes or filing with the corporate records.

3. A shareholder's attendance at a meeting results in both of the following:

a. Waives the shareholder's objection to lack of notice or defective notice of the meeting, unless the shareholder at the beginning of the meeting or promptly upon the shareholder's arrival objects to holding the meeting or transacting business at the meeting.

b. Waives the shareholder's objection to consideration of a particular matter at the meeting that is not within the purpose or purposes described in the meeting notice, unless the shareholder objects to considering the matter when it is presented.

4. Unless the articles of incorporation or bylaws provide otherwise, the shareholders may permit any or all shareholders to participate in a regular or special meeting by, or conduct the meeting through the use of, any means of communication by which all shareholders participating may simultaneously hear each other during the meeting. A shareholder participating in a meeting as provided in this subsection is deemed to be present in person at the meeting.

[C71, 73, 75, 77, 79, 81, §524.509]
95 Acts, ch 148, §49
CS 95, §524.533
Referred to in §524.314, 524.1502, 524.1508

524.534 Action without meeting.

1. Unless the articles of incorporation or bylaws provide otherwise, action required or permitted to be taken under this chapter at a special shareholders' meeting may be taken without a meeting if the action is consented to by all shareholders. The action must be evidenced by one or more written consents describing the action taken, signed by each shareholder, and included in the minutes or filed with the corporate records reflecting the action taken.

2. Action taken under this section is effective when the last shareholder signs the consent, unless the consent specifies a different effective date.

3. A written consent signed under this section has the effect of a meeting vote and may be described as such in any document.

95 Acts, ch 148, §50

524.535 Transfer books — fixing record date.

1. The board of directors of a state bank shall cause adequate stock transfer books to be maintained.

2. The bylaws or, in the absence of an applicable bylaw, the board of directors may fix, in advance, a date as the record date for any determination of shareholders entitled to notice of or to vote at a meeting of shareholders, the date to be not more than seventy days and, in case of a meeting of shareholders, not less than ten days prior to the date on which the particular action, requiring the determination of shareholders, is to be taken. If a record date is not fixed for the determination of shareholders entitled to notice of or to vote at a meeting of shareholders, or shareholders entitled to receive payment of a dividend, the date on which notice of the meeting is mailed or the date on which the resolution of the board of directors declaring such dividend is adopted, as the case may be, shall be the record date for the determination of shareholders. If a determination of shareholders entitled to vote at any meeting of shareholders has been made as provided in this section, the determination applies to any adjournment of the meeting.

[C97, §1853; C24, 27, 31, 35, 39, §**9192;** C46, 50, 54, 58, 62, 66, §526.36; C71, 73, 75, 77, 79, 81, §524.510]

95 Acts, ch 148, §51

CS 95, §524.535

2018 Acts, ch 1041, §127

Code editor directive applied

524.536 Voting list.

The officer or agent having charge of the stock transfer books for shares of a state bank shall, at least ten days before each meeting of shareholders, make a complete list of the shareholders entitled to vote at the meeting or any adjournment of the meeting, arranged in alphabetical order, with the address of and the number of shares held by each, which list, for a period of ten days prior to the meeting, shall be kept on file at the principal place of business of the state bank and is subject to inspection by a shareholder, or a shareholder's agent or attorney, at any time during usual business hours. The list of shareholders shall also be produced and kept open at the time and place of the meeting and is subject to the inspection of a shareholder, or a shareholder's agent or attorney, during the whole time of the meeting. The original stock transfer books are prima facie evidence as to who are the shareholders entitled to examine the list or transfer books or to vote at a meeting of shareholders. Failure to comply with the requirements of this section shall not affect the validity of action taken at a meeting of shareholders.

[C71, 73, 75, 77, 79, 81, §524.511]

95 Acts, ch 148, §52

CS 95, §524.536

524.537 Quorum of shareholders.

1. Unless otherwise provided in the articles of incorporation, a majority of the shares entitled to vote, represented in person or by proxy, constitutes a quorum at a meeting of shareholders. If a quorum is present, the affirmative vote of the majority of the shares represented at the meeting and entitled to vote on the subject matter shall be the act of the shareholders, unless the vote of a greater number or voting by classes is required by the laws of this state or of the United States or by the articles of incorporation or bylaws.

2. Once a share is represented for any purpose at a meeting, it is deemed present for the purpose of determining a quorum for the remainder of the meeting and for any adjournment of that meeting unless a new record date is or must be set for that adjourned meeting.

[C71, 73, 75, 77, 79, 81, §524.512]

95 Acts, ch 148, §53

CS 95, §524.537

524.538 Voting of shares.

1. Each outstanding share shall be entitled to one vote on each matter submitted to a vote

at a meeting of shareholders, except to the extent that the voting rights of the shares of a class or series may be limited or denied by the articles of incorporation.

2. Shares of a state bank purchased or acquired by such state bank pursuant to this chapter shall not be voted at any meeting and shall be excluded in determining whether matters voted upon by the shareholders were adopted by the requisite number of shares.

3. A shareholder may vote either in person or by proxy executed in writing by the shareholder or by the shareholder's duly authorized attorney in fact. A proxy shall not be valid after eleven months from the date of its execution.

4. At each election for directors every shareholder entitled to vote at such election shall have the right to vote, in person or by proxy, the number of shares owned by the shareholder for as many individuals as there are directors to be elected and for whose election the shareholder has a right to vote.

5. In an election of directors, a state bank shall not vote its own shares held by it as sole trustee unless under the terms of the trust the manner in which such shares shall be voted may be determined by a donor or beneficiary of the trust and unless such donor or beneficiary actually directs how the shares shall be voted. However, shares held in trust by a state bank pursuant to an instrument in effect prior to January 1, 1970, under the terms of which the manner in which such shares shall be voted could not be determined by a donor or beneficiary of the trust, may be voted in an election of directors of a state bank upon petition filed by the state bank, to a court of competent jurisdiction, and the appointment by such court of an individual to determine the manner in which the shares shall be voted. When the shares of a state bank are held by such state bank and one or more persons as trustees, the shares may be voted by such other person or persons as trustees, in the same manner as if the person or persons were the sole trustee. Whenever shares cannot be voted by reason of being held by a state bank as sole trustee, the shares shall be excluded in determining whether matters voted upon by the shareholders were adopted by the requisite number of shares.

[C97, §1847; S13, §1889-e; C24, 27, 31, 35, 39, §**9175, 9289;** C46, 50, 54, 58, 62, 66, §526.18, 532.6; C71, 73, 75, 77, 79, 81, §524.513]

95 Acts, ch 148, §54

CS95, §524.538

524.538A Voting by member of mutual corporation.

All holders of savings, demand, or other authorized accounts of a bank incorporated as or converted to be a mutual corporation are members of the state bank. In the consideration of all questions requiring action by the members of the state bank, each holder of an account shall be permitted to cast one vote for each one hundred dollars, or fraction thereof, of the withdrawal value of the member's account. No member, however, shall cast more than one thousand member votes. All accounts shall be nonassessable.

2012 Acts, ch 1017, §12, 18

524.539 Voting trust.

Any number of shareholders of a state bank may create a voting trust for the purpose of conferring upon a trustee or trustees the right to vote or otherwise represent their shares, for a period of not to exceed ten years, by entering into a written voting trust agreement specifying the terms and conditions of the voting trust, by depositing a counterpart of the agreement with the state bank at its principal place of business, by delivery of a copy of the voting trust agreement to the superintendent and by transferring their shares to such trustee or trustees for the purposes of the agreement. The counterpart of the voting trust agreement so deposited with the state bank is subject to examination for any proper purpose during usual business hours by a shareholder of the state bank, in person or by agent or attorney, or by any holder of a beneficial interest in the voting trust, in person or by agent or attorney.

This section shall not affect the validity of any agreement, relative to the voting of shares, in effect prior to July 1, 1995.

[C71, 73, 75, 77, 79, 81, §524.514]

95 Acts, ch 148, §55

CS 95, §524.539

Referred to in §524.540

524.540 Voting agreements.

1. Two or more shareholders may provide for the manner in which they will vote their shares by signing an agreement for that purpose. A voting agreement created under this section is not subject to section 524.539.

2. A voting agreement created under this section is subject to a judicial order for specific enforcement.

95 Acts, ch 148, §56

524.541 Lists — filing with superintendent.

1. Every state bank shall cause to be kept a full and correct list of the names and addresses of the officers, directors, and shareholders of the state bank, and the number of shares held by each. If an affiliate, as defined in section 524.1101, subsection 4, is a shareholder in a state bank, such list shall include the names, addresses, and percentage of ownership or interest in the affiliate of the shareholders, members, or other individuals possessing a beneficial interest in said affiliate.

2. A copy of the list as of the date of the adjournment of each annual meeting of shareholders, in the form of an affidavit signed by the president or cashier of the state bank, shall be transmitted to the superintendent within ten days after such annual meeting.

[C97, §1889; S13, §1889; C24, 27, 31, 35, 39, §**9255, 9256, 9257;** C46, 50, 54, 58, 62, 66, §528.47, 528.48, 528.49; C71, 73, 75, 77, 79, 81, §524.515]

CS 95, §524.541

2003 Acts, ch 4, §1; 2015 Acts, ch 29, §81

524.542 Dividends.

1. The board of directors of a state bank may, from time to time, declare, and the state bank may pay, dividends on its outstanding shares subject to the restrictions of this chapter and to the restrictions, if any, in its articles of incorporation. Dividends may be declared and paid only out of undivided profits and may be paid in cash or property.

2. A dividend shall not be declared or paid if restricted by the superintendent.

[C97, §1852, 1888; S13, §1850-a, 1852, 1889-l; C24, 27, 31, 35, §9188, 9191, 9262, 9262-c1, 9263, 9283, 9299; C39, §**9188, 9191, 9262, 9262.1, 9263, 9283, 9299;** C46, 50, 54, 58, 62, 66, §526.33, 526.35, 528.56, 528.57, 528.58, 528.85, 532.16; C71, 73, 75, 77, 79, 81, §524.516]

95 Acts, ch 148, §57

CS 95, §524.542

524.543 Distribution of shares of state bank.

1. The board of directors of a state bank may, subject to the provisions of section 524.405, distribute pro rata to holders of common shares authorized but unissued common shares of the state bank.

2. A distribution shall not be made in authorized but unissued shares of the state bank unless an amount equal to the total par value of the shares distributed is transferred to capital.

[C71, 73, 75, 77, 79, 81, §524.517]

95 Acts, ch 148, §58

CS 95, §524.543

Referred to in §524.524

524.544 Change of control — certificate of approval — shares as security — reports.

1. Whenever any person proposes to purchase or otherwise acquire directly or indirectly any of the outstanding shares of a state bank, and the proposed purchase or acquisition would result in control or in a change in control of the bank, the person proposing to purchase

or acquire the shares shall first apply in writing to the superintendent for a certificate of approval for the proposed change of control. The superintendent shall grant the certificate if the superintendent is satisfied that the person who proposes to obtain control of the bank is qualified by character, experience and financial responsibility to control and operate the bank in a sound and legal manner, and that the interests of the depositors, creditors and shareholders of the bank, and of the public generally, will not be jeopardized by the proposed change of control. A person which will become a bank holding company upon completion of an acquisition shall make application to the superintendent for a certificate of approval as provided in this section. Any other bank holding company shall comply with section 524.1804 in lieu of seeking a certificate of approval under this section. In any situation where the president or cashier of a bank has reason to believe any of the foregoing requirements have not been complied with, it shall be the duty of the president or cashier to promptly report in writing such facts to the superintendent upon obtaining knowledge thereof. As used in this section, the term *"control"* means the power, directly or indirectly, to elect the board of directors. If there is any doubt as to whether a change in the ownership of the outstanding shares is sufficient to result in control thereof, or to effect a change in the control thereof, such doubt shall be resolved in favor of reporting the facts to the superintendent.

2. Whenever twenty-five percent or more of the outstanding voting shares of a state bank is used as security for any transaction, the person or persons owning such shares shall promptly report such transaction to the superintendent in writing.

3. The reports required by subsections 1 and 2 of this section shall contain information, to the extent known by the person making the report, relative to the number of shares involved, the names of the sellers and purchasers or transferors and transferees, the purchase price, the name of the borrower, the amount, source, and terms of the loan, or other transaction, the name of the bank issuing the shares used as security, and the number of shares used as security.

4. The superintendent may require, at such times as the superintendent deems appropriate, the submission of a financial statement from a shareholder or shareholders of a state bank possessing, directly or indirectly, control of such state bank.

[C71, 73, 75, 77, 79, 81, §524.519]
CS 95, §524.544
99 Acts, ch 6, §1; 2013 Acts, ch 30, §128

524.545 Options for shares.

A state bank incorporated as a stock corporation may authorize the granting of options to officers and employees to purchase unissued shares of the state bank in accordance with a plan approved by the superintendent.

[C71, 73, 75, 77, 79, 81, §524.520]
95 Acts, ch 148, §59
CS 95, §524.545
2012 Acts, ch 1017, §13, 18

524.546 through 524.600 Reserved.

SUBCHAPTER VI

DIRECTORS

524.601 Board of directors.

1. The business and affairs of a state bank shall be managed by a board of five or more directors eighteen years of age or older, a majority of whom shall be residents of the state of Iowa and citizens of the United States.

2. The number of directors may be increased, or decreased to a number not less than five,

by the shareholders at the annual meeting, or at a special meeting called for that purpose, but no decrease shall have the effect of shortening the term of an incumbent director.

[C97, §1845, 1866; C24, 27, §9163, 9164, 9165, 9166, 9210 – 9212, 9213; C31, 35, §9163, 9164, 9165, 9210 – 9212, 9217-c2; C39, §**9163, 9164, 9165, 9210 – 9212, 9217.2;** C46, 50, 54, 58, 62, 66, §526.8, 526.9, 526.10, 527.8 – 527.10, 528.2; C71, 73, 75, 77, 79, 81, §524.601]

95 Acts, ch 148, §60

Referred to in §524.103

524.602 Board of directors — election.

1. Except as provided in subsection 2, at the first annual meeting of shareholders and at each annual meeting thereafter the shareholders shall elect directors to hold office until the next succeeding annual meeting. Directors shall hold office for one year or until their successors have been elected and qualified, unless removed in accordance with provisions of section 524.606. When the shareholders determine the number of directors at an annual meeting or at a special meeting, they shall, at the same meeting, elect a director to fill each directorship.

2. The articles of incorporation of a state bank may authorize directors to be elected to staggered terms of three years. At the first meeting of shareholders or at an annual or special meeting where the shareholders adopt staggered terms for directors, and at each annual meeting thereafter, the shareholders shall elect directors to hold office for any vacant position. A director shall hold office until the director's term expires or until the director's successor has been elected and qualified, unless the director is removed in accordance with the provisions of section 524.606.

[C97, §1846; C24, 27, 31, 35, 39, §**9171, 9172;** C46, 50, 54, 58, 62, 66, §526.14, 526.15; C71, 73, 75, 77, 79, 81, §524.602]

95 Acts, ch 148, §61; 2010 Acts, ch 1028, §9

524.603 Vacancies.

Unless otherwise provided in the articles of incorporation, the bylaws, or by action of the shareholders, any vacancy occurring in the board of directors may be filled by the affirmative vote of the majority of the directors then in office, even if less than a quorum of the board of directors. A director so elected shall be elected for the unexpired term of the director's predecessor in office.

[C97, §1846; C24, 27, 31, 35, 39, §**9170;** C46, 50, 54, 58, 62, 66, §526.13; C71, 73, 75, 77, 79, 81, §524.603]

524.604 Duties and responsibilities.

1. The duties and responsibilities of a director or of the board of directors shall include, but are not limited to, the following:

a. Attendance at no less than seventy-five percent of the regular board meetings held during the calendar year.

b. Employment of officer personnel, and determination of their compensation.

c. Periodic review of the original records of the state bank, or comprehensive summaries thereof prepared by the officers of the state bank, pertaining to loans, discounts, security interests and investments in bonds and securities.

d. Review of the adequacy of the bank's internal controls and determination of the most appropriate method to satisfy the bank's audit needs pursuant to section 524.608.

e. Periodic review of the utilization of security measures for the protection of the state bank and the maintenance of reasonable insurance coverage.

2. Directors of a state bank shall discharge the duties of their position in good faith and with that diligence, care and skill which ordinarily prudent persons would exercise under similar circumstances in like positions. The directors shall have a continuing responsibility

to assure themselves that the bank is being managed according to law and that the practices and policies adopted by the board are being implemented.

[C27, 31, 35, §9283-b23; C39, §**9283.71;** C46, 50, 54, 58, 62, 66, §531.23; C71, 73, 75, 77, 79, 81, §524.604]

95 Acts, ch 148, §62; 2012 Acts, ch 1023, §157

524.605 Liability of directors in certain cases.

1. In addition to any other liabilities imposed by law upon directors of a state bank:

a. Directors of a state bank who vote for or assent to the declaration of any dividend or other distribution of the assets of a state bank to its shareholders in willful or negligent violation of the provisions of this chapter or of any restrictions contained in the articles of incorporation, shall be jointly and severally liable to the state bank for the amount of such dividend which is paid or the value of such assets which are distributed in excess of the amount of such dividend or distribution which could have been paid or distributed without a violation of the provisions of this chapter or of the restrictions in the articles of incorporation.

b. The directors of a state bank who vote for or assent to any distribution of assets of a state bank to its shareholders during the dissolution of the state bank without the payment and discharge of, or making adequate provision for, all known debts, obligations, and liabilities of the state bank shall be jointly and severally liable to the state bank for the value of such assets which are distributed, to the extent that such debts, obligations and liabilities of the state bank are not thereafter paid and discharged.

c. The directors of a state bank who, willfully or negligently, vote for or assent to loans or extensions of credit in violation of the provisions of this chapter, shall be jointly and severally liable to the state bank for the total amount of any loss sustained.

d. The directors of a state bank who, willfully or negligently, vote for or assent to any investment of funds of the state bank in violation of the provisions of this chapter shall be jointly and severally liable to the state bank for the amount of any loss sustained on such investment.

2. A director of a state bank who is present at a meeting of its board of directors at which action on any matter is taken shall be presumed to have assented to the action taken unless the director's dissent shall be entered in the minutes of the meeting or unless the director shall file the director's written dissent to such action with the individual acting as the secretary of the meeting before the adjournment thereof or shall forward such dissent by registered or certified mail to the cashier of the state bank promptly after the adjournment of the meeting. Such right to dissent shall not apply to a director who voted in favor of such action.

3. A director shall not be liable under subsection 1 , paragraph "*a*", "*b*", "*c*", or "*d*" if the director relied and acted in good faith upon information represented to the director to be correct by an officer or officers of such state bank or stated in a written report by a certified public accountant or firm of such accountants. No director shall be deemed to be negligent within the meaning of this section if the director in good faith exercised that diligence, care and skill which an ordinarily prudent person would exercise as a director under similar circumstances.

4. Any director against whom a claim shall be asserted under or pursuant to this section for the payment of a dividend or other distribution of assets of a state bank and who shall be held liable thereon, shall be entitled to contribution from the shareholders who accepted or received any such dividend or assets, knowing such dividend or distribution to have been made in violation of the provisions of this chapter, in proportion to the amounts received by them respectively. Further, any director against whom a claim shall be asserted pursuant to this section for the payment of any liability imposed by this section shall be entitled to contribution from any director found to be similarly liable.

5. Whenever the superintendent deems it necessary the superintendent may require, after affording an opportunity for a hearing upon adequate notice, that a director or directors whom the superintendent reasonably believes to be liable to a state bank pursuant to subsection 1 , paragraph "*a*", "*b*", "*c*", or "*d*", to place in an escrow account in an insured bank located in this state, as directed by the superintendent, an amount sufficient to discharge any liability which may accrue pursuant to subsection 1 , paragraph "*a*", "*b*", "*c*", or "*d*". The

amount so deposited shall be paid over to the state bank by the superintendent upon final determination of the amount of such liability. Any portion of the escrow account which is not necessary to meet such liability shall be repaid on a pro rata basis to the directors who contributed to the fund.

6. Any action seeking to impose liability under this section, other than liability for contribution, shall be commenced only within five years of the action complained of and not thereafter.

[C71, 73, 75, 77, 79, 81, §524.605]

95 Acts, ch 148, §63; 2012 Acts, ch 1023, §134

Referred to in §524.302, 524.702

524.606 Removal of directors.

1. At a meeting of shareholders expressly called for that purpose, individual directors or the entire board of directors may be removed, with or without cause, by the affirmative vote of the holders of a majority of the shares entitled to vote at an election of directors. The vacancies created may be filled at the same meeting at which the removal proceedings take place.

2. *a.* If, in the opinion of the superintendent, any director of a state bank or bank holding company has violated any law relating to such state bank or bank holding company or has engaged in unsafe or unsound practices in conducting the business of such state bank or bank holding company, the superintendent may cause notice to be served upon such director, to appear before the superintendent to show cause why the director should not be removed from office. A copy of such notice shall be sent to each director of the state bank or bank holding company affected, by registered or certified mail. If, after granting the accused director a reasonable opportunity to be heard, the superintendent finds that the director violated any law relating to such state bank or bank holding company or engaged in unsafe or unsound practices in conducting the business of such state bank or bank holding company, the superintendent, in the superintendent's discretion, may order that such director be removed from office, and that such director be prohibited from serving in any capacity in any other bank, bank holding company, bank affiliate, trust company, or an entity licensed under chapter 533A, 533C, 533D, 535B, 536, or 536A. A copy of the order shall be served upon such director and upon the state bank or bank holding company of which the person is a director at which time the person shall cease to be a director of the state bank or bank holding company. The resignation, termination of employment, or separation of such director, including a separation caused by the closing of the state bank or bank holding company at which the person serves as a director, does not affect the jurisdiction and authority of the superintendent to cause notice to be served and proceed under this subsection against the director, if the notice is served before the end of the six-year period beginning on the date the director ceases to be a director with the bank.

b. The decision of the superintendent shall be subject to judicial review in accordance with the terms of the Iowa administrative procedure Act, chapter 17A. No action taken by a director prior to the director's removal shall be subject to attack on the ground of the director's disqualification.

[C31, 35, §9224-c2; C39, §**9224.2;** C46, 50, 54, 58, 62, 66, §528.18; C71, 73, 75, 77, 79, 81, §524.606]

91 Acts, ch 220, §3; 93 Acts, ch 28, §1; 95 Acts, ch 148, §64; 2003 Acts, ch 44, §114; 2006 Acts, ch 1015, §6; 2012 Acts, ch 1023, §157

Referred to in §524.228, 524.602, 524.707

Removal of officers and employees; §524.707

524.607 Meetings — waiver of notice — quorum.

1. The board of directors shall hold at least nine regular meetings each calendar year. No more than one regular meeting shall be held in any one calendar month. Unless the articles of incorporation or bylaws provide otherwise, the board of directors may permit directors to participate in meetings through the use of any means of communication by which all directors participating may simultaneously hear each other during the meeting. A director participating in a meeting by this means is deemed to be present at the meeting.

2. A special meeting may be called by any executive officer or a director. Notice of a meeting shall be given to each director, either personally or by mail, at least two days in advance of the meeting. Notice of a regular meeting shall not be required if the articles of incorporation, bylaws, or a resolution of the board of directors provide for a regular monthly meeting date.

3. Attendance of a director at a meeting shall constitute a waiver of notice of such meeting except where a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened.

4. Whenever any notice is required to be given to any director of a state bank under the provisions of this chapter or under the provisions of the articles of incorporation or the bylaws of the state bank, a waiver thereof in writing, signed by the individual or individuals entitled to such notice, whether before or after the time stated therein, shall be equivalent to the giving of such notice.

5. A majority of the board of directors shall constitute a quorum for the transaction of business unless a greater number is required by the articles of incorporation or the bylaws. The act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the board of directors, unless the act of a greater number is required by the laws of this state or of the United States, the articles of incorporation or the bylaws.

[C97, §1846, 1871; S13, §1871; C24, 27, §9174, 9224; C31, 35, §9174, 9224-c1; C39, §**9174, 9224.1;** C46, 50, 54, 58, 62, 66, §526.17, 528.17; C71, 73, 75, 77, 79, 81, §524.607]

95 Acts, ch 148, §65; 2015 Acts, ch 29, §114

524.607A Action without meeting.

1. Unless the articles of incorporation or bylaws provide otherwise, action required or permitted to be taken under this chapter at a board of directors' meeting may be taken without a meeting if the action is consented to by all members of the board. The action must be evidenced by one or more written consents describing the action taken, signed by each director, and included in the minutes or filed with the corporate records reflecting the action taken.

2. Action taken under this section is effective when the last director signs the consent, unless the consent specifies a different effective date.

3. A written consent signed under this section has the effect of a meeting vote and may be described as such in any document.

2004 Acts, ch 1141, §20

524.608 Auditing procedures.

1. In addition to any examination made by the banking division or other supervisory agency, the board of directors shall review the adequacy of the bank's internal controls and cause to be made no less frequently than once each calendar year additional auditing procedures that the board deems to be appropriate. The board shall determine the bank's audit needs and record in the board's minutes the extent to which audit procedures are to be employed. A report which summarizes significant audit findings shall be delivered to the superintendent as soon as practical upon completion.

2. The superintendent may require that more comprehensive auditing procedures be applied to a bank's account records when deemed necessary. These auditing procedures may range from limited scope agreed-upon procedures to an unqualified audit opinion.

[C97, §1871; S13, §1871; C24, 27, §9224, 9225; C31, 35, §9224-c1, 9225, 9226; C39, §**9224.1, 9225, 9226;** C46, 50, 54, 58, 62, 66, §528.17, 528.19, 528.20; C71, 73, 75, 77, 79, 81, §524.608]

95 Acts, ch 148, §66; 96 Acts, ch 1056, §8; 2018 Acts, ch 1041, §127

Referred to in §524.604

Code editor directive applied

524.609 Executive and other committees.

If the articles of incorporation or the bylaws so provide, the board of directors, by resolution adopted by a majority of the full board of directors, may designate from among its members an executive committee and one or more other committees each of which, to the extent provided in such resolution or in the articles of incorporation or the bylaws of the state bank shall

have and may exercise all the authority of the board of directors, but no such committee shall have the authority of the board of directors in reference to amending the articles of incorporation, adopting a plan of merger or consolidation, recommending to the shareholders the sale, lease, exchange or other disposition of all or substantially all the property and assets of the state bank, recommending to the shareholders a voluntary dissolution of the state bank or a revocation thereof, or amending the bylaws of the state bank. The designation of any such committee and the delegation thereto of authority shall not operate to relieve the board of directors, or any member thereof, of any responsibility imposed by law.

[C71, 73, 75, 77, 79, 81, §524.609]

524.610 Compensation of directors.

1. The shareholders of a state bank shall fix the reasonable compensation of directors for their services as members of the board of directors. Subject to approval by the shareholders at an annual or special meeting called for that purpose, the shareholders of a state bank may adopt a pension or profit-sharing plan, or both, or other plan of deferred compensation for directors, to which a state bank may contribute.

2. Directors may be reimbursed for reasonable expenses incurred in the performance of their duties.

[C97, §1869, 1871; S13, §1869, 1871; C24, 27, 31, 35, 39, §**9219, 9227;** C46, 50, 54, 58, 62, 66, §528.5, 528.21; C71, 73, 75, 77, 79, 81, §524.610; 81 Acts, ch 173, §1]

95 Acts, ch 148, §67; 2004 Acts, ch 1141, §21; 2018 Acts, ch 1041, §127

Referred to in §524.613

Code editor directive applied

524.611 Oath of directors.

1. Each director of a state bank, before acting as a director, shall take an oath that the director will diligently, faithfully and impartially perform the duties imposed upon the director by law, that the director will not knowingly violate or willingly permit a violation of any of the provisions of this chapter, and that the director meets the eligibility requirements of this chapter.

2. The oath shall be signed by the director, acknowledged before an officer authorized to take acknowledgments of deeds, and delivered to the superintendent.

[C97, §1845; C24, 27, §9167; C31, 35, 39, §**9224;** C46, 50, 54, 58, 62, 66, §528.16; C71, 73, 75, 77, 79, 81, §524.611]

2018 Acts, ch 1041, §127

Code editor directive applied

524.612 Director dealing with state bank.

1. A director shall not receive terms or be paid a rate of interest on deposits, by a state bank of which the person is a director, which are more favorable than that provided to any other customer under similar circumstances. Any waiver of ordinary or customary charges related to deposit accounts shall not violate this subsection.

2. A director shall not purchase or lease any assets from or sell or lease any assets to a state bank of which the person is a director except upon terms not less favorable to the state bank than those offered to or by other persons. All purchases or leases from and sales or leases to a director shall receive the prior approval of a majority of the board of directors voting in the absence of the interested director.

[C97, §1869; S13, §1869; C24, 27, 31, 35, 39, §**9220;** C46, 50, 54, 58, 62, 66, §528.6; C71, 73, 75, 77, 79, 81, §524.612]

91 Acts, ch 14, §1; 95 Acts, ch 148, §68; 2017 Acts, ch 138, §2, 3

Referred to in §524.706, 524.1601, 524.1806

524.613 Prohibitions applicable to certain financial transactions involving directors.

A director of a state bank shall not receive anything of value, other than compensation and expense reimbursement authorized by section 524.610, for procuring, or attempting to

procure, any loan or extension of credit, as defined in section 524.904, to the state bank or for procuring, or attempting to procure, an investment by the state bank.

[C31, 35, §9221-c3; C39, §**9221.3;** C46, 50, 54, 58, 62, 66, §528.10; C71, 73, 75, 77, 79, 81, §524.613]

95 Acts, ch 148, §69; 2017 Acts, ch 138, §4

Referred to in §524.1601, 524.1806

524.614 Honorary and advisory directors.

The board of directors of a state bank may appoint an individual as an honorary director, director emeritus, or member of an advisory board. An individual so appointed shall not vote at any meeting of the board of directors, shall not be counted in determining a quorum, and shall not be charged with any responsibilities or be subject to any liabilities imposed upon directors by this chapter.

[C71, 73, 75, 77, 79, 81, §524.614]

95 Acts, ch 148, §70

524.615 through 524.700 Reserved.

SUBCHAPTER VII

OFFICERS AND EMPLOYEES

524.701 Officers and employees.

1. A state bank shall have as officers a president, one vice president, and a cashier. No more than two of these positions may be held by the same individual. A state bank may have other officers as prescribed by the articles of incorporation or bylaws.

2. The board of directors shall elect one officer as the chief executive officer, who shall be a member of the board of directors.

3. Upon written notice by the superintendent, an individual who performs active executive or official duties for a state bank may be treated as an executive officer. A state bank may have a chairperson of the board of directors who, if the person does not perform executive or official duties or receive a salary, need not be considered an executive officer of the state bank.

4. An individual employed by a state bank, other than a director or an officer, is considered an employee for the purposes of this chapter.

[C97, §1845; C24, 27, 31, 35, 39, §**9162;** C46, 50, 54, 58, 62, 66, §526.7(4); C71, 73, 75, 77, 79, 81, §524.701]

91 Acts, ch 7, §1; 95 Acts, ch 148, §71

Referred to in §524.103

524.702 Officers — duties and liability.

1. All officers of a state bank shall have such authority and perform such duties in the management of the state bank as may be provided for in the articles of incorporation or the bylaws, or as may be determined by a resolution of the board of directors not inconsistent with the bylaws or the articles of incorporation.

2. If an officer willfully or negligently submits any incorrect information to a director or directors, and action by the board of directors contrary to the provisions of this chapter, or of any restrictions in the articles of incorporation, is taken in reliance thereon, the officer shall be liable to the same extent as if the officer were a director voting for or assenting to such action, as provided in section 524.605. An officer shall also be liable to the extent of any loss sustained by the state bank as a result of the officer's willful or negligent violation of any provision of this chapter. The superintendent may require an officer or officers whom the superintendent reasonably believes to be liable to a state bank pursuant to this section, to place in an escrow account an amount sufficient to discharge such liability in the manner provided for in section 524.605. No officer shall be deemed to be negligent within the meaning

of this section if the officer exercised that diligence, care and skill which an ordinarily prudent person would exercise as an officer under similar circumstances.

[C97, §1886; C24, 27, 31, 35, 39, §**9281;** C46, 50, 54, 58, 62, 66, §528.83; C71, 73, 75, 77, 79, 81, §524.702]

524.703 Officers and employees — employment and compensation.

1. The board of directors may fix the tenure and provide for the reasonable compensation of officers. The chief executive officer or the chief executive officer's designee shall determine the employees' compensation and tenure. Officers and employees may be reimbursed for reasonable expenses incurred by them on behalf of the state bank.

2. Subject to approval by the shareholders at an annual or special meeting called for the purpose, the board of directors of a state bank may adopt a pension or profit-sharing plan, or both, or other plan of deferred compensation, for both officers and employees, to which the state bank may contribute.

[C97, §1844, 1869; S13, §1869; C24, 27, 31, 35, 39, §**9162, 9219;** C46, 50, 54, 58, 62, 66, §526.7(4), 528.5; C71, 73, 75, 77, 79, 81, §524.703]

95 Acts, ch 148, §72; 2004 Acts, ch 1141, §22; 2018 Acts, ch 1041, §127

Referred to in §524.710

Code editor directive applied

524.704 Employee — employment and compensation. Repealed by 95 Acts, ch 148, §135.

524.705 Bonds of officers and employees.

The officers and employees of a state bank having the care, custody, or control of any funds or securities for any state bank shall give a good and sufficient bond in a company authorized to do business in this state indemnifying the state bank against losses, which may be incurred by reason of any act or acts of fraud, dishonesty, forgery, theft, larceny, embezzlement, wrongful abstraction, misapplication, misappropriation, or other unlawful act committed by such officer or employee directly or through connivance with others, until all of the officer's or employee's accounts with the state bank are fully settled and satisfied. The amounts and sureties are subject to the approval of the board of directors. The superintendent may require higher amounts as deemed necessary. If the agent of a bonding company issuing a bond under this section is an officer or employee of the state bank upon which the bond was issued, the bond so issued shall contain a provision that the bonding company shall not use, either as a grounds for rescission or as a defense to liability under the terms and conditions of the bond, the knowledge that the agent was so employed, whether or not the agent received any part of the premium for the bond as a commission.

[C97, §1845; C24, 27, §9169; C31, 35, §9169, 9217-c3; C39, §**9169, 9217.3;** C46, 50, 54, 58, 62, 66, §526.12, 528.3; C71, 73, 75, 77, 79, 81, §524.705]

95 Acts, ch 148, §73

524.706 Officer dealing with state bank.

1. Section 524.612 applies to executive officers.

2. Upon the request of the board of directors, an officer or employee of a state bank shall submit to the board of directors a personal financial statement which shall include the names of all persons to whom the officer or employee is obligated, the dates, terms, and amounts of each loan or other obligation, the security for the loan or obligation, and the purpose for which the proceeds of the loan or other obligation has been or is to be used.

3. Upon the request of the superintendent, a director or an officer of a state bank shall submit to the superintendent a personal financial statement which shall show the names of all persons to whom the director or officer is obligated, the dates, terms, and amounts of each

loan or other obligation, the security for the loan or obligation, and the purpose for which the proceeds of the loan or other obligation has been or is to be used.

[C97, §1869; S13, §1869; C24, 27, 31, 35, 39, §**9220;** C46, 50, 54, 58, 62, 66, §528.6; C71, 73, 75, 77, 79, 81, §524.706; 82 Acts, ch 1253, §1]

83 Acts, ch 101, §109; 84 Acts, ch 1032, §3; 91 Acts, ch 7, §2; 95 Acts, ch 148, §74; 96 Acts, ch 1056, §9; 2017 Acts, ch 138, §5, 6

Referred to in §524.1601, 524.1806

524.707 Removal of officers or employees.

1. An officer or employee may be removed by the board of directors whenever in its judgment the best interests of the state bank shall be served by such removal, but the removal shall be without prejudice to the contract rights, if any, of the officer or employee so removed. Election of an officer shall not of itself create contract rights.

2. Section 524.606, subsection 2, which provides for the removal of directors by the superintendent, shall have equal application to officers and employees of a bank, bank holding company, bank affiliate, or trust company.

[C71, 73, 75, 77, 79, 81, §524.707]

91 Acts, ch 220, §4; 95 Acts, ch 148, §75; 2006 Acts, ch 1015, §7

Referred to in §524.228

524.708 Report of change in officer personnel.

A state bank shall promptly notify the superintendent of any change in the individuals holding the offices of chief executive officer or president.

[C97, §1889; S13, §1889; C24, 27, 31, 35, 39, §**9255, 9257;** C46, 50, 54, 58, 62, 66, §528.47, 528.49; C71, 73, 75, 77, 79, 81, §524.708]

95 Acts, ch 148, §76

524.709 Duty to make records available to superintendent.

The officers and employees of a state bank shall make all records of the state bank available to the superintendent for the purpose of examination or for any other reasonable purpose.

[C24, 27, 31, 35, 39, §**9147;** C46, 50, 54, 58, 62, 66, §524.20; C71, 73, 75, 77, 79, 81, §524.709]

Referred to in §524.1604

524.710 Prohibitions applicable to certain financial transactions involving officers and employees.

An officer or employee of a state bank shall not do any of the following:

1. Receive anything of value, other than compensation as authorized by section 524.703, for procuring, or attempting to procure, any loan or extension of credit, as defined in section 524.904, for the state bank or for procuring, or attempting to procure, an investment by the state bank.

2. Engage, directly or indirectly, in the sale of any kind of insurance, shares of stock, bonds or other securities, or real property, or procure or attempt to procure for a fee or other compensation, a loan or extension of credit for any person from a person other than the state bank of which the person is an officer or employee, or act in any fiduciary capacity, unless authorized to do so by the board of directors of the state bank which shall also determine the manner in which the profits, fees, or other compensation derived therefrom shall be distributed.

[C31, 35, §9221-c3, 9222-c2, 9283-c1; C39, §**9221.3, 9222.2, 9283.01;** C46, 50, 54, 58, 62, 66, §528.10, 528.12, 528.86; C71, 73, 75, 77, 79, 81, §524.710]

95 Acts, ch 148, §77; 2017 Acts, ch 138, §7

Referred to in §524.912, 524.1601

524.711 through 524.800 Reserved.

SUBCHAPTER VIII

GENERAL BANKING POWERS

524.801 General powers.

1. A state bank, unless otherwise stated in its articles of incorporation, shall have power:

a. To sue and be sued, complain and defend, in its corporate or organizational name.

b. To have a corporate seal which may be altered at pleasure, and to use the same by causing it, or a facsimile thereof, to be impressed or affixed or in any other manner reproduced.

c. To purchase, take, receive, lease, or otherwise acquire, own, hold, improve and use real or personal property, or an interest therein, in connection with the exercise of any power granted in this chapter.

d. To sell, convey, pledge, mortgage, grant a security interest, lease, exchange, transfer, and release from trust or mortgage or otherwise dispose of all or any part of real or personal property, or an interest therein, in connection with the exercise of any power granted in this chapter.

e. To make and alter bylaws, not inconsistent with its articles of incorporation or with the laws of this state, for the administration and regulation of the affairs of the state bank.

f. To make donations for the public welfare for religious, charitable, scientific or educational or community development purposes.

g. To indemnify a director, officer, or employee, or a former director, officer, or employee of the state bank in the manner and in the instances authorized by sections 490.850 through 490.859.

h. To elect officers or appoint agents of the state bank and define their duties and fix their compensation.

i. To cease its existence as a state bank in the manner provided for in this chapter.

j. To have and exercise all powers necessary and proper to effect any or all of the purposes for which the state bank is organized.

k. To contract indebtedness and incur liabilities to effect any or all of the purposes for which the state bank is organized, subject to the provisions of this chapter.

l. To set off a customer's account against any of the customer's debts or liabilities owed the state bank pursuant to an agreement entered into between the customer and the state bank.

2. The powers granted in this section shall not be construed as limiting or enlarging any grant of authority made elsewhere in this chapter, or as a limitation on the purposes for which a state bank may be incorporated or organized.

[C97, §1841, 1844; S13, §1889-j; C24, 27, 31, 35, 39, §**9156, 9162, 9267;** C46, 50, 54, 58, 62, 66, §526.2, 526.7, 532.14; C71, 73, 75, 77, 79, 81, §524.801]

83 Acts, ch 71, §5; 90 Acts, ch 1205, §39; 95 Acts, ch 148, §78, 79; 2002 Acts, ch 1154, §112, 125; 2004 Acts, ch 1141, §65, 66; 2012 Acts, ch 1023, §157

524.802 Additional powers of a state bank.

A state bank shall have in addition to other powers granted by this chapter, and subject to the limitations and restrictions contained in this chapter, the power to do all of the following:

1. Become an insured bank pursuant to the Federal Deposit Insurance Act and to take action as necessary to maintain the state bank's insured status.

2. Become a member of the federal reserve system, to acquire and hold shares in the appropriate federal reserve bank and to exercise all powers conferred on member banks by the federal reserve system that are not inconsistent with this chapter.

3. Become a member of a clearinghouse association.

4. Act as agent of the United States or of any instrumentality or agency of the United States.

5. Act as agent for a depository institution affiliate.

6. Buy and sell coin, currency, and bullion.

7. Organize, acquire, and hold shares of stock in an operations subsidiary, with the prior approval of the superintendent.

8. Engage in the brokerage of insurance and real estate subject to the prior approval of the superintendent. These activities are subject to regulation, including but not limited to regulation under subtitle 1 and subtitle 4 of this title.

9. Acquire and hold shares of stock in the appropriate federal home loan bank and to exercise all powers conferred on member banks of the federal home loan bank system that are not inconsistent with this chapter. A purchase of federal home loan bank shares which causes the state bank's holdings to exceed fifteen percent of aggregate capital requires the prior approval of the superintendent. In addition, a state bank may own federal home loan bank shares in an amount exceeding fifteen percent of the state bank's aggregate capital, but not exceeding twenty-five percent of the state bank's aggregate capital, if the ownership of shares exceeding fifteen percent is needed to support the state bank's participation in the federal home loan bank's acquired member assets program as provided for in 12 C.F.R. pt. 955.

10. Acquire and hold shares of stock in the federal agricultural mortgage corporation or corporations engaged solely in the pooling of agricultural loans for the federal agricultural mortgage corporation guarantees.

11. Become a member of a bankers' bank.

12. Subject to the prior approval of the superintendent, organize, acquire, or invest in a subsidiary for the purpose of engaging in any of the following:

a. Nondepository activities that a state bank is authorized to engage in directly under this chapter.

b. Activities that a bank service corporation is authorized to engage in under state or federal law or regulation.

c. Activities authorized pursuant to section 524.825.

13. Acquire, hold, and improve real estate for the sole purpose of economic or community development, provided that the state bank's aggregate investment in all acquisitions and improvements of real estate under this subsection shall not exceed fifteen percent of a state bank's aggregate capital and shall be subject to the prior approval of the superintendent.

14. Provide customer financing for wind energy production facilities eligible for production tax credits pursuant to chapter 476B in a manner that maximizes the availability of production tax credits to the state bank, including structuring such financing as a membership investment whereby the state bank as equity investor may take a majority financial position, but not a management position, in each such facility, subject to the following:

a. Prior to providing financing, a creditworthiness review shall be conducted pursuant to the state bank's standard loan underwriting criteria.

b. The state bank shall not participate in the operation of the facility, the production of wind energy, or the sale of wind energy if such sale is contemplated by the customer.

c. If the facility does not perform as projected in the equity investment agreement, the state bank may either sell its interest in the facility or pursue liquidation.

d. The state bank shall not share in any appreciation in value of its interest in the facility or in any of the customer's real or personal assets.

e. At the end of any applicable holding period, the state bank shall sell at book value its ownership interest in the facility.

15. All other powers determined by the superintendent to be appropriate for a state bank.

[C97, §1841; SS15, §1889-o; C24, 27, 31, §9156, 9269, 9271; C35, §9156, 9269, 9271, 9283-g2, -g3, -g4, -g5; C39, §**9156, 9269, 9271, 9283.45, 9283.46, 9283.47, 9283.48;** C46, 50, 54, 58, 62, 66, §526.2, 528.67, 528.70, 530.2, 530.3, 530.4, 530.5; C71, 73, 75, 77, 79, 81, §524.802]

95 Acts, ch 148, §80; 2004 Acts, ch 1141, §23; 2008 Acts, ch 1128, §1, 15; 2012 Acts, ch 1017, §20

Referred to in §524.825, 524.1007, 524.1008

524.803 Business property of state bank.

1. A state bank shall have power to do all of the following:

a. Acquire and hold, or lease as lessee, such personal property as is used, or is to be used, in its operations.

b. Subject to the prior approval of the superintendent, acquire and hold, or lease as lessee, only such real property as is used, or is to be used, wholly or substantially, in its operations or acquired for future use.

c. Subject to the prior approval of the superintendent, acquire and hold shares in a corporation engaged solely in holding or operating real property used wholly or substantially by a state bank in its operations or acquired for its future use.

d. Subject to the prior approval of the superintendent, acquire and hold shares in a corporation organized solely for the purpose of providing data processing services, as such services are defined in section 524.804.

e. Subject to the prior approval of the superintendent, acquire and hold shares in a corporation engaged in providing and operating facilities through which banks and customers may engage, by means of either the direct transmission of electronic impulses to and from a bank or the recording of electronic impulses or other indicia of a transaction for delayed transmission to a bank, in transactions in which such banks are otherwise permitted to engage pursuant to applicable law.

2. The book value of all real and personal property acquired and held pursuant to this section, of all alterations to buildings on real property owned or leased by a state bank, of all shares in corporations acquired pursuant to paragraphs *"c"*, *"d"*, and *"e"* of subsection 1, and of any and all obligations of such corporations to the state bank, shall not exceed forty percent of the aggregate capital of the state bank or such larger amount as may be approved by the superintendent.

3. Any real property which is held by a state bank pursuant to this section and which it ceases to use for banking purposes, or is acquired for future use but not used within a reasonable period of time, shall be sold or disposed of by the state bank as directed by the superintendent.

[C97, §1851; C24, 27, 31, 35, 39, §**9190;** C46, 50, 54, 58, §526.34; C62, 66, §524.31, 526.34; C71, 73, 75, 77, 79, 81, §524.803]

87 Acts, ch 171, §13; 95 Acts, ch 148, §81

Referred to in §524.804

524.804 Data processing services.

A state bank which owns or leases equipment to perform such bank services as check and deposit sorting and posting, computation and posting of interest and other credits and charges, preparation and mailing of checks, statements, notices, and similar items, or other clerical, bookkeeping, accounting, statistical, or other similar functions, may provide similarly related data processing services for others whether or not engaged in the business of banking. If a state bank holds shares in a corporation organized solely for the purpose of providing data processing services, pursuant to the authority granted by section 524.803, subsection 1, paragraph *"d"*, other than a bank service corporation as defined by the laws of the United States, such corporation shall be authorized to perform services for the state bank owning such interest and for others, whether or not engaged in the business of banking.

[C62, 66, §524.31; C71, 73, 75, 77, 79, 81, §524.804]

95 Acts, ch 148, §82

Referred to in §524.218, 524.803, 524.1201

524.805 Deposits.

1. A state bank may receive money for deposit and may provide, by resolution of the board of directors, for the payment of interest on such deposit and shall repay the deposit in accordance with the terms and conditions of its acceptance.

2. The terms and conditions attending an agreement to pay interest on deposits shall be furnished to each customer at the time of the acceptance by the state bank of the initial deposit. No change made in the terms and conditions attending an agreement to pay interest which adversely affects the interest of a depositor shall be retroactively effective. Savings account depositors and holders and payees of automatic renewal time certificates of deposit

shall be given reasonable notice of any change in the terms and conditions attending an agreement to pay interest prior to the effective date thereof.

3. A state bank may make such charges for the handling or custody of deposits as may be fixed by its board of directors provided that a schedule of the charges shall be furnished to the customer at the time of acceptance by the state bank of the initial deposit. Any change in the charges shall be furnished to the customer within a reasonable period of time before the effective date of the change.

4. A state bank shall not accept deposits or renew certificates of deposit when insolvent.

5. Except as provided in section 524.807, a state bank may receive deposits by or in the name of a minor and may deal with a minor with respect to a deposit account without the consent of a parent, guardian or conservator and with the same effect as though the minor were an adult. Any action of the minor with respect to such deposit account shall be binding on the minor with the same effect as though an adult.

6. A state bank may receive deposits from a person acting as fiduciary or in an official capacity which shall be payable to such person in such capacity.

7. A state bank may receive deposits from a corporation, trust, estate, association or other similar organization which shall be payable to any person authorized by its board of directors or other persons exercising similar functions.

8. A state bank may receive deposits from one or more persons with the provision that upon the death of the depositors the deposit account shall be the property of the person or persons designated by the deceased depositors as shown on the deposit account records of the state bank. After payment by the state bank, the proceeds shall remain subject to the debts of the decedent and the payment of Iowa inheritance tax, if any. A state bank paying the person or persons designated shall not be liable as a result of that action for any debts of the decedent or for any estate, inheritance, or succession taxes which may be due this state.

[C97, §1844, 1848, 1849, 1852, 1854, 1884; S13, §1848, 1852; C24, 27, §9162, 9177, 9178, 9179, 9180, 9181, 9182, 9191, 9193, 9279; C31, 35, §9162, 9177, 9178, 9179, 9180, 9181, 9182, 9191, 9193, 9222-c1, 9279; C39, §**9162, 9177, 9178, 9179, 9180, 9181, 9182, 9191, 9193, 9222.1, 9279;** C46, 50, 54, 58, 62, 66, §526.7, 526.19 – 526.24, 526.35, 526.37, 528.11, 528.81; C71, 73, 75, 77, 79, 81, §524.805; 81 Acts, ch 173, §2]

95 Acts, ch 148, §83, 84; 2002 Acts, ch 1002, §1

Referred to in §524.1608

524.806 Deposit in the names of two or more individuals.

When a deposit is made in any state bank in the names of two or more individuals, payable to any one or more of them, or payable to the survivor or survivors, the deposit, including interest, or any part thereof, may be paid to any one or more of the individuals whether the others be living or not, and the receipt or acquittance of the individuals so paid is a valid and sufficient release and discharge to the state bank for any payment so made.

[S13, §1889-b; C24, 27, 31, 35, 39, §**9267;** C46, 50, 54, 58, 62, 66, §528.64; C71, 73, 75, 77, 79, 81, §524.806; 81 Acts, ch 173, §3]

524.807 Payment of deposited funds.

When any deposit shall be made by any individual in trust for another, and no other or further notice of the existence and terms of a legal and valid trust shall have been given to the state bank, in the event of the death of the trustee, the same or any part thereof, together with interest thereon, may be paid to the individual for whom the deposit was made, or to the individual's legal representatives; provided that the individual for whom the deposit was made, if a minor, shall not draw the same during the individual's minority without the consent of the legal representatives of said trustee.

[SS15, §1889-d; C24, 27, 31, 35, 39, §**9287;** C46, 50, 54, 58, 62, 66, §532.4; C71, 73, 75, 77, 79, 81, §524.807]

Referred to in §524.805

524.808 Adverse claims to deposits.

1. A state bank shall not be required, in the absence of a court order or indemnity required

by this section, to recognize any claim to, or any claim of authority to exercise control over, a deposit account made by a person or persons other than:

a. The customer in whose name the account is held by the state bank.

b. An individual or group of individuals who are authorized to draw on or control the account pursuant to certified corporate resolution or other written arrangement with the customer, currently on file with the state bank, which has not been revoked by valid corporate action in the case of a corporation, or by a valid agreement or other valid action appropriate for the form of legal organization of any other customer, of which the state bank has received notice and which is not the subject of a dispute known to the state bank as to its original validity. The deposit account records of a state bank shall be presumptive evidence as to the identity of the customer on whose behalf the money is held.

2. To require a state bank to recognize an adverse claim to, or adverse claim of authority to control, a deposit account, whoever makes the claim must either:

a. Obtain and serve on the state bank an appropriate court order or judicial process directed to the state bank, restraining any action with respect to the account until further order of such court or instructing the state bank to pay the balance of the account, in whole or in part, as provided in the order or process; or

b. Deliver to the state bank a bond, in form and amount and with sureties satisfactory to the state bank, indemnifying the state bank against any liability, loss or expense which it might incur because of its recognition of the adverse claim or because of its refusal by reason of such claim to honor any check or other order of anyone described in paragraphs "*a*" and "*b*" of subsection 1 of this section.

[C71, 73, 75, 77, 79, 81, §524.808]

524.809 Authority to lease safe deposit boxes.

1. A state bank may lease safe deposit boxes for the storage of property on terms and conditions prescribed by the state bank. The terms and conditions shall not bind a customer or the customer's successors or legal representatives to whom the state bank does not give notice of such terms and conditions by delivery of a lease and agreement in writing containing the terms and conditions. A state bank may limit its liability provided such limitations are set forth in the lease and agreement in at least the same size and type as the other substantive provisions of the lease and agreement.

2. The lease and agreement of a safe deposit box may provide that evidence tending to prove that property was left in any such box upon the last entry by the customer or the customer's authorized agent, and that the same or any part thereof was found missing upon subsequent entry, shall not be sufficient to raise a presumption that the same was lost by any negligence or wrongdoing for which such state bank is responsible, or put upon the state bank the burden of proof that such alleged loss was not the fault of the state bank.

3. A state bank may lease a safe deposit box to a minor. A state bank may deal with a minor with respect to a safe deposit lease and agreement without the consent of a parent, guardian or conservator and with the same effect as though the minor were an adult. Any action of the minor with respect to such safe deposit lease and agreement shall be binding on the minor with the same effect as though an adult.

4. A state bank which has on file a power of attorney of a customer covering a safe deposit lease and agreement, which has not been revoked by the customer, shall incur no liability as a result of continuing to honor the provisions of the power of attorney in the event of the death or incompetence of the donor of the power of attorney until it receives written notice of the death, or written notice of adjudication by a court of the incompetence of the customer and the appointment of a guardian or conservator.

[C31, 35, §9267-c1; C39, §**9267.1;** C46, 50, 54, 58, 62, 66, §528.65; C71, 73, 75, 77, 79, 81, §524.809]

95 Acts, ch 148, §85
Referred to in §524.108

524.810 Search procedure on death. Repealed by 97 Acts, ch 60, §1, 2.

524.810A Safe deposit box access.

1. A bank shall permit a person named in and authorized by a court order to open, examine, and remove the contents of a safe deposit box located at the bank. If a court order has not been delivered to the bank, the following persons may access and remove any or all contents of a safe deposit box located at a state bank which box is described in an ownership or rental agreement or lease between the state bank and a deceased owner or lessee:

a. A co-owner or co-lessee of the safe deposit box.

b. A person designated in the safe deposit box agreement or lease to have access to the safe deposit box upon the death of the lessee, to the extent provided in the safe deposit box agreement or lease.

c. An executor or administrator of the estate of a deceased owner or lessee upon delivery to the state bank of a certified copy of letters of appointment.

d. A person named as an executor in a copy of a purported will produced by the person, provided such access shall be limited to the removal of a purported will, and no other contents shall be removed.

e. A trustee of a trust created by the deceased owner or lessee upon delivery to the state bank of either of the following:

(1) A certification of trust pursuant to section 633A.4604 which certifies that the trust property is reasonably believed to include property in the safe deposit box.

(2) A copy of the trust with an affidavit by the trustee which certifies that a copy of the trust delivered to the state bank with the affidavit is an accurate and complete copy of the trust, that the trustee is the duly authorized and acting trustee under the trust, that the trust property is reasonably believed to include property in the safe deposit box, and that, to the knowledge of the trustee, the trust has not been revoked.

2. A person removing any contents of a safe deposit box pursuant to subsection 1 shall deliver any writing purported to be a will of the decedent to the court having jurisdiction over the decedent's estate.

3. *a.* If a person authorized to have access under subsection 1 does not request access to the safe deposit box within the thirty-day period immediately following the date of death of the owner or lessee of a safe deposit box, and the state bank has knowledge of the death of the owner or lessee of the safe deposit box, the safe deposit box may be opened by or in the presence of two employees of the state bank. If no key is produced, the state bank may cause the safe deposit box to be opened and the state bank shall have a claim against the estate of the deceased owner or lessee and a lien upon the contents of the safe deposit box for the costs of opening and resealing the safe deposit box.

b. If a safe deposit box is opened pursuant to paragraph *"a"*, the bank employees present at such opening shall do all of the following:

(1) Remove any purported will of the deceased owner or lessee.

(2) Unseal, copy, and retain in the records of the state bank a copy of a purported will removed from the safe deposit box. An additional copy of such purported will shall be made, dated, and signed by the bank employees present at the safe deposit box opening and placed in the safe deposit box. The safe deposit box shall then be resealed.

(3) The original of a purported will shall be sent by registered or certified mail or personally delivered to the district court in the county of the last known residence of the deceased owner or lessee, or the court having jurisdiction over the testator's estate. If the residence is unknown or last known and not in this state, the purported will shall be sent by registered or certified mail or personally delivered to the district court in the county where the safe deposit box is located.

4. The state bank may rely upon published information or other reasonable proof of death of an owner or lessee. A state bank has no duty to inquire about or discover, and is not liable to any person for failure to inquire about or discover, the death of the owner or lessee of a safe deposit box. A state bank has no duty to open or cause to be opened, and is not liable to any person for failure to open or cause to be opened, a safe deposit box of a deceased owner or lessee. Upon compliance with the requirements of subsection 1 or 3, the state bank is not

liable to any person as a result of the opening of the safe deposit box, removal and delivery of the purported will, or retention of the unopened safe deposit box and contents.

99 Acts, ch 148, §1; 2004 Acts, ch 1102, §1, 2; 2005 Acts, ch 38, §55
Referred to in §524.108

524.811 Adverse claims to property in safe deposit and safekeeping.

1. A state bank shall not be required, in the absence of a court order or indemnity required by this section, to recognize any claim to, or claim of authority to exercise control over, property held in safe deposit or property held for safekeeping pursuant to section 524.813 made by a person or persons other than:

a. The customer in whose name the property is held by the state bank.

b. An individual or group of individuals who are authorized to have access to the safe deposit box, or to the property held for safekeeping, pursuant to a certified corporate resolution or other written arrangement with the customer, currently on file with the state bank, which has not been revoked by valid corporate action in the case of a corporation, or by a valid agreement or other valid action appropriate for the form of legal organization of any other customer, of which the state bank has received notice and which is not the subject of a dispute known to the state bank as to its original validity. The safe deposit and safekeeping account records of a state bank shall be presumptive evidence as to the identity of the customer on whose behalf the money is held.

2. To require a state bank to recognize an adverse claim to, or adverse claim of authority to control, property held in safe deposit or for safekeeping, whoever makes the claim must either:

a. Obtain and serve on the state bank an appropriate court order or judicial process directed to the state bank, restraining any action with respect to the property until further order of such court or instructing the state bank to deliver the property, in whole or in part, as provided in the order or process; or

b. Deliver to the state bank a bond, in form and amount and with sureties satisfactory to the state bank, indemnifying the state bank against any liability, loss or expense which it might incur because of its recognition of the adverse claim or because of its refusal to deliver the property to any person described in paragraphs "*a*" and "*b*" of subsection 1 of this section.

[C71, 73, 75, 77, 79, 81, §524.811]
Referred to in §524.108

524.812 Remedies and proceedings for nonpayment of rent on safe deposit box.

1. A state bank shall have a lien upon the contents of a safe deposit box for past due rentals and any expense incurred in opening the safe deposit box, replacement of the locks thereon, and of any sale made pursuant to this section. If the rental of any safe deposit box is not paid within six months from the day it is due, at any time thereafter and while such rental remains unpaid, the state bank shall mail a notice by certified or registered mail to the customer at the customer's last known address as shown upon the records of the state bank, stating that if the amount due for such rental is not paid on or before a specified day, which shall be at least thirty days after the date of mailing such notice, the state bank will remove the contents thereof and hold the same for the account of the customer.

2. If the rental for the safe deposit box has not been paid prior to the expiration of the period specified in a notice mailed pursuant to subsection 1 of this section, the state bank may, in the presence of two of its officers, cause the box to be opened and the contents removed. An inventory of the contents of the safe deposit box shall be made by the two officers present and the contents held by the state bank for the account of the customer.

3. If the contents are not claimed within two years after their removal from the safe deposit box, the state bank may proceed to sell so much of the contents as is necessary to pay the past due rentals and the expense incurred in opening the safe deposit box, replacement of the locks thereon and the sale of the contents. The sale shall be held at the time and place specified in a notice published prior to the sale once each week for two successive weeks in a newspaper of general circulation published in the municipal corporation or unincorporated area in which the state bank has its principal place of business, or if there is none, a newspaper

of general circulation published in the county, or in a county adjoining the county, in which the state bank has its principal place of business. A copy of the notice so published shall be mailed to the customer at the customer's last known address as shown upon the records of the state bank. The notice shall contain the name of the customer and need only describe the contents of the safe deposit box in general terms. The contents of any number of safe deposit boxes may be sold under one notice of sale and the cost thereof apportioned ratably among the several safe deposit box customers involved. At the time and place designated in said notice the contents taken from each respective safe deposit box shall be sold separately to the highest bidder for cash and the proceeds of each sale applied to the rentals and expenses due to the state bank and the residue from any such sale shall be held by the state bank for the account of the customer or customers. Any amount so held as proceeds from such sale shall be credited with interest at the customary annual rate for savings accounts at said state bank, or in lieu thereof, at the customary rate of interest in the community where such proceeds are held. The crediting of interest shall not activate said account to avoid an abandonment as unclaimed property under chapter 556.

4. Notwithstanding any of the provisions of this section, shares, bonds, or other securities which, at the time of a sale pursuant to subsection 3 of this section, are listed on any established stock exchange in the United States, shall not be sold at public sale but may be sold through an established stock exchange. Upon the making of a sale of any such securities, an officer of the state bank shall execute and attach to the securities so sold an affidavit reciting facts showing that such securities were sold pursuant to this section and that the state bank has complied with the provisions of this section. The affidavit shall constitute sufficient authority to any corporation whose shares are so sold or to any registrar or transfer agent of such corporation to cancel the certificates of shares so sold and to issue a new certificate or certificates representing such shares to the purchaser thereof, and to any registrar, trustee, or transfer agent of registered bonds or other securities, to register any such bonds or other securities in the name of the purchaser thereof.

5. The proceeds of any sale made pursuant to this section, after the payment of any amounts with respect to which the state bank has a lien, any property which was not offered for sale and property which, although offered for sale, was not sold, shall be retained by the state bank until such time as the property is presumed abandoned according to the provisions of section 556.2, and shall thereafter be handled in accordance with the provisions of that chapter.

[C71, 73, 75, 77, 79, 81, §524.812]

95 Acts, ch 148, §86

Referred to in §524.108, 524.813

524.813 Authority to receive property for safekeeping.

1. A state bank may accept property for safekeeping if, except in the case of night depositories, it issues a receipt therefor. A state bank accepting property for safekeeping shall purchase and maintain reasonable insurance coverage to insure against loss incurred in connection with the acceptance of property for safekeeping. Property held for safekeeping shall not be commingled with the property of the state bank or the property of others.

2. A state bank shall have a lien upon any property held for safekeeping for past due charges for safekeeping and for expenses incurred in any sale made pursuant to this subsection. If the charge for the safekeeping of property is not paid within six months from the day it is due, at any time thereafter and while such charge remains unpaid, the state bank may mail a notice to the customer at the customer's last known address as shown upon the records of the state bank, stating that if the amount due is not paid on or before a specified day, which shall be at least thirty days after the date of mailing such notice, the state bank will remove the property from safekeeping and hold the same for the account of the customer. After the expiration of the period specified in such notice, if the charge for safekeeping has not been paid, the state bank may remove the property from safekeeping, cause the property to be inventoried and hold the same for the account of the customer. If the property is not claimed within two years after its removal from safekeeping the state bank may proceed to sell so much thereof as is necessary to pay the charge which remains unpaid

and the expense incurred in making the sale in the manner provided for in subsections 3 and 4 of section 524.812. The proceeds of any sale made pursuant to this section, after payment of any amounts with respect to which the state bank has a lien, any property which was not offered for sale and property which, although offered for sale, was not sold, shall be retained by the state bank until such time as the property is presumed abandoned according to the provisions of section 556.2, and shall thereafter be handled in accordance with the provisions of that chapter.

[C71, 73, 75, 77, 79, 81, §524.813]

Referred to in §524.811

524.814 Loan or pledge of assets.

Pursuant to a resolution of its board of directors, a state bank may lend or pledge its assets for the following purposes, and for no other purposes:

1. To secure deposits of the state bank or a bank that is an affiliate of the state bank when a customer is required to obtain such security, or a bank is required to provide security, by the laws of the United States, by any agency or instrumentality of the United States, by the laws of the state of Iowa or another state, by the state board of regents, by a resolution or ordinance relating to the issuance of bonds, by the terms of any interstate compact, or by order of any court of competent jurisdiction. The lending of securities to a bank that is an affiliate, or the pledging of securities for the account of a bank that is an affiliate, shall be on terms and conditions that are consistent with safe and sound banking practices.

2. To secure transactions to hedge risks associated with interest rate exposure, subject to the approval of the superintendent.

3. To secure money borrowed by the state bank, provided that capital notes or debentures issued pursuant to section 524.404 shall not in any event be secured by a pledge of assets or otherwise.

4. To secure participations sold to the federal agricultural mortgage corporation.

[S13, §1889-c; C24, 27, §9268; C31, 35, §9222-c2, 9222-c3, 9268; C39, §**9222.2, 9222.3, 9268;** C46, 50, 54, 58, 62, 66, §528.12, 528.13, 528.66; C71, 73, 75, 77, 79, 81, §524.814]

89 Acts, ch 257, §9; 2002 Acts, ch 1175, §92, 103; 2010 Acts, ch 1028, §10; 2010 Acts, ch 1189, §41

Referred to in §524.1601

524.815 Deposits by a state bank.

A state bank may deposit its funds in a depository which is selected by, or in a manner authorized by, the directors of a state bank and which is authorized by law to receive deposits and is subject to supervision by banking authorities of the United States or of any state, and, with the prior approval of the superintendent, in any other depository.

[C71, 73, 75, 77, 79, 81, §524.815]

524.816 Account insurance.

1. A bank organized under this chapter, as a condition of maintaining its privilege of organization after July 1, 1984 shall become an insured bank and shall acquire and maintain insurance to protect each depositor against loss of funds held on account by the bank. The insurance shall be obtained from the federal deposit insurance corporation or another insurance plan approved by the superintendent, provided that each bank shall acquire deposit insurance from the appropriate agency of the federal government.

2. The superintendent may furnish to an official of an insurance plan by which the accounts of the bank are insured, any information relating to examinations and reports of the status of that bank for the purpose of determining availability of insurance to that bank.

84 Acts, ch 1196, §1; 91 Acts, ch 16, §1

524.817 Reserved.

524.818 Indebtedness of state bank.

A state bank may borrow money or otherwise contract indebtedness for necessary expenses in managing and transacting its business, to maintain proper cash reserves, and for other

corporate purposes, provided, however, the superintendent may prohibit or place restrictions upon money borrowed or other indebtedness which would, in the superintendent's judgment, constitute an unsafe or unsound practice in view of the condition and circumstances of the state bank. Nothing contained in this section shall limit the right of a state bank to issue capital notes or debentures pursuant and subject to the provisions of section 524.404.

[S13, §1889-j; C24, 27, 31, 35, 39, §**9297;** C46, 50, 54, 58, 62, 66, §532.14; C71, 73, 75, 77, 79, 81, §524.818]

524.819 Clearing checks at par.

Checks drawn on a state bank shall be cleared at par by the state bank on which they are drawn. This section shall not be applicable where checks are received by a bank as special collection items.

[C46, 50, 54, 58, 62, 66, §528.63; C71, 73, 75, 77, 79, 81, §524.819]

Referred to in §524.1601

524.820 Money received for transmission.

1. A state bank shall have power to receive money for transmission. Upon receiving money for transmission, a state bank shall give the customer a receipt setting forth the date of receipt of the money, the amount of the money in dollars and cents, and if the money is to be transmitted to a foreign country in the currency of such country, the amount of the money in such currency.

2. In an action by a customer against a state bank for recovery of money delivered for transmission, the burden of proof of delivery of the money in accordance with the instructions of the customer shall be on the state bank but an affidavit by an agent or depository of the state bank that the money was delivered in accordance with the instructions of the customer and a receipt for the money signed in the name of the recipient designated by the customer shall be prima facie evidence of the delivery of the money in accordance with the instructions of the customer.

[C71, 73, 75, 77, 79, 81, §524.820]

524.821 Electronic transmission of funds — restrictions.

1. A state bank may engage in any transaction incidental to the conduct of the business of banking and otherwise permitted by applicable law, by means of either the direct transmission of electronic impulses to or from customers and banks or the recording of electronic impulses or other indicia of a transaction for delayed transmission to a bank. Subject to the provisions of chapter 527, a state bank may utilize, establish or operate, alone or with one or more other banks, savings and loan associations incorporated under federal law, credit unions incorporated under the provisions of chapter 533 or federal law, corporations licensed under chapter 536A, or third parties, the satellite terminals permitted under chapter 527, by means of which customers and banks may transmit and receive electronic impulses constituting transactions pursuant to this section. However, such utilization, establishment, or operation shall be lawful only when in compliance with chapter 527. Nothing in this section shall be construed as authority for any person to engage in transactions not otherwise permitted by applicable law, nor shall anything in this section be deemed to repeal, replace or in any other way affect any applicable law or rule regarding the maintenance of or access to financial information maintained by any bank.

2. A state bank which offers its customers, or any of them, the opportunity to engage in transactions with or through the bank in the manner authorized by subsection 1 shall not require a customer to deal with or through the bank in that manner in lieu of writing checks in the usual manner upon a conventional checking account, and shall not impose any extraordinary charge upon customers who choose to write checks in the usual manner upon a conventional checking account maintained at that bank. The term *"extraordinary charge"*, as used in this subsection, is a charge in excess of a fair and reasonable charge, based upon the costs to the bank of providing and maintaining checking account services.

[C77, 79, 81, §524.821; 82 Acts, ch 1094, §1]

2012 Acts, ch 1017, §108

524.822 through 524.824 Reserved.

524.825 Securities activities.

1. Subject to the prior approval of the superintendent and as authorized by rules adopted by the superintendent pursuant to chapter 17A, a state bank or a subsidiary of a state bank organized or acquired pursuant to section 524.802, subsection 12, may engage in directly, or may organize, acquire, or invest in a subsidiary for the purpose of engaging in securities activities and any aspect of the securities industry, including but not limited to any of the following:

a. Issuing, underwriting, selling, or distributing stocks, bonds, debentures, notes, interest in mutual funds or money-market-type mutual funds, or other securities.

b. Organizing, sponsoring, and operating one or more mutual funds.

c. Acting as a securities broker-dealer licensed under chapter 502. The business relating to securities shall be conducted through, and in the name of, the broker-dealer. The requirements of chapter 502 apply to any business of the broker-dealer transacted in this state.

2. A subsidiary engaging in activities authorized by this section may also engage in any other authorized activities under section 524.802, subsection 12.

87 Acts, ch 171, §14; 95 Acts, ch 148, §87; 2012 Acts, ch 1023, §157
Referred to in §524.802

524.826 through 524.900 Reserved.

SUBCHAPTER IX

INVESTMENT AND LENDING POWERS

524.901 Investments.

1. For purposes of this section, unless the context otherwise requires:

a. "Investment securities" means marketable obligations in the form of bonds, notes, or debentures which have been publicly offered, are of sound value, or are secured so as to be readily marketable at a fair value, and are within the four highest grades according to a reputable rating service or represent unrated issues of equivalent value. *"Investment securities"* does not include investments which are predominately speculative in nature.

b. "Shares" means proprietary units of ownership of a corporation.

2. A state bank shall not invest for its own account more than fifteen percent of its aggregate capital in investment securities of any one obligor. The par value of the investment securities shall be used to determine the amount that may be invested under this subsection, and any premium paid by a state bank for any investment securities shall not be included in determining the amount that may be invested under this subsection.

3. Subject only to the exercise of prudent banking judgment, a state bank may invest for its own account without regard to the limitation provided in subsection 2 in any of the following:

a. Investment securities of the United States of which the payment of principal and interest is fully and unconditionally guaranteed by the United States.

b. Investment securities issued, insured, or guaranteed by a department or an agency of the United States government, provided that the securities, insurance, or guarantee commits the full faith and credit of the United States for the repayment of the securities.

c. Investment securities of the federal national mortgage association or the association's successor.

d. Investment securities of the federal home loan mortgage corporation or the corporation's successor.

e. Investment securities of the student loan marketing association or the association's successor.

f. Investment securities of a federal home loan bank.

g. Investment securities of a farm credit bank.

h. Investment securities representing general obligations of the state of Iowa or of political subdivisions of the state.

4. A state bank may invest without limit in the shares or units of investment companies or investment trusts registered under the federal Investment Company Act of 1940, 15 U.S.C. §80a-1 et seq., the portfolio of which is limited to United States investment securities described in subsection 3 or repurchase agreements fully collateralized by United States investment securities described in subsection 3, if delivery of the collateral is taken either directly or through an authorized custodian and the dollar-weighted average maturity of the portfolio is not more than five years. All other investments by a state bank in the shares or units of investment companies or investment trusts registered under the federal Investment Company Act of 1940, 15 U.S.C. §80a-1 et seq., whose portfolios exclusively contain investment securities permissible pursuant to subsections 2 and 3, shall not exceed fifteen percent of the state bank's aggregate capital.

5. To the extent necessary to meet minimum membership or participation criteria, a state bank may invest for its own account in the shares of the appropriate federal reserve bank, the appropriate federal home loan bank, the federal national agricultural mortgage corporation or corporations engaged solely in the pooling of agricultural loans for federal agricultural mortgage corporation guarantees, and other similar investments acceptable to the superintendent and approved in writing by the superintendent. The bank's investment in the shares of each of the organizations is limited to fifteen percent of its aggregate capital or a higher amount as approved by the superintendent. Notwithstanding the specific requirements of this section, any shares of government-sponsored entities held by a state bank on or before July 1, 1995, shall be authorized.

6. A state bank, upon the approval of the superintendent, may acquire and hold the shares of any corporation which a state bank is authorized to acquire and hold pursuant to this chapter.

7. *a.* A state bank, upon the approval of the superintendent, may invest up to five percent of its aggregate capital in the shares or equity interests of any of the following:

(1) Economic development corporations organized under chapter 496B to the extent authorized by and subject to the limitations of that chapter.

(2) Community development corporations or community development projects to the same extent a national bank may invest in such corporations or projects pursuant to 12 U.S.C. §24.

(3) Small business investment companies as defined by the laws of the United States.

(4) Venture capital funds which invest an amount equal to at least fifty percent of a state bank's investment in small businesses having their principal offices within this state and having either more than one-half of their assets within this state or more than one-half of their employees employed within this state.

(5) Small businesses having a principal office within this state and having either more than one-half of their assets within this state or more than one-half of their employees employed within this state. An investment by a state bank in a small business under this subparagraph shall be included with the obligations of the small business to the state bank that are incurred as a result of the exercise by the state bank of the powers conferred in section 524.902 for the purpose of determining the total obligations of the small business pursuant to section 524.904. A state bank's equity interest investment in a small business, pursuant to this subparagraph, shall not exceed a twenty percent ownership interest in the small business.

(6) Other entities, acceptable to the superintendent, whose sole purpose is to promote economic or civic developments within a community or this state.

b. A state bank's total investment in any combination of the shares or equity interests of the entities identified in paragraph "*a*", subparagraphs (1) through (6) shall be limited to fifteen percent of its aggregate capital.

c. For purposes of this subsection:

(1) The term "*equity interests*" means limited partnership interests and other equity interests in which liability is limited to the amount of the investment, but does not mean general partnership interests or other interests involving general liability.

(2) The term "*small business*" means a corporation, partnership, proprietorship, or other

entity which meets the appropriate United States small business administration definition of small business and which is principally engaged in the development or exploitation of inventions, technological improvements, new processes, or other products not previously generally available in this state, or other investments which provide an economic benefit to the state.

(3) The term *"venture capital fund"* means a corporation, partnership, proprietorship, or other entity whose principal business is or will be the making of investments in, and the providing of significant managerial assistance to, small businesses.

8. A state bank, in the exercise of the powers granted in this chapter, may purchase cash value life insurance contracts which may include provisions for the lump sum payment of premiums and which may include insurance against the loss of the lump sum payment. The cash value life insurance contracts purchased from any one company shall not exceed fifteen percent of aggregate capital of the state bank, and in the aggregate from all companies, shall not exceed twenty-five percent of aggregate capital of the state bank unless the state bank has obtained the approval of the superintendent prior to the purchase of any cash value life insurance contract in excess of this limitation.

9. A state bank may invest without limitation for its own account in futures, forward, and standby contracts to purchase and sell any of the instruments a state bank is authorized to purchase and sell, subject to the prior approval of the superintendent and pursuant to applicable federal laws and regulations governing such contracts. Purchase and sale of such contracts shall be conducted in accordance with safe and sound banking practices and with the level of the activity being reasonably related to the state bank's business needs and capacity to fulfill its obligations under the contracts.

[C97, §1844, 1850; S13, §1850; SS15, §1889-o; C24, 27, 31, 35, 39, §**9162, 9183, 9269, 9271;** C46, 50, 54, 58, 62, 66, §526.7, 526.25, 528.15, 528.67, 528.70; C71, 73, 75, 77, 79, 81, §524.901; 81 Acts, ch 173, §10; 82 Acts, ch 1017, §1, 2]

83 Acts, ch 124, §14, 15; 83 Acts, ch 152, §1; 85 Acts, ch 136, §3; 85 Acts, ch 252, §35; 87 Acts, ch 171, §15 – 19; 88 Acts, ch 1075, §1; 89 Acts, ch 49, §1; 89 Acts, ch 257, §10 – 15; 91 Acts, ch 220, §5, 6; 94 Acts, ch 1140, §1, 2; 95 Acts, ch 148, §88; 2010 Acts, ch 1028, §11; 2012 Acts, ch 1023, §135; 2014 Acts, ch 1092, §188

Referred to in §12C.22, 524.904, 524.907, 524.1002, 524.1602, 536A.25

524.902 General lending powers of a state bank.

1. A state bank may, subject to any applicable restrictions under other provisions of this chapter, loan money, extend credit and discount or purchase evidences of indebtedness and agreements for the payment of money.

2. Nothing in this chapter is deemed to permit a state bank to purchase a vendee's interest in a real property sales contract, provided, however, that a state bank may loan or extend credit on the security of such an interest.

[C97, §1844, 1850, 1870; S13, §1850; SS15, §1870; C24, 27, 31, 35, 39, §**9162, 9184, 9223;** C46, 50, 54, 58, 62, 66, §526.7, 526.29, 528.14; C71, 73, 75, 77, 79, 81, §524.902]

92 Acts, ch 1161, §3

Referred to in §524.901

524.903 Purchase and sale of drafts and bills of exchange.

1. A state bank shall have power to accept drafts drawn upon it having not more than six months after sight to run, exclusive of days of grace:

a. Which grow out of transactions involving the importation or exportation of goods.

b. Which grow out of transactions involving the domestic shipment of goods, provided documents of title are attached thereto at the time of acceptance.

c. In which a security interest is perfected at the time of acceptance covering readily marketable staples.

2. A state bank shall not accept such drafts in an amount which exceeds at any time in the aggregate for all drawers thirty percent of the state bank's aggregate capital.

3. A state bank may accept drafts, having not more than three months after sight to run, drawn upon it by banks or bankers in foreign countries, or in dependencies or insular

possessions of the United States, for the purpose of furnishing dollar exchange as required by the usages of trade where the drafts are drawn in an aggregate amount which shall not at any time exceed for all such acceptance on behalf of a single bank or banker seven and one-half percent of the state bank's aggregate capital, and for all such acceptances, thirty percent of the state bank's aggregate capital.

[C24, 27, 31, 35, 39, §**9272, 9273, 9274;** C46, 50, 54, 58, 62, 66, §528.71, 528.72, 528.73; C71, 73, 75, 77, 79, 81, §524.903]

95 Acts, ch 148, §89; 2004 Acts, ch 1141, §24

Referred to in §524.904, 524.1602

524.904 Loans and extensions of credit to one borrower.

1. For purposes of this section, *"loans and extensions of credit"* means a state bank's direct or indirect advance of funds to a borrower based on an obligation of that borrower to repay the funds or repayable from specific property pledged by the borrower and shall include:

a. A contractual commitment to advance funds, as defined in section 524.103.

b. A maker or endorser's obligation arising from a state bank's discount of commercial paper.

c. A state bank's purchase of securities subject to an agreement that the seller will repurchase the securities at the end of a stated period.

d. A state bank's purchase of third-party paper subject to an agreement that the seller will repurchase the paper upon default or at the end of a stated period. The amount of the state bank's loan is the total unpaid balance of the paper owned by the state bank less any applicable dealer reserves retained by the state bank and held by the state bank as collateral security. Where the seller's obligation to repurchase is limited, the state bank's loan is measured by the total amount of the paper the seller may ultimately be obligated to repurchase. A state bank's purchase of third-party paper without direct or indirect recourse to the seller is not a loan or extension of credit to the seller.

e. An overdraft.

f. Amounts paid against uncollected funds.

g. Loans or extensions of credit that have been charged off the books of the state bank in whole or in part, unless the loan or extension of credit has become unenforceable by reason of discharge in bankruptcy; or is no longer legally enforceable because of expiration of the statute of limitations or a judicial decision; or forgiven under an executed written agreement by the state bank and the borrower.

h. The aggregate rentals payable by the borrower under leases of personal property by the state bank as lessor.

i. Loans and extensions of credit to one borrower consisting of investments in which the state bank has invested pursuant to section 524.901.

j. Amounts invested by a state bank for its own account in the shares and obligations of a corporation which is a customer of the state bank.

k. All other loans and extensions of credit to one borrower of the state bank not otherwise excluded by subsection 7, whether directly or indirectly, primarily or secondarily.

2. A state bank may grant loans and extensions of credit to one borrower in an amount not to exceed fifteen percent of the state bank's aggregate capital as defined in section 524.103, unless the additional lending provisions described in subsection 3 or 4 apply.

3. A state bank may grant loans and extensions of credit to one borrower in an amount not to exceed twenty-five percent of the state bank's aggregate capital if any amount that exceeds the lending limitation described in subsection 2 is fully secured by one or any combination of the following:

a. Nonnegotiable bills of lading, warehouse receipts, or other documents transferring or securing title covering readily marketable nonperishable staples when such goods are covered by insurance to the extent that insuring the goods is customary, and when the market value of the goods is not at any time less than one hundred twenty percent of the amount of the loans and extensions of credit.

b. Nonnegotiable bills of lading, warehouse receipts, or other documents transferring or securing title covering readily marketable refrigerated or frozen staples when such goods are

fully covered by insurance and when the market value of the goods is not at any time less than one hundred twenty percent of the amount of the loans and extensions of credit.

c. Shipping documents or instruments that secure title to or give a first lien on livestock. At inception, the current value of the livestock securing the loans must equal at least one hundred percent of the amount of the outstanding loans and extensions of credit. For purposes of this section, *"livestock"* includes dairy and beef cattle, hogs, sheep, and poultry, whether or not held for resale. For livestock held for resale, current value means the price listed for livestock in a regularly published listing or actual purchase price established by invoice. For livestock not held for resale, the value shall be determined by the local slaughter price. The state bank must maintain in its files evidence of purchase or an inspection and valuation for the livestock pledged that is reasonably current, taking into account the nature and frequency of turnover of the livestock to which the documents relate.

d. Mortgages, deeds of trust, or similar instruments granting a first lien on farmland or on single-family or two-family residences, subject to the provisions of section 524.905, provided the amount loaned shall not exceed fifty percent of the appraised value of such real property.

e. With the prior approval of the superintendent, other readily marketable collateral. The market value of the collateral securing the loans must at all times equal at least one hundred percent of the outstanding loans and extensions of credit.

4. A state bank may grant loans and extensions of credit to one borrower not to exceed thirty-five percent of the state bank's aggregate capital if any amount that exceeds the lending limitations described in subsection 2 or 3 consists of obligations as endorser of negotiable chattel paper negotiated by endorsement with recourse, or as unconditional guarantor of nonnegotiable chattel paper, or as transferor of chattel paper endorsed without recourse subject to a repurchase agreement.

5. *a.* A state bank may grant loans and extensions of credit to a borrowing group in an amount not to exceed twenty-five percent of the state bank's aggregate capital if all loans and extensions of credit to any one borrower within a borrowing group conform to subsection 2 or 3, and the financial strength, assets, guarantee, or endorsement of any one borrowing group member is not relied upon as a basis for loans and extensions of credit to any other borrowing group member. A state bank may grant loans and extensions of credit to a borrowing group in an amount not to exceed thirty-five percent of aggregate capital if all loans and extensions of credit to any one borrower within a borrowing group conform to subsection 2, 3, or 4, and the financial strength, assets, guarantee, or endorsement of any one borrowing group member is not relied upon as a basis for loans and extensions of credit to any other borrowing group member. While not to be construed as an endorsement of the quality of any loan or extension of credit, the superintendent may authorize a state bank to grant loans and extensions of credit to a borrowing group in an amount not to exceed fifty percent of aggregate capital if all loans and extensions of credit to any one borrower within a borrowing group conform to subsection 2 or 3, and the financial strength, assets, guarantee, or endorsement of any one borrowing group member is not relied upon as a basis for loans and extensions of credit to any other borrowing group member.

b. For the purposes of this subsection, a borrowing group includes a person and any legal entity, including but not limited to corporations, limited liability companies, partnerships, trusts, and associations where the following exist:

(1) One or more persons own or control fifty percent or more of the voting securities or membership interests of the borrowing entity or a member of the group.

(2) One or more persons control, in any manner, the election of a majority of the directors, managers, trustees, or other persons exercising similar functions of the borrowing entity or a member of the group.

(3) One or more persons have the power to vote fifty percent or more of any class of voting securities or membership interests of the borrowing entity or a member of the group.

c. To demonstrate compliance with this subsection, a state bank shall maintain in its files, at a minimum, all of the following:

(1) Documentation demonstrating the current ownership of the borrowing entity.

(2) Documentation identifying the persons who have voting rights in the borrowing entity.

(3) Documentation identifying the board of directors and senior management of the borrowing entity.

(4) The state bank's assessment of the borrowing entity's means of servicing the loan or extension of credit, including specific reasons in support of that assessment. The assessment shall include an analysis of the borrowing entity's financial history, its present and projected economic and financial performance, and the significance of any financial support provided to the borrowing entity by members of the borrowing group and third parties.

6. For purposes of this section:

a. Loans and extensions of credit to one person will be attributed to another person and will be considered one borrower if either of the following apply:

(1) The proceeds, or assets purchased with the proceeds, benefit another person, other than a bona fide arm's length transaction where the proceeds are used to acquire property, goods, or services.

(2) The expected source of repayment for each loan or extension of credit is the same for each borrower and no borrower has another source of income from which the loan may be fully repaid.

b. Loans and extensions of credit to a partnership, joint venture, or association are deemed to be loans and extensions of credit to each member of the partnership, joint venture, or association. This provision does not apply to limited partners in limited partnerships or to members of joint ventures or associations if the partners or members, by the terms of the partnership or membership agreement or other written agreement, are not to be held generally liable for the debts or actions of the partnership, joint venture, or association, and those provisions are valid under applicable law.

c. Loans and extensions of credit to members of a partnership, joint venture, or association are not attributed to the partnership, joint venture, or association unless loans and extensions of credit are made to the member to purchase an interest in the partnership, joint venture, or association, or the proceeds are used for a common purpose with the proceeds of loans and extensions of credit to the partnership, joint venture, or association.

d. Loans and extensions of credit to one borrower which are endorsed or guaranteed by another borrower will not be combined with loans and extensions of credit to the endorser or guarantor unless the endorsement or guaranty is relied upon as a basis for the loans and extensions of credit. A state bank shall not be deemed to have violated this section if the endorsement or guaranty is relied upon after inception of loans and extensions of credit, but the state bank shall, if required by the superintendent, dispose of loans and extensions of credit to one borrower in the amount in excess of the limitations of this section within a reasonable time as fixed by the superintendent.

e. When the superintendent determines the interests of a group of more than one borrower, or any combination of the members of the group, are so interrelated that they should be considered a unit for the purpose of applying the limitations of this section, some or all loans and extensions of credit to that group of borrowers existing at any time shall be combined and deemed loans and extensions of credit to one borrower. A state bank shall not be deemed to have violated this section solely by reason of the fact that loans and extensions of credit to a group of borrowers exceed the limitations of this section at the time of a determination by the superintendent that the indebtedness of that group must be combined, but the state bank shall, if required by the superintendent, dispose of loans and extensions of credit to the group in the amount in excess of the limitations of this section within a reasonable time as fixed by the superintendent.

7. Total loans and extensions of credit to one borrower for the purpose of applying the limitations of this section shall not include any of the following:

a. Additional funds advanced for taxes or for insurance if the advance is for the protection of the state bank.

b. Accrued and discounted interest on existing loans or extensions of credit.

c. Any portion of a loan or extension of credit sold as a participation by a state bank on a nonrecourse basis, provided that the participation results in a pro rata sharing of credit risk proportionate to the respective interests of the originating and participating lenders. Where a participation agreement provides that repayment must be applied first to the portions sold,

a pro rata sharing will be deemed to exist only if the agreement also provides that in the event of a default or comparable event defined in the agreement, participants must share in all subsequent repayments and collections in proportion to their percentage participation at the time of the occurrence of the event. If an originating state bank funds the entire loan, it must receive funding from the participants on the same day or the portions funded will be treated as loans by the originating state bank to the borrower.

d. Loans and extensions of credit to one borrower to the extent secured by a segregated deposit account which the state bank may lawfully set off. An amount held in a segregated deposit account in the name of more than one customer shall be counted only once with respect to all borrowers. Where the deposit is eligible for withdrawal before the secured loan matures, the state bank must establish internal procedures to prevent release of the security without the state bank's prior consent.

e. Loans and extensions of credit to one borrower which is a bank.

f. Loans and extensions of credit to one borrower which are fully secured by bonds and securities of the kind in which a state bank is authorized to invest for its own account without limitation under section 524.901, subsection 3.

g. Loans and extensions of credit to a federal reserve bank or to the United States, or of any department, bureau, board, commission, agency, or establishment of the United States, or to any corporation owned directly or indirectly by the United States, or loans and extensions of credit to one borrower to the extent that such loans and extensions of credit are fully secured or guaranteed or covered by unconditional commitments or agreements to purchase by a federal reserve bank or by the United States, or any department, bureau, board, commission, agency, or establishment of the United States, or any corporation owned directly or indirectly by the United States. Loans and extensions of credit to one borrower secured by a lease on property under the terms of which the United States, or any department, bureau, board, commission, agency, or establishment of the United States, or any corporation owned directly or indirectly by the United States, or the state of Iowa, or any political subdivision of the state, is lessee and under the terms of which the aggregate rentals payable to the borrower will be sufficient to satisfy the amount loaned are considered to be loans and extensions of credit secured or guaranteed as provided for in this paragraph.

h. Loans and extensions of credit to one borrower as the drawer of drafts drawn in good faith against actually existing values in connection with a sale of goods which have been endorsed by the borrower with recourse or which have been accepted.

i. Loans and extensions of credit arising out of the discount of commercial paper actually owned by a borrower negotiating the same and endorsed by a borrower without recourse and which is not subject to repurchase by a borrower.

j. Loans and extensions of credit drawn by a borrower in good faith against actually existing values and secured by nonnegotiable bills of lading for goods in process of shipment.

k. Loans and extensions of credit in the form of acceptances of other banks of the kind described in section 524.903, subsection 3.

l. Loans and extensions of credit of the borrower by reason of acceptances by the state bank for the account of the borrower pursuant to section 524.903, subsection 1.

m. A renewal or restructuring of a loan as a new loan or extension of credit following the exercise by a state bank of reasonable efforts, consistent with safe and sound banking practices, to bring the loan into conformance with the lending limit, unless new funds are advanced by the state bank to the borrower or unless a new borrower replaces the original borrower or unless the superintendent determines that the renewal or restructuring was undertaken as a means to evade the state bank's lending limit.

[C97, §1870; SS15, §1870; C24, 27, 31, 35, 39, §**9223;** C46, 50, 54, 58, 62, 66, §528.14, 528.15; C71, 73, 75, 77, 79, 81, §524.904; 81 Acts, ch 173, §4]

89 Acts, ch 257, §16; 95 Acts, ch 148, §90; 96 Acts, ch 1056, §10; 99 Acts, ch 6, §2; 2004 Acts, ch 1141, §25; 2011 Acts, ch 102, §3, 4, 10; 2012 Acts, ch 1021, §102 – 104; 2013 Acts, ch 5, §2; 2013 Acts, ch 30, §129, 130

Referred to in §524.103, 524.613, 524.710, 524.901, 524.907, 524.1602

524.905 Loans on real property.

1. *Rules for loans.* A state bank may make permanent loans, construction loans, or combined construction and permanent loans, secured by liens on real property, as authorized by rules adopted by the superintendent under chapter 17A. The rules shall include provisions as necessary to ensure the safety and soundness of these loans, and to ensure full and fair disclosure to borrowers of the effects of provisions in agreements for these loans, including provisions permitting change or adjustment of any terms of a loan, provisions permitting, requiring, or prohibiting repayment of a loan on a basis other than of equal periodic installments of interest plus principal over a fixed term, provisions imposing penalties for the borrower's noncompliance with requirements of a loan agreement, or provisions allowing or requiring a borrower to choose from alternative courses of action at any time during the effectiveness of a loan agreement.

2. *Protective payments — escrow accounts.* A bank may include in the loan documents signed by the borrower a provision requiring the borrower to pay the bank each month in addition to interest and principal under the note an amount equal to one-twelfth of the estimated annual real estate taxes, special assessments, hazard insurance premium, mortgage insurance premium, or any other payment agreed to by the borrower and the bank in order to better secure the loan. The bank shall be deemed to be acting in a fiduciary capacity with respect to these funds. A bank receiving funds in escrow pursuant to an escrow agreement executed on or after July 1, 1982 in connection with a loan as defined in section 535.8, subsection 1, shall pay interest to the borrower on those funds, calculated on a daily basis, at the rate the bank pays to depositors of funds in ordinary savings accounts. A bank which maintains an escrow account in connection with any loan authorized by this section, whether or not the mortgage has been assigned to a third person, shall each year deliver to the mortgagor a written annual accounting of all transactions made with respect to the loan and escrow account.

3. *Escrow reports.* A state bank may act as an escrow agent with respect to real property, and may receive funds and make disbursements from escrowed funds in that capacity. The state bank shall be deemed to be acting in a fiduciary capacity with respect to these funds. A bank which maintains such an escrow account, whether or not the mortgage has been assigned to a third person, shall deliver to the mortgagor a written summary of all transactions made with respect to the loan and escrow accounts during each calendar year. However, the mortgagor and mortgagee may, by mutual agreement, select a fiscal year reporting period other than the calendar year. The summary shall be delivered or mailed not later than thirty days following the year to which disclosure relates. The summary shall contain all of the following information:

a. The name and address of the mortgagee.

b. The name and address of the mortgagor.

c. A summary of escrow account activity during the year as follows:

(1) The balance of the escrow account at the beginning of the year.

(2) The aggregate amount of deposits to the escrow account during the year.

(3) The aggregate amount of withdrawals from the escrow account for each of the following categories:

(a) Payments against loan principal.

(b) Payments against interest.

(c) Payments against real estate taxes.

(d) Payments for real property insurance premiums.

(e) All other withdrawals.

(4) The balance of the escrow account at the end of the year.

d. A summary of loan principal for the year as follows:

(1) The amount of principal outstanding at the beginning of the year.

(2) The aggregate amount of payments against principal during the year.

(3) The amount of principal outstanding at the end of the year.

4. *Marketability reports.* If the bank obtains a report or opinion by an attorney or from another mortgage lender relating to defects in or liens or encumbrances on the title of real property, the unmarketability of the title to real property, or the invalidity or unenforceability

of liens or encumbrances upon real property, the bank shall provide a copy of the report or opinion to the mortgagor and the mortgagor's attorney.

[C97, §1850; S13, §1850; C24, 27, 31, §9183, 9185, 9186; C35, §9183, 9183-g1, 9185, 9186; C39, §**9183, 9183.1, 9185, 9186;** C46, 50, 54, 58, 62, 66, §526.25, 526.26, 526.30, 526.31; C71, 73, 75, 77, 79, S79, §524.905; C81, §524.905, 535B.1 – 535B.14; 81 Acts, ch 173, §5, ch 174, §1, 7; 82 Acts, ch 1253, §2, 43]

83 Acts, ch 124, §16

Referred to in §524.904, 524.907, 524.1602, 535B.11, 536A.20

Termination of installment contract, foreclosure of mortgage, or repossession of property during military service; application for relief respecting obligation or liability incurred prior to military service; §29A.102, 29A.103, 29A.104, 29A.105

524.906 Reserved.

524.907 Participations.

A state bank may purchase and may sell, subject to the provisions of sections 524.901, 524.904, and 524.905, and to such regulations as the superintendent may prescribe, participations in one or more evidences of indebtedness and agreements for the payment of money, and pools of bonds, securities, evidences of indebtedness and agreements for the payment of money.

[C71, 73, 75, 77, 79, 81, §524.907]

89 Acts, ch 257, §17

Referred to in §524.1602

524.908 Leasing of personal property.

A state bank may make leases as authorized by rules adopted by the superintendent under chapter 17A.

[C71, 73, 75, 77, 79, 81, §524.908]

95 Acts, ch 148, §91

524.909 Loans and investments by officer.

No loan or investment shall be made from the funds of any state bank, directly or indirectly, except by an officer of the state bank who is authorized to do so by the board of directors.

[C97, §1869; S13, §1869; C24, 27, §9220; C31, 35, §9220, 9221-c3; C39, §**9220, 9221.3;** C46, 50, 54, 58, 62, 66, §528.6, 528.10; C71, 73, 75, 77, 79, 81, §524.909]

524.910 Property acquired to satisfy debts previously contracted.

A state bank may acquire property of any kind to secure, protect or satisfy a loan or investment previously made in good faith. Property acquired pursuant to this section shall be held and disposed of subject to the following conditions and limitations:

1. Shares in a corporation and other personal property, the acquisition of which is not otherwise authorized by this chapter, shall be sold or otherwise disposed of within six months unless the time is extended by the superintendent.

2. Real property purchased by a state bank at sales upon foreclosure of mortgages or deeds of trust owned by it, or acquired upon judgments or decrees obtained or rendered for debts due it, or real property conveyed to it in satisfaction of debts previously contracted in the course of its business, or real property obtained by it through redemption as a junior mortgagee or judgment creditor, shall be sold or otherwise disposed of by the state bank within five years after title is vested in the state bank, unless the time is extended by the superintendent.

[C97, §1851; C24, 27, 31, 35, 39, §**9190;** C46, 50, 54, 58, 62, 66, §526.34; C71, 73, 75, 77, 79, 81, §524.910]

85 Acts, ch 252, §34; 90 Acts, ch 1245, §1; 92 Acts, ch 1161, §4

524.911 Letters of credit.

A state bank shall have the power to issue, advise, and confirm letters of credit authorizing a beneficiary thereof to draw on or demand payment of the state bank or its correspondent banks.

[C71, 73, 75, 77, 79, 81, §524.911]

2016 Acts, ch 1011, §101

524.912 Customer shall be free to obtain own insurance and loan.

In any case in which any kind of insurance is required by the state bank as a condition for lending money or in connection with any other transaction, the customer shall be free to obtain such insurance from a source of the customer's selection. In the case of a sale of shares of stock, bonds, or other securities, or real property by an officer or employee, which is authorized by the board of directors of a state bank in the manner provided for in section 524.710, subsection 2, the purchaser shall be free to obtain a loan for the purchase of such stock, bonds, or other securities, or real property from a lender of the purchaser's selection.

[C71, 73, 75, 77, 79, 81, §524.912]

98 Acts, ch 1036, §1

524.913 Consumer loans.

1. The provisions of the Iowa consumer credit code, chapter 537, shall apply to consumer loans made by a bank, and provisions of that code shall supersede any conflicting provision of this chapter with respect to consumer loans.

2. This section shall not apply to a consumer loan which is a real property improvement loan insured wholly or in part by the federal housing administration of the United States.

3. Notwithstanding subsection 1, a state bank may offer voluntary debt cancellation coverage, whether insurance or debt waiver, to consumers. The amount charged for the coverage shall be included in the amount financed, as defined in section 537.1301. However, the charge for such coverage may be excluded from the finance charge under the federal Truth in Lending Act as defined in section 537.1302.

[C75, 77, 79, 81, §524.913]

2003 Acts, ch 44, §114; 2006 Acts, ch 1039, §1

524.914 through 524.1000 Reserved.

SUBCHAPTER X

FIDUCIARY POWERS

Referred to in §633.203

524.1001 Power to act as fiduciary.

When approving a proposed state bank, or at any time subsequent thereto upon amendment of its articles of incorporation, the superintendent may authorize a state bank to act in a fiduciary capacity. In determining whether the superintendent shall authorize a state bank to act in a fiduciary capacity, the superintendent may consider any of the relevant criteria referred to in section 524.305, and other appropriate facts and circumstances. In any fiduciary capacity in which a state bank may act pursuant to this section, it shall have all the rights and duties which an individual has in such capacity under applicable law and under the terms upon which the state bank is designated to act in such capacity. In authorizing a state bank to act in a fiduciary capacity, the superintendent may limit such authorization to such capacities as the superintendent deems appropriate.

[S13, §1889-g; SS15, §1889-d; C24, 27, 31, 35, 39, §**9284, 9291;** C46, 50, 54, 58, 62, 66, §532.1, 532.8; C71, 73, 75, 77, 79, 81, §524.1001]

Referred to in §633.63

524.1002 Actions required, permitted, or prohibited in a fiduciary capacity.

The following rules shall be applicable to a state bank acting in the capacity of fiduciary:

1. A state bank shall segregate from its assets all property held as fiduciary, other than items in the course of collection, and shall keep separate records of all such property for each account for which such property is held.

2. Funds of a fiduciary account may be deposited in the state bank which is acting as fiduciary, either as demand deposits, savings deposits or time deposits having a single or multiple maturity.

3. A state bank may provide any oath or affidavit required of the state bank as fiduciary through an officer acting on behalf of the state bank.

4. A state bank shall not make a loan or extension of credit of any funds held as fiduciary, directly or indirectly, to or for the benefit of a director, officer, or employee of the state bank or of an affiliate, a partnership or other unincorporated association of which such director, officer, or employee is a partner or member, or a corporation in which such officer, director, or employee has a controlling interest, except a loan specifically authorized by the terms upon which the state bank was designated as fiduciary.

5. Unless otherwise authorized by the instrument creating the relationship, court order, or the laws of this state, a state bank, as fiduciary, shall not, directly or indirectly, sell any asset to the state bank for its own account, or to an officer, director, or employee, nor purchase from the state bank, or an officer, director, or employee, any asset or any security issued by the state bank except, in the case of a state bank, any of the following:

a. Investments in which a state bank may invest without limitation pursuant to section 524.901, subsection 3.

b. Assets purchased by the state bank pursuant to an agreement whereby the state bank is bound to sell, and the state bank as fiduciary is bound to buy, at a date not more than one year from the date of acquisition by the state bank, such assets at a price agreed upon at the time of acquisition by the state bank.

c. Any asset sold to the state bank for its own account or purchased in a fiduciary capacity from the state bank with the prior approval of the superintendent.

[S13, §1889-f; C24, 27, 31, 35, 39, §**9290;** C46, 50, 54, 58, 62, 66, §532.7; C71, 73, 75, 77, 79, 81, §524.1002]

98 Acts, ch 1036, §2; 2016 Acts, ch 1011, §102

Referred to in §524.1601

524.1003 Removal of fiduciary powers.

1. *a.* If the superintendent at any time concludes that a state bank authorized to act in a fiduciary capacity is managing its accounts in an unsafe or unsound manner, or in a manner in conflict with the provisions of this chapter, and such state bank refuses to correct such practices upon notice to do so, the superintendent may forthwith direct that the state bank cease to act as a fiduciary and proceed to resign its fiduciary positions.

b. In such event the superintendent shall cause to be filed a petition in the district court in which the state bank has its principal place of business setting forth in general terms that the state bank is acting as fiduciary with respect to certain property and that it is necessary and desirable that successor fiduciaries be appointed. Upon the filing of the petition the court shall enter an order requiring all persons interested in all such fiduciary accounts to designate and take all necessary measures to appoint a successor fiduciary within a time to be fixed by the order, or to show cause why a successor fiduciary should not be appointed by the court. The court shall also direct the state bank to mail a copy of the order to each living settlor and each person known by the state bank to have a beneficial interest in the fiduciary accounts with respect to which the state bank is fiduciary and with respect to which it is being asked to resign its position. Such notice shall be mailed to the last known address of each such settlor and person having a beneficial interest as shown by the records of the state bank. The court may also order publication of such order to the extent that it deems necessary to protect the interests of absent or remote beneficiaries.

2. In any fiduciary account where those interested therein fail to cause a successor fiduciary to be appointed prior to the time fixed in such order, the court shall appoint a successor fiduciary. A successor fiduciary appointed in accordance with the terms of this section shall succeed to all the rights, powers, titles, duties, and responsibilities of the state

bank, except that the successor fiduciary shall not exercise powers given in the instrument creating the powers that by its express terms are personal to the fiduciary therein designated and except claims or liabilities arising out of the management of the fiduciary account prior to the date of the transfer.

[C39, §**9283.38;** C46, 50, 54, 58, 62, 66, §528.123; C71, 73, 75, 77, 79, 81, §524.1003]

2015 Acts, ch 29, §82

Referred to in §524.1004

524.1004 Voluntary relinquishment of fiduciary capacity.

1. A state bank desiring to surrender its authorization to act in a fiduciary capacity, in order to relieve itself of the necessity of complying with the requirements attendant to such capacity, shall file with the superintendent a certified copy of a resolution signifying such intent. In such event the state bank shall cause to be filed a petition in the district court in which the state bank has its principal place of business setting forth in general terms that the state bank is acting as fiduciary with respect to certain property and that it desires to cease its fiduciary function and resign its fiduciary positions. Upon the filing of the petition the relinquishment of fiduciary capacity and the appointment of a successor fiduciary or fiduciaries shall be handled in the same manner and with the same effect as provided for in section 524.1003, dealing with the removal of fiduciary powers.

2. After compliance with this section the state bank shall proceed to amend its articles of incorporation, in accordance with the provisions of this chapter, in a manner to indicate that it is no longer authorized to act in a fiduciary capacity. The superintendent shall approve the proposed amendment, in the manner provided for in this chapter, if the superintendent is satisfied that the state bank has properly relieved itself of its fiduciary responsibilities.

[S13, §1889-h; C24, 27, 31, 35, 39, §**9292;** C46, 50, 54, 58, 62, 66, §532.9; C71, 73, 75, 77, 79, 81, §524.1004]

2018 Acts, ch 1041, §127

Code editor directive applied

524.1005 Trust companies operating on January 1, 1970.

1. A trust company existing and operating on January 1, 1970 and which was authorized to act only as a trust company may continue to act only in a fiduciary capacity according to the terms of its articles of incorporation. The articles of incorporation of the trust company may be renewed in perpetuity. When applicable, this chapter applies to the operations of the trust company. Section 524.107, subsection 2, regarding the use of the word "trust" does not apply to a trust company subject to this section.

2. Notwithstanding subsection 1, a trust company shall have the power to do all of the following:

a. Acquire and hold, or lease as lessee, such personal property as is used, or is to be used, in its operations.

b. Subject to the prior approval of the superintendent, acquire and hold, or lease as lessee, only such real property as is used, or is to be used, wholly or substantially, in its operations or acquired for future use.

c. Subject to the prior approval of the superintendent, acquire and hold shares of a corporation engaged solely in holding and operating real property used wholly or substantially by the trust company in its operation or acquired for its future use.

d. Subject to the prior approval of the superintendent, acquire and hold shares of a corporation organized to perform, or performing, functions or activities that may be performed by a trust company, including activities of a fiduciary, agency, or custodial nature, in the manner authorized by federal or state law, as long as the corporation is not a bank and does not make loans and investments or accept deposits other than the following permitted deposits:

(1) Deposits that are generated from trust funds not currently invested and that are properly secured to the extent required by law.

(2) Deposits representing funds received for a special use in the capacity of managing agent or custodian for an owner of, or investor in, real property, securities, or other personal

property; or for such owner or investor as agent or custodian of funds held for investment or as escrow agent; or for an issuer of, or broker or dealer in securities, in a capacity such as a paying agent, dividend disbursing agent, or securities clearing agent. However, such deposits shall not be employed by or for the account of the customer in the manner of a general purpose checking account or interest-bearing account.

(3) Making call loans to securities dealers or purchasing money market instruments such as certificates of deposit, commercial paper, government or municipal securities, and bankers acceptances. Such authorized loans and investments, however, shall not be used as a method of channeling funds to nontrust company affiliates of the trust company.

e. Subject to the prior approval of the superintendent, acquire and hold shares of a corporation organized to perform, or performing, the collection of charges and premiums from, or adjusting and settling claims on, residents of this state and any other state where authorized or qualified to conduct such activity, in connection with life or health insurance coverage or annuities.

[C97, §1889; S13, §1889; C24, 27, 31, 35, 39, §**9259, 9261;** C46, 50, 54, 58, 62, 66, §528.52, 528.54; C71, 73, 75, 77, 79, 81, §524.1005]

85 Acts, ch 25, §1; 89 Acts, ch 257, §18

Referred to in §524.103, 633.63

524.1006 Banks depositing securities in federally regulated corporation.

1. A bank, either acting as a fiduciary or holding securities as a managing agent or custodian, including a custodian for a fiduciary, may deposit securities in a federally regulated clearing corporation as provided in section 633.89, and in addition may deposit securities, the principal and interest of which the United States or any United States department, agency, or instrumentality either has agreed to pay or has guaranteed, in a federal reserve bank.

2. The records of a depositing bank at all times must identify the persons on whose behalf securities have been deposited in a federal reserve bank. An interest in deposited securities may be transferred by entry on the books of the federal reserve bank without physical delivery of the securities. A depositing bank is subject to rules adopted by the superintendent of banking, with respect to state banks, and by the comptroller of the currency, with respect to national banking associations. On demand by the owner, a bank acting as a managing agent or as a custodian shall identify in writing the securities deposited in a federal reserve bank for the account of the owner. On demand by any party to the accounting of a bank acting as a fiduciary, the bank shall identify in writing the securities deposited in a federal reserve bank for its account as fiduciary.

3. This section applies regardless of the date of the agreement, instrument, or court order under which the bank was appointed.

[C75, 77, 79, 81, §524.1006]

2018 Acts, ch 1041, §127

Code editor directive applied

524.1007 Succession of fiduciary accounts to an affiliate.

1. A state bank authorized to act in a fiduciary capacity may enter into an agreement for the succession of fiduciary accounts with any of its affiliates which are authorized to act in a fiduciary capacity. In the agreement the succeeding affiliate may agree to succeed the relinquishing affiliate as a fiduciary to those fiduciary accounts which are designated in the agreement. The designation of accounts may be by general class or description and may include fiduciary accounts subject and not subject to court administration and fiduciary accounts to arise in the future under wills, trusts, court orders, or other documents under which the relinquishing affiliate is named as a fiduciary or is named to become a fiduciary upon the death of a testator or settlor or upon the happening of any other subsequent event. The agreement shall provide that the succeeding affiliate maintain one or more employees or agents at the office of the relinquishing affiliate in order to facilitate the continued servicing of the designated fiduciary accounts. The relinquishing affiliate shall mail a notice of the succession to all persons having an interest in a fiduciary account at the then last

known address, and shall publish a notice of the succession to fiduciary accounts in a newspaper published in the county of the principal place of business of the relinquishing affiliate. After the publication, the succeeding affiliate shall, without further notice, approval or authorization, succeed to the relinquishing affiliate as to the fiduciary accounts and the fiduciary powers, rights, privileges, duties, and liabilities for the fiduciary accounts. On the effective date of the succession to fiduciary accounts, the relinquishing affiliate is released from the fiduciary duties under the fiduciary accounts and shall discontinue its exercise of trust powers to the fiduciary accounts. This subsection does not absolve a bank or affiliate from liabilities arising out of a breach of fiduciary duty occurring prior to the effective date of the succession to fiduciary accounts.

2. Within sixty days after the mailing and publication of the notice, a person with an interest in a fiduciary account included within the notice and agreement required by subsection 1 may apply to the district court in the county in which the notice is published for the appointment of a new fiduciary on the ground that the succeeding fiduciary will adversely affect the administration of the fiduciary account. After notice to all interested parties and a hearing on the issues, the court may appoint a new fiduciary to replace the succeeding fiduciary if it finds that the substitution of the succeeding fiduciary will adversely affect the administration of the account and that the appointment of a new fiduciary would be in the best interests of the beneficiaries of the fiduciary account. This subsection is in addition to section 633.65 governing the removal of a fiduciary.

3. For purposes of subsection 1, *"affiliate"* means a trust company subsidiary authorized by the superintendent pursuant to section 524.802, subsection 12, paragraph *"b"*, and located in this state, a state bank located in this state, or a national bank located in this state and organized under 12 U.S.C. §21, that are under the common ownership of a bank holding company as defined in section 524.1801.

4. The privilege extended to a state bank by this section is also extended on the same terms and conditions to a national bank located in this state and organized under 12 U.S.C. §21 et seq. to engage generally in the banking business.

84 Acts, ch 1167, §1; 96 Acts, ch 1056, §11

524.1008 Succession of fiduciary accounts to an independent bank.

1. *a.* A state bank authorized to act in a fiduciary capacity may enter into an agreement for the succession of fiduciary accounts with a trust company subsidiary authorized by the superintendent pursuant to section 524.802, subsection 12, paragraph *"b"*, or one or more other state or national banks that are located in this state and authorized to act in a fiduciary capacity. In the agreement, the succeeding bank or trust company subsidiary may agree to succeed the relinquishing bank as a fiduciary with respect to those fiduciary accounts which are designated in the agreement. The designation of accounts may be by general class or description and may include fiduciary accounts subject and not subject to court administration and fiduciary accounts to arise in the future under wills, trusts, court orders, or other documents under which the relinquishing bank is named as a fiduciary or is named to become a fiduciary upon the death of a testator or settlor or upon the happening of any other subsequent event. The agreement shall provide that one of the following applies:

(1) That the succeeding bank or trust company subsidiary maintain one or more employees or agents at the office of the relinquishing bank in order to facilitate the continued servicing of the designated fiduciary accounts.

(2) That the relinquishing bank act as an agent of the succeeding bank or trust company subsidiary with respect to the fiduciary accounts that are subject to the agreement, and the relinquishing bank as an agent may perform services other than fiduciary services with respect to those accounts.

b. If the relinquishing bank is an agent under the alternative specified in paragraph *"a"*, subparagraph (2), then the relinquishing bank shall disclose to its customers that it is acting as an agent of the succeeding bank or trust company subsidiary. The relinquishing bank shall mail a notice of the succession to all persons having an interest in a fiduciary account at their last known address, and shall publish a notice of the succession to fiduciary accounts in a newspaper published in the county of the principal place of business of the relinquishing

bank. After the publication, the succeeding bank or trust company subsidiary shall, without further notice, approval or authorization succeed the relinquishing bank as to the fiduciary accounts and the fiduciary powers, rights, privileges, duties, and liabilities for the fiduciary accounts. On the effective date of the succession to fiduciary accounts, the relinquishing bank is released from fiduciary duties under the fiduciary accounts and shall discontinue its exercise of trust powers to the fiduciary accounts. This subsection does not absolve a relinquishing bank from liabilities arising out of a breach of fiduciary duty occurring prior to the succession of fiduciary accounts.

2. Within sixty days after the mailing and publication of the notice, a person with an interest in a fiduciary account included within the notice and agreement required by subsection 1 may apply to the district court in the county in which the notice is published for the appointment of a new fiduciary on the ground that the succeeding fiduciary will adversely affect the administration of the fiduciary account. After notice to all interested parties and a hearing on the issues, the court may appoint a new fiduciary to replace the succeeding fiduciary if it finds that the substitution of the succeeding fiduciary will adversely affect the administration of the account and that the appointment of a new fiduciary would be in the best interests of the beneficiaries of the fiduciary account. This subsection is in addition to section 633.65 governing the removal of a fiduciary.

3. A bank shall not agree to relinquish fiduciary accounts to or act as an agent of more than one succeeding fiduciary at any one time.

4. The privilege of succeeding to fiduciary accounts that is extended to a state bank or trust company subsidiary by subsection 1 is also extended on the same terms and conditions to a national bank located in this state and organized under 12 U.S.C. §21.

84 Acts, ch 1167, §2; 96 Acts, ch 1056, §12; 2013 Acts, ch 90, §160

524.1009 Succession to fiduciary accounts and appointments — application for appointment of new fiduciary.

1. If a party to a plan of merger was authorized to act in a fiduciary capacity and if the resulting state or national bank is similarly authorized, the resulting state or national bank shall be automatically substituted by reason of the merger as fiduciary of all accounts held in that capacity by such party to the plan, without further action and without any order or decree of any court or public officer, and shall have all the rights and be subject to all the obligations of such party as fiduciary.

2. No designation, nomination, or appointment as fiduciary of a party to a plan of merger shall lapse by reason of the merger. The resulting state or national bank, if authorized to act in a fiduciary capacity, shall be entitled to act as fiduciary pursuant to each designation, nomination, or appointment to the same extent as the party to the plan so named could have acted in the absence of the merger.

3. Any person with an interest in an account held in a fiduciary capacity by a party to a plan of merger may, within sixty days after the effective date of the merger, apply to the district court in the county in which the resulting state or national bank has its principal place of business, for the appointment of a new fiduciary to replace the resulting state or national bank on the ground that the merger will adversely affect the administration of the fiduciary account. The court shall have the discretion to appoint a new fiduciary to replace the resulting state or national bank if it should find, upon hearing after notice to all interested parties, that the merger will adversely affect the administration of the fiduciary account and that the appointment of a new fiduciary will be in the best interests of the beneficiaries of the fiduciary account. This provision is in addition to any other provision of law governing the removal of fiduciaries and is subject to the terms upon which the party to the plan which held the fiduciary account was designated as fiduciary.

95 Acts, ch 148, §92

Referred to in §524.1418

524.1010 through 524.1100 Reserved.

SUBCHAPTER XI

AFFILIATES

524.1101 Definitions.

For the purposes of this chapter, an "*affiliate*" of a state bank shall include any corporation, trust, estate, association, or other similar organization:

1. Of which a state bank, directly or indirectly, owns or controls either a majority of the voting shares or more than fifty percent of the number of shares voted for the election of its directors, trustees, or other individuals exercising similar functions at the preceding election, or controls in any manner the election of a majority of its directors, trustees, or other individuals exercising similar functions.

2. Of which control is held, directly or indirectly, through share ownership or in any other manner, by the shareholders of a state bank who own or control either a majority of the shares of such state bank or more than fifty percent of the number of shares voted for the election of directors of such state bank at the preceding election, or by trustees for the benefit of the shareholders of any such state bank.

3. Of which a majority of its directors, trustees, or other individuals exercising similar functions are directors of any one state bank.

4. Which owns or controls, directly or indirectly, either a majority of the voting shares of a state bank or more than fifty percent of the number of shares voted for the election of directors of a state bank at the preceding election, or controls in any manner the election of a majority of the directors of a state bank, or for the benefit of whose shareholders or members all or substantially all of the outstanding voting shares of a state bank is held by trustees.

5. Which is a bank holding company, as defined by the laws of the United States, of which a state bank is a subsidiary, and any other subsidiary, as defined by the laws of the United States, of a bank holding company.

[C71, 73, 75, 77, 79, 81, §524.1101]

Referred to in §12C.22, 524.541, 537.1301

524.1102 Loans and other transactions with affiliates.

1. A state bank shall not make any loan or any extension of credit to, or purchase securities under repurchase agreement from, any of its affiliates, or invest any of its funds in the shares, bonds, capital securities, or other obligations of an affiliate, or accept the shares, bonds, capital securities, or other obligations of an affiliate as collateral security for advances made to any customer, if the aggregate amount of the loans, extensions of credit, repurchase agreements, investments and advances against such collateral security will exceed:

a. In the case of any one affiliate, ten percent of the aggregate capital of the state bank.

b. In the case of all such affiliates, twenty percent of the aggregate capital of the state bank.

2. Within the foregoing limitations, each loan or extension of credit of any kind or character to an affiliate shall be secured by collateral in the form of shares of stock, bonds, capital securities or other such obligations having a market value at the time of making the loan or extension of credit of at least twenty percent more than the amount of the loan or extension of credit, or of at least ten percent more than the amount of the loan or extension of credit if it is secured by obligations of any state, or of any political subdivision or agency of the state, or of at least one hundred percent of the amount of the loan or extension of credit if it is secured by a segregated deposit account which the state bank may set off.

3. A loan or extension of credit to a director, officer, clerk, or other employee or any representative of any affiliate is deemed to be a loan to the affiliate to the extent that the proceeds of such loan are used for the benefit of, or transferred to, the affiliate.

4. The provisions of this section shall not apply to loans or extensions of credit fully secured by obligations of the United States, or the farm credit banks, or the federal home loan banks, or obligations fully guaranteed by the United States as to principal and interest. The provisions of this section shall not apply to indebtedness of any affiliate for unpaid balances due a state bank on assets purchased from the state bank.

5. For purposes of this section, the terms *"extension of credit"* and *"extensions of credit"* are deemed to include any purchase of securities under a repurchase agreement, other assets or obligations under a repurchase agreement, and the discount of promissory notes, bills of exchange, conditional sales contracts, or similar paper, whether with or without recourse.

[C71, 73, 75, 77, 79, 81, §524.1102]

89 Acts, ch 257, §19, 20; 91 Acts, ch 20, §1; 95 Acts, ch 148, §93; 2012 Acts, ch 1023, §157

Referred to in §524.1103, 524.1104, 524.1602

524.1103 Exceptions.

1. The provisions of section 524.1102 shall not apply to any affiliate:

a. Engaged solely in holding or operating real estate used wholly or substantially by the state bank in its operations or acquired for its future use.

b. Engaged solely in conducting a safe-deposit business or the business of an agricultural credit corporation eligible to discount loans with a farm credit bank.

c. Engaged solely in holding obligations of the United States, the farm credit banks, the federal home loan banks, or obligations fully guaranteed by the United States as to principal and interest.

d. Where the affiliate relationship has arisen as a result of shares acquired in satisfaction of a bona fide debt contracted prior to the date of the creation of such relationship provided that such shares shall be sold at public or private sale within one year from the date of the creation of the relationship, unless the time is extended by the superintendent.

e. Where the affiliate relationship exists by reason of the ownership or control of any voting shares thereof by a state bank as executor, administrator, trustee, receiver, agent, depository, or in any other fiduciary capacity, except where such shares are held for the benefit of all or a majority of the shareholders of such state bank.

f. Which is a bank.

g. Which is an operations subsidiary or other subsidiary in which the state bank owns or controls eighty percent or more of the voting shares. However, an operations subsidiary shall not conduct any activity at any location where the state bank itself would not be permitted to conduct that activity without the prior approval of the superintendent.

2. *a.* The superintendent may, in the superintendent's discretion, by regulation or order, exempt transactions or relationships from the requirements of section 524.1102 if the superintendent finds such exemptions to be in the public interest and consistent with the purposes of section 524.1102.

b. A state bank may request an exemption from the requirements of section 524.1102 by submitting a written request to the superintendent including all of the following:

(1) A detailed description of the transaction or relationship for which the state bank seeks an exemption.

(2) A statement of the reasons for exemption of the transaction or relationship.

(3) An explanation of how the exemption would be in the public interest and consistent with the purposes of section 524.1102.

[C71, 73, 75, 77, 79, 81, §524.1103]

89 Acts, ch 257, §21, 22; 95 Acts, ch 148, §94; 2012 Acts, ch 1017, §21

524.1104 Applicability of general loan limitations.

Any loan or extension of credit to an affiliate, and any investment in the shares, bonds, capital securities or other obligations of an affiliate, excepted by the provisions of section 524.1102 from the requirements of that section, shall continue to be subject to the other provisions of this chapter applicable to loans or extensions of credit by a state bank and investments by a state bank in shares, bonds, capital securities, or other such obligations.

[C71, 73, 75, 77, 79, 81, §524.1104]

Referred to in §524.1602

524.1105 Examination of affiliates and reports.

1. For the purpose of determining the condition of a state bank and information concerning the state bank, the superintendent shall have the power to make or cause to be

made an examination of any affiliate to the same extent as the superintendent may examine a state bank under this chapter.

2. If the superintendent has reasonable cause to believe that any corporation, trust, estate, association, or other similar organization is an affiliate, the superintendent may require the organization to furnish such information as may enable the superintendent to determine whether the organization is an affiliate.

[C71, 73, 75, 77, 79, 81, §524.1105]

Referred to in §524.217, 524.219

524.1106 Fees paid to an affiliate — approval by superintendent.

Any contract or arrangement for management or financial services which involves payment for these services by a state bank to a person who owns shares in that bank, or to any other affiliate, must be approved by the superintendent prior to such contract or arrangement becoming binding upon the state bank, and may also be reviewed at any time after original approval. Any contract or arrangement for consultation or other services which involve payment of those services by a state bank to any person who individually or whose spouse or immediate family or any combination thereof owns fifteen percent or more of the outstanding shares of that bank or is an officer or director thereof, or to an affiliate may be reviewed by the superintendent. The superintendent shall have authority to determine whether or not such fees are reasonable in relation to the services performed, and if the superintendent determines they are unreasonable, to require that they be reduced to a reasonable amount or eliminated and the excess refunded, or that such contract or arrangement not be entered into by the state bank.

[C71, 73, 75, 77, 79, 81, §524.1106]

524.1107 through 524.1200 Reserved.

SUBCHAPTER XII

OFFICES

524.1201 General provisions.

1. A state bank may establish and operate any number of bank offices at any location in this state subject to the approval and regulation of the superintendent. A bank office may furnish all banking services ordinarily furnished to customers and depositors at the principal place of business of the state bank which operates the office, and a bank office manager or an officer of the bank shall be physically present at each bank office during a majority of its business hours. The central executive and official business and principal recordkeeping functions of a state bank shall be exercised only at its principal place of business or at another bank office as authorized by the superintendent for these functions.

2. Notwithstanding subsection 1, data processing services referred to in section 524.804 may be performed for the state bank at some other location. All transactions of a bank office shall be immediately transmitted to the principal place of business or other bank office authorized under subsection 1 of the state bank which operates the office, and no current recordkeeping functions shall be maintained at a bank office other than the bank office authorized under subsection 1, except to the extent the state bank which operates the office deems it desirable to keep there duplicates of the records kept at the principal place of business or authorized bank office of the state bank.

3. Notwithstanding any of the other provisions of this section, original loan

documentation and trust recordkeeping functions may be located at any authorized bank office or at any other location approved by the superintendent.

[C27, 31, 35, §9258-b1; C39, §**9258.1;** C46, 50, 54, 58, 62, 66, §528.51; C71, 73, 75, 77, 79, 81, §524.1201; 81 Acts, ch 173, §6]

89 Acts, ch 257, §23; 91 Acts, ch 72, §1; 95 Acts, ch 32, §1; 96 Acts, ch 1056, §13, 14; 2001 Acts, ch 4, §1, 11; 2004 Acts, ch 1141, §26; 2005 Acts, ch 19, §109; 2006 Acts, ch 1015, §8; 2011 Acts, ch 102, §5

Referred to in §524.1203, 524.1204, 524.1205, 524.1419, 524.1603

524.1202 Location of offices. Repealed by 2001 Acts, ch 4, §10, 11.

524.1203 Cancellation of approval of offices.

Whenever an examination by the superintendent or other supervisory agencies discloses that the operation of a bank office is being conducted in violation of section 524.1201, the superintendent may forthwith revoke the approval of the bank office.

[C71, 73, 75, 77, 79, 81, §524.1203]

Referred to in §524.1205, 524.1419

524.1204 Privileges extended to national banks.

The privileges extended to state banks by sections 524.1201 and 524.1212 and chapter 527 shall be available on the same conditions to national banks to the extent they are so authorized by federal law.

[C71, §524.1201(3); C73, 75, 77, 79, 81, §524.1204]

2001 Acts, ch 4, §3, 11

524.1205 Establishment of branch or office in other state — superintendent's authority to regulate.

1. Notwithstanding section 524.1201, subsection 1, upon application to and approval by the superintendent, a state bank may acquire in any manner, establish, maintain, operate, retain, or relocate a branch or office in a state other than this state. Subject to the approval of the superintendent, such branch or office may engage in any activity authorized for a branch or office of a bank organized under the laws of that other state.

2. The superintendent shall supervise and regulate all out-of-state branches and offices of a state bank.

3. Sections 524.1201 and 524.1203 apply to an out-of-state branch or office of a state bank except as otherwise provided by the laws of the state in which a branch or office is located or by the superintendent pursuant to this section.

4. This section does not authorize or permit a state-chartered bank located outside of this state or a national bank located outside of this state to establish a de novo branch or office in this state.

96 Acts, ch 1056, §15; 2001 Acts, ch 4, §4, 5, 11, 12

524.1206 Identification of legally chartered name of bank — required use of name.

A state or national bank, at its locations in this state, shall identify its principal place of business, any bank office, or any bank branch in a manner which includes its legally chartered name or a reasonable variation of such name. The legally chartered name of the state or national bank shall be used in all legal documents of such bank.

98 Acts, ch 1036, §3

Referred to in §524.310

524.1207 through 524.1211 Reserved.

524.1212 Location of satellite terminals.

Any state bank may utilize a satellite terminal, as defined in section 527.2, when that satellite terminal is lawfully being operated, at any location within this state. Any transaction engaged in through the use of a satellite terminal shall be deemed to take place at the

principal place of business of a bank whose accounts and records are affected by the transaction.

[C77, 79, 81, §524.1212; 81 Acts, ch 173, §8]

2001 Acts, ch 4, §6, 11

Referred to in §524.1204

524.1213 United community bank offices. Repealed by 2001 Acts, ch 4, §10, 11.

524.1214 through 524.1300 Reserved.

SUBCHAPTER XIII

DISSOLUTION

524.1301 Dissolution by incorporators, organizers, or initial directors.

A majority of the incorporators, organizers, or initial directors of a state bank that has not issued shares or has not commenced business may dissolve the state bank by delivering articles of dissolution to the superintendent, together with the applicable filing and recording fees, for filing with the secretary of state that set forth all of the following:

1. The name of the state bank.
2. The date of its incorporation or organization.
3. Either of the following:

a. That the state bank has not issued any shares.

b. That the state bank has not commenced business.

4. That no debt of the state bank remains unpaid.
5. If shares were issued, that the net assets of the state bank remaining after the payment of all necessary expenses have been distributed to the shareholders.
6. That a majority of the incorporators, organizers, or initial directors authorized the dissolution.

[C97, §1857; S13, §1857; C24, 27, 31, 35, 39, §**9277;** C46, 50, 54, 58, 62, 66, §528.76; C71, 73, 75, 77, 79, 81, §524.1301]

90 Acts, ch 1205, §40; 95 Acts, ch 148, §96; 2004 Acts, ch 1141, §67

524.1302 Involuntary dissolution prior to commencement of business.

Prior to the issuance of an authorization to do business, the superintendent may cause the dissolution of a state bank if there exists any reason why it should not have been incorporated or organized under this chapter or if an authorization to do business has not been issued within one year after the date of its incorporation or organization, or such longer time as the superintendent may allow for satisfaction of conditions precedent to its issuance. After giving the state bank adequate notice and an opportunity for hearing, the superintendent shall certify the applicable facts by the filing of a statement with the secretary of state, who shall thereafter issue a certificate of dissolution. Upon the issuance of such certificate of dissolution by the secretary of state, the corporate or organizational existence of the state bank shall cease.

[C31, 35, §9142-c1; C39, §**9142.1;** C46, 50, 54, 58, 62, 66, §524.14; C71, 73, 75, 77, 79, 81, §524.1302]

2004 Acts, ch 1141, §68

524.1303 Voluntary dissolution after commencement of business.

1. A state bank which has commenced business may propose to voluntarily dissolve upon the affirmative vote of the holders of at least a majority of the shares entitled to vote on the voluntary dissolution, adopting a plan of dissolution involving both a provision for acquisition of its assets and assumption of its liabilities by another state bank, national bank, or other financial institution insured by the federal deposit insurance corporation and a provision for continuance of its business if acquisition of its assets and assumption of its liabilities is not effected, or any other plan of dissolution providing for full payment of its liabilities.

2. Upon acceptance for processing of an application for approval of a plan of dissolution on forms prescribed by the superintendent, the superintendent shall conduct such investigation as the superintendent may deem necessary to determine whether the plan adequately protects the interests of depositors, other creditors and shareholders and, if the plan involves an acquisition of assets and assumption of liabilities by another state bank, whether such acquisition and assumption would be consistent with adequate and sound banking and in the public interest, on the basis of factors substantially similar to those set forth in section 524.1403, subsection 1, paragraph *"d"*.

3. Within thirty days after the application for dissolution involving a provision of acquisition of the state bank's assets and assumption of its liabilities by another state bank is accepted for processing, the dissolving bank shall publish notice of the proposed transaction in a newspaper of general circulation published in the municipal corporation or unincorporated area in which the dissolving bank has its principal place of business, and in the municipal corporation or unincorporated area in which the acquiring state bank has its principal place of business, or if there is none, a newspaper of general circulation published in the county or counties, or in a county adjoining the county or counties, in which the dissolving bank and the acquiring bank have their principal place of business. The notice shall be on forms provided by the superintendent, and proof of publication of the notice shall be delivered to the superintendent within fourteen days.

4. Within thirty days after the date of the publication of the notice, any interested person may submit to the superintendent written comments and data on the application. The superintendent may extend the thirty-day comment period if, in the superintendent's judgment, extenuating circumstances exist.

5. Within thirty days after the date of the publication of the notice, any interested person may submit to the superintendent a written request for a hearing on the application. The request shall state the nature of the issues or facts to be presented and the reasons why written submissions would be insufficient to make an adequate presentation to the superintendent. If the reasons are related to factual disputes, the disputes shall be described. Comments challenging the legality of an application shall be submitted separately in writing and shall not be considered at a hearing conducted pursuant to this section. Written requests for hearings shall be evaluated by the superintendent, who may grant or deny such requests in whole or in part. A hearing request shall generally be granted only if it is determined that written submissions would be inadequate or that a hearing would otherwise be beneficial to the decision-making process. A hearing may be limited to issues considered material by the superintendent.

6. If a request for a hearing has been made and denied, the superintendent shall notify the applicant and all interested persons and shall state the reasons for the denial. Interested persons may submit to the superintendent, with simultaneous copies to the applicant, additional written comments or information on the application within fourteen days after the date of the notice of denial. The applicant shall be provided an additional seven days, after the fourteen-day deadline has expired, within which to respond to any comments submitted within the fourteen-day period. The superintendent may waive this seven-day period upon request by the applicant. A copy of any response submitted by the applicant shall also be mailed simultaneously by the applicant to the interested persons.

[C97, §1857; S13, §1857; C24, 27, 31, 35, 39, §**9277;** C46, 50, 54, 58, 62, 66, §528.76; C71, 73, 75, 77, 79, 81, §524.1303]

92 Acts, ch 1161, §5; 95 Acts, ch 148, §97; 2004 Acts, ch 1141, §27; 2005 Acts, ch 19, §110

Referred to in §524.1309

524.1304 Voluntary dissolution — approval.

1. Within ninety days after acceptance of the application for processing, the superintendent shall approve or disapprove the application for voluntary dissolution on the basis of the superintendent's investigation. As a condition of receiving the decision of the superintendent with respect to the application, the applying state bank shall reimburse the superintendent for all expenses incurred by the superintendent in connection with the application. The superintendent shall give to the applying state bank written notice of the

superintendent's decision. The decision of the superintendent shall be subject to judicial review pursuant to chapter 17A.

2. Upon approval of the plan of voluntary dissolution by the superintendent, the superintendent shall file with the secretary of state articles of dissolution prepared by the applicant in conformance with section 524.1304A. Upon filing of the articles of dissolution with the secretary of state, the state bank shall cease to accept deposits or carry on its business, except insofar as may be necessary for the proper winding up of the business of the state bank in accordance with the approved plan of dissolution.

3. If applicable state or federal laws require approval by an appropriate state or federal agency, the superintendent may withhold delivery of the approved articles of dissolution until the superintendent receives notice of the decision of such agency. If the final approval of the agency is not given within six months of the superintendent's approval, then the superintendent shall notify the applying state bank that the approval of the superintendent has been rescinded for that reason.

[C97, §1857; S13, §1857; C24, 27, 31, 35, 39, §**9277;** C46, 50, 54, 58, 62, 66, §528.76; C71, 73, 75, 77, 79, 81, §524.1304]

95 Acts, ch 148, §98

Referred to in §524.1309

524.1304A Articles of dissolution.

1. At any time after the dissolution of a state bank is authorized, the state bank may dissolve by delivering to the superintendent for filing with the secretary of state articles of dissolution setting forth all of the following:

a. The name of the state bank.

b. The date dissolution was authorized.

c. The number of votes entitled to be cast by the shareholders on the proposal to dissolve.

d. The total number of shareholder votes cast for and against dissolution, or the total number of undisputed votes cast for dissolution and a statement that the number cast for dissolution was sufficient for approval.

e. If voting by voting groups was required, the information required by paragraphs "*c*" and "*d*" must be separately provided for each voting group entitled to vote separately on the plan to dissolve.

f. That all debts, obligations, and liabilities of the state bank will be paid or otherwise discharged or that adequate provision will be made for such discharge.

g. That all the remaining property and assets of the state bank will be distributed among its shareholders in accordance with their respective rights and interests.

h. That there are no legal actions pending against the state bank in any court or that adequate provision has been made for the satisfaction of any judgment, order, or decree which may be entered against it in any pending legal action.

2. A state bank is dissolved upon the effective date of its articles of dissolution.

95 Acts, ch 148, §99

Referred to in §524.1304, 524.1309

524.1305 Voluntary dissolution proceedings — winding up.

1. The board of directors shall have full power to wind up and settle the affairs of a state bank in voluntary dissolution proceedings, including the power to do all of the following:

a. Collecting the assets of the state bank.

b. Disposing of its properties that will not be distributed in kind to its shareholders.

c. Discharging or making provision for discharging its liabilities.

d. Distributing its remaining property among its shareholders according to their interests.

e. Doing every other act necessary to wind up and liquidate its business and affairs.

2. Dissolution of a state bank does not result in any of the following:

a. Transferring title to the state bank's property.

b. Preventing transfer of its shares or securities, although the authorization to dissolve may provide for closing the state bank's share transfer records.

c. Subjecting its directors or officers to standards of conduct different from those prescribed by this chapter prior to dissolution.

d. Changing quorum or voting requirements for its board of directors or shareholders; changing provisions for selection, resignation, or removal of its directors or officers or both; or changing provisions for amending its bylaws.

e. Preventing commencement of a proceeding by or against the state bank in its name.

f. Abating or suspending a proceeding pending by or against the state bank on the effective date of dissolution.

3. Within thirty days after filing of the articles of dissolution with the secretary of state, the state bank shall give notice of its dissolution:

a. By mail to each depositor and creditor, except those as to whom the liability of the state bank has been assumed by another financial institution insured by the federal deposit insurance corporation pursuant to the plan, at their last address of record as shown upon the books of the bank, including a statement of the amount shown by the books of the state bank to be due to such depositor or creditor and a demand that any claim for a greater amount be filed with the state bank any time before a specified date at least ninety days after the date of the notice.

b. By mail to each lessee of a safe-deposit box and each customer for whom property is held in safekeeping, except those as to whom the liability of the state bank has been assumed by another financial institution insured by the federal deposit insurance corporation pursuant to the plan, at their last address of record as shown upon the books of the state bank, including a demand that all property held in a safe-deposit box or held in safekeeping by the state bank be withdrawn by the person entitled to the property before a specified date which is at least ninety days after the date of the notice.

c. By mail to each person, at the person's last known address as shown upon the books of the state bank, interested in funds held in a fiduciary account or other representative capacity.

d. By a conspicuous posting at each office of the state bank.

e. By such publication as the superintendent may prescribe.

4. As soon after the approval of the plan of dissolution and the filing of the articles of dissolution as feasible, the state bank shall resign all fiduciary appointments and take such action as may be necessary to settle its fiduciary accounts.

5. All known depositors and creditors shall be paid promptly after the date specified in the notice given under paragraph *"a"* of subsection 3 of this section. Unearned portions of rentals for safe-deposit boxes shall be rebated to the lessees thereof.

6. Safe-deposit boxes, the contents of which have not been removed by the owners after the date specified in the notice given under paragraph *"b"* of subsection 3 of this section, shall be opened under the supervision of the superintendent and the contents placed in sealed packages which, together with unclaimed property held by the state bank in safekeeping, shall be transmitted to the treasurer of state. Amounts due to depositors who are unknown, or who are under a disability and there is no person legally competent to receive the amount, or who cannot be found after the exercise of reasonable diligence, shall be transmitted to the treasurer of state, together with a statement giving the name of the person, if known, entitled to the amount, the person's last known address, the amount due the person, and other information about the person as the treasurer of state may reasonably require. All property transmitted to the treasurer of state pursuant to this subsection shall be treated as abandoned, retained by the treasurer of state, and subject to claim, in the manner provided for in sections 556.14 to 556.21. All amounts due creditors described in section 490.1440 shall be deposited with the treasurer of state in accordance with that section. Such amounts shall be retained by the treasurer of state and are subject to claim in the manner provided for in section 490.1440.

7. Upon approval by the superintendent, assets remaining after the performance of all obligations of the state bank under subsections 4, 5, and 6 of this section shall be distributed to its shareholders according to their respective rights and preferences. Partial distributions to shareholders may be made prior to such time only if, and to the extent, approved by the superintendent. All amounts due shareholders described in section 490.1440 shall be deposited with the treasurer of state in accordance with that section. Such amounts shall

be retained by the treasurer of state and are subject to claim in the manner provided for in said section 490.1440.

8. During the course of dissolution proceedings the state bank shall make such reports as the superintendent may require, and shall continue to be subject to the provisions of this chapter, including those relating to examination of state banks, until completion of the dissolution of the state bank.

9. If at any time during the course of dissolution proceedings the superintendent finds that the assets of the state bank will not be sufficient to discharge its obligations, the superintendent shall tender to the federal deposit insurance corporation the receivership in the manner required by section 524.1310, and the dissolution shall thereafter be treated as an involuntary dissolution in accordance with the terms of that section and sections 524.1311 and 524.1312.

[C71, 73, 75, 77, 79, 81, §524.1305]

90 Acts, ch 1205, §41; 95 Acts, ch 148, §100; 2012 Acts, ch 1017, §22, 28

Referred to in §524.1309, 524.1310

524.1306 Revocation of voluntary dissolution proceedings.

1. A state bank may, at any time prior to the filing of the articles of dissolution with the secretary of state, revoke voluntary dissolution proceedings as provided for in section 490.1404.

2. The statement of revocation of voluntary dissolution proceedings, whether by consent of shareholders or by act of the state bank, shall be delivered to the superintendent, together with the applicable filing and recording fee, who shall, if the superintendent finds that they satisfy the requirements of this section, deliver them to the secretary of state for filing and recording in the secretary of state's office, and the same shall be filed and recorded in the office of the county recorder.

[C71, 73, 75, 77, 79, 81, §524.1306]

90 Acts, ch 1205, §42; 95 Acts, ch 148, §101

Referred to in §524.1309

524.1307 and 524.1308 Repealed by 95 Acts, ch 148, §135.

524.1308A Known claims against dissolved state bank.

1. A dissolved state bank may dispose of the known claims against it pursuant to this section.

2. The dissolved state bank shall notify its known claimants in writing of the dissolution at any time after the effective date of the dissolution. The written notice must include all of the following:

a. A description of information that must be included in a claim.

b. The mailing address where a claim may be sent.

c. The deadline for submitting a claim, which may not be fewer than one hundred twenty days from the effective date of the written notice, by which the dissolved state bank must receive the claim.

d. A statement that the claim will be barred if not received by the deadline.

3. A claim against the dissolved state bank is barred if either of the following occur:

a. A claimant who was given written notice under subsection 2 does not deliver the claim to the dissolved state bank by the deadline.

b. A claimant whose claim was rejected by the dissolved state bank does not commence a proceeding to enforce the claim within ninety days from the effective date of the rejection notice.

4. For purposes of this section, *"claim"* does not include a contingent liability or a claim based upon an event occurring after the effective date of dissolution.

95 Acts, ch 148, §102

Referred to in §524.1308B

524.1308B Unknown claims against dissolved state bank.

1. A dissolved state bank may publish notice of its dissolution and request that persons with claims against the state bank present them in accordance with the notice.

2. A notice made pursuant to this section must satisfy all of the following requirements:

a. Be published at least once in a newspaper of general circulation in the county where the dissolved state bank's principal office is located.

b. Include a description of the information that must be included in a claim and provide a mailing address where the claim may be sent.

c. Include a statement that a claim against the state bank will be barred unless a proceeding to enforce the claim is commenced within two years after the publication of the notice.

3. If the dissolved state bank publishes a newspaper notice pursuant to subsection 2, the claim of each of the following claimants is barred unless the claimant commences a proceeding to enforce the claim against the dissolved state bank within two years after the publication date of the newspaper notice:

a. A claimant who did not receive written notice under section 524.1308A.

b. A claimant whose claim was timely sent to the dissolved state bank but not acted on.

c. A claimant whose claim is contingent or based on an event occurring after the effective date of dissolution.

4. A claim may be enforced under this section as follows:

a. Against the dissolved state bank, to the extent of its undistributed assets.

b. If the assets have been distributed in liquidation, against a shareholder of the dissolved state bank to the extent of the shareholder's pro rata share of the claim or the state bank's assets distributed to the shareholder in liquidation, whichever is less, but a shareholder's total liability for all claims under this section shall not exceed the total amount of assets distributed to the shareholder in liquidation.

95 Acts, ch 148, §103

524.1309 Becoming subject to chapter 489 or 490.

In lieu of the dissolution procedure prescribed in sections 524.1303 to 524.1306, a state bank may cease to carry on the business of banking and, after compliance with this section, continue as a corporation subject to chapter 490; or if the state bank is organized as a limited liability company under this chapter, continue as a limited liability company subject to chapter 489.

1. A state bank that has commenced business may propose to voluntarily cease to carry on the business of banking and become a corporation subject to chapter 490, or a limited liability company subject to chapter 489, upon the affirmative vote of the holders of at least a majority of the shares entitled to vote on such proposal, adopting a plan involving both a provision for acquisition of its assets and assumption of its liabilities by another state bank, national bank, or other financial institution insured by the federal deposit insurance corporation, and a provision for continuance of its business if acquisition of its assets and assumption of its liabilities is not effected, or any other plan providing for the cessation of banking business and the payment of its liabilities.

2. The application to the superintendent for approval of a plan described in subsection 1 shall be treated by the superintendent in the same manner as an application for approval of a plan of dissolution under section 524.1303, subsection 2, and shall be subject to section 524.1303, subsection 3.

3. Immediately upon adoption and approval of a plan to voluntarily cease to carry on the business of banking and become a corporation subject to chapter 490, or a limited liability company subject to chapter 489, the state bank shall deliver to the superintendent a plan to cease the business of banking and become a corporation subject to chapter 490, or a limited liability company subject to chapter 489, which shall be signed by two of its duly authorized officers and shall contain the name of the state bank, the post office address of its principal place of business, the name and address of its officers and directors, the number of shares entitled to vote on the plan and the number of shares voted for or against the plan, respectively, the nature of the business to be conducted by the corporation under chapter

490, or by the limited liability company subject to chapter 489, and the general nature of the assets to be held by the corporation or company.

4. Upon approval of the plan by the superintendent, the state bank shall immediately surrender to the superintendent its authorization to do business as a bank and shall cease to accept deposits and carry on the banking business except insofar as may be necessary for it to complete the settlement of its affairs as a state bank in accordance with subsection 5.

5. The board of directors has full power to complete the settlement of the affairs of the state bank. Within thirty days after approval by the superintendent of the plan to cease the business of banking and become a corporation subject to chapter 490, or a limited liability company subject to chapter 489, the state bank shall give notice of its intent to persons identified in section 524.1305, subsection 3, in the manner provided for in that subsection. In completing the settlement of its affairs as a state bank, the state bank shall also follow the procedure prescribed in section 524.1305, subsections 4, 5, and 6.

6. Upon completion of all the requirements of this section, the state bank shall deliver to the superintendent articles of intent to be subject to chapter 490 or 489, together with the applicable filing and recording fees, which shall set forth that the state bank has complied with this section, that it has ceased to carry on the business of banking, and the information required by section 490.202 relative to the contents of articles of incorporation under chapter 490, or articles of organization under chapter 489. If the superintendent finds that the state bank has complied with this section and that the articles of intent to be subject to chapter 490 or 489 satisfy the requirements of this section, the superintendent shall deliver them to the secretary of state for filing and recording in the secretary of state's office, and the superintendent shall file and record them in the office of the county recorder.

7. Upon the filing of the articles of intent to be subject to chapter 490 or 489, the state bank shall cease to be a state bank subject to this chapter, and shall cease to have the powers of a state bank subject to this chapter and shall become a corporation subject to chapter 490 or a limited liability company subject to chapter 489. The secretary of state shall issue a certificate as to the filing of the articles of intent to be subject to chapter 490 or 489 and send the certificate to the corporation or limited liability company or its representative. The articles of intent to be subject to chapter 490 or 489 shall be the articles of incorporation of the corporation or a limited liability company. The provisions of chapter 490 or 489 becoming applicable to a corporation or limited liability company formerly doing business as a state bank shall not affect any right accrued or established, or liability or penalty incurred under this chapter prior to the filing with the secretary of state of the articles of intent to be subject to chapter 490 or 489.

8. A shareholder of a state bank who objects to adoption by the state bank of a plan to cease to carry on the business of banking and to continue as a corporation subject to chapter 490, or a limited liability company subject to chapter 489, is entitled to appraisal rights provided for in chapter 490, division XIII, or in chapter 489, section 489.604.

9. A state bank, at any time prior to the approval of the articles of intent to become subject to chapter 490 or 489, may revoke the proceedings in the manner prescribed by section 524.1306.

[C71, 73, 75, 77, 79, 81, §524.1309]

90 Acts, ch 1205, §43; 95 Acts, ch 148, §104 – 106; 2002 Acts, ch 1154, §114, 125; 2004 Acts, ch 1141, §69; 2005 Acts, ch 19, §111; 2008 Acts, ch 1162, §149, 150, 154, 155

524.1310 Involuntary dissolution after commencement of business — federal deposit insurance corporation as receiver.

1. *a.* In a situation in which the superintendent has required, in accordance with section 524.226, that the state bank cease to carry on its business, the superintendent shall tender to the federal deposit insurance corporation the receivership for the state bank. The affairs of the state bank shall thereafter be governed by this section, section 524.1311, and the provisions of federal law, and shall be subject to federal court jurisdiction, and the assets of the state bank shall be distributed in accordance with section 524.1312. If there is a conflict between the provisions of state and federal law, federal law shall govern.

b. All amounts due creditors and shareholders described in section 490.1440 shall be

deposited with the treasurer of state in accordance with that section. Such amounts shall be retained by the treasurer of state and subject to claim in the manner provided for in section 490.1440. Amounts due to depositors who are unknown, or who are under a disability and there is no person legally competent to receive the amount, or who cannot be found after the exercise of reasonable diligence, shall be transmitted to the treasurer of state in the manner required by section 524.1305, subsection 6. Such property shall be treated as abandoned, retained by the treasurer of state, and is subject to claim, in the manner provided for in sections 556.14 to 556.21.

2. Under the receivership, the rights of depositors and other creditors of the insured state bank shall be determined in accordance with the laws of this state.

3. The federal deposit insurance corporation as receiver shall possess all the powers, rights, and privileges provided under section 524.1311, except insofar as that section may be in conflict with the laws of the United States.

4. If the federal deposit insurance corporation pays or makes available for payment the insured deposit liabilities of an insured state bank, the federal deposit insurance corporation shall be subrogated by operation of law to all rights against such insured state bank of the owners of such deposits in the same manner and to the same extent as subrogation of the federal deposit insurance corporation is provided for in applicable federal law in the case of a national bank.

[C73, §1572; C97, §1877; C24, 27, 31, §9239, 9240, 9242; C35, §9154-f3, 9239, 9240, 9242; C39, §**9154.03, 9239, 9240, 9242, 9283.35, 9283.36;** C46, 50, 54, 58, 62, 66, §524.30, 528.33, 528.41, 528.43, 528.120, 528.121; C71, 73, 75, 77, 79, 81, §524.1310]

90 Acts, ch 1205, §44; 2012 Acts, ch 1017, §23, 28

Referred to in §524.1305

524.1311 Involuntary dissolution after commencement of business — receivership procedure.

1. Under the receivership, a diligent effort shall be made to collect and realize on the assets of the state bank and to make distribution of the proceeds from time to time to those entitled thereto. The federal deposit insurance corporation may execute assignments, releases, and satisfactions to effectuate sales and transfers as receiver or after the receivership has terminated. The federal deposit insurance corporation may sell or compound all bad or doubtful debts, and may sell all the real and personal property of such state bank.

2. After the involuntary dissolution of a state bank, the superintendent shall file notice of the dissolution with the secretary of state and the county recorder of the county in which the state bank is located. No fee shall be charged by the secretary of state or the county recorder for the filing or recording. The corporate existence of the state bank shall cease upon filing of the notice of dissolution with the secretary of state.

[C73, §1572; C97, §1857, 1877; S13, §1857; C24, §9239, 9278; C27, §9239, 9239-a5, 9278; C31, 35, §9239, 9239-a5, 9278, 9278-c1; C39, §**9239, 9239.6, 9278, 9278.1 – 9278.3;** C46, 50, 54, 58, 62, 66, §528.33, 528.39, 528.77 – 528.80; C71, 73, 75, 77, 79, 81, §524.1311]

2012 Acts, ch 1017, §24, 28

Referred to in §524.1305, 524.1310

524.1312 Distribution of assets upon insolvency.

In the distribution of the assets of a state bank which is dissolved under this chapter, or by any other method, the order of payment of the liabilities of the state bank, in the event that its assets are insufficient to pay in full all its liabilities for which claims are made, shall be:

1. The payment of costs and expenses of the administration of the dissolution.

2. The payment of claims for public funds deposited pursuant to chapter 12C and the payment of claims which are given priority by applicable statutes. If the assets are insufficient for payment of the claims in full, then priority shall be determined as specified by the statutes or, in the absence of conflicting provisions, on a pro rata basis.

3. Amounts due to depositors.

4. The payment of all other claims pro rata, exclusive of claims on capital notes and debentures.

5. The payment of capital notes and debentures.

[C73, §1572; C97, §1857, 1877; S13, §1857; C24, §9239, 9243, 9278; C27, §9239, 9239-a6, 9243, 9278; C31, 35, §9239, 9239-a6, 9243, 9278, 9278-c1; C39, §**9239, 9239.7, 9243, 9278, 9278.1, 9278.2, 9278.3;** C46, 50, 54, 58, 62, 66, §528.33, 528.40, 528.44, 528.77, 528.78, 528.79, 528.80; C71, 73, 75, 77, 79, 81, §524.1312]

85 Acts, ch 194, §9

Referred to in §12C.23A, 524.404, 524.1305, 524.1310

Claims entitled to priority; §680.7 – 680.9

524.1313 Involuntary dissolution after commencement of business — tender of receivership to F.D.I.C. Repealed by 2012 Acts, ch 1017, §27, 28. See §524.1311.

524.1314 Survival of rights and remedies after dissolution or expiration — preservation of records.

1. The dissolution of a state bank, or the expiration of its period of duration, shall not take away or impair any remedy available to or against such state bank, its directors, officers, or shareholders, for any right or claim existing, or any liability incurred prior to such dissolution or expiration, if action or other proceeding thereon is commenced within two years after the date of such dissolution or expiration. Any such action or proceeding by or against the state bank may be prosecuted or defended by the state bank in its corporate name. The shareholders, directors and officers shall have power to take such corporate or other action as shall be appropriate to protect such remedy, right or claim.

2. Subsequent to the dissolution of a state bank, other than through the adoption of a plan involving a provision for acquisition of its assets and assumption of its liabilities by another state bank, national bank, or other financial institution insured by the federal deposit insurance corporation, the superintendent may assume custody of the records of the state bank and, if so, shall retain them in accordance with the provisions of section 524.221. The superintendent may make copies of such records in accordance with the provisions of section 524.221, subsection 1.

[C71, 73, 75, 77, 79, 81, §524.1314]

95 Acts, ch 148, §107

524.1315 through 524.1400 Reserved.

SUBCHAPTER XIV

MERGER, CONSOLIDATION, AND CONVERSION

524.1401 Authority to merge.

1. Upon compliance with the requirements of this chapter, one or more state banks, one or more national banks, one or more federal associations, one or more corporations, or any combination of these entities, with the approval of the superintendent, may merge into a state bank.

2. Upon compliance with the requirements of this chapter, one or more state banks may merge into a national bank. The authority of a state bank to merge into a national bank is subject to the condition that at the time of the transaction the laws of the United States shall authorize a national bank located in this state, without approval by the comptroller of the currency of the United States, to merge into a state bank under limitations no more restrictive than those contained in this chapter with respect to the merger of a state bank into a national bank.

3. Upon compliance with the requirements of this chapter, one or more state banks may merge with one or more federal associations. The authority of a state bank to merge into a federal association is subject to the conditions the laws of the United States authorize at the time of the transaction.

4. As used in this section, the term *"merger"* or *"merge"* means any plan by which the assets and liabilities of an entity are combined with those of one or more other entities, including transactions in which one of the corporate entities survives and transactions in which a new corporate entity is created.

[C54, 58, 62, 66, §528B.1 – 528B.3; C71, 73, 75, 77, 79, 81, §524.1401]

95 Acts, ch 148, §108; 2012 Acts, ch 1017, §109

524.1402 Requirements for a merger.

The requirements for a merger which must be satisfied by the parties to the merger are as follows:

1. The parties shall adopt a plan stating all of the following:

a. The names of the parties proposing to merge and the name of the bank into which they propose to merge, which is the "resulting bank".

b. The terms and conditions of the proposed merger.

c. The manner and basis of converting the shares of each party into shares, obligations, or other securities of the resulting bank or of any other corporation, or, in whole or in part, into cash or other property.

d. The rights of the shareholders of each of the parties.

e. An agreement concerning the merger.

f. Such other provisions with respect to the proposed merger which are deemed necessary or desirable.

2. In the case of a state bank which is a party to the plan, if the proposed merger will result in a state bank subject to this chapter, adoption of the plan by such state bank requires the affirmative vote of at least a majority of the directors and approval by the shareholders, in the manner and according to the procedures prescribed in section 490.1104, at a meeting called in accordance with the terms of that section. In the case of a national bank, or if the proposed merger will result in a national bank, adoption of the plan by each party to the merger shall require the affirmative vote of at least such directors and shareholders whose affirmative vote on the plan is required under the laws of the United States. Subject to applicable requirements of the laws of the United States in a case in which a national bank is a party to a plan, any modification of a plan which has been adopted shall be made by any method provided in the plan, or in the absence of such provision, by the same vote as required for adoption.

3. If a proposed merger will result in a state bank, application for the required approval by the superintendent shall be made in the manner prescribed by the superintendent. There shall also be delivered to the superintendent, when available, the following:

a. Articles of merger.

b. Applicable fees payable to the secretary of state, as specified in section 490.122, for the filing and recording of the articles of merger.

c. If there is any modification of the plan at any time prior to the approval by the superintendent under section 524.1403, an amendment of the application and, if necessary, of the articles of merger, signed in the same manner as the originals, setting forth the modification of the plan, the method by which the modification was adopted and any related change in the provisions of the articles of merger.

d. Proof of publication of the notice required by subsection 4.

4. If a proposed merger will result in a state bank, within thirty days after the application for merger is accepted for processing, the parties to the plan shall publish a notice of the proposed transaction in a newspaper of general circulation published in the municipal corporation or unincorporated area in which each party to the plan has its principal place of business, or if there is none, in a newspaper of general circulation published in the county, or in a county adjoining the county, in which each party to the plan has its principal place of business. The notice shall be on forms prescribed by the superintendent and shall set forth the names of the parties to the plan and the resulting state bank, the location and post office address of the principal place of business of the resulting state bank and of each office to be maintained by the resulting state bank, and the purpose or purposes of the resulting state bank. Proof of publication of the notice shall be delivered to the superintendent within fourteen days.

5. Within thirty days after the date of the publication of the notice required under subsection 4, any interested person may submit to the superintendent written comments and data on the application. Comments challenging the legality of an application shall be submitted separately in writing. The superintendent may extend the thirty-day comment period if, in the superintendent's judgment, extenuating circumstances exist.

6. Within thirty days after the date of the publication of the notice required under subsection 4, any interested person may submit to the superintendent a written request for a hearing on the application. The request shall state the nature of the issues or facts to be presented and the reasons why written submissions would be insufficient to make an adequate presentation to the superintendent. If the reasons are related to factual disputes, the disputes shall be described. Written requests for hearings shall be evaluated by the superintendent, who may grant or deny such requests in whole or in part. A hearing request shall generally be granted only if it is determined that written submissions would be inadequate or that a hearing would otherwise be beneficial to the decision-making process. A hearing may be limited to issues considered material by the superintendent.

7. If a request for a hearing is denied, the superintendent shall notify the applicant and all interested persons and shall state the reasons for the denial. Interested persons may submit to the superintendent, with simultaneous copies to the applicant, additional written comments or data on the application within fourteen days after the date of the notice of denial. The applicant shall be provided an additional seven days, after the fourteen-day deadline has expired, within which to respond to any comments submitted within the fourteen-day period. The superintendent may waive this seven-day period upon request by the applicant. A copy of any response submitted by the applicant shall also be mailed simultaneously by the applicant to the interested persons.

8. The articles of merger shall be signed by two duly authorized officers of each party to the plan and shall contain all of the following:

a. The names of the parties to the plan, and of the resulting state bank.

b. The location and the post office address of the principal place of business of each party to the plan, and of each additional office maintained by the parties to the plan, and the location and post office address of the principal place of business of the resulting state bank, and of each additional office to be maintained by the resulting state bank.

c. The votes by which the plan was adopted, and the date and place of each meeting in connection with such adoption.

d. The number of directors constituting the board of directors, and the names and addresses of the individuals who are to serve as directors until the next annual meeting of the shareholders or until their successors be elected and qualify.

e. Any amendment of the articles of incorporation of the resulting state bank.

f. The plan of merger.

9. If a proposed merger will result in a national bank, a state bank which is a party to the plan shall do all of the following:

a. Notify the superintendent of the proposed merger.

b. Provide such evidence of the adoption of the plan as the superintendent may request.

c. Notify the superintendent of any abandonment or disapproval of the plan.

d. File with the superintendent and with the secretary of state evidence of approval of the merger by the comptroller of the currency of the United States.

e. Notify the superintendent of the date upon which the merger is to become effective.

[C54, 58, 62, 66, §528B.4, 528B.5; C71, 73, 75, 77, 79, 81, §524.1402]

90 Acts, ch 1076, §1; 90 Acts, ch 1205, §45, 46; 95 Acts, ch 148, §109; 2002 Acts, ch 1154, §115, 125; 2004 Acts, ch 1141, §28; 2005 Acts, ch 19, §112

Referred to in §524.1403

524.1403 Approval of merger by superintendent.

1. Upon receipt of an application for approval of a merger and of the supporting items required by section 524.1402, subsection 3, the superintendent shall conduct such investigation as the superintendent deems necessary to ascertain the following:

a. The articles of merger and supporting items satisfy the requirements of this chapter.

b. The plan and any modification of the plan adequately protects the interests of depositors, other creditors and shareholders.

c. The requirements for a merger under all applicable laws have been satisfied and the resulting state bank would satisfy the requirements of this chapter with respect to it.

d. The merger would be consistent with adequate and sound banking and in the public interest on the basis of the financial history and condition of the parties to the plan, including the adequacy of the capital structure of the resulting state bank, the character of the management of the resulting state bank, the potential effect of the merger on competition, and the convenience and needs of the area primarily to be served by the resulting state bank.

2. *a.* Within one hundred eighty days after acceptance of the application for processing, or within an additional period of not more than sixty days after receipt of an amendment of the application, the superintendent shall approve or disapprove the application on the basis of the investigation. The plan shall not be modified at any time after approval of the application by the superintendent.

b. If the superintendent finds that the superintendent must act immediately on the pending application in order to protect the interests of depositors or the assets of any party to the plan, the superintendent may proceed without requiring publication of the notice required under section 524.1402, subsection 4. As a condition of receiving the decision of the superintendent with respect to the pending application, the parties to the plan shall reimburse the superintendent for all the expenses incurred in connection with the application. The superintendent shall give to the parties to the plan written notice of the decision and, in the event of disapproval, a statement of the reasons for the decision. The decision of the superintendent shall be subject to judicial review pursuant to chapter 17A.

[C54, 58, 62, 66, §528B.4; C71, 73, 75, 77, 79, 81, §524.1403]

92 Acts, ch 1161, §6; 95 Acts, ch 148, §110; 2012 Acts, ch 1023, §157

Referred to in §524.1303, 524.1402

524.1404 Procedure after approval by the superintendent — issuance of certificate of merger.

If applicable state or federal laws require the approval of the merger by a federal or state agency, the superintendent may withhold delivery of the approved articles of merger until the superintendent receives notice of the decision of such agency. If the final approval of the agency is not given within six months of the superintendent's approval, the superintendent shall notify the parties to the plan that the approval of the superintendent has been rescinded for that reason. If such agency gives its approval, the superintendent shall deliver the articles of merger, with the superintendent's approval indicated on the articles, to the secretary of state, and shall notify the parties to the plan. The receipt of the approved articles of merger by the secretary of state constitutes filing of the articles of merger with that office. The secretary of state shall record the articles of merger, and the articles shall be filed and recorded in the office of the county recorder in each county in which the parties to the plan had previously maintained a principal place of business. On the date upon which the merger is effective the secretary of state shall issue a certificate of merger and send the same to the resulting state bank and a copy of the certificate of merger to the superintendent.

[C54, 58, 62, 66, §528B.6; C71, 73, 75, 77, 79, 81, §524.1404]

95 Acts, ch 148, §111

524.1405 Effect of merger.

1. The merger is effective upon the filing of the articles of merger with the secretary of state, or at any later date and time as specified in the articles of merger. The certificate of merger is conclusive evidence of the performance of all conditions precedent to the merger, and of the existence or creation of the resulting state bank, except as against the state.

2. When a merger takes effect all of the following apply:

a. Every other financial institution to the merger merges into the surviving financial institution and the separate existence of every party except the surviving financial institution ceases.

b. The title to all real estate and other property owned by each party to the merger is vested in the surviving party without reversion or impairment.

c. The surviving party has all liabilities of each party to the merger.

d. A proceeding pending against any party to the merger may be continued as if the merger did not occur or the surviving party may be substituted in the proceeding for the party whose existence ceased.

e. The articles of incorporation of the surviving party are amended to the extent provided in the articles of merger.

f. The shares of each party to the merger that are to be converted into shares, obligations, or other securities of the surviving party or any other corporation or limited liability company or into cash or other property are converted, and the former holders of the shares are entitled only to the rights provided in the articles of merger or to their rights under section 524.1406.

[C54, 58, 62, 66, §528B.6, 528B.8; C71, 73, 75, 77, 79, 81, §524.1405]

95 Acts, ch 148, §112, 113; 98 Acts, ch 1036, §4; 2004 Acts, ch 1141, §70

524.1406 Appraisal rights of shareholders.

1. A shareholder of a state bank, which is a party to a proposed merger plan which will result in a state bank subject to this chapter, who objects to the plan is entitled to appraisal rights as provided in chapter 490, division XIII.

2. If a shareholder of a national bank which is a party to a proposed merger plan which will result in a state bank, or a shareholder of a state bank which is a party to a plan which will result in a national bank, objects to the plan and complies with the requirements of the applicable laws of the United States, the resulting state bank or national bank, as the case may be, is liable for the value of the shareholder's shares as determined in accordance with such laws of the United States.

[C54, 58, 62, 66, §528B.9; C71, 73, 75, 77, 79, 81, §524.1406]

90 Acts, ch 1205, §47; 95 Acts, ch 148, §114; 99 Acts, ch 162, §1; 99 Acts, ch 208, §59; 2000 Acts, ch 1211, §3; 2002 Acts, ch 1154, §116, 125; 2008 Acts, ch 1119, §11; 2010 Acts, ch 1138, §57; 2011 Acts, ch 34, §121; 2014 Acts, ch 1001, §4; 2014 Acts, ch 1076, §20

Referred to in §524.1405

524.1407 Succession to fiduciary accounts and appointments — application for appointment of new fiduciary. Repealed by 95 Acts, ch 148, §135.

524.1408 Merger of corporation or limited liability company substantially owned by a state bank.

A state bank owning at least ninety percent of the outstanding shares, of each class, of another corporation or limited liability company which it is authorized to own under this chapter may merge the other corporation or limited liability company into itself without approval by a vote of the shareholders of either the state bank or the subsidiary corporation or limited liability company. The board of directors of the state bank shall approve a plan of merger, mail the plan of merger to shareholders of record of the subsidiary corporation or holders of membership interests in the subsidiary limited liability company, and prepare and execute articles of merger in the manner provided for in section 490.1105. The articles of merger, together with the applicable filing and recording fees, shall be delivered to the superintendent who shall, if the superintendent approves of the proposed merger and if the superintendent finds the articles of merger satisfy the requirements of this section, deliver them to the secretary of state for filing and recording in the secretary of state's office, and they shall be filed in the office of the county recorder. The secretary of state upon filing the articles of merger shall issue a certificate of merger and send the certificate to the state bank and a copy of it to the superintendent.

[C71, 73, 75, 77, 79, 81, §524.1408]

90 Acts, ch 1205, §48; 95 Acts, ch 148, §115; 2002 Acts, ch 1154, §117, 125; 2004 Acts, ch 1141, §71; 2005 Acts, ch 3, §87

524.1409 Conversion of national bank or federal savings association into state bank.

A national bank or federal savings association, subject to the provisions of this chapter, may convert into a state bank upon authorization by and compliance with the laws of the United States, adoption of a plan of conversion by the affirmative vote of at least a majority of its directors and the holders of two-thirds of each class of its shares at a meeting held upon not less than ten days' notice to all shareholders, and upon approval of the superintendent.

[C54, 58, 62, 66, §528B.3, 528B.7; C71, 73, 75, 77, 79, 81, §524.1409]

98 Acts, ch 1036, §5; 2007 Acts, ch 88, §8; 2012 Acts, ch 1017, §110

524.1410 Application for approval by superintendent.

A national bank or federal savings association shall make an application to the superintendent for approval of the conversion in a manner prescribed by the superintendent and shall deliver to the superintendent, when available:

1. Articles of conversion.
2. As soon as available, proof of publication of the notice required by section 524.1412.
3. The applicable fee payable to the secretary of state, under section 490.122, for the filing and recording of the articles of conversion.

[C54, 58, 62, 66, §528B.7; C71, 73, 75, 77, 79, 81, §524.1410]

90 Acts, ch 1205, §49; 98 Acts, ch 1036, §6; 2007 Acts, ch 88, §9; 2012 Acts, ch 1017, §111

524.1411 Articles of conversion.

The articles of conversion shall be signed by two duly authorized officers of the national bank or federal savings association and shall contain all of the following:

1. The name of the national bank or federal savings association and the name of the resulting state bank.
2. The location and post office address of its principal place of business and of each additional office, and the location and post office address of the principal place of business of the resulting state bank and of each additional office to be maintained by the resulting state bank.
3. The votes by which the plan of conversion was adopted and the date and place of each meeting in connection with the adoption.
4. The number of directors constituting the board of directors, and the names and addresses of the persons who are to serve as directors until the next annual meeting of shareholders or until successors be elected and qualify.
5. The provisions required in the articles of incorporation by section 524.302, subsection 1, paragraphs "*c*" and "*d*", and section 524.302, subsection 2, paragraph "*b*".

[C54, 58, 62, 66, §528B.4; C71, 73, 75, 77, 79, 81, §524.1411]

95 Acts, ch 148, §116; 98 Acts, ch 1036, §7, 8; 2007 Acts, ch 88, §10; 2012 Acts, ch 1017, §112, 113; 2013 Acts, ch 30, §131

524.1412 Publication of notice.

Within thirty days after the application for conversion has been accepted for processing, the national bank or federal savings association shall publish a notice of the delivery of the articles of conversion to the superintendent in a newspaper of general circulation published in the municipal corporation or unincorporated area in which the national bank or federal savings association has its principal place of business, or if there is none, a newspaper of general circulation published in the county, or in a county adjoining the county, in which the national bank or federal savings association has its principal place of business. Proof of publication of the notice shall be delivered to the superintendent within fourteen days. The notice shall set forth all of the following:

1. The name of the national bank or federal savings association and the name of the resulting state bank.
2. The location and post office address of its principal place of business.
3. A statement that articles of conversion have been delivered to the superintendent.
4. The purpose or purposes of the resulting state bank.

5. The date of delivery of the articles of conversion to the superintendent.

[C54, 58, 62, 66, §528B.6; C71, 73, 75, 77, 79, 81, §524.1412]

95 Acts, ch 148, §117; 98 Acts, ch 1036, §9, 10; 2004 Acts, ch 1141, §29; 2007 Acts, ch 88, §11; 2012 Acts, ch 1017, §114, 115

Referred to in §524.1410

524.1413 Approval of conversion by superintendent.

1. Upon acceptance for processing of an application for approval of a conversion, the superintendent shall conduct such investigation as the superintendent deems necessary to ascertain the following:

a. The articles of conversion and supporting items satisfy the requirements of this chapter.

b. The plan adequately protects the interests of depositors.

c. The requirements for a conversion under all applicable laws have been satisfied and the resulting state bank would satisfy the requirements of this chapter applicable to it.

d. The resulting state bank will possess an adequate capital structure.

2. Within ninety days after the application has been accepted for processing, the superintendent shall approve or disapprove the application on the basis of the investigation. As a condition of receiving the decision of the superintendent with respect to the application, the national bank or federal savings association shall reimburse the superintendent for all expenses incurred in connection with the application. The superintendent shall give the national bank or federal savings association written notice of the decision and, in the event of disapproval, a statement of the reasons for the decision. If the superintendent approves the application, the superintendent shall deliver the articles of conversion, with the superintendent's approval indicated on the articles of conversion, to the secretary of state. The decision of the superintendent shall be subject to judicial review pursuant to chapter 17A. Notwithstanding the terms of the Iowa administrative procedure Act, chapter 17A, a petition for judicial review must be filed within thirty days after the superintendent notifies the national bank or federal savings association of the superintendent's decision.

[C54, 58, 62, 66, §528B.4; C71, 73, 75, 77, 79, 81, §524.1413]

95 Acts, ch 148, §118; 98 Acts, ch 1036, §11; 2007 Acts, ch 88, §12; 2013 Acts, ch 90, §161

524.1414 Receipt by secretary of state — county recorder.

The receipt of the approved articles of conversion by the secretary of state constitutes filing of the articles of conversion with that office. The secretary of state shall record the articles of conversion and the articles shall be filed and recorded in the office of the county recorder in the county in which the resulting state bank has its principal place of business.

[C54, 58, 62, 66, §528B.6; C71, 73, 75, 77, 79, 81, §524.1414]

95 Acts, ch 148, §119

524.1415 Effect of filing of articles of conversion with secretary of state.

1. The conversion is effective upon the filing of the articles of conversion with the secretary of state, or at any later date and time as specified in the articles of conversion. The acknowledgment of filing is conclusive evidence of the performance of all conditions required by this chapter for conversion of a national bank or federal savings association into a state bank, except as against the state.

2. When a conversion becomes effective, the existence of the national bank or federal savings association shall continue in the resulting state bank which shall have all the property, rights, powers, and duties of the national bank or federal savings association, except that the resulting state bank shall have only the authority to engage in such business and exercise such powers as it would have, and shall be subject to the same prohibitions and limitations to which it would be subject, upon original incorporation under this chapter. The articles of incorporation of the resulting state bank shall be the provisions stated in the articles of conversion.

3. A liability of the national bank or federal savings association, or of the national bank's or federal savings association's shareholders, directors, or officers, is not affected by the conversion. A lien on any property of the national bank or federal savings association is not

impaired by the conversion. A claim existing or action pending by or against the national bank or federal savings association may be prosecuted to judgment as if the conversion had not taken place, or the resulting state bank may be substituted in its place.

4. The title to all real estate and other property owned by the converting national bank or federal savings association is vested in the resulting state bank without reversion or impairment.

[C54, 58, 62, 66, §528B.6, 528B.8; C71, 73, 75, 77, 79, 81, §524.1415]

95 Acts, ch 148, §120, 121; 96 Acts, ch 1034, §51; 98 Acts, ch 1036, §12; 2007 Acts, ch 88, §13; 2012 Acts, ch 1017, §116

524.1416 Authority for conversion of state bank into national bank or federal savings association.

1. A state bank may convert into a national bank or federal savings association by compliance with the laws of the United States, and adoption of a plan of conversion by the affirmative vote of at least a majority of its directors and the holders of two-thirds of each class of its shares at a meeting held upon not less than ten days' notice to all shareholders. The authority of a state bank to convert into a national bank or federal savings association shall be subject to the condition that at the time of the transaction, the laws of the United States shall authorize a national bank or federal savings association located in this state, without approval by the comptroller of the currency of the United States or director of the office of thrift supervision, as applicable, to convert into a state bank under limitations and conditions no more restrictive than those contained in this section and section 524.1417 with respect to conversion of a state bank into a national bank or federal savings association.

2. A state bank which converts into a national bank or federal savings association shall notify the superintendent of the proposed conversion, provide such evidence of the adoption of the plan as the superintendent may request, notify the superintendent of any abandonment or disapproval of the plan, and file with the superintendent and with the secretary of state a certificate of the approval of the conversion by the comptroller of the currency of the United States or director of the office of thrift supervision, as applicable, and the date upon which such conversion is to become effective. A state bank that converts into a national bank or federal savings association shall comply with the provisions of section 524.310, subsection 1.

[C54, 58, 62, 66, §528B.2; C71, 73, 75, 77, 79, 81, §524.1416]

98 Acts, ch 1036, §13; 2004 Acts, ch 1141, §30; 2006 Acts, ch 1010, §149; 2007 Acts, ch 88, §14; 2012 Acts, ch 1017, §117

524.1417 Appraisal rights of shareholder of converting state or national bank or federal savings association.

1. A shareholder of a state bank that converts into a national bank or federal savings association who objects to the plan of conversion is entitled to appraisal rights as provided in chapter 490, division XIII.

2. If a shareholder of a national bank or federal savings association that converts into a state bank objects to the plan of conversion and complies with the requirements of applicable laws of the United States, the resulting state bank is liable for the value of the shareholder's shares as determined in accordance with such laws of the United States.

[C54, 58, 62, 66, §528B.9; C71, 73, 75, 77, 79, 81, §524.1417]

95 Acts, ch 148, §122, 123; 98 Acts, ch 1036, §14; 2002 Acts, ch 1154, §118, 125; 2007 Acts, ch 88, §15; 2012 Acts, ch 1017, §118

Referred to in §524.1416

524.1418 Succession to fiduciary accounts and appointments — application for appointment of new fiduciary.

The provisions of section 524.1009 apply to a resulting state or national bank or federal savings association after a conversion with the same effect as though the state or national

bank or federal savings association were a party to a plan of merger, and the conversion were a merger, within the provisions of that section.

[C54, 58, 62, 66, §528B.10; C71, 73, 75, 77, 79, 81, §524.1418]

95 Acts, ch 148, §124; 98 Acts, ch 1036, §15; 2007 Acts, ch 88, §16; 2012 Acts, ch 1017, §119

524.1419 Offices of a resulting state bank.

If a merger or conversion results in a state bank subject to the provisions of this chapter, the resulting state bank, after the effective date of the merger or conversion, shall be subject to the provisions of sections 524.1201 and 524.1203 relating to the bank offices.

[C71, 73, 75, 77, 79, 81, §524.1419]

89 Acts, ch 257, §25; 95 Acts, ch 148, §125; 2001 Acts, ch 4, §8, 11

524.1420 Nonconforming assets of resulting state bank.

If a merger or conversion results in a state bank subject to the provisions of this chapter, and the resulting state bank has assets which do not conform with the provisions of this chapter, the superintendent may allow the resulting state bank a reasonable time to conform with state law.

[C54, 58, 62, 66, §528B.11; C71, 73, 75, 77, 79, 81, §524.1420]

95 Acts, ch 148, §126

524.1421 Mutual to stock conversions.

1. A mutual corporation, a mutual holding company, a federal mutual association, or a federal mutual holding company, subject to the provisions of this chapter, may convert into a stock corporation that is either a state bank or a state bank mutual bank holding company upon approval of the superintendent.

2. A mutual corporation, a mutual holding company, a federal mutual association, or a federal mutual holding company shall make an application to the superintendent for approval of the conversion in a manner prescribed by the superintendent and shall deliver to the superintendent, when available, the following:

a. Articles of conversion.

b. A business plan addressing factors prescribed by the superintendent.

c. Proof of publication of the notice required by section 524.1422.

d. The applicable fee payable to the secretary of state, under section 490.122, for the filing and recording of the articles of conversion.

3. The superintendent may adopt rules governing mutual to stock conversions.

2012 Acts, ch 1017, §14, 18

524.1422 Notice of mutual to stock conversion.

Within thirty days after an application for conversion has been accepted for processing, the mutual corporation, mutual holding company, federal mutual association, or federal mutual holding company shall publish a notice of the delivery of the articles of conversion to the superintendent in a newspaper of general circulation published in the municipal corporation or unincorporated area in which the mutual corporation, mutual holding company, federal mutual association, or federal mutual holding company has its principal place of business, or if there is none, a newspaper of general circulation published in the county, or in a county adjoining the county, in which the mutual corporation, mutual holding company, federal mutual association, or federal mutual holding company has its principal place of business. The notice shall set forth the information required by the superintendent.

2012 Acts, ch 1017, §15, 18

Referred to in §524.1421

524.1423 through 524.1500 Reserved.

SUBCHAPTER XV

AMENDMENT TO ARTICLES OF INCORPORATION

524.1501 Authority to amend.

A state bank, with the approval of the superintendent and in the manner provided in this chapter, may amend its articles of incorporation in order to make any change in the articles of incorporation so long as the articles of incorporation as amended contain only provisions as might be lawfully contained in the original articles of incorporation at the time of making the amendment.

[C35, §9283-f14; C39, §**9283.42;** C46, 50, 54, 58, 62, 66, §528.127; C71, 73, 75, 77, 79, 81, §524.1501]

95 Acts, ch 148, §127

524.1502 Procedure to amend.

1. An amendment of the articles of incorporation shall be proposed by adoption of a resolution by the board of directors, directing that it be submitted to a vote at a meeting of shareholders called in the manner required by section 524.533.

2. The resolution proposing an amendment or amendments shall contain the language of each amendment by setting forth in full the articles of incorporation as they would be amended or any provision thereof as it would be amended or by setting forth in full any matter to be added to or deleted from the articles of incorporation. A copy of the resolution or a summary thereof shall be included with the notice of the meeting required for the vote of the shareholders.

3. Adoption of each amendment shall require the affirmative vote of the holders of a majority of the shares entitled to vote thereon and, if any class is entitled to vote thereon as a class, the affirmative vote of the holders of a majority of the shares of each class entitled to vote thereon as a class.

[C35, §9283-f11, -f12, -f13; C39, §**9283.39, 9283.40, 9283.41;** C46, 50, 54, 58, 62, 66, §528.124, 528.125, 528.126; C71, 73, 75, 77, 79, 81, §524.1502]

Referred to in §524.312

524.1503 Voting on amendments by voting groups.

1. The holders of the outstanding shares of a class are entitled to vote as a separate voting group on a proposed amendment if the amendment does any of the following:

a. Increases or decreases the aggregate number of authorized shares of the class.

b. Increases or decreases the par value of the shares of the class.

c. Effects an exchange or reclassification of all or part of the shares of the class into shares of another class or effects a cancellation of all or part of the shares of the class.

d. Effects an exchange or reclassification, or creates the right of exchange, of all or part of the shares of another class into shares of that class.

e. Changes the designation, rights, preferences, or limitations of all or part of the shares of the class.

f. Changes the shares of all or part of the class into a different number of shares of the same class.

g. Creates a new class of shares having rights or preferences with respect to distributions or to dissolution that are prior, superior, or substantially equal to the shares of the class.

h. Increases the rights, preferences, or number of authorized shares of any class that, after giving effect to the amendment, have rights or preferences with respect to distributions or to dissolution that are prior, superior, or substantially equal to the shares of the class.

i. Limits or denies an existing preemptive right of all or part of the shares of the class.

j. Cancels or otherwise affects rights to distributions or dividends that have accumulated but not yet been declared on all or part of the shares of the class.

2. If a proposed amendment would affect a series of a class of shares in one or more of the ways described in subsection 1, the shares of that series are entitled to vote as a separate voting group on the proposed amendment.

3. If a proposed amendment that entitles two or more series of shares to vote as separate voting groups under this section would affect those two or more series in the same or a substantially similar way, the shares of all the series so affected must vote together as a single voting group on the proposed amendment.

4. A class or series of shares is entitled to the voting rights granted by this section although the articles of incorporation provide that the shares are nonvoting shares.

[C71, 73, 75, 77, 79, 81, §524.1503]

95 Acts, ch 148, §128

524.1504 Articles of amendment.

1. Upon the adoption of an amendment, articles of amendment shall be prepared on forms prescribed by the superintendent, signed by two duly authorized officers of the state bank and shall contain:

a. The name of the state bank.

b. The location of its principal place of business.

c. The amendment adopted, which shall be set forth in full.

d. The place and date of the meeting of shareholders at which the amendment was adopted, and the kind and period of notice given to the shareholders.

e. For a stock corporation, the number of shares entitled to vote on the amendment, and if the shares of any class are entitled to vote thereon as a class, the number of shares of each class. For a mutual corporation, the number of member votes entitled to be cast.

f. The number of shares or member votes voted for and against such amendment, respectively, and if the shares of any class are entitled to vote thereon as a class, the number of shares of each such class voted for and against such amendment.

2. The articles of amendment shall be delivered to the superintendent together with the applicable fees for the filing and recording of the articles of amendment.

[C71, 73, 75, 77, 79, 81, §524.1504]

95 Acts, ch 148, §129; 2012 Acts, ch 1017, §16, 18

Referred to in §524.312, 524.1505

524.1505 Approval of articles of amendment.

1. Upon receipt of the articles of amendment the superintendent shall conduct such investigation as the superintendent may deem necessary to determine whether the articles of amendment satisfy the requirements of section 524.1504 and whether the amendment, if effected, will in any way prejudice the interests of the depositors of the state bank.

2. Within sixty days after receipt of the articles of amendment the superintendent shall approve or disapprove the articles of amendment on the basis of the investigation. If the superintendent shall approve the articles of amendment, the superintendent shall deliver them with the written approval to the secretary of state and notify the state bank of the action. If the superintendent shall disapprove the articles of amendment, the superintendent shall give written notice to the state bank of the disapproval and a statement of the reasons for the decision. The decision of the superintendent shall be subject to judicial review in accordance with the terms of the Iowa administrative procedure Act, chapter 17A. Notwithstanding the terms of said Act, such a petition for judicial review must be filed within thirty days after the superintendent notifies the state bank of the decision.

[C71, 73, 75, 77, 79, 81, §524.1505]

2003 Acts, ch 44, §114

Referred to in §524.1508

524.1506 Certificate of amendment.

1. The secretary of state shall record the articles of amendment, and the articles of amendment shall be filed in the office of the county recorder in the county in which the state bank has its principal place of business. The secretary of state upon the filing of the articles of amendment shall issue a certificate of amendment and send the same to the state bank.

2. Upon the issuance of the certificate of amendment by the secretary of state, the

amendment becomes effective and the articles of incorporation are deemed to be amended accordingly.

[C71, 73, 75, 77, 79, 81, §524.1506]

95 Acts, ch 148, §130

Referred to in §524.312

524.1507 Change of location of principal place of business. Repealed by 95 Acts, ch 148, §135.

524.1508 Restated articles of incorporation.

1. A state bank may at any time restate its articles of incorporation, which may be amended by the restatement, so long as its articles of incorporation as restated contain only such provisions as might be lawfully contained in original articles of incorporation at the time of making the restatement. Restated articles of incorporation shall be adopted in the following manner:

a. The board of directors shall adopt a resolution setting forth the proposed restated articles of incorporation, which may include an amendment or amendments to the articles of incorporation of the state bank to be made thereby, and directing that the restated articles, including such amendment or amendments, be submitted to a vote at a meeting of shareholders, which may be either an annual meeting or a special meeting.

b. Written or printed notice setting forth the proposed restated articles or a summary of the provisions of the proposed restated articles shall be given to each shareholder of record entitled to vote on the proposed restated articles within the time and in the manner provided in section 524.533. If the meeting be an annual meeting, the proposed restated articles may be included in the notice of such annual meeting. If the restated articles include an amendment or amendments to the articles of incorporation, the notice shall separately set forth such amendment or amendments or a summary of the changes to be effected by the amendment or amendments.

c. At the meeting a vote of the shareholders entitled to vote on the proposed restated articles shall be taken on the proposed restated articles. The proposed restated articles shall be adopted upon receiving the affirmative vote of the holders of a majority of the shares entitled to vote, unless such restated articles include an amendment to the articles of incorporation which, if contained in a proposed amendment to articles of incorporation to be made without restatement of the articles of incorporation, would entitle a class of shares to vote as a class on the proposed restated articles, in which event the proposed restated articles shall be adopted upon receiving the affirmative vote of the holders of a majority of the shares of each class of shares entitled to vote on the proposed restated articles as a class, and of the total shares entitled to vote on the proposed restated articles.

2. Upon approval, restated articles of incorporation shall be executed by the state bank by its president or vice president and by its cashier or an assistant cashier, and verified by one of the officers signing the restated articles, and shall set forth, as then stated in the articles of incorporation of the state bank and, if the restated articles of incorporation included an amendment or amendments to the articles of incorporation, as so amended, the material and contents described in section 524.302.

3. The restated articles of incorporation shall set forth also a statement that they correctly set forth the provisions of the articles of incorporation as amended, that they have been duly adopted as required by law and that they supersede the original articles of incorporation and all amendments to the original articles of incorporation.

4. The restated articles of incorporation shall be delivered to the superintendent together with the applicable fees for the filing and recording of the restated articles of incorporation. The superintendent shall conduct such investigation and give approval or disapproval, as provided in section 524.1505. If the superintendent approves the restated articles of incorporation, the superintendent shall deliver them with the written approval on the restated articles of incorporation to the secretary of state for filing, and the restated articles of incorporation shall be filed in the office of the county recorder. The secretary of state upon

filing the restated articles of incorporation shall issue a restated certificate of incorporation and send the certificate to the state bank or its representative.

5. Upon the issuance of the restated certificate of incorporation by the secretary of state, the restated articles of incorporation including any amendment or amendments to the articles of incorporation are effective and supersede the original articles of incorporation and all amendments to the original articles of incorporation.

[C71, 73, 75, 77, 79, 81, §524.1508]

95 Acts, ch 148, §131; 2012 Acts, ch 1023, §157

524.1509 Reverse stock split.

A state bank may effect a reverse stock split or similar change in capital structure by renewal, amendment, or restatement of existing articles of incorporation, provided the requirements of the superintendent are satisfied.

95 Acts, ch 148, §132

524.1510 Effect of amendment.

An amendment to the articles of incorporation does not affect a cause of action existing against or in favor of the state bank, a proceeding to which the state bank is a party, or the existing rights of persons other than shareholders of the state bank. An amendment changing the state bank's name does not abate a proceeding brought by or against the state bank in its former name.

95 Acts, ch 148, §133

524.1511 through 524.1600 Reserved.

SUBCHAPTER XVI

PENALTIES

524.1601 Penalties and criminal provisions applicable to directors, officers, and employees of state banks and bank holding companies.

1. A director, officer, or employee of a state bank or bank holding company who willfully violates any of the provisions of section 524.612, subsection 2; section 524.613; section 524.706, subsection 1, insofar as such subsection incorporates section 524.612, subsection 2; or section 524.710, shall be guilty of a serious misdemeanor, and, in the following circumstances, shall pay an additional fine or fines equal to:

a. The amount of money or the value of the property which the director, officer, or employee received for procuring, or attempting to procure, a loan, extension of credit, or investment by the state bank or bank holding company, upon conviction of a violation of section 524.613 or of section 524.710.

b. The amount by which the director's or executive officer's deposit account in the state bank or bank holding company is overdrawn, in violation of 12 C.F.R. §215.4(e).

c. The amount of any profit which the director, officer, or employee receives on the transaction, upon conviction of a violation of section 524.612, subsection 2, or of section 524.706, subsection 1, insofar as each applies to purchases from and sales to a state bank or bank holding company upon terms more favorable to such director, officer, or employee than those offered to other persons.

d. The amount of profit, fees, or other compensation received, upon conviction of a violation of section 524.710, subsection 2.

2. A director or officer who willfully makes or receives a loan in violation of 12 C.F.R. §215.4 or 215.5, shall be guilty of a serious misdemeanor and shall be subject to an additional fine equal to that amount of the loan in excess of the limitation imposed by such regulations, and shall be forever disqualified from acting as a director or officer of any state bank or bank holding company.

3. A director, officer, or employee of a state bank or bank holding company who willfully

makes or receives a loan or extension of credit of funds held by the state bank or bank holding company as fiduciary, in violation of section 524.1002, subsection 4, shall be guilty of a serious misdemeanor and shall be subject to a further fine equal to the amount of the loan or extension of credit made in violation of section 524.1002, subsection 4, and shall be forever disqualified from acting as a director, officer, or employee of any state bank or bank holding company.

4. A director, officer, or employee of a state bank or bank holding company who willfully violates, or participates in the violation of, section 524.814, or section 524.819, shall be guilty of a serious misdemeanor.

[C97, S13, §1869; C24, 27, 31, 35, 39, §**9221;** C46, 50, 54, 58, 62, 66, §528.7, 528.63; C71, 73, 75, 77, 79, 81, §524.1601]

98 Acts, ch 1036, §16; 2006 Acts, ch 1015, §9; 2007 Acts, ch 22, §93; 2015 Acts, ch 29, §83; 2017 Acts, ch 138, §8, 9

524.1602 Penalties applicable to state bank.

The superintendent may impose a penalty on a state bank of up to one thousand dollars for each day:

1. That it holds investments for its own account in bonds or securities in violation of section 524.901.

2. On which it accepts and holds drafts in violation of section 524.903.

3. On which it has money loaned, credit extended or holds discounted or purchased evidences of indebtedness or agreements for the payment of money, in violation of sections 524.904 to 524.907.

4. On which it has money loaned, invested or is otherwise in violation of section 524.1102 or 524.1104.

5. On which it publishes, disseminates, or distributes any advertising containing any false, misleading, or deceptive statements concerning rates, terms, and conditions on which loans are made or deposits are received, in violation of section 524.1606.

[C71, 73, 75, 77, 79, 81, §524.1602]

84 Acts, ch 1067, §42; 2006 Acts, ch 1015, §10

524.1603 Engaging in business unlawfully.

1. Any person who willfully engages in the business of receiving money for deposit or transacts the business generally done by banks, or who willfully establishes a place of business for such purposes, in violation of section 524.107, subsection 1, shall be guilty of a serious misdemeanor.

2. The superintendent may impose a penalty on a state bank of up to one thousand dollars for each day that it violates the provisions of section 524.1201.

[C97, S13, §1889; C24, 27, 31, 35, 39, §**9151, 9260;** C46, 50, 54, 58, 62, 66, §524.25, 528.53; C71, 73, 75, 77, 79, 81, §524.1603]

2006 Acts, ch 1015, §11

524.1604 Failure to file report or make statement.

1. Any person whose duty it is to make statements or file reports as may be required by this chapter, and who willfully neglects or refuses to perform such duty, shall be guilty of a simple misdemeanor.

2. A state bank which fails to furnish to the superintendent the statement of condition required within the time required by this chapter, or fails to furnish the superintendent any report or other information the superintendent is legally authorized to request, within ten days of the superintendent's request therefor, or within the time required by this chapter, shall pay to the superintendent a penalty of fifty dollars for each day of delinquency, unless prior to such delinquency the superintendent has extended the time within which the same may be filed.

3. Any officer or employee who violates section 524.709 shall be guilty of a simple misdemeanor.

[C97, §1886; S13, §1871; C24, 27, 31, 35, 39, §**9226, 9230, 9281;** C46, 50, 54, 58, 62, 66, §528.20, 528.24, 528.83; C71, 73, 75, 77, 79, 81, §524.1604]

524.1605 False statements, reports, and felonious acts.

1. Any director, officer, or employee of a state bank who shall knowingly subscribe or make any false statements or false entries in the books, records, or memoranda of a state bank, or knowingly subscribe or exhibit false papers with intent to deceive any person authorized to examine its condition, or shall knowingly subscribe or make false reports, or shall knowingly divert the funds of the state bank to other purposes than those authorized by law, or who commits any other act with intent to defraud the state bank or any other person shall be guilty of a class "C" felony, and shall be forever disqualified from acting as a director, officer, or employee of any state bank.

2. Any officer or employee of a state bank who, with intent to defraud the state bank or any other person, certifies any check when there are not sufficient funds on hand available to the credit of the drawer of said check to pay the same, or who issues any certificate of deposit when funds have not been deposited equal to the amount of such certificate, or who, with intent to defraud the state bank or any other person, draws any draft or bill of exchange, makes any acceptance, or issues, puts forth or assigns any note, debenture, bond or other obligation or instrument, or participates in, or receives directly or indirectly any money, property or other benefit from any transaction, loan, contract or other act of a state bank shall be guilty of a class "C" felony, and shall, in either event be forever disqualified from acting as an officer or employee of any state bank.

[C97, §1887; C24, 27, §9282; C31, 35, §9282, 9283-c2; C39, §**9282, 9283.02;** C46, 50, 54, 58, 62, 66, §528.84, 528.87; C71, 73, 75, 77, 79, 81, §524.1605]

524.1606 Fraudulent advertising or notice.

A state bank shall not publish, disseminate, or distribute any advertising or notice containing any false, misleading, or deceptive statements concerning the rates, terms, or conditions on which loans are made or deposits are received, any charge which the state bank is authorized to impose pursuant to this chapter, or the financial condition of the state bank. Any officer or employee of a state bank who willfully violates the provisions of this section shall be guilty of a fraudulent practice.

[C97, §1859; C24, 27, 31, 35, 39, §**9260;** C46, 50, 54, 58, 62, 66, §526.44, 529.12; C71, 73, 75, 77, 79, 81, §524.1606]

Referred to in §524.1602
Fraudulent practices, see §714.8 – 714.14

524.1607 False statement for credit.

1. For the purposes of this section, unless the context otherwise requires:

a. "*Financial institution*" means a financial institution as defined in 18 U.S.C. §20.

b. "*Mortgage banker*" means a person who makes or originates mortgage loans on real property located in this state.

c. "*Mortgage broker*" means a person who arranges or negotiates, or attempts to arrange or negotiate, mortgage loans on real property located in this state.

2. Any person who knowingly makes or causes to be made, directly or indirectly, any false statement in writing, or who procures, knowing that a false statement in writing has been made concerning the financial condition or means or ability to pay of such person, or any other person in which such person is interested or for whom such person is acting, with the intent that such statement shall be relied upon by a financial institution, a mortgage banker, a mortgage broker, or any other entity licensed by the banking division for the purpose of procuring the delivery of property, the payment of cash or the receipt of credit in any form, for the benefit of such person or of any other person in which such person is interested or for whom such person is acting, shall be guilty of a fraudulent practice.

[C31, 35, §9283-c3; C39, §**9283.03;** C46, 50, 54, 58, 62, 66, §528.88; C71, 73, 75, 77, 79, 81, §524.1607]

2008 Acts, ch 1160, §8
Fraudulent practices, see §714.8 – 714.14

524.1608 Penalty for accepting deposits while insolvent.

If a state bank shall accept any deposit or renew any certificate of deposit in violation of section 524.805, subsection 4, any officer or employee knowing of such insolvency who willfully receives, accepts or renews or is accessory to or otherwise knowingly permits such acceptance shall be guilty of a fraudulent practice and shall, in either event be forever disqualified from acting as an officer or employee of any state bank.

[C97, §1885; C24, 27, 31, 35, 39, §**9280;** C46, 50, 54, 58, 62, 66, §528.82; C71, 73, 75, 77, 79, 81, §524.1608]

Fraudulent practices, see §714.8 – 714.14

524.1609 False statements concerning state banks.

Whoever maliciously or with intent to deceive makes, publishes, utters, repeats, or circulates any false statement concerning any state bank which imputes, or tends to impute, insolvency, unsound financial condition or financial embarrassment, or which may tend to cause or provoke, or aid in causing or provoking, a general withdrawal of deposits from such state bank, or which may otherwise injure or tend to injure the business or goodwill of such state bank, shall be guilty of a simple misdemeanor.

[C31, 35, §9283-c4; C39, §**9283.04;** C46, 50, 54, 58, 62, 66, §528.89; C71, 73, 75, 77, 79, 81, §524.1609]

524.1610 Violation of prohibition against receiving a commission for organizing a state bank.

Any person violating the provisions of section 524.311 shall be guilty of a simple misdemeanor.

[C24, 27, 31, 35, 39, §**9276;** C46, 50, 54, 58, 62, 66, §528.75; C71, 73, 75, 77, 79, 81, §524.1610]

524.1611 Offenses involving employees of banking division.

1. Any person violating the provisions of section 524.211, subsection 1, shall be guilty of a fraudulent practice, and shall be subject to a further fine of a sum equal to the amount of the value of the property given or received or the money so loaned or borrowed. An employee of the division of banking convicted of a violation of such subsection shall be immediately discharged from employment and shall be forever disqualified from holding any position in the banking division.

2. Any examiner violating the provision of section 524.212 shall be guilty of a serious misdemeanor. Any examiner convicted of a violation of section 524.212 shall be immediately discharged from employment and shall be forever disqualified from holding any position in the banking division.

[C71, 73, 75, 77, 79, 81, §524.1611]

2004 Acts, ch 1141, §31

524.1612 through 524.1700 Reserved.

SUBCHAPTER XVII

PRIVATE BANKS

524.1701 through 524.1703 Repealed by 95 Acts, ch 148, §135.

524.1704 through 524.1800 Reserved.

SUBCHAPTER XVIII

BANK HOLDING COMPANIES

524.1801 Definitions.

As used in this chapter unless the context otherwise requires:

1. *"Bank holding company"* means bank holding company as defined in 12 U.S.C. §1841(a), and also includes a company that would become a bank holding company upon completion of an acquisition.

2. *"Company"* means company as defined in 12 U.S.C. §1841(b).

3. *"Control"* means control as provided in 12 U.S.C. §1841(a).

4. *"Location"* means, for purposes of determining where a bank or bank holding company is located, the following:

a. A bank is located in the state in which its principal place of business or main office is physically located.

b. A bank holding company is located in the state which is its home state as determined under 12 U.S.C. §1841(o)(4).

5. *"Out-of-state bank holding company"* means out-of-state bank holding company as defined in 12 U.S.C. §1841(o).

[C73, 75, 77, 79, 81, §524.1801]

96 Acts, ch 1056, §17

Referred to in §524.107, 524.1007, 524.1802, 524.1806, 524.1807, 527.5

524.1802 Limitation.

1. For purposes of this section, unless the context otherwise requires:

a. "Acquisition" means any of the following:

(1) Obtaining direct or indirect ownership or control of more than twenty-five percent of any class of the voting shares of a depository institution.

(2) Obtaining the power to directly or indirectly control in any manner the election of a majority of the directors, trustees, or other persons exercising similar functions of a depository institution.

(3) Obtaining direct or indirect ownership or control of, or acquisition or assumption of, the deposits of a depository institution or the deposits of any branch, office, or other facility of a depository institution.

b. "Affiliate" of a depository institution or holding company includes a corporation, limited liability company, trust, estate, association, or other similar organization which satisfies any of the following:

(1) The depository institution or holding company directly or indirectly owns or controls either twenty-five percent of the voting shares or more than twenty-five percent of the number of shares voted for the election of such entity's directors, trustees, or other individuals exercising similar functions, or controls in any manner the election of a majority of its directors, trustees, or other individuals exercising similar functions.

(2) Control is held directly or indirectly in such entity through share ownership, or in any other manner, by the shareholders of the depository institution or holding company who own or control either twenty-five percent of the shares of such depository institution or holding company or more than twenty-five percent of the number of shares voted for the election of directors, trustees, or other individuals exercising similar functions of such depository institution or holding company, or by trustees for the benefit of the shareholders of any such depository institution or holding company.

(3) A majority of such entity's directors, trustees, or other individuals exercising similar functions are directors of the depository institution or holding company.

(4) Directly or indirectly owns or controls either twenty-five percent of the voting shares of the depository institution or holding company or more than twenty-five percent of the number of shares voted for the election of directors, trustees, or other individuals exercising similar functions of the depository institution or holding company, or controls in any manner the election of a majority of the directors, trustees, or other individuals exercising similar

functions of the depository institution or holding company, or for the benefit of whose shareholders or members all or substantially all of the outstanding voting shares of the depository institution or holding company are held by trustees.

c. "Deposit" means deposit as defined in 12 U.S.C. §1813.

d. "Deposit in this state" means a deposit properly shown in a deposit report or in a statement under subsection 4, paragraph *"c"*, *"d"*, *"h"*, or *"i"*, as a deposit at a depository institution in this state or at a branch, office, or other facility of the depository institution in this state, without regard to the location of the depositor.

e. "Deposit report" means the annual report that identifies deposits by branch, office, or other facility and that is filed by a depository institution with the federal deposit insurance corporation or the office of thrift supervision. For a depository institution not required to file an annual report that identifies deposits by branch, office, or other facility, *"deposit report"* means the quarterly report of condition filed by the depository institution for the quarter that ends on or nearest to the date as of which deposits are stated in a deposit report that identifies deposits by branch, office, or other facility and that is required to be filed by other depository institutions having the same type of charter. The date of a deposit report means the date as of which deposits are stated in the deposit report.

f. "Depository institution" means a depository institution as defined in 12 U.S.C. §1813.

g. "Holding company" means a bank holding company as defined in section 524.1801 and a savings and loan holding company as defined in 12 U.S.C. §1467a.

h. "Incorporated in any state" means a limited liability company organized as a state bank under this chapter and a limited liability company organized as a state bank under the laws of any state as defined in 12 U.S.C. §1813(a)(3).

i. "Series of acquisitions" means both of the following:

(1) All acquisitions made at any time after the date of the most recent available deposit report and prior to the date of a statement under subsection 4, and all acquisitions made during such time by any depository institution or holding company that is acquired by the depository institution or holding company making the statement, and all acquisitions made during such time by any such depository institution or holding company so acquired.

(2) All acquisitions made at any time between the dates of the two most recent available deposit reports, that are not shown on the most recent available deposit report, by a depository institution or holding company making a statement under subsection 4, and all acquisitions made during such time by any depository institution or holding company that is acquired by the depository institution or holding company making the statement, and all acquisitions made during such time by any such depository institution or holding company so acquired.

2. A depository institution or holding company shall not directly or indirectly acquire a depository institution or the deposits of a depository institution if any of the following apply:

a. The acquirer is a depository institution and, upon the acquisition, the total deposits in this state directly or indirectly controlled by the depository institution would exceed fifteen percent of the total deposits in this state, as determined under this section.

b. The acquirer is a holding company and, upon the acquisition, the total deposits in this state directly or indirectly controlled by the holding company would exceed fifteen percent of the total deposits in this state, as determined under this section.

c. The acquirer is a depository institution or a holding company which is directly or indirectly owned or controlled by a holding company and, upon the acquisition, the total deposits in this state directly or indirectly controlled by the holding company which owns or controls the acquiring depository institution or holding company would exceed fifteen percent of the total deposits in this state, as determined under this section.

3. On or after January 1, 2000, a depository institution shall not directly or indirectly cause or permit the transfer, assignment, or other disposition of deposits, or the conversion of deposits to nondeposit investments or other nondeposit products, whether by written agreement or otherwise, for the purpose of achieving compliance with the deposit limitation set forth in subsection 2. The following transfers or conversions by a depository institution shall not be deemed to be made for the purpose of achieving such compliance:

a. A transfer or conversion in the ordinary course of business, such as compliance with a

contract to transfer funds from deposit accounts into repurchase agreements, mutual funds, or other nondeposit investments.

b. A transfer or conversion of deposits held in the name of an affiliate as a depositor of the depository institution.

c. A transfer of deposits, which are not subject to reacquisition, in an acquisition by an entity that is not an affiliate of the depository institution.

4. If the superintendent determines that an acquisition may involve a question of compliance with the deposit limitation set forth in subsection 2, the superintendent shall require that each depository institution and holding company involved in the acquisition submit to the superintendent a statement certified by its president, chief executive officer, or chief financial officer, which states that a transfer, assignment, or other disposition of deposits prohibited by subsection 3 has not been made. The statement, in sufficient detail to permit the superintendent to make the determinations required under subsections 5 and 6, shall also set forth the following:

a. The total amount of deposits in this state directly or indirectly held or controlled by the depository institution making the statement, or the deposits in this state directly or indirectly held or controlled by all depository institutions that are directly or indirectly owned or controlled by the holding company, on the date of the most recent available deposit reports of the depository institutions.

b. If all of the deposits of a depository institution making a deposit report were directly or indirectly acquired since the date of the most recent available deposit report in an acquisition or as a result of a series of acquisitions, the statement shall set forth the amount of the deposits in this state acquired from each such other depository institution measured as of the date of the most recent available deposit report of each such depository institution made prior to the acquisition.

c. If less than all of the deposits of a depository institution were directly or indirectly acquired since the date of the most recent available deposit report in an acquisition or as a result of a series of acquisitions, the statement shall set forth the total amount of deposits in this state directly or indirectly acquired in such acquisitions.

d. The total amount of deposits in this state directly or indirectly owned or controlled by the depository institution or holding company making the statement that have been directly or indirectly transferred or assigned in a transaction since the date of the most recent available deposit report to an entity that is not an affiliate of the depository institution or holding company making the statement, and that are not subject to reacquisition.

e. The total amount of deposits in this state set forth in paragraph "*a*" plus the deposits described in paragraphs "*b*" and "*c*", and less the deposits described in paragraph "*d*".

f. The total amount of deposits in this state directly or indirectly held or controlled by the depository institution making the statement, or in the case of a statement by a holding company, the total amount of deposits in this state directly or indirectly held or controlled by all depository institutions that are directly or indirectly owned or controlled by the holding company, on the date of the earlier of the two most recent available deposit reports of the depository institutions.

g. If all of the deposits of any other depository institution making a deposit report were acquired between the dates of the two most recent available deposit reports in an acquisition or as a result of a series of acquisitions, the statement shall set forth the amount of the deposits in this state acquired from each such other depository institution measured as of the date of the earlier of the two most recent available deposit reports of each such depository institution made prior to the acquisition.

h. If less than all of the deposits of any depository institution were directly or indirectly acquired between the dates of the two most recent available deposit reports in an acquisition or as a result of a series of acquisitions, the statement shall set forth the total amount of deposits in this state directly or indirectly acquired in such acquisitions.

i. The total amount of deposits in this state directly or indirectly owned or controlled by the depository institution or holding company making the statement that have been directly or indirectly transferred or assigned in a transaction between the dates of the two most recent

available deposit reports to an entity that is not an affiliate of the depository institution or holding company making the statement, and that are not subject to reacquisition.

j. The total amount of deposits in this state set forth in paragraph *"f"* plus the deposits described in paragraphs *"g"* and *"h"*, and less the deposits described in paragraph *"i"*.

5. The superintendent may conduct such review as the superintendent considers necessary to verify the statements submitted under subsection 4, paragraphs *"a"*, *"b"*, *"c"*, and *"d"*. The superintendent shall calculate the following fraction:

a. The numerator is the sum of the deposits in this state directly or indirectly owned or controlled by the depository institutions involved in the acquisition and the deposits in this state directly or indirectly owned or controlled by all other depository institutions directly or indirectly owned or controlled by a holding company involved in the acquisition, as stated in subsection 4, paragraph *"e"*.

b. The denominator is the deposits in this state of all depository institutions as stated in the most recent available deposit reports.

6. The superintendent may conduct such review as the superintendent considers necessary to verify the statements submitted under subsection 4, paragraphs *"f"*, *"g"*, *"h"*, and *"i"*. The superintendent shall calculate the following fraction:

a. The numerator is the average of the sum of the deposits in this state directly or indirectly owned or controlled by the depository institutions involved in the acquisition and the deposits in this state directly or indirectly owned or controlled by all other depository institutions directly or indirectly owned or controlled by a holding company involved in the acquisition, as stated in subsection 4, paragraphs *"e"* and *"j"*.

b. The denominator is the average of the deposits in this state of all depository institutions as stated in the two most recent available deposit reports.

7. If the quotient determined by the calculation in either subsection 5 or 6 exceeds fifteen percent, the proposed acquisition does not comply with the limitation of subsection 2.

[C73, 75, 77, 79, 81, §524.1802; 82 Acts, ch 1253, §3]

84 Acts, ch 1230, §25; 90 Acts, ch 1002, §2; 97 Acts, ch 23, §64; 2000 Acts, ch 1094, §1, 2; 2004 Acts, ch 1141, §72

Referred to in §524.1807

524.1803 Offer to purchase stock. Repealed by 2006 Acts, ch 1015, §22.

524.1804 Notice of acquisition.

A bank holding company which proposes to directly or indirectly acquire control of, or directly or indirectly acquire all or substantially all of the assets of, a state bank or national bank, shall provide to the superintendent a copy of the application and any modifications or amendments to the application submitted to the federal reserve board for permission to take such action at the same time the application is transmitted to the federal reserve board. The superintendent may conduct such investigation into and evaluation of the proposed action as the superintendent deems necessary and appropriate, and may submit to the federal reserve board any information so obtained together with the superintendent's own comments or recommendations regarding the proposed acquisition.

[C73, 75, 77, 79, 81, §524.1804]

96 Acts, ch 1056, §18

Referred to in §524.544, 524.1807

524.1805 Restrictions on acquisitions and mergers.

1. An out-of-state bank or out-of-state bank holding company shall not directly or indirectly acquire control of, or directly or indirectly acquire all or substantially all of the assets of, a bank located in this state unless the bank has been in continuous existence and operation for at least five years.

2. For purposes of subsection 1, a bank that has been chartered solely for the purpose of, and does not open for business prior to, acquiring control of, or acquiring all or substantially all of the assets of, a bank located in this state is deemed to have been in existence for the same period of time as the bank to be acquired.

3. For purposes of subsection 1, the period of existence and operation of a bank is deemed to be continuous, notwithstanding any of the following:

a. Any direct or indirect change in the name, ownership, or control of the bank.

b. Any rechartering or merger of the bank.

4. For purposes of subsection 1, a bank that has been chartered solely for the purpose of, and does not open for business prior to, acquiring control of, or acquiring all or substantially all of the assets of, one or more branches owned and operated on January 1, 1997, by a savings association, as defined in 12 U.S.C. §1813, which association is an affiliate of the bank, is deemed to have been in continuous existence and operation as a bank for the combined periods of continuous existence and operation of the bank and the savings association from which the branch or branches were acquired.

5. For purposes of subsection 1, a bank that resulted from the conversion of a federal savings association, as defined in 12 U.S.C. §1813, is deemed to have been in continuous existence and operation as a bank for the combined periods of continuous existence and operation of the bank and the association from which it was converted.

6. An out-of-state bank or out-of-state bank holding company that is organized under laws other than those of this state is subject to and shall comply with the provisions of chapter 490, division XV, relating to foreign corporations, and shall immediately provide the superintendent of banking with a copy of each filing submitted to the secretary of state under chapter 490, division XV.

[C73, 75, 77, 79, 81, §524.1805]

96 Acts, ch 1056, §19; 97 Acts, ch 50, §2; 2007 Acts, ch 88, §17; 2012 Acts, ch 1017, §120; 2016 Acts, ch 1011, §103

Referred to in §524.1807

524.1806 Banks owned or controlled — officers and directors.

An individual who is a director or an officer of a bank holding company, as specified by section 524.1801, is deemed to be a director or an officer, or both, as the case may be, of each bank so owned or controlled by that bank holding company, for the purposes of sections 524.612, 524.613 and 524.706, and for the purposes of 12 C.F.R. pt. 215.

[C73, 75, 77, 79, 81, §524.1806]

95 Acts, ch 148, §134; 2017 Acts, ch 138, §10

Referred to in §524.1807

524.1807 Penalties.

Any bank holding company which willfully violates any provision of sections 524.1801 to 524.1806 shall, upon conviction, be fined not less than one hundred dollars nor more than one thousand dollars for each day during which the violation continues. Any individual who willfully participates in a violation of any provisions of sections 524.1801 to 524.1806 shall be guilty of a serious misdemeanor.

[C73, 75, 77, 79, 81, §524.1807]

524.1808 Insurance sales.

1. Insurance activities in Iowa of an out-of-state bank holding company and its subsidiaries are subject to regulation, including but not limited to regulation under Title XIII, subtitle 1, in the same manner and to the same extent as are the insurance activities of an Iowa bank holding company and its subsidiaries.

2. An authorization for a state bank to engage in activities regulated under Title XIII, subtitle 1, if any, does not grant an out-of-state bank holding company that acquires a state bank or any state bank owned or controlled by such bank holding company or any subsidiary or affiliate the ability or right to engage in such activities outside of this state.

90 Acts, ch 1002, §13; 90 Acts, ch 1266, §57

C91, §524.1912

96 Acts, ch 1056, §20, 23

C97, §524.1808

524.1809 Mutual bank holding companies.

1. A state bank may be owned, directly or indirectly, by a mutual bank holding company.
2. A mutual holding company authorized pursuant to 12 U.S.C. §1467a and regulations promulgated thereunder may convert to a mutual bank holding company authorized under this chapter.
3. A mutual corporation may reorganize as a mutual holding company in the manner provided in 12 U.S.C. §1467a(o). The resulting mutual holding company shall be a mutual bank holding company authorized under this chapter.
4. A mutual bank holding company authorized under this chapter shall also be subject to chapter 490, the Iowa business corporations Act. If a provision of chapter 490 conflicts with the provisions of this chapter or a rule of the superintendent adopted pursuant to this chapter, the provisions of this chapter or rule of the superintendent shall control.
5. The superintendent may adopt rules pursuant to chapter 17A pertaining to mutual bank holding companies and reorganizations into mutual bank holding companies under this chapter.

2012 Acts, ch 1017, §17, 18

524.1810 through 524.1900 Reserved.

SUBCHAPTER XIX

REGIONAL BANKING

524.1901 through 524.1911 Repealed by 96 Acts, ch 1056, §24.

524.1912 Reserved.

524.1913 Prohibited acquisitions. Repealed by 90 Acts, ch 1266, §61(3).

524.1914 through 524.2000 Reserved.

SUBCHAPTER XX

APPLICABILITY

524.2001 Applicability of other chapters.

Chapters 489, 490, 491, 492, and 493 do not apply to banks except as provided by this chapter.

[C71, §524.1802; C73, 75, 77, 79, 81, §524.1902]
90 Acts, ch 1205, §50
C91, §524.2001
2004 Acts, ch 1141, §73; 2008 Acts, ch 1162, §151, 154, 155

CHAPTERS 525 and 526

RESERVED

CHAPTER 527

ELECTRONIC TRANSFER OF FUNDS

Referred to in §524.821, 524.1204, 533.301, 536A.24, 669.14

527.1	Statement of intent.	527.7	Records maintained.
527.2	Definitions.	527.8	Repealed by 95 Acts, ch 66, §5.
527.3	Enforcement.	527.8A	Exemptions.
527.4	Establishment of satellite terminals — restrictions.	527.9	Central routing units.
527.5	Satellite terminal requirements.	527.10	Confidentiality.
527.6	Repealed by 95 Acts, ch 66, §5.	527.11	Rulemaking.
		527.12	Revocation of privilege.

527.1 Statement of intent.

The general assembly declares as its purpose in adopting this chapter to provide:

1. That electronic funds transfer systems should provide reliable service to the consumer with full protection of privacy of personal financial information.

2. That electronic funds transfer systems should not impair the safety and soundness of a person's funds.

3. That electronic funds transfer systems are essential facilities in the channels of commerce.

4. That regulation of electronic funds transfer systems should be fair and not unduly impede the development of new technologies which benefit the public.

[C77, 79, 81, §527.1]

527.2 Definitions.

As used in this chapter, the following definitions shall apply unless the context otherwise requires:

1. *"Access device"* means a card, code, or other mechanism, or any combination thereof, that may be used by a customer for the purpose of initiating a transaction by means of a satellite terminal which will affect a customer asset account.

2. *"Administrator"* means and includes the superintendent of banking and the superintendent of credit unions within the department of commerce and the supervisor of industrial loan companies within the office of the superintendent of banking. However, the powers of administration and enforcement of this chapter shall be exercised only as provided in sections 527.3, 527.5, subsection 7, sections 527.11, 527.12, and any other pertinent provision of this chapter.

3. *"Batch basis"* means the delivery of an accumulation of messages representing multiple transactions after completion of the transactions.

4. *"Central routing unit"* means any facility where electronic impulses or other indicia of a transaction originating at a satellite terminal are received and are routed and transmitted to a financial institution, or to a data processing center, or to another central routing unit, wherever located.

5. *"Completion of the transaction"* means when the presence of the customer at a satellite terminal is no longer needed to consummate the sale of goods or services, to grant to the seller the right to receive payment for the goods or services, and to issue a receipt to the customer.

6. *"Customer asset account"* or *"account"* means a demand deposit, share, checking, savings, or other customer account, other than an occasional or incidental credit balance in a credit plan, which represents a liability of the financial institution which maintains such account at a business location or office located in this state, either directly or indirectly for the benefit of a customer.

7. *"Data processing center"* means a facility, wherever located, at which electronic impulses or other indicia of a transaction originating at a satellite terminal are received and are processed in order to enable the satellite terminal to perform any function for which it is designed. However, *"data processing center"* does not include a facility which is directly connected to a satellite terminal and which performs only the functions of direct transmission of all requested transactions from that terminal to a data processing facility

without performing any review of the requested transactions for the purpose of categorizing, separating, or routing. *"Categorizing"* means the process of reviewing and grouping of requested electronic funds transfer transactions according to the source or nature of the requested transaction. *"Separating"* means the process of interpreting and segregating requested electronic funds transfer transactions, or portions of such transactions, to provide for processing of information relating to such requested transactions or portions of such transactions. *"Routing"* means the process of interpreting and transmitting requested electronic funds transfer transactions to a destination selected at the time of interpretation and transmission from two or more alternative destinations.

8. *"Electronic personal identifier"* means a personal and confidential code or other security mechanism which has been designated by a financial institution issuing an access device to a customer to serve as a supplemental means of access to a customer's account that may be used by the customer in conjunction with an access device for the purpose of initiating a transaction by means of a satellite terminal.

9. *"Financial institution"* means and includes any bank incorporated under the provisions of any state or federal law, any savings and loan association incorporated under the provisions of federal law, any credit union organized under the provisions of any state or federal law, any corporation licensed as an industrial loan company under chapter 536A, and any affiliate of a bank, savings and loan association, credit union, or industrial loan company.

10. *"Limited-function terminal"* means an on-line point-of-sale terminal, an off-line point-of-sale terminal, or a multiple use terminal, which is not operated in a manner to accept an electronic personal identifier. Except as otherwise provided, a limited-function terminal shall not be subject to the requirements imposed upon other satellite terminals pursuant to sections 527.4 and 527.5, subsections 1, 2, 3, 7, and 8.

11. *"Multiple use terminal"* means any machine or device to which all of the following are applicable:

a. The machine or device is established and owned or operated by a person who primarily engages in a service, business or enterprise, including but not limited to the retail sale of goods or services, but who is not organized under the laws of this state or under federal law as a bank, savings and loan association, or credit union;

b. The machine or device is used by the person by whom it is owned or operated in some capacity other than as a satellite terminal; and

c. A financial institution proposes to contract or has contracted to utilize that machine or device as a satellite terminal.

12. *"Municipal corporation"* means an incorporated city.

13. *"Office"* means and includes any business location in this state of a financial institution at which is offered the services of accepting deposits, originating loans, and dispensing cash, by financial institution personnel in the office.

14. *"Off-line point-of-sale terminal"* means a satellite terminal at any location in this state off the premises of the financial institution, other than an on-line point-of-sale terminal, that satisfies all of the following:

a. The satellite terminal is not operated to accept deposits or to dispense scrip or other negotiable instruments.

b. The satellite terminal is not operated to dispense cash except when operated by a person other than the customer initiating the transaction.

c. The satellite terminal is utilized for the purpose of making payment to the provider of goods or services purchased or provided at the location of the satellite terminal.

15. *"On-line point-of-sale terminal"* means a satellite terminal at any location in this state off the premises of the financial institution operated on an on-line real time basis, that satisfies all of the following:

a. The satellite terminal is not operated to accept deposits or to dispense scrip or other negotiable instruments.

b. The satellite terminal is not operated to dispense cash except when operated by a person other than the customer initiating the transaction.

c. The satellite terminal is utilized for the purpose of making payment to the provider of goods or services purchased or provided at the location of the satellite terminal.

16. *"On-line real time basis"* means the delivery or return of a message initiated at a satellite terminal through transmission of electronic impulses to or from a location remote from the location of the satellite terminal prior to completion of the transaction.

17. *"Personal terminal"* means and includes a satellite terminal located in a personal residence and a telephone, wherever located, operated by a customer of a financial institution for the purpose of initiating a transaction affecting a noncommercial account of the customer.

18. *"Premises"* means and includes only those locations where, by applicable law, financial institutions are authorized to maintain a principal place of business and other offices for the conduct of their respective businesses; provided that with respect to an industrial loan company, *"premises"* means only a location where business may be conducted under a single license issued to the industrial loan company.

19. *"Reciprocal basis"* means that a financial institution whose licensed or principal place of business is located in this state has the express authority under the laws of a state other than Iowa to conduct business under qualifications and conditions which are no more restrictive than those imposed by the laws of the other state on financial institutions whose licensed or principal place of business is located in the other state, as determined by the administrator, and the laws of Iowa are no more restrictive of financial institutions whose licensed or principal place of business is located in such other state than they are of financial institutions whose licensed or principal place of business is located in this state.

20. *"Satellite terminal"* means and includes any machine or device located off the premises of a financial institution, and any machine or device located on the premises of a financial institution only if the machine or device is available for use by customers of other financial institutions, whether attended or unattended, by means of which the financial institution and its customers utilizing an access device may engage through either the immediate transmission of electronic impulses to or from the financial institution or the recording of electronic impulses or other indicia of a transaction for delayed transmission to the financial institution, in transactions which affect a customer asset account and which otherwise are specifically permitted by applicable law. However, the term *"satellite terminal"* does not include any such machine or device, wherever located, if that machine or device is not generally accessible to persons other than employees of a financial institution or an affiliate of a financial institution.

[C77, 79, 81, §527.2]

87 Acts, ch 158, §1, 2; 89 Acts, ch 86, §1 – 7; 91 Acts, ch 216, §1 – 3; 95 Acts, ch 66, §1; 2000 Acts, ch 1232, §99, 107; 2012 Acts, ch 1017, §121

Referred to in §99D.9, 99F.7, 234.12A, 279.30, 423.3, 524.1212, 527.3, 547A.1, 714.16B, 715A.1, 715A.8, 715A.10

527.3 Enforcement.

1. For purposes of this chapter the superintendent of banking only has the power to issue rules applicable to, to accept and approve or disapprove applications or informational statements from, to conduct hearings and revoke any approvals relating to, and to exercise all other supervisory authority created by this chapter with respect to banks; the superintendent of credit unions only has such powers and authority with respect to credit unions; and the superintendent of banking or the superintendent's designee only has such powers and authority with respect to industrial loan companies.

2. The administrator shall have the authority to examine any person who operates a multiple use terminal, limited-function terminal, or other satellite terminal, and any other device or facility with which such terminal is interconnected, as to any transaction by, with, or involving a financial institution which affects a customer asset account. Information obtained in the course of such an examination shall not be disclosed, except as provided by law.

3. Nothing contained in this chapter shall authorize the administrator to regulate the conduct of business functions or to obtain access to any business records, data, or information of a person who operates a multiple use terminal, except those pertaining to a financial transaction engaged in through a satellite terminal, or as may otherwise be provided by law.

4. Nothing contained in this chapter shall be construed to prohibit or to authorize the administrator to prohibit an operator of a multiple use terminal, other than a financial institution, or an operator of any other device or facility with which such terminal is interconnected, other than a central routing unit or data processing center (as defined in section 527.2) from using those facilities to perform internal proprietary functions, including the extension of credit pursuant to an open-end credit arrangement.

5. An administrator may conduct hearings and exercise any other appropriate authority conferred by this chapter regarding the operation or control of a satellite terminal upon the written request of a person, including but not limited to, a retailer, financial institution, or consumer.

6. The authority of an administrator pursuant to section 527.5, subsection 2, paragraph *"a"*, to approve access cards issued by a financial institution for use as an access device includes the requirement that a registration statement shall be filed with the administrator and be maintained on a current basis by each financial institution issuing access cards within the state. The registration statement shall be in writing on a form prescribed by the administrator, and contain the name and address of the registrant, a depiction of both sides of the access card, and any other information the administrator deems relevant relating to the access card and transactions utilizing the access card which affect a customer asset account.

7. A financial institution shall not be required to join, be a member or shareholder of, or otherwise participate in, any corporation, association, partnership, cooperative, or other enterprise as a condition of the financial institution's utilization of any satellite terminal located within this state.

8. An administrator may issue any order necessary to secure compliance with or prevent a violation of this chapter or the rules adopted pursuant to this chapter, regarding the establishment and operation of a satellite terminal, limited-function terminal, upgraded, altered, modified, or replaced limited-function terminal, and any other device or facility with which such terminal is interconnected. A person who violates a provision of this chapter or any rule or any order issued pursuant to this chapter is subject to a civil penalty not to exceed one thousand dollars for each day the violation continues. A person aggrieved by an order of an administrator may appeal the order by filing a written notice of appeal with the administrator within thirty days of the issuance of the order. The administrator shall schedule a hearing for the purpose of hearing the arguments of the aggrieved person within thirty days of the filing of the notice of appeal. The provisions of chapter 17A shall apply to all matters related to the appeal. The attorney general, on request of the administrator, shall institute any legal proceedings necessary to obtain compliance with an order of the administrator or to prosecute a person for a violation of the provisions of this chapter or rules adopted pursuant to this chapter.

[C77, 79, 81, §527.3]

87 Acts, ch 158, §3; 91 Acts, ch 92, §1; 91 Acts, ch 216, §4, 5; 95 Acts, ch 66, §2; 2012 Acts, ch 1017, §122

Referred to in §527.2, 527.12

527.4 Establishment of satellite terminals — restrictions.

1. A satellite terminal shall not be established within this state except by a financial institution.

2. A financial institution may establish a satellite terminal at any location within this state. This subsection does not amend, modify, or supersede any provision of chapter 524 regulating the number or locations of bank offices of a state or national bank, or authorize the establishment by a financial institution of any offices or other facilities except satellite terminals at locations permitted by this subsection.

3. A financial institution whose licensed or principal place of business is not located in this state may establish, control, maintain, or operate any number of satellite terminals at any location within this state if all satellite terminals, wherever located, that are owned, controlled, maintained, or operated by the financial institution are available for use on a nondiscriminatory basis by any other financial institution which engages in electronic

transactions in this state and by all customers who have minimum contact with this state and who have been designated by a financial institution using the satellite terminal and who have been provided with an access device, approved by the administrator, by which to engage in electronic transactions by means of the satellite terminal.

[C77, 79, 81, §527.4]

87 Acts, ch 158, §4; 89 Acts, ch 86, §8 – 11; 91 Acts, ch 216, §6; 2000 Acts, ch 1232, §100 – 103, 107

Referred to in §527.2, 527.5

527.5 Satellite terminal requirements.

A satellite terminal may be utilized by a financial institution to the extent permitted in this chapter only if the satellite terminal is utilized and maintained in compliance with the provisions of this chapter and only if all of the following are complied with:

1. A satellite terminal in this state may be established by one or more financial institutions. The establishing financial institutions shall designate a single controlling financial institution which shall maintain the location, use, and operation of the satellite terminal, wherever located, in compliance with this chapter. The use and operation of a satellite terminal shall be governed by a written agreement between the controlling financial institution and the person controlling the physical location at which the satellite terminal is placed. The written agreement shall specify all of the terms and conditions, including any fees and charges, under which the satellite terminal is placed at that location. If the satellite terminal is a multiple use terminal, the written agreement shall specify, and may limit, the specific types of transactions incidental to the conduct of the business of a financial institution which may be engaged in through that terminal.

2. *a.* A satellite terminal shall be available for use on a nondiscriminatory basis by any other financial institution which has its principal place of business within this state, and by all customers who have been designated by a financial institution using the satellite terminal and who have been provided with an access device, approved by the administrator, by which to engage in electronic transactions by means of the satellite terminal.

b. For the purposes of complying with paragraph *"a"*, an on-line point-of-sale terminal is not required to be available for use by customers of a financial institution by means of an access device by which an off-line point-of-sale terminal can be used to engage in electronic transactions.

c. All off-line point-of-sale terminals located at the retail location or retail locations within this state of a single retailer are exempt from paragraph *"a"* if electronic transactions can be initiated at each of such terminals only by an access device unique to the retailer.

d. Paragraph *"a"* applies to a financial institution whose licensed or principal place of business is located in a state other than Iowa, whether or not the financial institution has a business location in this state, if all satellite terminals or other similar type terminals owned, controlled, operated, or maintained by the financial institution, wherever located, are available on a reciprocal basis to each financial institution with a principal place of business in this state and to each financial institution with a business location in this state which complies with this paragraph, and to all customers who have been designated by any such financial institution using the satellite terminal and who have been provided with an access device.

3. *a.* An informational statement shall be filed and shall be maintained on a current basis with the administrator by the financial institution controlling a satellite terminal in this state, which sets forth all of the following:

(1) The name and business address of the controlling financial institution.

(2) The location of the satellite terminal.

(3) A schedule of the charges which will be required to be paid by a financial institution utilizing the satellite terminal.

(4) An agreement with the administrator that the financial institution controlling the satellite terminal will maintain that satellite terminal in compliance with this chapter.

b. The informational statement shall be accompanied by a copy of the written agreement required by subsection 1. The informational statement also shall be accompanied by a

statement or copy of any agreement, whether oral or in writing, between the controlling financial institution and a data processing center or a central routing unit, unless operated by or solely on behalf of the controlling financial institution, by which transactions originating at that terminal will be received.

4. A satellite terminal in this state shall not be attended or operated at any time by an employee of a financial institution or an affiliate of a financial institution, except for the purpose of instructing customers, on a temporary basis, in the use of the satellite terminal, for the purpose of testing the terminal, or for the purpose of transacting business on the employee's own behalf.

5. A satellite terminal shall bear a sign or label no larger than three inches by two inches identifying the name, address, and telephone number of the owner of the satellite terminal. The administrator may authorize methods of identification the administrator deems necessary to enable the general public to determine the accessibility of a satellite terminal.

6. The charges required to be paid by any financial institution which utilizes the satellite terminal for transactions involving an access device shall not exceed a pro rata portion of the costs, determined in accordance with generally accepted accounting principles, of establishing, operating and maintaining the satellite terminal, plus a reasonable return on these costs to the owner of the satellite terminal.

7. If the administrator deems the informational statement or any amendment to that statement or amendment to be complete and finds no grounds for denying establishment of a satellite terminal, the administrator may notify the person filing the informational statement that the administrator has expressly approved the establishment and operation of the satellite terminal as described in the informational statement or amendment and according to the agreements attached to the statement or amendment. Operation of the satellite terminal may commence immediately upon a person receiving such express approval from the administrator. If the administrator finds grounds, under any applicable law or rule, for denying establishment of a satellite terminal the administrator shall notify the person filing the informational statement or an amendment thereto, within thirty days of the filing thereof, of the existence of such grounds. If such notification is not given by the administrator, the administrator shall be considered to have expressly approved the establishment and operation of the satellite terminal as described in the informational statement or amendment and according to the agreements attached thereto, and operation of the satellite terminal in accordance therewith may commence on or after the thirtieth day following such filing. However, this subsection shall not be construed to prohibit the administrator from enforcing the provisions of this chapter, nor shall it be construed to constitute a waiver of any prohibition, limitation, or obligation imposed by this chapter.

8. *a.* Satellite terminals located in this state shall be directly connected to either of the following:

(1) A central routing unit approved pursuant to this chapter.

(2) A data processing center which is directly connected to a central routing unit approved pursuant to this chapter.

b. If a data processing center which is directly connected to a satellite terminal located in this state does not authorize or reject a transaction originated at that terminal, the transaction shall be immediately transmitted by the data processing center to a central routing unit approved pursuant to this chapter, unless one of the following applies:

(1) The transaction is not authorized because of a mechanical failure of the data processing center or satellite terminal.

(2) The transaction does not affect a customer asset account held by a financial institution.

c. This subsection does not limit the authority of a data processing center to authorize or reject transactions requested by customers of a financial institution pursuant to an agreement whereby the data processing center authorizes or rejects requested transactions on behalf of the financial institution and provides to the financial institution, on a batch basis and not on an on-line real time basis, information concerning authorized or rejected transactions of customers of the financial institution.

9. A personal terminal may be utilized by a financial institution to the extent permitted

by this chapter if the use and operation of the personal terminal is governed by a written agreement between the controlling financial institution and its customer and if the personal terminal is utilized and maintained in compliance with subsection 8 and all other applicable sections of this chapter. A telephone located at other than a personal residence and used primarily as a personal terminal must be utilized and maintained in compliance with this section.

10. Any person, as defined in section 4.1, subsection 20, establishing a limited-function terminal within this state, except for a multiple use terminal, which is utilized to initiate transactions affecting a customer asset account shall file with the administrator and shall maintain on a current basis a registration statement on a form prescribed by the administrator containing the name and address of the registrant, the location of the limited-function terminal, and any other information the administrator deems relevant. All limited-function terminals established in this state prior to July 1, 1991, shall be registered in a similar manner by the establishing person no later than July 1, 1992.

11. *a.* If at any time, a limited-function terminal at a location in this state off the premises of the financial institution is replaced by a device constituting either an on-line or an off-line point-of-sale terminal which may be utilized to initiate transactions which affect customer asset accounts through the use of an electronic personal identifier, or is upgraded, altered, or modified to be operated in a manner which allows the use of an electronic personal identifier to initiate transactions which affect customer asset accounts, or an on-line or an off-line point-of-sale terminal which may be utilized to initiate transactions which affect customer asset accounts through the use of an electronic personal identifier is newly established at a location in this state off the premises of the financial institution, then such upgraded, altered, or modified limited-function terminal or replacement point-of-sale terminal or such newly established point-of-sale terminal is deemed to be a full-function point-of-sale terminal for purposes of this subsection and all requirements of a satellite terminal in this chapter apply to the full-function point-of-sale terminal with regard to all transactions affecting customer asset accounts which are initiated through the use of an electronic personal identifier, except for section 527.4, subsection 3, and subsections 1, 3, and 7 of this section.

b. A full-function point-of-sale terminal, as identified in paragraph "*a*", which is operated in a manner which permits all access devices to be utilized to initiate transactions which affect customer asset accounts, and where all such transactions can be directly routed for authorization purposes as established in this subsection, is also exempt from the provisions of subsection 8. However, if a data processing center directly connected to such full-function point-of-sale terminal does not authorize or reject a transaction affecting a customer asset account initiated at the terminal through the use of an electronic personal identifier, the transaction shall be immediately transmitted by the data processing center to either of the following:

(1) A central routing unit approved pursuant to this chapter.

(2) An electronic funds transfer processing facility maintained or operated by a national card association and utilized for the processing of transactions initiated through the use of electronic funds transfer transaction cards or access devices depicting a service mark, logo, or trademark associated with the national card association. However, if the national card association's processing facility is unable to immediately authorize or reject a transaction affecting a customer asset account initiated at that terminal through the use of an access device which bears a service mark, logo, or trademark associated with a central routing unit approved pursuant to this chapter but does not bear a service mark, logo, or trademark associated with a national card association, or which bears a service mark, logo, or trademark other than that associated with either a central routing unit approved pursuant to this chapter or a national card association, the transaction shall be immediately transmitted to a central routing unit approved pursuant to this chapter, whether the transaction initiated through the use of such access device was transmitted to the national card association's processing facility by a data processing center directly connected to the full-function point-of-sale terminal, or the national card association's processing facility received the transmission of transaction data directly from the full-function point-of-sale terminal.

c. If the national card association's electronic funds transfer processing facility directly or

indirectly receives a transaction affecting a customer asset account initiated at a full-function point-of-sale terminal through the use of an electronic personal identifier and an access device bearing a service mark, logo, or trademark associated with a national card association, whether or not the access device also bears the service mark, logo, or trademark of an approved central routing unit, and the national card association's processing facility cannot immediately authorize or reject the transaction, such transaction shall be immediately transmitted to a central routing unit approved pursuant to this chapter, or to a financial institution, or its data processing center, which is capable of immediately authorizing or rejecting the transaction.

d. For purposes of this subsection, a national card association must be a membership corporation or organization, wherever incorporated and maintaining a principal place of business, which is engaged in the business of administering for the benefit of the association's members a program involving electronic funds transfer transaction cards or access devices depicting a service mark, logo, or trademark associated with the national card association and which may be utilized to perform transactions at point-of-sale terminals. A national card association must have a membership solely comprised of insured depository financial institutions, organizations directly or indirectly owned or controlled solely by insured depository financial institutions, entities wholly owned by one or more insured depository financial institutions, holding companies having at least two-thirds of their assets consisting of the voting stock of insured depository financial institutions, organizations wholly owned by one or more holding companies having at least two-thirds of their assets consisting of the voting stock of insured depository financial institutions and which are solely engaged in activities related to the programs sponsored by the national card association, or such other entities or organizations which are authorized by the national card association's bylaws to participate in the electronic funds transfer transaction card or access device programs or other services and programs sponsored by the national card association. For purposes of this subsection, a national card association shall not include a financial institution, bank holding company as defined in section 524.1801, or in the federal Bank Holding Company Act of 1956, 12 U.S.C. §1842(d), as amended to July 1, 1994, or any other financial institution holding company organized under federal or state law, or a subsidiary or affiliate corporation owned or controlled by a financial institution or financial institution holding company, which has authorized a customer or member to engage in satellite terminal transactions. For purposes of this subsection, a national card association shall also not include a membership corporation or organization which is conducting business as a regional or nationwide network of shared electronic funds transfer terminals which do not constitute point-of-sale terminals, and is engaged in satellite terminal transaction services utilizing a common service mark, logo, or trademark to identify such terminal services.

e. This subsection does not apply to satellite terminals located in this state, other than on-line and off-line full-function point-of-sale terminals as identified in this subsection, or multiple use terminals located in this state which are capable of being operated in a manner to initiate transactions affecting customer asset accounts through the use of an electronic personal identifier.

12. Effective July 1, 1994, any transaction engaged in with a retailer through a satellite terminal at a location in this state off the premises of the financial institution by means of an access device which results in a debit to a customer asset account shall be cleared and paid at par during the settlement of such transaction. Notwithstanding the terms of any contractual agreement between a retailer or financial institution and a national card association as described in subsection 11, an electronic funds transfer processing facility of a national card association, a central routing unit approved pursuant to this chapter, or a data processing center, the processing fees and charges for such transactions to the retailer shall be as contractually agreed upon between the retailer and the financial institution which establishes, owns, operates, controls, or processes transactions initiated at the satellite terminal. All accounting documents reflecting such fees and charges imposed on the retailer shall separately identify transactions which have resulted in a debit to a customer asset account and the charges imposed. The provisions of this subsection shall apply to all

satellite terminals, including limited-function terminals, full-function point-of-sale terminals as identified in subsection 11, paragraph *"a"*, and multiple use terminals.

[C77, 79, 81, §527.5; 82 Acts, ch 1094, §2]

87 Acts, ch 158, §5 – 11; 89 Acts, ch 86, §12 – 14; 91 Acts, ch 216, §7 – 11; 93 Acts, ch 36, §1; 93 Acts, ch 37, §1; 95 Acts, ch 66, §3, 4; 96 Acts, ch 1094, §1, 2; 2000 Acts, ch 1232, §104 – 107; 2012 Acts, ch 1017, §123; 2012 Acts, ch 1023, §157

Referred to in §527.2, 527.3, 527.9, 715A.10

527.6 Repealed by 95 Acts, ch 66, §5.

527.7 Records maintained.

1. All transactions engaged in through a satellite terminal shall be recorded in a form from which it will be possible to produce a humanly readable record of any transaction, and these recordings shall be retained by the utilizing financial institutions for the periods required by law.

2. The machine receipt provided to a satellite account transaction card user by a satellite terminal shall be admissible as evidence in any legal action or proceeding and shall constitute prima facie proof of the transaction evidence by that receipt.

3. A financial institution shall provide each of its satellite account holders with a periodic account statement that shall contain a brief description of all satellite terminal transactions sufficient to enable the account holder to identify any transaction and to relate it to machine receipts provided by satellite terminals.

4. When a periodic account statement includes both satellite terminal transactions and other nonsatellite terminal transactions, all satellite terminal transactions shall be indicated as such, and shall be accompanied by the description required by subsection 3.

5. The administrator may provide by rule for the recording and maintenance, by any financial institution utilizing a satellite terminal, of amounts involved in a transaction engaged in through the satellite terminal which are of a known tax consequence to the customer initiating the transaction. For the purpose of this subsection, *"known tax consequences"* means and includes but shall not be limited to the following:

a. An amount directly or indirectly received from a customer and applied to a loan account of the customer which represents interest paid by the customer to the financial institution.

b. In any transaction where the total amount involved is deducted from funds in a customer's account and is simultaneously paid either directly or indirectly by the financial institution to the account of a third party, any portion of the transaction amount which represents a sales or other tax imposed upon or included within the transaction and collected by that third party from the customer, or any portion of the transaction amount which represents interest paid to the third party by the customer.

c. Any other transaction which the administrator determines to have direct tax consequences to the customer. The administrator also may provide for the periodic distribution to customers of summaries of transactions having known tax consequences.

[C77, 79, 81, §527.7]

91 Acts, ch 216, §12; 2012 Acts, ch 1023, §136

527.8 Repealed by 95 Acts, ch 66, §5.

527.8A Exemptions.

Transactions initiated at a satellite terminal which do not involve the use of an access device to directly or indirectly affect a customer asset account are not governed by this chapter.

91 Acts, ch 216, §13

527.9 Central routing units.

1. A central routing unit shall not be operated in this state unless written approval for that operation has been obtained from the administrator.

2. *a.* A person desiring to operate a central routing unit shall submit to the administrator an application which shall contain all of the following information:

(1) The name and business address of the owner of the proposed unit.

(2) The name and business address of each data processing center and other central routing unit with which the proposed central routing unit will have direct electronic communication.

(3) The location of the proposed central routing unit.

(4) A schedule of the charges which will be required to be paid to that applicant by each financial institution which utilizes the proposed central routing unit.

(5) An agreement by the applicant that the proposed central routing unit will be capable of accepting and routing, and will be operated to accept and route, transmissions of data originating at any satellite terminal located in this state, except limited-function terminals, whether receiving from that terminal or from a data processing center or other central routing unit.

(6) A representation and undertaking that the proposed central routing unit is directly connected to every data processing center that is directly connected to a satellite terminal located in this state, and that the proposed central routing unit will provide for direct connection in the future with any data processing center that becomes directly connected to a satellite terminal located in this state. This representation and undertaking is not required of a central routing unit with respect to limited-function terminals.

b. The application shall be accompanied by all agreements between the proposed central routing unit and all data processing centers and other central routing units respecting the transmission of transaction data; and a copy of any agreement between the proposed central routing unit and any financial institution establishing a satellite terminal unless that agreement theretofore has been filed with the administrator pursuant to section 527.5.

3. The administrator shall approve or disapprove an application for operation of a central routing unit within sixty days after receipt.

4. A central routing unit operating under the approval of the administrator shall be subject to examination by the administrator for the purpose of determining compliance with this chapter.

5. *a.* Effective July 1, 1987, a person owning or operating a central routing unit authorized under this section shall include public representation on any board setting policy for the central routing unit. Four or five public members shall be appointed to the board in the following manner:

(1) Three members shall be appointed by the superintendent of banking.

(2) One member shall be appointed by the superintendent of credit unions.

(3) If an industrial loan company is connected to the central routing unit, one member shall be appointed by the superintendent of banking.

b. The superintendent of banking and superintendent of credit unions shall form a committee to set, in conjunction with the entity owning or operating the central routing unit, the term of office, the rate of compensation, and the rate of reimbursement for each public member. However, the public members shall be entitled to reasonable compensation and reimbursement from the board.

c. Each public member is entitled to all the rights of participation and voting as any other member of the board. The public members are to represent the interest of consumers and the business and agricultural communities in establishing policies for the central routing unit.

d. It is the intention of the general assembly that the ratio of public members to the overall membership of the board shall not be less than one public member for each seven members of the board. If the number of members on the board is increased, then the number of members appointed pursuant to paragraph "*a*" shall be increased to maintain the minimum ratio. In this event, the superintendent of banking and the superintendent of credit unions shall appoint additional public members in order to maintain the minimum ratio.

e. An individual shall not be appointed as a public member pursuant to this subsection if the individual is a director of a financial institution or is directly employed by a financial institution doing business in this state.

[C77, 79, 81, §527.9]

87 Acts, ch 158, §13, 14; 89 Acts, ch 86, §16; 91 Acts, ch 216, §14; 2012 Acts, ch 1017, §124; 2012 Acts, ch 1023, §137

527.10 Confidentiality.

A satellite terminal, data processing center, or central routing unit shall not be operated in any manner to permit any person to obtain information concerning the account of any person with a financial institution, unless such information is essential to complete or prevent the completion of a transaction then being engaged in through the use of that facility.

A financial institution, data processing center, central routing unit, or other person shall not disseminate any information relating to the use of a multiple use terminal without the written authorization of the retailer on whose premises the terminal is located, or of the owner or operator of the terminal or the financial institution controlling the terminal. This section shall not, however, prohibit or restrict the use of information received in the processing, authorization, or rejection of a requested electronic funds transfer transaction, where such use is necessary or incidental to the processing, authorization, or rejection, or to reconciling disputes or resolving questions raised by a retailer, financial institution, consumer, or any other person regarding the transaction.

[C77, 79, 81, §527.10]

87 Acts, ch 158, §15

527.11 Rulemaking.

The administrator shall have the power to adopt and promulgate rules pursuant to chapter 17A as in the administrator's opinion will be necessary to properly and effectively carry out and enforce the provisions of this chapter.

[C77, 79, 81, §527.11]

Referred to in §527.2

527.12 Revocation of privilege.

Whenever the administrator determines, upon notice and hearing pursuant to chapter 17A, that a satellite facility or data processing center or central routing unit is being operated in violation of this chapter, the administrator may revoke the approval to operate that facility. If the administrator does not have any direct authority over the facility because of the provisions of section 527.3, the administrator may revoke with respect to any financial institution over which the administrator does have direct authority the privilege to engage in transactions through or with that facility. A revocation by the administrator shall be effective when ordered by the administrator, anything in chapter 17A to the contrary notwithstanding. The administrator may bring an action in the district court in the name of the state to enjoin any financial institution or other person who continues to utilize or to operate a satellite terminal or data processing center or central routing unit after the approval has been revoked. The administrator also may bring such an action to enjoin any person who fails to obtain any approval required by this chapter.

[C77, 79, 81, §527.12]

Referred to in §527.2

CHAPTER 528

ALTERNATIVE MORTGAGE LOANS

Referred to in §669.14

528.1	Title.	528.6	Prototype plan for alternative mortgage loans — approval by administrator.
528.2	Definitions.	528.7	Reduction in installment payments — repayment of mortgage debt.
528.3	Financial institutions allowed to make alternative mortgages.	528.8	Interest on graduated payment mortgage loans.
528.4	Prepayment penalty prohibited.	528.9	Rules.
528.5	Disclosure of alternative mortgage loan information to applicants.		

528.1 Title.

This chapter is entitled *"Alternative and Reverse Annuity Mortgage Loan Act"*.

89 Acts, ch 267, §1

528.2 Definitions.

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

1. *"Administrator"* means the superintendent of banking and the superintendent of credit unions within the department of commerce.

2. *"Alternative mortgage loan"* means a mortgage loan which is a reverse annuity mortgage loan or graduated payment mortgage loan.

3. *"Financial institution"* means financial institution as defined in section 535A.1.

4. *"Graduated payment mortgage loan"* means a mortgage loan in which principal and interest payments, if any, and the making of additional advances, if any, are scheduled to reflect the prospective increasing or decreasing income of the mortgagor.

5. *"Mortgage loan"* means a loan secured by a first mortgage on one, two, three, or four family, owner-occupied residential real property.

6. *"Reverse annuity mortgage loan"* means a mortgage loan in which either the loan proceeds are used to purchase an annuity with the annuity proceeds to be advanced to the mortgagors, or the loan proceeds are directly advanced to the mortgagors, in ten or more installments, either directly or indirectly, and which together with unpaid interest, if any, are to be repaid in accordance with section 528.7.

89 Acts, ch 267, §2; 2012 Acts, ch 1017, §125

528.3 Financial institutions allowed to make alternative mortgages.

A financial institution may make alternative mortgage loans in accordance with this chapter. General provisions governing a financial institution's mortgage loans apply to alternative mortgage loans unless inconsistent with the provisions of this chapter. This chapter does not prohibit a financial institution from making any loan which is not an alternative mortgage loan, provided such loan otherwise complies with applicable laws.

89 Acts, ch 267, §3

528.4 Prepayment penalty prohibited.

A financial institution making an alternative mortgage loan may contract with the mortgagor for interest to be paid currently or to accrue, and if accrued, for accrued interest to be added to the mortgage debt on which interest may be charged and collected. Accrued interest which is added to the mortgage debt shall be secured by the mortgage to the same extent as the principal of the alternative mortgage loan. An instrument evidencing an alternative mortgage loan shall not contain a provision imposing a penalty for prepayment of the loan.

89 Acts, ch 267, §4

528.5 Disclosure of alternative mortgage loan information to applicants.

1. A financial institution that offers or makes an alternative mortgage loan shall include in any disclosure of the rates or availability of mortgage loans, the rates and availability of reverse annuity mortgages or graduated payment mortgage loans, if and when such loans are offered. The administrator may prescribe by rule forms for the required disclosures.

2. A prospective mortgage loan applicant shall have the choice of applying for a mortgage loan or any type of alternative mortgage loan offered by the financial institution.

89 Acts, ch 267, §5

528.6 Prototype plan for alternative mortgage loans — approval by administrator.

1. Before a financial institution makes an alternative mortgage loan, it shall submit to the administrator for that type of institution, for the administrator's approval, the prototype plan and subsequent amendments to the plan under which alternative mortgage loans are to be made. A plan submitted shall include a copy of the form of note and mortgage instrument that will be used for that type of alternative mortgage loan, a detailed description of how the plan will function, and other information as the administrator requires. The administrator shall specifically review the mortgage instrument submitted as part of the plan to ensure that any default provisions included in the deed pursuant to section 528.7, subsection 2, paragraph "*c*", are necessary to protect the interests of the mortgagee and are fair and equitable for the mortgagor. A reverse annuity mortgage shall provide that the mortgagor or mortgagors of the property shall retain a life estate in the property until the death of the mortgagor or all of the mortgagors, notwithstanding that the annuity may expire prior to the end of the life estate, depending upon the terms of the annuity.

2. The administrator may approve any plan and amendment to a plan that in the administrator's opinion serves the best interests of prospective mortgagors and mortgagees. The administrator's considerations shall include, without limitation, the flexibility of each plan to serve the differing needs of various persons who may apply for an alternative mortgage loan under the plan.

3. If the administrator approves the plan or amendment, the financial institution may make alternative mortgage loans in accordance with the approved plan and any approved amendments.

4. This section applies to all alternative mortgage loans made on or after January 1, 1990.

89 Acts, ch 267, §6

528.7 Reduction in installment payments — repayment of mortgage debt.

1. If the mortgagee or its assignee and the mortgagor agree, any installment payment of either the loan proceeds or an annuity purchased with the loan proceeds of a reverse annuity mortgage loan may be reduced by an amount used for partial repayment of the mortgage debt, except as provided in subsection 2 of this section.

a. Notwithstanding any such reduction, each mortgagor shall receive a cash payment in each installment for the term of the annuity or, if no annuity, for the term during which the mortgagee contracted with the mortgagor to advance the loan proceeds.

b. Except as provided in subsection 2, no repayments of any part of the mortgage debt shall be required from the mortgagor after termination of the period during which loan proceeds or any annuity purchased with the loan proceeds are advanced to the mortgagor.

2. If the mortgagee or its assignee and the mortgagor agree, and at the option of the mortgagee, advances under a reverse annuity mortgage loan may terminate and the entire unpaid balance of the loan plus accrued interest may become due and payable upon the occurrence of any of the following events:

a. The death of the last surviving mortgagor.

b. The sale or other transfer of the real estate securing the loan to a person other than any of the original mortgagors.

c. Any other occurrence which materially decreases the value of the property securing

the loan or which will have the likely effect of causing the loan not to be repaid. Any such additional occurrence shall be clearly described in the note or mortgage instrument.

89 Acts, ch 267, §7
Referred to in §528.2, 528.6

528.8 Interest on graduated payment mortgage loans.

A graduated payment mortgage loan offered or made by a financial institution shall provide for interest at a specified rate or a series of specified rates.

89 Acts, ch 267, §8

528.9 Rules.

The administrator may adopt rules pursuant to chapter 17A, as the administrator deems necessary and convenient to carry out the provisions of this chapter.

89 Acts, ch 267, §9

CHAPTERS 528A and 528B

RESERVED

CHAPTER 529

IOWA FINANCIAL TRANSACTION REPORTING ACT

Referred to in §669.14, 706B.2

529.1 Definitions.
529.2 Reports.
529.3 Investigations.
529.4 Uniformity of construction and application.

529.1 Definitions.

In this chapter, unless the context otherwise requires:

1. *"Authorized delegate"* means a person designated by the licensee.
2. *"Check cashing"* means exchanging for compensation a check, draft, money order, traveler's check, or a payment instrument of a money transmitter for money delivered to the presenter at the time and place of the presentation.
3. *"Compensation"* means any fee, commission, or other benefit.
4. *"Conduct the business"* means engaging in activities of a licensee or money transmitter more than ten times in any calendar year for compensation.
5. *"Foreign money exchange"* means exchanging for compensation money of the United States government or a foreign government to or from money of another government at a conspicuously posted exchange rate at the time and place of the presentation of the money to be exchanged.
6. *"Licensee"* means a person licensed under this chapter.*
7. *"Location"* means a place of business at which activity conducted by a licensee or money transmitter occurs.
8. *"Money"* means a medium of exchange authorized or adopted by a domestic or foreign government as a part of its currency and that is customarily used and accepted as a medium of exchange in the country of issuance.
9. *"Money transmitter"* means a person who is located or doing business in this state, including a check casher and a foreign money exchanger, and who does any of the following:

a. Sells or issues payment instruments.

b. Conducts the business of receiving money for the transmission of or transmitting money.

c. Conducts the business of exchanging payment instruments or money into any form of money or payment instrument.

d. Conducts the business of receiving money for obligors for the purpose of paying obligors' bills, invoices, or accounts.

e. Meets the definition of a bank, financial agency, or financial institution as prescribed by 31 U.S.C. §5312 or 31 C.F.R. §103.11 and any successor provisions.

10. *"Payment instrument"* means a check, draft, money order, traveler's check, or other instrument or order for the transmission or payment of money, sold to one or more persons, whether or not that instrument or order is negotiable. *"Payment instrument"* does not include an instrument that is redeemable by the issuer in merchandise or service, a credit card voucher, or a letter of credit.

11. *"Proceeds"* means property acquired or derived directly or indirectly from, produced through, realized through, or caused by an act or omission and includes any property of any kind.

12. *"Property"* means anything of value, and includes any interest in property, including any benefit, privilege, claim, or right with respect to anything of value, whether real or personal, tangible or intangible, without reduction for expenses incurred for acquisition, maintenance, production, or any other purpose.

13. *"Superintendent"* means the superintendent of banking or the superintendent of credit unions.

14. *"Transaction"* includes a purchase, sale, trade, loan, pledge, investment, gift, transfer, transmission, delivery, deposit, withdrawal, payment, transfer between accounts, exchange of currency, extension of credit, purchase or sale of any monetary instrument, use of a safe deposit box, or any other acquisition or disposition of property by whatever means effected.

15. *"Transmitting money"* includes the transmission of money by any means including transmission within this country or to or from locations abroad by payment instrument, wire, facsimile, or electronic transfer, courier, or otherwise.

16. *"Traveler's check"* means an instrument identified as a traveler's check on its face or commonly recognized as a traveler's check and issued in a money multiple of United States or foreign currency with a provision for a specimen signature of the purchaser to be completed at the time of purchase and a countersignature of the purchaser to be completed at the time of negotiation.

96 Acts, ch 1133, §34; 98 Acts, ch 1074, §30

*This chapter does not include licensing provisions

529.2 Reports.

1. A licensee, authorized delegate, or money transmitter required to file a report regarding business conducted in this state pursuant to the federal Currency and Foreign Transactions Reporting Act, 31 U.S.C. §5311 through 5326 and 31 C.F.R. pt. 103, or 12 C.F.R. §21.11, shall file a duplicate of that report with the department of public safety.

2. All persons engaged in a trade or business who are required to file a report pursuant to 26 U.S.C. §6050I and 26 C.F.R. §1.6050I, and any successor provisions, concerning returns relating to cash received in trade or business, shall file a copy of the report with the department of public safety.

3. A licensee, authorized delegate, or money transmitter that is regulated under the federal Currency and Foreign Transactions Reporting Act, 31 U.S.C. §5325 and 31 C.F.R. pt. 103, and that is required to make available prescribed records to the secretary of the United States department of treasury upon request at any time, shall follow the same prescribed procedures and create and maintain the same prescribed records relating to a transaction and shall make these records available to the department of public safety pursuant to a prosecuting attorney subpoena.

4. *a.* The timely filing of a report required by this section with the appropriate federal agency shall be deemed compliance with the reporting requirements of this section, unless the attorney general or the department of public safety has notified the superintendent that reports of that type are not being regularly and comprehensively transmitted by that federal agency to the department of public safety.

b. This chapter does not preclude a licensee, authorized delegate, money transmitter, financial institution, or a person engaged in a trade or business, in its discretion, from instituting contact with, and thereafter communicating with and disclosing customer financial records to appropriate state or local law enforcement agencies if the licensee, authorized delegate, money transmitter, financial institution, or person has information that may be relevant to a possible violation of any criminal statute or to the evasion or attempted evasion of any reporting requirement of this chapter.

c. A licensee, authorized delegate, money transmitter, financial institution, person engaged in a trade or business, or any officer, employee, agent, or authorized delegate of any of them, or any public official or governmental employee who keeps or files a record pursuant to this section or who communicates or discloses information or records under paragraph *"b"*, is not liable to its customer, to a state or local agency, or to any person for any loss or damage caused in whole or in part by the making, filing, or governmental use of the report, or any information contained in that report.

5. The attorney general or the department of public safety may report any possible violations indicated by analysis of the reports required by this chapter to any appropriate law enforcement agency for use in the proper discharge of its official duties. The attorney general or the department of public safety shall provide copies of the reports required by this chapter to any appropriate prosecutorial or law enforcement agency upon being provided with a written request for records relating to a specific individual or entity and stating that the agency has an articulable suspicion that such individual or entity has committed a felony offense or a violation of this chapter to which the reports are relevant. A person who releases information received pursuant to this subsection except in the proper discharge of the person's official duties is guilty of a serious misdemeanor.

6. It shall be unlawful for any person to do any of the following:

a. With intent to disguise the fact that money or a payment instrument is the proceeds of criminal conduct, or with intent to promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on of any criminal conduct, to knowingly furnish or provide to a licensee, authorized delegate, money transmitter, financial institution, person engaged in a trade or business, or any officer, employee, agent, or authorized delegate of any of them, or to the attorney general or department of public safety, any false, inaccurate, or incomplete information; or to knowingly conceal a material fact in connection with a transaction for which a report is required to be filed pursuant to this section.

b. With the intent to disguise the fact that money or a payment instrument is the proceeds of criminal conduct, or with intent to promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on of any criminal conduct, or with intent to evade the making or filing of a report required under this chapter, or with intent to cause the making or filing of a report that contains a material omission or misstatement of fact, to conduct or structure a transaction or series of transactions by or through one or more licensees, authorized delegates, money transmitters, financial institutions, or persons engaged in a trade or business.

7. A person who violates subsection 6 is guilty of a class "C" felony and is also subject to a civil penalty of three times the value of the property involved in the transaction, or, if no transaction is involved, five thousand dollars.

8. Notwithstanding any other provision of law, each violation of this section constitutes a separate, punishable offense.

9. Any report, record, information, analysis, or request obtained by the attorney general or department of public safety pursuant to this chapter is not a public record as defined in chapter 22 and is not subject to disclosure.

96 Acts, ch 1133, §35; 98 Acts, ch 1074, §31
Referred to in §22.7(34)

529.3 Investigations.

1. The attorney general or county attorney may conduct investigations within or outside this state to determine if any licensee, authorized delegate, money transmitter, or person

engaged in a trade or business has failed to file a report required by this chapter or has engaged or is engaging in any act, practice, or transaction that constitutes a violation of this chapter.

2. Upon presentation of a subpoena from a prosecuting attorney, all licensees, authorized delegates, money transmitters, and financial institutions shall make their books and records available to the attorney general or county attorney or peace officer during normal business hours for inspection and examination in connection with an investigation pursuant to this section.

96 Acts, ch 1133, §36

529.4 Uniformity of construction and application.

1. The provisions of this chapter shall be liberally construed to effectuate its remedial purposes. Civil remedies under this chapter shall be supplemental and not mutually exclusive. The civil remedies do not preclude and are not precluded by other provisions of law.

2. The provisions of this chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting the law and to make the reporting requirements regarding financial transactions under Iowa law uniform with the reporting requirements regarding financial transactions under federal law.

3. The attorney general is authorized to enter into reciprocal agreements with the attorney general or chief prosecuting attorney of any state to effectuate the purposes of this chapter.

96 Acts, ch 1133, §37

CHAPTERS 530 to 532

RESERVED

CHAPTER 533

CREDIT UNIONS

Referred to in §12.61, 12C.1, 216.10, 331.602, 423.2, 445.5, 490.1701, 501A.601, 524.821, 533C.102, 535.2, 535.8, 535C.2, 536A.24, 536C.3, 537.1301, 537.2301, 537.6105, 537.6201, 546.4, 602.8103, 669.14

Former ch 533 repealed by 2007 Acts, ch 174, §98

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SUBCHAPTER I

ADMINISTRATION OF ACT

533.101 Title.

This chapter shall be known as the "*Iowa Credit Union Act*".

2007 Acts, ch 174, §1

533.102 Definitions.

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

1. *"Account insurance plan"* means an arrangement providing account and share insurance which is of a type authorized under section 533.307.

2. *"Common bond"* means the shared characteristic of members of a credit union.

3. *a.* *"Credit union"* means a cooperative, nonprofit association, organized or incorporated in accordance with the provisions of this chapter or under the laws of another state or the Federal Credit Union Act, 12 U.S.C. §1751 et seq., for the purposes of creating a source of credit at a fair and reasonable rate of interest, of encouraging habits of thrift among its members, and of providing an opportunity for its members to use and control their own money on a democratic basis in order to improve their economic and social condition.

b. A *"credit union"* is also a "supervised financial organization" as that term is defined and used in chapter 537, the Iowa consumer credit code.

4. *"Credit union service organization"* means a corporation, limited partnership, or limited liability company organized under state law to provide financial and financial-related services for one or more credit unions, each of which owns part of the capital stock of the credit union service organization, as authorized under section 533.301, subsection 5, paragraph *"f"*, and which corporation, limited partnership, or limited liability company is subject to examination by the credit union division of the Iowa department of commerce or a federal supervisory agency.

5. *"Ownership share"* means a share of a credit union acquired by a member at the time membership is initiated.

6. *"Review board"* means the credit union review board.

7. *"State credit union"* means a credit union organized pursuant to section 533.201.

8. *"Superintendent"* means the superintendent of credit unions appointed pursuant to section 533.104.

2007 Acts, ch 174, §2; 2012 Acts, ch 1023, §138; 2013 Acts, ch 17, §1
Referred to in §12C.13, 252I.1, 421.17A

533.103 Credit union division created.

A credit union division of the department of commerce is created to administer this chapter.

2007 Acts, ch 174, §3
Referred to in §546.4

533.104 Superintendent.

1. A superintendent of credit unions shall be appointed by the governor, subject to confirmation by the senate, to regulate credit unions.

a. The appointee shall be selected solely with regard to qualification and fitness to discharge the duties of office.

b. The individual appointed shall have at least five years' experience as a director or executive officer of a credit union, or comparable experience in the regulation or examination of credit unions. For purposes of this paragraph, credit union membership does not qualify as credit union experience.

2. The superintendent shall have an office at the seat of government. The superintendent's term of office shall be four years beginning and ending as provided by section 69.19. The governor may remove the superintendent for malfeasance in office, or for any cause that renders the superintendent ineligible, incapable, or unfit to discharge the duties of the office.

3. The superintendent shall receive a salary set by the governor within a range established by the general assembly.

4. A vacancy in the office of superintendent shall be filled for the unexpired portion of the regular term.

5. The superintendent may adopt rules as necessary or appropriate to administer this chapter, subject to the prior approval of the rules by the review board.

2007 Acts, ch 174, §4
Referred to in §533.102, 546.4
Confirmation, see §2.32

533.105 Deputy superintendent.

1. The superintendent may appoint an employee of the credit union division as deputy superintendent to perform the duties of the superintendent during the superintendent's absence or inability to act.

2. The deputy superintendent shall serve at the pleasure of the superintendent. If the office of the superintendent becomes vacant, the deputy superintendent shall have all powers and duties of the superintendent until a new superintendent is appointed by the governor in accordance with this chapter.

3. The deputy superintendent shall receive a salary to be fixed by the superintendent.

2007 Acts, ch 174, §5

533.106 Employees.

1. *a.* The superintendent may appoint assistants, examiners, and other employees as the superintendent considers necessary to the proper discharge of duties imposed upon the superintendent by the laws of this state.

b. Pay plans shall be established for the credit union division employees, other than clerical employees, who supervise and examine the accounts and affairs of credit unions and other persons, subject to supervision and regulation by the superintendent, that are substantially equivalent to those paid by the national credit union administration and other federal supervisory agencies in this area of the United States.

2. *a.* A state credit union, or its officers, directors, or employees, shall not directly or indirectly make a loan of money or property to the superintendent.

b. The superintendent shall not directly or indirectly accept a loan of money or property from a state credit union, or its officers, directors, or employees.

3. *a.* An employee of the credit union division, other than the superintendent, may borrow money from a state credit union only on comparable terms and conditions to those ordinarily extended to all members of the credit union. The employee shall notify the superintendent of the acceptance of a loan from a state credit union.

b. The superintendent may restrict borrowing by employees from state credit unions if the superintendent determines such borrowing will interfere with the functions of the credit union division.

c. An employee shall not participate in the examination of a credit union where the employee has a loan.

4. The superintendent or an employee of the credit union division, other than a member of the review board, shall not perform any services for or be an officer, director, or employee of a state credit union or any other entity supervised or regulated by the credit union division.

5. A person who violates this section shall be permanently disqualified from acting as an officer, director, or employee of a state credit union and permanently disqualified from acting as superintendent or an employee of the credit union division.

6. The superintendent or an employee of the credit union division who is convicted, or an applicant for employment with the credit union division who has been convicted, of theft, burglary, robbery, larceny, embezzlement, or other crime involving breach of trust, or a crime involving moral turpitude, shall be forever disqualified from holding any position in the credit union division.

2007 Acts, ch 174, §6; 2018 Acts, ch 1123, §5, 7

Referred to in §533.106A

Subsection 6 amended

533.106A Background investigations.

1. The credit union division may conduct a background investigation on an applicant for employment with the division. The division shall inform an applicant that the position requires a background investigation and shall obtain the applicant's written authorization prior to conducting the investigation.

2. The background investigation may include, without limitation, a review of at least the following subjects:

a. Work history and educational credentials.

b. Financial review.

c. Criminal history data, including a national criminal history check through the federal bureau of investigation.

3. If a background investigation is conducted, the applicant shall provide the applicant's fingerprints to the credit union division. The division shall provide the fingerprints to the department of public safety for submission through the state criminal history repository to the federal bureau of investigation.

4. An employee of the credit union division may be subject to a national criminal history check through the federal bureau of investigation at least once every five years, or whenever circumstances arise giving the division reason to believe that the employee has been arrested, charged, or indicted for a crime as described in section 533.106, subsection 6.

5. The credit union division shall pay the actual cost of the background investigation, including fingerprinting and the national criminal history check, if any.

6. The results of a background investigation, including a criminal history check, shall not be considered a public record under chapter 22.

2018 Acts, ch 1123, §6, 7
NEW section

533.107 Credit union review board.

1. A credit union review board is created. The review board shall consist of seven members, five of whom shall have been members in good standing for at least the previous five years of either an Iowa state chartered credit union, or a credit union chartered under the Federal Credit Union Act, 12 U.S.C. §1751 et seq., and having its principal place of business in Iowa. Two of the members may be public members; however, at no time shall more than five of the members be directors or employees of a credit union. The members shall serve for three-year staggered terms beginning and ending as provided by section 69.19.

2. The members of the review board shall be appointed by the governor subject to confirmation by the senate. The governor may appoint the members of the review board from a list of nominees submitted to the governor by the credit unions located in this state.

3. The review board shall meet at least four times each year and shall hold special meetings at the call of the chairperson. Four members constitute a quorum.

4. Each member of the review board shall receive actual and necessary expenses incurred in the discharge of official duties. Each member of the review board may also be eligible to receive compensation as provided in section 7E.6.

5. A member of the review board shall not take part in any action or participate in any decision when the matter under consideration specifically relates to a credit union of which the review board member is a member.

6. The review board may adopt rules pursuant to chapter 17A or take other action as it deems necessary or suitable, to administer this chapter.

2007 Acts, ch 174, §7; 2013 Acts, ch 90, §162
Confirmation, see §2.32

533.108 Records of credit union division.

1. *a.* Records of the credit union division are public records subject to the provisions of chapter 22, except as otherwise provided in this chapter.

b. Papers, documents, writings, reports, reports of examinations and other information relating specifically to the supervision and regulation of a specific state credit union or of other persons by the superintendent pursuant to the laws of this state are not public records and shall not be open for examination or copying by the public or for examination or publication by the news media.

c. The superintendent or an employee of the credit union division shall not disclose information relating specifically to the supervision and regulation of a specific state credit union or of other persons in any manner to any person other than the person examined, except as otherwise authorized by this section or section 533.113 or 533.308.

d. Notwithstanding the prohibition on disclosure pursuant to paragraph "*c*", the superintendent or an employee of the credit union division may disclose information relating

specifically to the supervision and regulation of a specific state credit union or of other persons if the credit union or other person consents in writing to the disclosure and the persons to whom the disclosures are made are subject to, or agree to comply with, standards of confidentiality comparable to those contained in this chapter.

2. *a.* The superintendent or an employee of the credit union division shall not be subpoenaed in any cause or proceeding to give testimony concerning papers, documents, writings, reports, reports of examinations, or other information relating to the supervision and regulation of a specific state credit union or persons by the superintendent pursuant to the laws of this state.

b. The papers, documents, writings, reports, reports of examinations, and other information of the credit union division that relate to the supervision and regulation of a specific state credit union or persons shall not be offered in evidence in a court or be subject to subpoena by a party, except when relevant in the following matters:

(1) In actions or proceedings brought by the superintendent.

(2) In matters in which an interested and proper party seeks review of a decision of the superintendent.

(3) In actions or proceedings that arise out of the criminal provisions of the laws of this state or of the United States.

(4) In actions brought as shareholder derivative suits against a credit union by a member who has acquired an ownership share.

(5) In actions brought to recover moneys or to recover upon an indemnity bond for embezzlement, misappropriation, or misuse of credit union funds.

3. *a.* Information, records, and documents utilized for the purpose of, or in the course of, investigation, regulation, or examination of a specific credit union, received by the credit union division from some other governmental entity that treats such information, records, and documents as confidential, are confidential and shall not be disclosed by the division and are not subject to subpoena.

b. Information, records, and documents under paragraph *"a"* do not constitute a public record subject to examination and copying under chapter 22.

c. The superintendent may exchange with governmental regulatory officials confidential information, records, and documents that are not a public record subject to examination and copying under chapter 22 provided that the other officials are subject to, or agree to comply with, standards of confidentiality comparable to those contained in this section.

2007 Acts, ch 174, §8; 2012 Acts, ch 1020, §1
Referred to in §533.113, 533.325

533.109 Insurance and surety bond.

1. The superintendent shall acquire good and sufficient bond in a company authorized to do business in this state in order to ensure both of the following:

a. The faithful performance of the deputy superintendent, assistants, examiners, and all other employees of the credit union division.

b. Protection from any liability that may accrue in case of the loss of property of a state credit union, or of a member of a state credit union or of any other person, in the course of an examination, investigation, or other function required or allowed by the laws of this state.

2. The superintendent shall be bonded in accordance with chapter 64, provided that such bond shall be in the amount of one hundred thousand dollars.

2007 Acts, ch 174, §9

533.110 Reimbursement of expenses.

1. The superintendent, deputy superintendent, assistants, examiners, and other employees of the credit union division are entitled to receive reimbursement for expenses incurred in the performance of their duties.

2. The superintendent, and when specifically authorized by the superintendent, the deputy superintendent, assistants, examiners, and other employees of the division, are

entitled to receive reimbursement for expenses incurred while attending conventions, meetings, conferences, schools, or seminars relating to the performance of their duties.

2007 Acts, ch 174, §10

533.111 Expenses of the credit union division.

1. *a.* All expenses required in the discharge of the duties and responsibilities imposed upon the credit union division, the superintendent, and the review board by the laws of this state shall be paid from fees provided by the laws of this state and appropriated by the general assembly from the department of commerce revolving fund created in section 546.12.

b. All fees imposed under this chapter are payable to the superintendent, who shall pay all fees and other moneys received to the treasurer of state within the time required by section 12.10. The treasurer of state shall deposit such funds in the department of commerce revolving fund created in section 546.12.

2. The superintendent shall account for receipts and disbursements according to the separate duties imposed upon the superintendent by the laws of this state, and each separate duty shall be fiscally self-sustaining.

3. The credit union division may expend additional funds, including funds for additional personnel, if the additional expenditures are actual expenses that exceed the funds budgeted for credit union examinations and directly result from examinations of state credit unions.

a. The amounts necessary to fund the excess examination expenses shall be collected from state credit unions being regulated, and the collections shall be treated as repayment receipts as defined in section 8.2.

b. The division shall notify in writing the legislative services agency and the department of management when hiring additional personnel. The written notification shall include documentation that any additional expenditure related to such hiring will be totally reimbursed as provided in section 546.12, subsection 2, and shall also include the division's justification for hiring such personnel. The division must obtain the approval of the department of management only if the number of additional personnel to be hired exceeds the number of full-time equivalent positions authorized by the general assembly.

4. *a.* All fees and other moneys collected shall be deposited into the department of commerce revolving fund created in section 546.12 and expenses required to be paid under this section shall be paid from moneys in the department of commerce revolving fund and appropriated for those purposes.

b. Funds appropriated to the credit union division shall be subject at all times to the warrant of the director of the department of administrative services, drawn upon written requisition of the superintendent or a designated representative, for the payment of all salaries and other expenses necessary to carry out the duties of the credit union division.

5. The credit union division may accept reimbursement of expenses related to the examination of a state credit union from the national credit union administration or any other guarantor or insurance plan authorized by this chapter. These reimbursements shall be deposited into the department of commerce revolving fund created in section 546.12.

2007 Acts, ch 174, §11; 2009 Acts, ch 181, §104; 2011 Acts, ch 34, §122

533.112 Annual and individual fees — examination fees — delinquencies.

1. Each state credit union shall pay an annual fee for examination and supervision as determined by the superintendent based on the actual cost of operating the credit union division.

a. The cost of operating the credit union division shall include but not be limited to costs and expenses for salaries and benefits, expenses and travel for employees, office facilities, supplies, equipment, and administrative costs and expenses incurred in the discharge of the duties imposed on the superintendent under this chapter.

b. (1) The cost of operating the credit union division shall also include but not be limited to the costs incurred due to additional time and other division resources required for any of the following:

(a) Performing services for the credit union that are customarily performed by the credit union.

(b) Performing services related to a particular examination that exceed estimates for an individual credit union's examination based on factors including but not limited to the asset size of the credit union, the complexity of transactions to be examined, and the examination history of the credit union.

(2) An individual fee assessment for such costs incurred under this paragraph *"b"* may be made in addition to a credit union's annual fee.

c. In establishing the structure of the fee schedule, the superintendent shall consider recommendations from the review board and from state credit unions.

d. The annual fee may be paid in one or more installments, as provided by rule by the superintendent.

2. Each corporation, credit union service organization, or other person subject to an examination pursuant to section 533.113 shall pay an examination fee as determined by the superintendent, which shall reflect but not be limited to the time required for the examination and the costs of the examination.

a. The costs of the examination shall include but not be limited to costs and expenses for salaries and benefits, expenses and travel for employees, office facilities, supplies, equipment, and administrative costs and expenses incurred in the discharge of duties imposed upon the superintendent under this chapter.

b. The examination fee shall be due within thirty days of presentation of the fee statement to the corporation, credit union service organization, or other person examined by the division.

3. In addition to the annual fee and examination fee assessed pursuant to this section, the division may also assess a credit union, credit union service organization, corporation, or other person subject to an examination pursuant to section 533.113 for the expense of accountants, investigators, and other experts reasonably necessary to assist in the conduct of the examination, pursuant to section 533.113, subsection 1.

4. *a.* Failure of a state credit union, corporation, credit union service organization, or other person to pay a fee pursuant to subsection 1, 2, or 3 shall result in the fee being considered delinquent and a penalty equal to five percent of the original fee may be assessed for each day or part of a day the payment remains delinquent.

b. A fee delinquency under this subsection by a corporation, credit union service organization, or other person may result in the superintendent collecting the delinquent fee and penalty from the state credit union owning shares or investments or having business transactions or a relationship with such corporation, credit union service organization, or other person.

c. A fee delinquency under this subsection may also constitute grounds for revocation of the certificate of approval of the credit union to operate in this state.

2007 Acts, ch 174, §12; 2012 Acts, ch 1020, §2
Referred to in §533.330

533.113 Examinations.

1. The superintendent may do any or all of the following:

a. Make or cause to be made an examination of a credit union whenever the superintendent believes such examination is necessary or advisable, but in no event less frequently than once during each twenty-four-month period.

b. Make or cause to be made such limited examinations at such times and with such frequency as the superintendent deems necessary and advisable to determine the condition of any state credit union and whether any person has violated the provisions of this chapter.

c. Make or cause to be made an examination of any corporation or credit union service organization in which a state credit union owns shares or has made an investment.

d. Make or cause to be made an examination of any person having business transactions or a relationship with any state credit union when such examination is deemed necessary and advisable in order to determine whether the capital of the state credit union is impaired or whether the safety of its deposits, its financial information or accounts, or its computer systems or computer networks, is imperiled.

e. Accept, in lieu of the examination of a state credit union, or any corporation or

credit union service organization in which a state credit union owns shares or has made an investment, or of any person having business transactions or a relationship with any state credit union, an examination report prepared by a federal regulatory authority.

f. Accept, in lieu of the examination of a state credit union, an audit report conducted by a certified public accounting firm selected from a list of firms previously approved by the superintendent. The cost of the audit shall be paid by the state credit union.

g. Accept, in lieu of the examination of an out-of-state credit union which also conducts business in this state, an examination report prepared by a state or federal regulatory authority.

h. Retain, at the examinee's expense, accountants, investigators, and other experts as reasonably necessary to assist in the conduct of the examination. Any person so retained shall serve in a purely advisory capacity at the direction of the superintendent.

2. A state credit union and all of its officers and agents shall give to the representatives of the superintendent free and unimpeded access to all books, papers, securities, records, and other sources of information under their control.

3. *a.* A report of examination shall be forwarded to the chairperson of a state credit union within thirty days after the completion of the examination. Within thirty days of the receipt of this report, a meeting of the directors shall be called by the state credit union to consider matters contained in the report and the action taken shall be set forth in the minutes of the board.

b. The report of examination of any affiliate or of any person examined as provided in this subsection shall not be transmitted by the superintendent to any such affiliate or person or to the board of directors of any state credit union unless authorized or requested by such affiliate or person.

c. All reports of examinations, including any copies of such reports in the possession of any person other than the superintendent or employee of the credit union division, including any state credit union, agency, or institution to which any report of such examination may be furnished under this section, or section 533.108 or 533.325, shall be confidential communications, shall not be subject to subpoena from any person except as provided in section 533.108, subsection 2, paragraph "*b*", and shall not be published, shared, or made public in any way by any person without the written authorization of the credit union division and the execution of a confidentiality agreement between all of the parties pursuant to section 533.108, subsection 1, paragraph "*d*".

d. All reports of examinations, including any copies of such reports in the possession of any person other than the superintendent or employee of the credit union division, shall remain the exclusive property of the credit union division.

4. The superintendent may require any of the following state credit unions to submit to an additional examination or to an independent audit performed by a certified public accounting firm as provided in subsection 1, paragraph "*f*", at the expense of the state credit union:

a. A state credit union where the records are inadequate.

b. A state credit union in which the books have not been balanced as of the end of the month not less than thirty days previously.

c. A state credit union whose affairs are in an unfavorable condition.

5. The superintendent may furnish a copy of the examination report and materials relating to any or all examinations made of any state credit union and any affiliate of a state credit union to any or all of the following, including any official or supervising examiner of any office or regulatory authority:

a. The national credit union administration.

b. The federal deposit insurance corporation.

c. The federal reserve system.

d. The office of the comptroller of the currency.

e. The federal home loan bank.

f. Financial institution regulatory authorities of other states.

g. The financial crimes enforcement network of the United States department of the treasury.

6. The superintendent may impose a penalty, after notice in writing and opportunity for

a hearing, for a violation of this section. If a state credit union fails to satisfactorily resolve the matter within sixty days from receipt of such notice, the superintendent may impose a penalty against the state credit union in an amount not to exceed one hundred dollars per day per violation for each day that the violation remains unresolved.

2007 Acts, ch 174, §13; 2012 Acts, ch 1020, §3; 2016 Acts, ch 1030, §2; 2017 Acts, ch 12, §1
Referred to in §533.108, 533.112, 537.2305

533.113A Meetings of the board called by superintendent.

1. Whenever the superintendent deems it necessary and advisable, the superintendent may notify the board of directors of a state credit union that a meeting will be held at a place and time and manner as the superintendent directs. The superintendent's notice may disclose the purpose of the meeting.

2. The superintendent may present to the board at the meeting any item the superintendent desires to bring to the attention of the board, including but not limited to any report of an examination required or allowed by this chapter, any conclusions or projections drawn by the superintendent, any recommendations made relative to a report of an examination, and any other matters concerning the operation and condition of the state credit union.

3. Each member of a board of directors required to hold a meeting with the superintendent pursuant to this section shall furnish a statement to the superintendent, on forms supplied by the superintendent, that the member acknowledges the matters presented by the superintendent.

4. A state credit union required to hold a meeting with the superintendent pursuant to this section shall cause the matters presented at such meeting to be recorded in the minutes of the meeting.

5. If the superintendent concludes that a state credit union's affairs are in an unfavorable condition, the superintendent may direct the state credit union to consider consolidation, dissolution, or any other form of reorganization.

2017 Acts, ch 12, §2

533.114 Annual report of superintendent.

1. The superintendent shall report annually to the governor in the manner and within the time required by chapter 7A. A copy of the report shall be furnished by the superintendent to each state credit union and to the Iowa credit union league and its affiliates.

2. In addition to the matters required by chapter 7A, the annual report of the superintendent shall contain all of the following:

a. A summary of applications approved or denied by the superintendent pursuant to this chapter since the last previous report.

b. A summary of the assets, liabilities, and capital structures of all state credit unions as of December 31 of the year for which the report is made.

c. A statement of the receipts and disbursements of funds of the superintendent during the fiscal year ending on June 30 of the year for which the report is made and of the funds on hand on that June 30.

d. Information that the administrator of the Iowa consumer credit code may require to be included.

e. A list of state credit unions that have been designated as serving predominantly low-income members pursuant to section 533.301, subsection 1.

f. Other information the superintendent deems appropriate and advisable to disclose in the discharge of the duties imposed upon the superintendent by this chapter.

2007 Acts, ch 174, §14; 2016 Acts, ch 1030, §3

533.115 Reciprocity.

1. Subject to rules of the superintendent, a credit union organized in another state may do business in Iowa if state credit unions organized in Iowa may do business in the state in which the out-of-state credit union is organized.

2. Notwithstanding subsection 1, an out-of-state credit union shall meet the same deposit

insurance requirements established by this chapter for a state credit union prior to doing business in Iowa.

2007 Acts, ch 174, §15

533.115A Conducting business outside of state.

If a state credit union has an office and conducts business in another state having laws or regulations allowing credit unions to exercise additional powers, the state credit union may request permission from the superintendent to exercise such additional powers while operating in the other state with only the resident members of that other state.

2016 Acts, ch 1030, §4

533.116 Enforcement of Iowa consumer credit code.

1. The superintendent shall enforce the Iowa consumer credit code with respect to state credit unions, as provided in sections 537.2303, 537.2305, and 537.6105.

2. The superintendent shall cooperate with the administrator of the Iowa consumer credit code as designated in section 537.6103, and shall assist that administrator whenever necessary to provide for the discharge of the duties of that administrator.

3. Notwithstanding other provisions of this chapter to the contrary, the superintendent shall furnish to the administrator of the Iowa consumer credit code, access to or copies of records in the custody of the credit union division that relate to a state credit union when necessary to enable the administrator of the Iowa consumer credit code to enforce chapter 537.

2007 Acts, ch 174, §16

533.117 Small loans legislation.

This chapter does not apply to any person engaged in the business of loaning money under chapter 536.

2007 Acts, ch 174, §17

533.118 through 533.200 Reserved.

SUBCHAPTER II

ORGANIZATION OF CREDIT UNIONS

533.201 Organization.

1. In order to simplify the organization of state credit unions, the superintendent shall cause to be prepared an approved form of articles of incorporation and a form of bylaws, consistent with this chapter, which shall be used by state credit union incorporators.

2. *a.* A group comprised of at least seven residents of the state of Iowa may apply to the superintendent for permission to organize a state credit union.

b. A state credit union shall be organized by delivering to the superintendent articles of incorporation that state all of the following:

(1) The name and location of the proposed state credit union.

(2) The names and addresses of the subscribers to the articles and the number of shares subscribed to by each.

(3) The share structure of the state credit union. A state credit union may have more than one class of shares. The par value of the shares of the state credit union shall be established by the board of directors.

3. The applicants shall prepare and adopt bylaws for the general governance of the state credit union consistent with the provisions of this chapter.

4. The articles and the bylaws, both executed in duplicate, shall be forwarded with a fee of ten dollars to the superintendent.

5. *a.* The superintendent shall determine whether the articles and bylaws conform to the provisions of this chapter within thirty days of receipt.

b. The superintendent shall notify the applicants of the determination after review of the articles and bylaws.

c. If the decision is favorable, the superintendent shall issue a certificate of approval, which shall be attached to the duplicate articles of incorporation and returned, together with the duplicate bylaws, to the applicants.

d. Articles and bylaws approved by the superintendent shall be binding upon the applicants and the board of directors of a state credit union. If the board of directors does not follow the articles of incorporation and bylaws, the members of the state credit union may pursue a derivative action in Iowa district court.

6. *a.* The applicants shall file the duplicate of the articles of incorporation and the attached certificate of approval with the county recorder of the county within which the state credit union is to have its principal place of business.

b. The county recorder shall record and index the duplicate of the articles of incorporation and the attached certificate of approval and return the articles of incorporation and the certificate of approval, with the recorder's certificate of record attached, to the superintendent for permanent record.

7. Articles of incorporation or bylaws may be amended by any of the following methods, upon a favorable vote of a majority of the board of directors selecting the method of voting:

a. The favorable vote of a majority of the members present at a meeting, if that number constitutes a quorum and if the proposed amendment was contained in the notice of the meeting.

b. The favorable vote of a majority of the members of the board.

c. By a majority vote of members voting by mailed or electronic ballot, ensuring votes remain confidential and secret from all interested parties, and that each member is only allowed to vote once, according to procedures specified by rule of the superintendent or as specified in the bylaws.

d. A combination of procedures as specified in paragraphs "*a*" and "*c*", according to procedures specified by rule of the superintendent or as specified in the bylaws.

8. If the proposed amendment receives a favorable majority of the total votes cast under the method of voting selected under subsection 7, the articles of incorporation or bylaws are amended as proposed. Notice shall be given to members of the results of the vote. Ballots of members shall be preserved for at least sixty days after the results are tallied and notice given to members, and until any challenge is resolved.

9. An amendment to the articles of incorporation or bylaws must be approved by the superintendent before the amendment becomes effective.

10. The original articles or amended articles may contain a provision eliminating or limiting the personal liability of a director, officer, or employee of the state credit union or its shareholders for monetary damages for breach of fiduciary duty as a director, officer, or employee, provided that the provision does not eliminate or limit the liability of a director, officer, or employee for any breach of the director's, officer's, or employee's duty of loyalty to the state credit union or its shareholders, for acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law, or for any transaction from which the director, officer, or employee derives an improper personal benefit. However, a provision shall not eliminate or limit the liability of a director, officer, employee, or shareholder for any act or omission occurring prior to the date when the provision in the articles of incorporation becomes effective.

2007 Acts, ch 174, §18; 2012 Acts, ch 1020, §4

Referred to in §533.102

533.201A Change in place of business.

1. A state credit union shall notify the superintendent of any change in its principal place of business within ten days of the change. A state credit union shall also file an application to relocate an office as provided by rule.

2. A state credit union changing its principal place of business shall review and amend its articles of incorporation, if necessary.

2016 Acts, ch 1030, §5

533.202 Common bond — membership — ownership share.

1. *a.* State credit union organization shall be available to groups of individuals who have a common bond of association such as, but not limited to, occupation, common employer, or residence within specified geographic boundaries.

b. Changes in the common bond may be made by the board of directors.

2. *a.* The membership of a state credit union consists of those persons in the common bond who have subscribed to one ownership share and have complied with the other requirements specified by the articles of incorporation and bylaws.

b. Organizations, incorporated or otherwise, may be members.

c. Unless the state credit union's bylaws state otherwise, once a person or organization becomes a member of a state credit union in accordance with this chapter, the person or organization may remain a member of that state credit union, and retain all membership privileges, until the person or organization chooses to withdraw from the membership of the state credit union, or is expelled pursuant to section 533.210.

2007 Acts, ch 174, §19

533.203 Fiscal year — membership meetings — voting by membership — notice.

1. The fiscal year of all state credit unions shall end December 31.

2. Annual meetings shall be held, and special meetings may be held, in the manner indicated in the bylaws.

a. A member shall have one vote regardless of the number of or class of shares held by the member.

b. There shall be no voting by proxy.

c. A member other than a natural person may cast a single vote through a delegated agent.

3. *a.* When a vote of the membership is required under the provisions of this chapter, the board of directors, by a favorable vote of the majority of the board, shall select one of the following methods for conducting that vote, unless a procedure for that vote is otherwise specified:

(1) The favorable vote of a majority of the members present at a meeting, if that number constitutes a quorum and if the proposed vote was contained in the notice of the meeting.

(2) By a majority vote of members voting by mailed or electronic ballot according to procedures specified by rule of the superintendent or as specified in the bylaws.

(3) A combination of procedures as specified in subparagraphs (1) and (2), according to procedures specified by rule of the superintendent or as specified in the bylaws.

b. Notice shall be given to members of the results of the vote. Ballots of members shall be preserved for at least sixty days after the results are tallied and notice given to members, and until any challenge is resolved.

4. Votes of the membership conducted in accordance with this chapter shall ensure that votes remain confidential and secret from all interested parties, and that each member is only allowed to vote once.

5. When notice to members is required under the provisions of this chapter, the board of directors may satisfy the notice requirement by sending the notice electronically to those members who have exercised an option to receive notices electronically.

6. Credit unions may send account statements and other communications electronically to those members who have exercised an option to receive communications electronically.

2007 Acts, ch 174, §20; 2012 Acts, ch 1020, §5

Referred to in §533.203A, 533.204, 533.208, 533.213, 533.401, 533.403, 533.405

533.203A Vote to modify, amend, or reverse act of board of directors — instruction to take action.

1. The majority of members present at any meeting may vote to modify, amend, or reverse any act of the board of directors or instruct the board to take action not inconsistent with the articles, bylaws, or this chapter.

2. In order to be binding upon the board of directors, any action taken by the membership to modify, amend, or reverse an act of the board, or to instruct the board to take action, requires an affirmative vote of a majority of all eligible members obtained by submitting the

modification, amendment, reversal, or instruction to the members for a vote, pursuant to the provisions of section 533.203.

2012 Acts, ch 1020, §6

533.204 Election of board.

1. At the organizational meeting, and at each annual meeting after initial organization, a board of directors shall be elected to hold office. The board shall consist of at least seven members, but in every instance shall be composed of an odd number of directors. The directors shall serve staggered terms of three years, as the bylaws provide, so that an approximately equal number of terms expire at each annual meeting. A director shall serve until a successor is elected and qualified.

2. At each annual meeting, one member shall be elected to fill each position vacated by reason of an expiring term or other cause.

3. The board of directors shall allow members to vote on the election of directors according to the provisions of section 533.203.

4. A record of the names and addresses of the directors, officers, and committee persons shall be filed with the superintendent within ten days following each election or any other change in the directors, officers, or committee persons.

2007 Acts, ch 174, §21; 2011 Acts, ch 34, §123; 2012 Acts, ch 1020, §7

533.205 Board of directors — duties — penalties.

1. Within five days following the organizational meeting and each annual meeting, the directors shall elect the following officers from the membership of the board of directors:

a. A chairperson of the board.

b. A vice chairperson.

c. A secretary.

d. A financial officer whose title shall be designated by the board.

2. *a.* The board of directors shall appoint the following committees:

(1) A credit committee of not less than three members.

(2) An auditing committee of not less than three members.

b. The board may also appoint alternate members of the credit committee or the auditing committee.

c. Only a member of the board or a member of the state credit union may be appointed to the credit committee or to the auditing committee.

d. The board may appoint an executive committee to act on the board's behalf.

3. The duties and responsibilities of a director and of the board of directors shall include but are not limited to all of the following:

a. General management of the affairs of the state credit union.

b. Setting the amount of the surety bond that shall be required of all officers and employees handling money.

c. Attendance at no less than seventy-five percent of the regular board meetings held during the calendar year.

d. Periodic review of the original records of the state credit union, or comprehensive summaries prepared by the officers of the state credit union, pertaining to loans, security interests, and investments.

e. Review of the adequacy of the state credit union's internal controls.

f. Periodic review of utilization of security measures.

g. Establishing education and training programs to ensure that the director possesses adequate knowledge to manage the affairs of the state credit union.

4. *a.* Directors of a state credit union shall discharge the duties of their position in good faith and with that diligence, care, and skill which ordinarily prudent persons would exercise under similar circumstances in like positions.

b. The directors have a continuing responsibility to assure themselves that the state credit union is being managed according to law and that the practices and policies adopted by the board are being implemented.

5. *a.* The board of directors shall name or employ an individual who performs active executive or official duties for the state credit union as its chief executive officer.

b. The board shall fix the tenure and provide for the reasonable compensation of the chief executive officer.

c. The chief executive officer may be a member of the board of directors.

6. *a.* The chief executive officer or the chief executive officer's designee shall determine the compensation and tenure of employees of the state credit union.

b. An employee of the state credit union shall not be a member of the board of directors.

c. For purposes of this section, an "*employee of the state credit union*" means an individual employed by the state credit union other than the chief executive officer.

7. A state credit union may pay an overdraft of a director, officer, or employee of the state credit union on an account at the state credit union, subject to the rules of the superintendent, when the payment of funds is made in accordance with any of the following:

a. A written, preauthorized, interest-bearing extension of credit plan that specifies a method of repayment.

b. A written, preauthorized transfer of collected funds from another account of the account holder at the state credit union.

c. The overdraft is paid pursuant to an overdraft protection plan or courtesy pay program.

8. A credit union director shall not receive compensation for service as a director. However, a director may be reimbursed for reasonable expenses directly related to such service.

9. The superintendent may impose a penalty, after notice in writing and opportunity for a hearing, for a violation of this section. If a state credit union fails to satisfactorily resolve the matter within sixty days from receipt of such notice, the superintendent may impose a penalty against the state credit union in an amount not to exceed one hundred dollars per day per violation for each day that the violation remains unresolved.

2007 Acts, ch 174, §22; 2011 Acts, ch 34, §124; 2012 Acts, ch 1020, §8; 2013 Acts, ch 17, §2; 2016 Acts, ch 1030, §6; 2017 Acts, ch 138, §11

533.206 Meetings of the board.

Unless the bylaws provide otherwise, the board of directors may permit any and all directors to participate in all except one meeting per year of the board of directors through the use of any means of communication by which all directors participating in the meeting may simultaneously hear each other and communicate during the meeting. A director participating in a meeting by this means is deemed to be present at the meeting.

2007 Acts, ch 174, §23

533.207 Credit committee.

1. The credit committee shall have responsibility for the general supervision of all loans to members.

2. Applications for loans shall be on a form approved by the credit committee.

a. All applications shall set forth the purpose for which the loan is desired, the security, if any, offered, and such other data as may be required.

b. Within the meaning of this section, an assignment of shares or deposits or the endorsement of a note may be deemed security.

3. At least a majority of the members of the credit committee shall review and act on all loan applications and may grant approval, or the credit committee, with the prior approval of the board of directors, may grant one or more loan officers the power to approve or reject loans subject to written conditions and regulations adopted by the credit committee.

4. The credit committee shall meet as often as may be necessary after due notice to each committee member.

2007 Acts, ch 174, §24; 2011 Acts, ch 34, §125

533.208 Auditing committee.

The auditing committee shall perform the following functions:

1. Make or cause to be made an examination of the affairs of the state credit union at

least annually, including an audit of its financial records. If the auditing committee feels such action to be necessary, the auditing committee shall call the members together after the audit and submit to them its report.

2. Make or cause to be made an annual report and submit it at the annual meeting of the members.

3. Suspend by majority vote any officer, director, or member of the auditing committee if the auditing committee deems the action to be necessary to the proper conduct of the state credit union. The suspension shall be put to a vote of the membership, according to the provisions of section 533.203. The members may vote to sustain the suspension and remove the officer, director, or member permanently or may vote to reinstate the officer, director, or member.

4. Call a special meeting of state credit union members by majority vote to consider a matter to be submitted by the auditing committee.

2007 Acts, ch 174, §25; 2012 Acts, ch 1020, §9

533.209 Conflicts of interest.

1. A director, committee member, officer, or employee of a state credit union shall not directly or indirectly participate in either the deliberation upon or the determination of any matter in which the director, committee member, officer, or employee has a direct or indirect interest.

2. For the purposes of this section, an "*interest*" may include, but is not limited to, a pecuniary or familial interest.

2007 Acts, ch 174, §26

533.209A Prohibited relationships.

A director shall not be related by consanguinity or affinity within the third degree to any person employed by a state credit union in a senior management position. For purposes of this section, "*senior management position*" includes a state credit union's chief executive officer, president, or manager; assistant chief executive officer, assistant president, vice president, or assistant manager; or chief financial officer or treasurer.

2014 Acts, ch 1011, §1

533.210 Expulsion or withdrawal of credit union member.

1. The board of directors may expel any member of a state credit union who has failed to do either of the following:

a. Carry out the member's obligations to the state credit union.

b. Comply with the state credit union's bylaws or policies.

2. A member of a state credit union may be expelled by a majority vote of the board of directors at a regular or special meeting of the board.

a. An expelled member may request a hearing before the membership of the state credit union, which shall be held within sixty days of an expelled member's request.

b. At the hearing, the membership may reinstate the expelled member by majority vote, upon terms and conditions prescribed at the hearing.

3. Any member may withdraw from the state credit union at any time, but advance notice of withdrawal of shares or deposits may be required as provided in this section.

4. After deducting all amounts due from the member to the state credit union and the amount necessary to honor outstanding share drafts drawn against accounts of the member, all amounts paid on shares or as deposits of an expelled or withdrawn member, along with accrued dividends and interest to the date of expulsion or withdrawal, shall be paid to that member.

5. Upon expulsion or withdrawal of a member from a state credit union, or at any other time, the state credit union may require sixty days' notice of intention to withdraw shares and thirty days' notice of intention to withdraw deposits, except that a state credit union shall not at any time require notice of withdrawal with respect to funds that are subject to withdrawal by share drafts.

6. Expelled or withdrawn members shall have no further rights in the state credit union.

However, expelled or withdrawn members shall not be released from any remaining liability to the state credit union because of the expulsion or withdrawal.

2007 Acts, ch 174, §27; 2012 Acts, ch 1020, §10
Referred to in §533.202, 533.302

533.211 Suspension or restriction of services.

1. A state credit union may suspend or deny certain services to members who have done any of the following:

a. Caused a loss to the state credit union.

b. Violated the membership agreement or any policy adopted by the board.

c. Been physically or verbally abusive to state credit union members or staff.

2. Members with suspended services may maintain a share account and continue to vote at annual and special meetings.

2007 Acts, ch 174, §28

533.212 Use of name "credit union" requirements — restrictions — exceptions.

1. *a.* A state credit union organized in accordance with this chapter shall include the words "credit union" in its name.

b. All state credit union offices shall be identified by use of the state credit union's full name.

c. The full name of a state credit union shall be used in all legal documents of the state credit union.

2. *a.* A person other than a credit union shall not use a name or title containing the words "credit union", or any derivation, and shall not represent in advertising or otherwise that the person is conducting business as a credit union, except as provided in subsection 3.

b. A person who violates paragraph *"a"* may be enjoined from the use of words, advertising, or other representation prohibited by paragraph *"a"*.

3. The prohibitions contained in subsection 2 do not apply to any of the following entities:

a. A credit union organized under this chapter or the laws of another state.

b. A credit union organized under the Federal Credit Union Act, 12 U.S.C. §1751 et seq.

c. The Iowa credit union league, a chapter, affiliate, or subsidiary of the Iowa credit union league or a political action committee formed pursuant to the Federal Election Campaign Act, 2 U.S.C. §431 et seq., or chapter 68A by the Iowa credit union league or by credit unions organized under this chapter or federal law.

d. A joint service center operated by two or more credit unions where credit union services are made available to credit union members.

e. An organization formed for educational purposes in association with an accredited elementary or secondary school that engages in receipt of deposits of no more than twenty dollars per depositor and uses the words "educational credit union" in its name. An educational credit union must be affiliated with a state credit union organized under this chapter. Notwithstanding this recognition given to an educational credit union, an educational credit union is not a state credit union within the scope or regulation of this chapter.

2007 Acts, ch 174, §29
For future text of subsection 4, effective April 30, 2019, see 2018 Acts, ch 1172, §82, 86

533.213 Corporate central credit union.

1. A corporate central credit union may be established.

a. Credit unions organized under this chapter, the Federal Credit Union Act, 12 U.S.C. §1751 et seq., or any other credit union act and credit union organizations may be members.

b. Regulated financial institutions, nonprofit organizations, and cooperative organizations may also be members to the extent and manner provided for in the bylaws of the corporate central credit union.

2. A corporate central credit union shall not be required to transfer to its legal reserve more than five percent of its net income for the year.

3. A corporate central credit union shall have all the powers, restrictions, and obligations imposed upon or granted to a state credit union under this chapter, except that the corporate

central credit union may also exercise any of the following additional powers subject to the adoption of rules by the superintendent and with the prior written approval of the superintendent:

a. Borrow any amount from any source.

b. Invest in or purchase obligations or securities or other designated investments to the same extent authorized for other supervised financial institutions.

c. Invest in or acquire shares, stocks, or other obligations of an organization providing services that are associated with the operations of credit unions. However, the aggregate amount invested pursuant to this paragraph shall not exceed fifty percent of the total of all reserves and undivided earnings of the corporate central credit union.

d. Buy or sell investment securities and corporate bonds that are evidences of indebtedness. However, the purchase or sale is limited to marketable obligations of a corporation or state or federal agency issued without recourse.

e. Establish one or more capital accounts in the same manner as if it were a federal credit union.

f. Sell all or part of its assets to another corporate central credit union and assume the liabilities of a selling corporate central credit union if the action is pursuant to a plan agreed upon by a majority of the board of directors and, in the case of the sale of all of its assets, the affirmative vote of a majority of its members according to the provisions of section 533.203.

g. Invest in the shares or deposits of another similarly organized corporate central credit union, or central liquidity facility.

h. Make other investments approved by the superintendent.

2007 Acts, ch 174, §30; 2012 Acts, ch 1020, §11; 2013 Acts, ch 90, §163
Referred to in §12C.16, 12C.17

533.214 Central credit unions.

Credit unions known as central credit unions may exist for the purpose of serving directors, officers, and employees of credit unions, members of dissolved and existing credit unions, credit unions, employee groups as described in section 533.301, subsection 13, and such other persons as the superintendent approves.

2007 Acts, ch 174, §31; 2008 Acts, ch 1031, §57

533.215 through 533.300 Reserved.

SUBCHAPTER III

CREDIT UNION OPERATIONS

533.301 Powers.

A state credit union shall have the power to do all of the following:

1. Receive payments for ownership shares, for other shares, or as deposits from any or all of the following:

a. Members of the state credit union.

b. Nonmembers as prescribed by rule where the state credit union is serving predominantly low-income members. Rules adopted allowing nonmember deposits in state credit unions serving predominantly low-income members shall be designed solely to meet the needs of the low-income members.

c. Other credit unions.

d. Federal, state, county, and city governments.

2. Make loans or leases to members.

3. Make loans to a cooperative society or other organization having membership in the state credit union.

4. Make deposits in state and national banks, federal savings banks or savings and loan associations, and state and federal credit unions, the accounts of which are insured by the federal deposit insurance corporation or the national credit union share insurance fund.

5. Make investments in any or all of the following:

a. Time deposits in state and national banks, federal savings banks or savings and loan associations, and state and federal credit unions, the deposits of which are insured by the federal deposit insurance corporation or the national credit union share insurance fund.

b. Obligations, participations, or other instruments of or issued by, or fully guaranteed as to principal and interest by the United States government or any agency of the United States government, or any trust or trusts established for investing directly or collectively in the United States government or any agency of the United States government.

c. General obligations of this state and any subdivision of this state.

d. Purchase of notes of liquidating credit unions with the approval of the superintendent.

e. Shares and deposits in other credit unions.

f. Shares, stocks, loans, and other obligations or a combination of shares, stocks, loans, and other obligations of a credit union service organization, corporation, or association, provided the membership or ownership, as the case may be, of the credit union service organization, corporation, or association is primarily confined or restricted to credit unions or organizations of credit unions, and provided that the purpose of the credit union service organization, corporation, or association is primarily designed to provide services to credit unions, organizations of credit unions, or credit union members. However, the aggregate amount invested pursuant to this paragraph shall not exceed five percent of the assets of the credit union.

g. Obligations issued by federal land banks, federal intermediate credit banks, banks for cooperatives, or any of the federal farm credit banks.

h. Commercial paper issued by United States corporations as defined by rule.

i. Corporate bonds as defined by and subject to terms and conditions imposed by the superintendent, provided that the superintendent shall not approve investment in corporate bonds unless the bonds are investment grade. For purposes of this paragraph, *"investment grade"* means the issuer of a security has an adequate capacity to meet the financial commitments under the security for the projected life of the asset or exposure, even under adverse economic conditions. An issuer has an adequate capacity to meet the financial commitments if the risk of default by the obligor is low and the full and timely repayment of principal and interest on the security is expected. A state credit union may consider any or all of the following nonexhaustive or nonmutually exclusive factors, to the extent appropriate, with respect to the credit risk of a security:

(1) Credit spreads.
(2) Securities-related research.
(3) Internal or external credit risk assessments.
(4) Default statistics.
(5) Inclusion on an index.
(6) Priorities and enhancements.
(7) Price, yield, or volume.
(8) Asset class-specific factors.

j. Any permissible investment for federal credit unions, provided that this paragraph shall not permit a credit union to invest in a credit union service organization except as provided in paragraph *"f"*.

6. Borrow money as provided in this chapter.

7. Assess penalties as may be provided by the bylaws.

8. Sue and be sued.

9. Make contracts.

10. Purchase, hold, and dispose of property necessary and incidental to its operation, except that any property acquired through foreclosure shall be disposed of within a period not to exceed ten years.

11. Exercise such incidental powers as may be necessary or requisite to enable the state credit union to carry on the business effectively for which it is incorporated.

12. Apply for share account and deposit account insurance that meets the requirements of this chapter, and take all actions necessary to maintain an insured status.

13. Serve a group of persons having an insufficient number of members to form or conduct

the affairs of a separate credit union, upon the approval of the superintendent. The existence of a common bond relationship between the group and the credit union affecting that service shall not be required.

14. Deposit with a credit union that has been in existence for not more than a year, an amount not to exceed twenty-five percent of the assets of the new credit union, but only one credit union may, at any time, make such a deposit.

15. Acquire the conditional sales contracts, promissory notes, or other similar instruments executed by its members, but the rate of interest existing on the instruments shall not exceed the highest rate charged by the acquiring credit union on its outstanding loans.

16. *a.* Sell, participate in, or discount the obligations of its members with or without recourse.

b. Purchase the obligations of credit union members, provided the obligations meet the requirements of this chapter.

17. Acquire and hold shares in a corporation engaged in providing and operating facilities through which a credit union and its members may engage, by means of either the direct transmission of electronic impulses to and from the credit union or the recording of electronic impulses or other indicia of a transaction for delayed transmission to the credit union, in transactions in which such credit union is otherwise permitted to engage pursuant to applicable law, subject to the prior approval of the superintendent.

18. Engage in any transaction otherwise permitted by this chapter and applicable law, by means of either the direct transmission of electronic impulses to or from the state credit union or the recording of electronic impulses or other indicia of a transaction for delayed transmission to the state credit union.

a. Subject to the provisions of chapter 527, a state credit union may utilize, establish, or operate, alone or with one or more other credit unions, banks incorporated under chapter 524 or federal law, savings and loan associations incorporated under federal law, corporations licensed under chapter 536A, or third parties, the satellite terminals permitted under chapter 527, by means of which the state credit union may transmit to or receive from any member electronic impulses constituting transactions pursuant to this subsection. However, such utilization, establishment, or operation shall be lawful only when in compliance with chapter 527.

b. This subsection shall not be construed as authority for any person to engage in transactions not otherwise permitted by applicable law, and shall not be deemed to repeal, replace, or in any other way affect any applicable law or rule regarding the maintenance of or access to financial information maintained by any credit union.

19. Establish one or more state credit union offices other than its main office.

a. A state credit union may furnish at any of its offices all credit union services ordinarily furnished to the membership at its principal place of business.

b. The central executive and official business and recordkeeping functions of a state credit union shall be exercised at its principal place of business or at another state credit union office or a location authorized by the superintendent for these functions.

c. A state credit union shall file an informational statement in the form prescribed by the superintendent prior to opening a state credit union office.

d. A state credit union office shall not be opened without a certificate to establish a state credit union office issued by the superintendent.

e. The establishment of a state credit union office must be reasonably necessary for service to, and in the best interests of, the members of the state credit union, and shall not endanger the safety and soundness of the state credit union opening the office.

f. A state credit union may join with one or more credit unions in the operation of an office facility to meet the service needs of its members.

20. Contract with another credit union to furnish services which either could otherwise legally perform. Contracted services provided under this subsection are subject to regulation and examination like other services.

21. Purchase insurance or make the purchase of insurance available for members.

22. Charge fees and penalties and apply them to income.

23. *a.* (1) Act as agent of the federal government when requested by the secretary of the United States department of treasury.

(2) Perform such services as may be required in connection with the collection of taxes and other obligations due the United States and the lending, borrowing, and repayment of moneys by the United States.

(3) Act as a depository of public money when designated for that purpose.

b. (1) Act as agent of this state when requested by the treasurer of state.

(2) Perform such services as may be required in connection with the collection of taxes and other obligations due this state and the lending, borrowing, and repayment of moneys by this state.

(3) Act as a depository of public moneys when designated for that purpose.

24. Receive public funds pursuant to chapter 12C and pledge its assets to secure the deposit of public funds.

25. Engage in any activity authorized by the superintendent which would be permitted if the state credit union were federally chartered and which is consistent with state law.

26. To promote the public welfare, make donations for religious, charitable, scientific, educational, or community betterment purposes.

27. Set off a member's accounts against any of the member's debts or liabilities owed the state credit union pursuant to an agreement entered into between the member and the state credit union. The state credit union shall also have a lien on the shares and deposits of a member for any sum due to the state credit union from the member or for any loan endorsed by the member.

28. Sell, to persons in the field of membership, negotiable checks, including traveler's checks; money orders; and other similar money transfer instruments including international and domestic electronic fund transfers and remittance transfers.

29. Cash checks and money orders, and send and receive international and domestic electronic fund transfers and remittance transfers, for persons in the field of membership.

2007 Acts, ch 118, §1, 3; 2007 Acts, ch 174, §32; 2011 Acts, ch 25, §64; 2012 Acts, ch 1017, §126 – 128; 2013 Acts, ch 17, §3; 2014 Acts, ch 1011, §2 – 4, 7; 2015 Acts, ch 30, §170

Referred to in §533.102, 533.114, 533.214, 533.303, 533.406

533.302 Capital.

1. The capital of a credit union shall consist of the payments that have been made to it by the several members thereof on shares. A credit union may charge an entrance fee as may be provided by the bylaws.

2. A credit union may establish an equity share having a par value not to exceed one hundred dollars which shall be a part of the capital of the credit union and shall not be withdrawn or transferred except upon expulsion or withdrawal from membership in the credit union, as provided in section 533.210.

3. At the option of the credit union, the equity share may earn a dividend and may be insured.

2007 Acts, ch 174, §33; 2012 Acts, ch 1020, §12

Referred to in §533.307

533.303 Reserves.

1. At the end of each dividend period, but no less than quarterly, the gross income of the state credit union shall be determined.

2. A legal reserve against losses on loans and against such other losses as may be specified by rule shall be set aside from the gross income in accordance with the following schedule:

a. A state credit union in operation for more than four years and having assets of five hundred thousand dollars or more shall set aside the following amounts in the following order:

(1) Ten percent of the gross income until the legal reserve equals four percent of the total outstanding loans and risk assets.

(2) Five percent of the gross income until the legal reserve equals six percent of the total outstanding loans and risk assets.

b. A state credit union in operation for less than four years or having assets of less than five hundred thousand dollars shall set aside the following amounts in the order set forth:

(1) Ten percent of the gross income until the legal reserve equals seven and one-half percent of the total outstanding loans and risk assets.

(2) Five percent of the gross income until the legal reserve equals ten percent of the total outstanding loans and risk assets.

3. *a.* If the legal reserve falls below the percent of the total outstanding loans and risk assets required for a state credit union by this section, the state credit union shall replenish the legal reserve by regular contributions in the amounts needed to reach the required reserve. However, the superintendent may waive the reserve requirement when in the superintendent's opinion the waiver is necessary or desirable.

b. The legal reserve shall belong to the state credit union and shall be used to meet losses.

c. The reserve shall not be distributed to members as interest or dividends except on liquidation of the state credit union or in accordance with a plan approved by the superintendent.

4. The superintendent may require a state credit union to set aside additional amounts as a special reserve if an examination of assets discloses that the legal reserve of the state credit union is inadequate.

5. A state credit union shall maintain an adequate allowance for loan and lease losses account and such other valuation allowance accounts as may be necessary to provide for the full and fair disclosure, in the state credit union's financial statements, of the assets, liabilities, and equity of the state credit union.

6. For the purpose of establishing legal reserves, the following shall not be considered risk assets:

a. Cash on hand.

b. Deposits and shares in federally insured banks, savings banks, and credit unions.

c. Assets which are insured by, fully guaranteed as to principal and interest by, or due from the United States government, its agencies, and instrumentalities.

d. Loans to other credit unions.

e. Student loans insured under the provisions of 20 U.S.C. §1071 – 1087 or similar state programs.

f. Loans insured by the federal housing administration under 12 U.S.C. §1703.

g. Loans fully insured or guaranteed by the federal government, a state government, or any agency of either.

h. Common trust investments which deal in investments authorized in section 533.301.

i. Prepaid expenses.

j. Accrued interest on nonrisk investments.

k. Furniture and equipment.

l. Land and buildings.

m. Loans fully secured by a pledge of shares within the state credit union.

n. Deposits in the national credit union share insurance fund.

o. Real estate loans in transit to the secondary market as specified by rule.

7. Notwithstanding any other provision of this section, a state credit union shall maintain a sufficient amount of net worth as required by the state credit union's deposit insurer and rules of the superintendent.

2007 Acts, ch 174, §34
Referred to in §533.312, 533.329

533.304 Investment in certain shares or equity interests.

1. For purposes of this section, unless the context otherwise requires:

a. *"Equity interests"* means limited partnership interests and other equity investments in which liability is limited to the amount of the investment, but does not mean general partnership interests or other interests involving general liability.

b. *"Small business"* means a corporation, partnership, proprietorship, or other entity formed under the laws of the United States, or a state, district, or territory of the United States, that meets the appropriate United States small business administration definition

of small business and that is principally engaged in the development or exploitation of inventions, technological improvements, new processes, or other products not previously generally available in this state, or other investments which provide an economic benefit to this state.

c. *"Venture capital fund"* means a corporation, partnership, proprietorship, or other entity formed under the laws of the United States, or a state, district, or territory of the United States, whose principal business is or will be the making of investments in and the provision of significant managerial assistance to small businesses that meet the United States small business administration definition of small business.

2. A state credit union may invest in either of the following to the extent that the total investments under this section shall not be more than five percent of the state credit union's assets:

a. Shares or equity interests in venture capital funds that agree to invest an amount equal to at least fifty percent of the state credit union's investment in small businesses having their principal offices within this state and having either more than one-half of their assets within this state or more than one-half of their employees employed within this state.

b. Shares or equity interests in small businesses having their principal offices within this state and having either more than one-half of their assets within this state or more than one-half of their employees employed within this state. A state credit union shall not invest in more than twenty percent of the total capital and surplus of any one small business under this paragraph.

2007 Acts, ch 174, §35

533.305 Investment in banks or savings banks — required findings.

1. *Investment in banks.* A state credit union may, with the prior approval of the superintendent, invest in the capital stock, obligations, or other securities of a bank.

2. *Investment in savings banks.* A state credit union may, with the prior approval of the superintendent, invest in the capital stock, obligations, or other securities of a savings bank.

3. *Findings required.* The superintendent shall not grant an approval under subsection 1 or 2, unless the superintendent makes one of the following findings:

a. Based upon a preponderance of the evidence presented, the proposed investment will not have the immediate effect of significantly reducing competition between depository financial institutions located in the same community as the institution whose shares would be acquired.

b. Based upon a preponderance of the evidence presented, the proposed investment would have an anticompetitive effect as described in paragraph *"a"*, but other factors, specifically cited, outweigh the anticompetitive effect so that there would be a net public benefit as a result of the investment.

4. *Competition preserved.*

a. The subsequent liquidation of a bank or savings bank whose shares are acquired under this section shall not prevent the subsequent incorporation of another bank or savings bank in the same community.

b. The superintendent of banking shall not find the liquidation of a bank whose shares are acquired under this section to be grounds for disapproving the incorporation of another bank in the same community under section 524.305.

2007 Acts, ch 174, §36; 2012 Acts, ch 1017, §129

533.306 Power to borrow.

A state credit union may borrow from any source in total a sum that shall not exceed fifty percent of the sum of its share and deposit account balances.

2007 Acts, ch 174, §37

533.307 Account insurance.

Except as provided in section 533.302, subsection 3, a credit union organized under this chapter, as a condition of maintaining its privilege of organization, shall acquire and maintain insurance to protect each shareholder and each depositor against loss of funds

held on account by the credit union. The insurance shall be obtained from the national credit union administrator or from some other share guarantor or insurance plan approved by the Iowa commissioner of insurance and the superintendent, provided that each credit union shall acquire deposit insurance from the appropriate agency of the federal government.

2007 Acts, ch 174, §38; 2012 Acts, ch 1020, §13
Referred to in §533.102

533.308 Fidelity bond and general insurance coverage.

1. A state credit union shall maintain a fidelity bond for state credit union employees and officials in a sufficient amount to indemnify the state credit union against losses that may be incurred by reason of any act or acts of fraud, dishonesty, forgery, theft, larceny, embezzlement, wrongful abstraction, misapplication, misappropriation, or other unlawful act committed by the employee or official directly or through connivance with others, and general insurance coverage for losses caused by persons not associated with the state credit union.

a. The fidelity bond and general insurance coverage shall be obtained from a company authorized to do business in this state.

b. The superintendent may require additional coverage for a state credit union if, in the opinion of the superintendent, current coverage is insufficient. The board of directors of the state credit union shall obtain the additional coverage within thirty days after written notice from the superintendent.

2. The superintendent may furnish to any official of an insurance plan by which the accounts of a state credit union are insured or by which its employees and officials are bonded, any information relating to examinations, investigations, and reports of the status of that state credit union or its employees and officials for the purpose of facilitating the availability or continuation of the insurance or bond of the state credit union or resolution of a claim. The superintendent and the insurance company shall, whenever possible, execute a confidentiality agreement regarding the information provided by the superintendent that imposes standards of confidentiality comparable to those required by this chapter.

3. A state credit union may furnish to any official of an insurance plan by which the accounts of the state credit union are insured or by which its employees and officials are bonded, any information regarding transactions of the state credit union, examinations, investigations, or reports of the status of the state credit union or its employees and officials for the purpose of facilitating the availability or continuation of the insurance or bond of the state credit union or resolution of a claim. The state credit union and the insurance company shall, whenever possible, execute a confidentiality agreement regarding the information provided by the state credit union that imposes standards of confidentiality comparable to those required by this chapter.

2007 Acts, ch 174, §39; 2012 Acts, ch 1020, §14, 15
Referred to in §533.108, 533.325

533.309 Share accounts.

A state credit union may have share accounts including but not limited to the following types:

1. *Ownership share account.* The ownership share account shall consist of an account balance held by the state credit union in accordance with the state credit union's bylaws. Each member may acquire only one ownership share. In the case of a joint account, the joint account owners may acquire only one ownership share unless each joint account owner applies for and is accepted as an individual member.

2. *Joint accounts.* A member may designate any person or persons to hold shares, deposits, and thrift club accounts with the member in joint tenancy with the right of survivorship, but such joint tenants shall not be permitted to cast more than one vote per ownership share jointly held in the state credit union. However, a joint tenant may have other rights of a jointly held ownership share, including the ability to obtain loans, or hold office or be required to pay an entrance fee. Payment of part or all of such joint accounts to any of the joint tenants shall, to the extent of such payment, discharge the liability to all.

3. *Account for minors.* Shares may be issued and deposits accepted in the name of a minor. Such shares and deposits may be withdrawn by the minor and payments made on such withdrawals shall be valid. A minor under sixteen years of age shall not be entitled to vote in the meetings of the members either personally or through the minor's parent or guardian, and a minor shall not become a director until the minor reaches the minor's eighteenth birthday.

4. *Beneficiary account.* If a member makes a deposit for the benefit of a person other than the depositor, the name and residence address of the beneficiary shall be disclosed and the account shall be kept in the name of the depositor, for the benefit of the beneficiary. The account balance may be withdrawn by the depositor or, upon the death of the depositor, by the beneficiary or the beneficiary's legal representative.

2007 Acts, ch 174, §40; 2012 Acts, ch 1020, §16

533.310 Deposits in the names of two or more individuals.

When a deposit is made in a state credit union in the names of two or more individuals that is payable to any one or more of them or is payable to the survivor or survivors, the deposit, including interest, or any part, may be paid to any one or more of the individuals, whether or not the others are living. The receipt or a quittance of the individuals who are paid is a valid and sufficient release and discharge of the state credit union for any payment made pursuant to this section.

2007 Acts, ch 174, §41

533.311 Acceptance of deposits and investments while insolvent.

When a state credit union is insolvent, the state credit union shall not do either of the following:

1. Accept any deposits or investments in ownership shares.
2. Renew or extend the term of any time deposits or time investments.

2007 Acts, ch 174, §42

533.312 Dividends and interest.

1. The board of directors may declare dividends at such rates and upon such classes of shares as are determined by the board, at such intervals and for such periods as the board may authorize, and after provision for required reserves pursuant to section 533.303.

2. Dividends shall be considered a normal operating expense of the state credit union and shall be paid on all paid-up shares outstanding at the close of the period for which the dividend is declared and shall be available only from undivided earnings.

3. The superintendent may restrict or prohibit the payment of a dividend or interest when an impairment of capital exists.

2007 Acts, ch 174, §43

533.313 Share drafts.

1. A state credit union may provide its members with share draft accounts.

a. *"Share draft"* means a negotiable draft which is payable upon demand and is used to withdraw funds from a share draft account.

b. A share draft is an item for purposes of chapter 554, article 4.

c. The term does not include a draft issued by a state credit union for the transfer of funds between the issuing credit union and another credit union, a bank, a savings and loan association chartered under federal law, or another depository financial institution.

2. A share draft account is an account that is a demand account from which a state credit union has agreed that funds may be withdrawn by means of a share draft. A share draft account may bear interest or dividends as determined by the board of directors, provided that the state credit union shall not pay interest or dividends on a share draft account at a rate that exceeds the maximum interest rate which a regulated financial institution is able to pay on comparable instruments as allowed by the depository institutions deregulatory committee.

3. A state credit union may guarantee payment for a share draft if both the following conditions are met:

a. A specific guarantee authorization is obtained for the share draft from the state credit union.

b. The guarantee authorization is immediately noted on the share draft account to prevent the withdrawal of funds needed to pay the guaranteed share draft.

4. A state credit union may charge fees and penalties on share drafts and apply fees and penalties to the state credit union's income in relation to share draft services.

5. The superintendent may adopt rules relating to share draft programs as necessary to administer this chapter.

2007 Acts, ch 174, §44; 2012 Acts, ch 1017, §130

533.314 Payment of share drafts during dissolution.

Other provisions of section 533.404 notwithstanding, when a state credit union is dissolved, first priority of payment shall be given to unpaid share drafts. However, a share draft shall not be paid if any of the following conditions exist:

1. The share draft was issued on or after the date of dissolution, or on or after the date the state credit union is required by section 533.405, subsection 2, to cease doing business in the event of a voluntary dissolution.

2. The share draft is written against an account that does not contain sufficient funds with which to pay the share draft.

3. The share draft is payable to a member of the state credit union, or to a member of the family of the issuer of the share draft, or to a business in which the issuer of the share draft has an interest. However, the exception contained in this subsection does not apply to any person referred to in this subsection if the person is a holder in due course, as provided in chapter 554, article 3.

2007 Acts, ch 174, §45

533.315 Loans.

1. *General lending power.* A state credit union may loan to a member for a provident or productive purpose.

a. Loans are subject to the conditions contained in this section and in the bylaws.

b. A loan may be repaid by the borrower, in whole or in part, any day the office of the state credit union is open for business.

c. A loan shall be made pursuant to an application with supportive credit information.

d. The superintendent may adopt rules requiring periodic updating of credit or financial information for all loans or for classes of loans designated in the rules.

2. *Aggregate lending to one member.* A state credit union shall not lend in the aggregate to a member more than ten percent of its member savings.

3. *Lending to a credit union director.* A director of a state credit union may borrow from that state credit union under the provisions of this chapter, but the rates, terms, and conditions of a loan or line of credit either made to or endorsed or guaranteed by the director shall not be more favorable than the rates, terms, or conditions of comparable existing loans or lines of credit provided to other members. The aggregate amount of all director loans and lines of credit shall not exceed twenty-five percent of the assets of the state credit union.

4. *Loans on real property.*

a. A state credit union may make permanent loans, construction loans, combined construction and permanent loans, or second mortgage loans secured by liens on real property, as authorized by rules adopted by the superintendent. The rules shall contain provisions as necessary to ensure the safety and soundness of these loans, and to ensure full and fair disclosure to borrowers of the effects of provisions in agreements for these loans, including provisions permitting change or adjustment of any terms of a loan, provisions permitting, requiring, or prohibiting repayment of a loan on a basis other than of equal periodic installments of interest plus principal over a fixed term, provisions imposing penalties for a borrower's noncompliance with requirements of a loan agreement, or provisions allowing or requiring a borrower to choose from alternative courses of action at any time during the effectiveness of a loan agreement.

b. (1) A state credit union may include in the loan documents signed by the borrower

a provision requiring the borrower to pay the state credit union each month in addition to interest and principal under the note an amount equal to one-twelfth of the estimated annual real estate taxes, special assessments, hazard insurance premium, mortgage insurance premium, or any other payment agreed to by the borrower and the state credit union in order to better secure the loan. The state credit union shall be deemed to be acting in a fiduciary capacity with respect to these funds.

(2) A state credit union receiving funds in escrow pursuant to an escrow agreement executed on or after July 1, 1982, in connection with a loan as defined in section 535.8, subsection 1, shall pay interest to the borrower on those funds, calculated on a daily basis, at the rate the state credit union pays to its members on ordinary savings deposits.

(3) A state credit union that maintains an escrow account in connection with any loan authorized by this subsection, whether or not the mortgage has been assigned to a third person, shall each year deliver to the mortgagor a written annual accounting of all transactions made with respect to the loan and escrow account.

c. A state credit union that obtains a report or opinion by an attorney or from another mortgage lender relating to defects in or liens or encumbrances on the title to real property, the unmarketability of the title to real property, or the invalidity or unenforceability of liens or encumbrances on real property, shall provide a copy of the report or opinion to the mortgagor and the mortgagor's attorney.

5. *Escrow reports.* A state credit union may act as an escrow agent with respect to real property that is mortgaged to the state credit union, and may receive funds and make disbursements from escrowed funds in that capacity. The state credit union shall be deemed to be acting in a fiduciary capacity with respect to escrowed funds. A state credit union that maintains an escrow account, whether or not a mortgage has been assigned to a third person, shall deliver to the mortgagor a written summary of all transactions made with respect to the loan and escrow accounts during each calendar year. However, the mortgagor and mortgagee may, by mutual agreement, select a fiscal year reporting period other than the calendar year. The summary shall be delivered or mailed not later than thirty days following the year to which the disclosure relates. The summary shall contain all of the following information:

a. The name and address of the mortgagee.

b. The name and address of the mortgagor.

c. A summary of escrow account activity during the year as follows:

(1) The balance of the escrow account at the beginning of the year.

(2) The aggregate amount of deposits to the escrow account during the year.

(3) The aggregate amount of withdrawals from the escrow account for each of the following categories:

(a) Payments against loan principal.

(b) Payments against interest.

(c) Payments against real estate taxes.

(d) Payments for real property insurance premiums.

(e) All other withdrawals.

(4) The balance of the escrow account at the end of the year.

d. A summary of loan principal for the year as follows:

(1) The amount of principal outstanding at the beginning of the year.

(2) The aggregate amount of payments against principal during the year.

(3) The amount of principal outstanding at the end of the year.

6. *Other loans.* Loans that are not secured by real property shall be subject to the following conditions:

a. Loans to any one member that in the aggregate exceed the unsecured loan limit established by the board of directors of a state credit union shall be secured by one or more cosigners or guarantors, or by a first lien on collateral having a value that is approximately equal to the amount in excess of such unsecured loan limit. Every cosigner or guarantor shall furnish the state credit union with evidence of financial responsibility.

b. This subsection shall not be deemed to preclude a credit committee or loan officer from requiring security for any loan.

c. A state credit union may make loans according to any or all of the following:

(1) Loans insured under the provisions of 20 U.S.C. §1071 – 1087 or similar state programs.

(2) Loans insured by the federal housing administration under 12 U.S.C. §1703.

(3) Loans to families of low or moderate income as a part of programs authorized in chapter 16.

d. The restrictions and limitations contained in this subsection do not apply to loans made to a member credit union by a corporate central credit union.

7. *Loan renewals and extensions.* This section shall not prevent the renewal or extension of loans.

8. *Penalties.* The superintendent may impose a penalty on a state credit union for each loan made in violation of this section. If a state credit union, after notice in writing, and opportunity for hearing, fails to satisfactorily resolve the matter within sixty days from receipt of such notice, the superintendent may impose a penalty against such state credit union in an amount not to exceed one hundred dollars per day per violation for each day the violation remains unresolved.

9. *Consumer credit code.*

a. The provisions of the Iowa consumer credit code, chapter 537, shall apply to consumer loans made by a state credit union, and a provision of that chapter shall supersede any conflicting provision of this chapter with respect to a consumer loan.

b. Notwithstanding paragraph *"a"*, a state credit union may offer voluntary debt cancellation coverage, whether insurance or debt waiver, to members. The amount charged for the coverage shall be included in the amount financed, as defined in section 537.1301. However, the charge for such coverage may be excluded from the finance charge under the federal Truth in Lending Act as defined in section 537.1302.

10. *Early loan repayment.* If a member elects to repay a loan secured by a mortgage or deed of trust upon real property that is a single-family or a two-family dwelling or agricultural land at a date earlier than is required by the terms of the loan, the state credit union shall be governed by section 535.9.

11. *Interest on prepayment.* Real estate loans on one-family to four-family dwellings may be repaid in part or in full at any time, except that a state credit union may charge not to exceed six months' advance interest on that part of the aggregate amount of all prepayments made on such loan in any twelve-month period which exceeds twenty percent of the original principal amount of the loan; and may charge any negotiated rate on other loans. This subsection, however, does not authorize a state credit union to charge any advance interest or prepayment penalty where prohibited by section 535.9.

2007 Acts, ch 174, §46; 2011 Acts, ch 34, §126

Referred to in §535B.11

533.316 Interest rates.

1. *a.* Interest rates on loans made by a state credit union, other than loans secured by a mortgage or deed of trust which is a first lien upon real property, shall not exceed the finance charge permitted in sections 537.2401 and 537.2402 on consumer loans.

b. Interest rates on business loans shall not exceed the finance charge permitted by section 535.2.

2. With respect to a loan secured by a mortgage or deed of trust which is a first lien upon real property, a state credit union shall not charge a rate of interest that exceeds the maximum rate permitted by section 535.2.

3. The provisions of this section do not apply to a loan that is subject to section 636.46.

2007 Acts, ch 174, §47

533.317 Authority to lease safe deposit boxes.

1. A state credit union may lease safe deposit boxes for the storage of property on terms and conditions prescribed by the state credit union. The terms and conditions shall not bind any person to whom the state credit union does not give notice of the terms and conditions by delivery of a lease and agreement in writing containing the terms and conditions.

2. A state credit union may limit its liability provided that the limitations are set forth in

the lease and agreement in at least the same size and type as the other substantive provisions of the contract.

3. The lease and agreement of a safe deposit box may provide that evidence tending to prove that property was left in a safe deposit box upon the last entry by the member or the member's authorized agent, and that the property or any part of the property was found missing upon subsequent entry, is not sufficient to raise a presumption that the property was lost by any negligence or wrongdoing for which the state credit union is responsible, or put upon the state credit union the burden of proof that the alleged loss was not the fault of the state credit union.

4. A state credit union may lease a safe deposit box to a minor.

a. A state credit union may deal with a minor with respect to a safe deposit lease and agreement without the consent of a parent, guardian, or conservator and with the same effect as though the minor were an adult.

b. Any action of the minor with respect to such safe deposit lease and agreement is binding on the minor with the same effect as though the minor were an adult.

5. A state credit union that has on file a power of attorney of a member covering a safe deposit lease and agreement, which has not been revoked by the member, shall incur no liability as a result of continuing to honor the provisions of the power of attorney in the event of the death or incompetence of the donor of the power of attorney until the state credit union receives written notice of the death, or written notice of adjudication by a court of the incompetence of the member and the appointment of a guardian or conservator.

2007 Acts, ch 174, §48

533.318 Safe deposit box access.

1. A state credit union shall permit a person named in and authorized by a court order to open, examine, and remove the contents of a safe deposit box located at the state credit union.

2. If a court order has not been delivered to a state credit union, the following persons may access and remove any or all contents of a safe deposit box located at the state credit union and described in an ownership or rental agreement or lease between the state credit union and a deceased owner or lessee:

a. A co-owner or co-lessee of the safe deposit box.

b. A person designated in the safe deposit box agreement or lease to have access to the safe deposit box upon the death of the lessee, to the extent provided in the safe deposit box agreement or lease.

c. An executor or administrator of the estate of a deceased owner or lessee upon delivery to the state credit union of a certified copy of letters of appointment.

d. A person named as an executor in a copy of a purported will produced by the person, provided such access shall be limited to the removal of a purported will, and no other contents shall be removed.

e. A trustee of a trust created by the deceased owner or lessee upon delivery to the state credit union of a copy of the trust together with an affidavit by the trustee that certifies that the copy of the trust delivered to the state credit union with the affidavit is an accurate and complete copy of the trust, the trustee is the duly authorized and acting trustee under the trust, the trust property includes property in the safe deposit box, and that to the knowledge of the trustee the trust has not been revoked.

3. A person removing any contents of a safe deposit box pursuant to subsection 1 or 2 shall deliver any writing purported to be a will of the decedent to the court having jurisdiction over the decedent's estate.

4. *a.* If a person authorized to have access under subsection 1 or 2 does not request access to the safe deposit box within the thirty-day period immediately following the date of death of the owner or lessee of a safe deposit box, and the state credit union has knowledge of the death of the owner or lessee of the safe deposit box, the safe deposit box may be opened by or in the presence of two employees of the state credit union.

b. If a safe deposit box is opened pursuant to paragraph *"a"*, the state credit union employees present at such opening shall do all of the following:

(1) Remove any purported will of the deceased owner or lessee.

(2) Unseal, copy, and retain in the records of the state credit union a copy of a purported will removed from the safe deposit box. An additional copy of such purported will shall be made, dated, and signed by the credit union employees present at the safe deposit box opening and placed in the safe deposit box. The safe deposit box shall then be resealed.

(3) The original of a purported will shall be sent by certified mail or restricted certified mail or personally delivered to the district court in the county of the last known residence of the deceased owner or lessee, or the court having jurisdiction over the testator's estate. If the residence is unknown or last known and not in this state, the purported will shall be sent by certified mail or restricted certified mail or personally delivered to the district court in the county where the safe deposit box is located.

c. If no key is produced, the state credit union may cause the safe deposit box to be opened and the state credit union shall have a claim against the estate of the deceased owner or lessee and a lien upon the contents of the safe deposit box for the costs of opening and resealing the safe deposit box.

5. *a.* A state credit union may rely upon published information or other reasonable proof of death of an owner or lessee.

b. A state credit union has no duty to inquire about or discover, and is not liable to any person for failure to inquire about or discover, the death of the owner or lessee of a safe deposit box.

c. A state credit union has no duty to open or cause to be opened, and is not liable to any person for failure to open or cause to be opened, a safe deposit box of a deceased owner or lessee.

d. Upon compliance with the requirements of this section as appropriate, the state credit union is not liable to any person as a result of the opening of the safe deposit box, removal and delivery of the purported will, or retention of the unopened safe deposit box and contents.

2007 Acts, ch 174, §49

533.319 Adverse claims to property in safe deposit and safekeeping.

1. A state credit union shall not be required, in the absence of a court order or indemnity required by this section, to recognize any claim to, or claim of authority to exercise control over, property held in safe deposit or property held for safekeeping pursuant to section 533.321 made by a person or persons other than the following:

a. The member in whose name the property is held by the state credit union.

b. An individual or group of individuals who are authorized to have access to the safe deposit box, or to the property held for safekeeping, pursuant to a certified corporate resolution or other written arrangement with the member, currently on file with the state credit union, which has not been revoked by valid corporate action in the case of a corporation, or by a valid agreement or other valid action appropriate for the form of legal organization of any other member, of which the state credit union has received notice and which is not the subject of a dispute known to the state credit union as to its original validity. The safe deposit and safekeeping account records of a state credit union shall be presumptive evidence as to the identity of the member on whose behalf the property is held.

2. A person making an adverse claim to, or an adverse claim of authority to control, property held in a safe deposit box or for safekeeping, must do either of the following:

a. Obtain and serve on the state credit union an appropriate court order or judicial process directed to the state credit union, restraining any action with respect to the property until further order of the court or instructing the state credit union to deliver the property, in whole or in part, as indicated in the order or process.

b. Deliver to the state credit union a bond, in form and amount with sureties satisfactory to the state credit union, indemnifying the state credit union against any liability, loss, or expense which the state credit union might incur because of its refusal to deliver the property to any person described in subsection 1, paragraph "*a*" or "*b*".

2007 Acts, ch 174, §50

533.320 Remedies and proceedings for nonpayment of rent on safe deposit box.

1. A state credit union has a lien upon the contents of a safe deposit box for past due rentals and any expense incurred in opening the safe deposit box, replacement of the locks on the safe deposit box, and of a sale made pursuant to this section.

2. If the rental of a safe deposit box is not paid within six months from the day the rental is due, at any time after the six months and while the rental remains unpaid, the state credit union shall mail a notice by restricted certified mail to the member at the member's last known address as shown upon the records of the state credit union, stating that if the amount due for the rental is not paid on or before a specified day, which shall be at least thirty days after the date of mailing such notice, the state credit union will remove the contents of the safe deposit box and hold the contents for the account of the member.

3. If the rental for the safe deposit box has not been paid after the expiration of the period specified in a notice mailed pursuant to subsection 2, the state credit union, in the presence of two of its officers, may cause the safe deposit box to be opened and the contents removed. An inventory of the contents of the safe deposit box shall be made by the two officers present and the contents held by the state credit union for the account of the member.

4. *a.* If the contents are not claimed within two years after their removal from the safe deposit box, the state credit union may proceed to sell so much of the contents as is necessary to pay the past due rentals and expense incurred in opening the safe deposit box, replacement of the locks on the safe deposit box, and the sale of the contents.

b. The sale shall be held at the time and place specified in a notice published prior to the sale once each week for two successive weeks in a newspaper of general circulation published in the city or unincorporated area in which the state credit union has its principal place of business, or if there is none, a newspaper of general circulation published in the county, or in a county adjoining the county, in which the state credit union has its principal place of business.

c. A copy of the published notice shall be mailed to the member at the member's last known address as shown upon the records of the state credit union.

d. The notice shall contain the name of the member and need only describe the contents of the safe deposit box in general terms.

e. The contents of any number of safe deposit boxes may be sold under one notice of sale and the cost of the sale apportioned ratably among the several safe deposit box members involved.

f. At the time and place designated in the notice the contents taken from each respective safe deposit box shall be sold separately to the highest bidder for cash and the proceeds of each sale applied to the rentals and expenses due to the state credit union and the residue from any such sale shall be held by the state credit union for the account of the member or members.

g. An amount held as proceeds from such sale shall be credited with interest at the customary annual rate for savings accounts at the state credit union, or in lieu, at the customary rate of interest in the community where such proceeds are held. The crediting of interest does not activate the account to avoid an abandonment as unclaimed property under chapter 556.

5. *a.* Notwithstanding the provisions of this section, shares, bonds, or other securities which, at the time of a sale pursuant to subsection 4, are listed on an established stock exchange in the United States shall not be sold at public sale but may be sold through an established stock exchange.

b. Upon making a sale of any such securities, an officer of the state credit union shall execute and attach to the securities an affidavit reciting facts showing that the securities were sold pursuant to this section, and that the state credit union has complied with the provisions of this section. The affidavit constitutes sufficient authority to any corporation whose shares are sold or to any registrar or transfer agent of such corporation to cancel the certificates representing the shares to the purchaser of the shares, and to any registrar, trustee, or transfer agent of registered bonds or other securities, to register any such bonds or other securities in the name of the purchaser of the bonds or other securities.

6. The proceeds of any sale made pursuant to this section, after the payment of any

amounts with respect to which the state credit union has a lien, any property that was not offered for sale and property which, although offered for sale, was not sold, shall be retained by the state credit union until such time as the property is presumed abandoned according to section 556.2, and shall be handled pursuant to chapter 556.

2007 Acts, ch 174, §51
Referred to in §533.321

533.321 Authority to receive property for safekeeping.

1. A state credit union may accept property for safekeeping if the state credit union issues a receipt for the property, except in the case of night depositories.

a. A state credit union accepting property for safekeeping shall purchase and maintain reasonable insurance coverage to ensure against loss incurred in connection with the acceptance of property for safekeeping.

b. Property held for safekeeping shall not be commingled with the property of the state credit union or the property of others.

2. A state credit union has a lien upon any property held for safekeeping and for expenses incurred in any sale made pursuant to this subsection.

a. If the charge for safekeeping of property is not paid within six months from the day the charge is due, at any time after the six months and while the charge remains unpaid, the state credit union may mail a notice to the member at the member's last known address as shown upon the records of the state credit union, stating that if the amount due is not paid on or before a specified day, which shall be at least thirty days after the date of mailing the notice, the state credit union will remove the property from safekeeping and hold the property for the account of the member.

b. After the expiration of the period specified in the notice, if the charge for safekeeping has not been paid, the state credit union may remove the property from safekeeping, cause the property to be inventoried, and hold the property for the account of the member.

c. If the property is not claimed within two years after its removal from safekeeping, the state credit union may proceed to sell so much of the property as is necessary to pay the charge which remains unpaid and the expense incurred in making the sale in the manner provided for in section 533.320, subsections 4 and 5.

d. The proceeds of any sale made pursuant to this section, after payment of any amounts with respect to which the state credit union has a lien, any property that was not offered for sale, and property which, although offered for sale, was not sold, shall be retained by the state credit union until such time as the property is presumed abandoned according to section 556.2, and shall be handled pursuant to chapter 556.

2007 Acts, ch 174, §52
Referred to in §533.319

533.322 Preservation of records.

1. The superintendent may adopt rules regarding the preservation of records and files of a state credit union or any other person supervised or regulated by the superintendent. A state credit union is not required to preserve its records for a period longer than seven years after the first day of January of the year following the time of the making or filing of such records. However, account records showing unpaid balances due to depositors shall not be destroyed.

2. A copy of an original may be kept in lieu of any original records.

a. For purposes of this section, a copy includes any duplicate, rerecording or reproduction of an original record from any photograph, photostat, microfilm, microcard, miniature or microphotograph, computer printout, electronically stored data or image, or other process that accurately reproduces or forms a durable medium for accurately and legibly reproducing an unaltered image or reproduction of the original record.

b. A copy is deemed to be an original and shall be treated as an original record in a judicial or administrative proceeding for purposes of admissibility in evidence. A facsimile, exemplification, or certified copy of any such copy reproduced from a film record is deemed to be a facsimile, exemplification, or certified copy of the original.

2007 Acts, ch 174, §53; 2011 Acts, ch 87, §3
Referred to in §533.404

533.323 Photographic records.

1. Any state credit union writing or record, or a photostatic or photographic reproduction of such writing or record, whether in the form of an entry in a book or otherwise, made as a memorandum or record of any act, transaction, occurrence, or event, shall be admissible in evidence as proof of the act, transaction, occurrence, or event, if made in the regular course of business.

2. A printout or other tangible output, readable by sight, shown to accurately reflect data contained in a promissory note, negotiable instrument, or letter of credit, that contains a signature made or created by electronic or digital means such that it is stored by a computer or similar device, is deemed to be an original of such note, instrument, or letter for purposes of presenting such note, instrument, or letter for payment, acceptance, or honor, or for purposes of a judicial proceeding involving a claim based upon such note, instrument, or letter.

2007 Acts, ch 174, §54

533.324 Preservation of records — statute of limitations.

1. All causes of action, other than actions for relief on the grounds of fraud or mistake, against a state credit union based upon a claim or claims founded on a written contract, or a claim or claims inconsistent with an entry or entries in a state credit union record, made in the ordinary course of business, shall be deemed to have accrued, and shall accrue for the purpose of the statute of limitations one year after the breach or failure of performance of a written contract, or one year after the date of such entry or entries. No action founded upon such a cause may be brought after the expiration of six years from the date of such accrual.

2. In any cause or proceeding in which state credit union records or files may be called in question or be demanded of the state credit union, or any officer or employee of the state credit union, a showing that such records or files have been destroyed in accordance with the provisions of this chapter or rules adopted pursuant to this chapter shall be a sufficient excuse for the failure to produce them.

2007 Acts, ch 174, §55; 2011 Acts, ch 87, §4

533.325 Confidentiality of state credit union information.

1. The directors, officers, committee members, and employees of a state credit union shall hold in confidence all information regarding transactions of the state credit union, including information regarding transactions with its members and their personal affairs, except to the extent necessary in connection with any of the following:

a. Making, extending, or collecting a loan or line of credit.

b. Guaranteeing of member share drafts by third parties.

c. Communicating with an insurance company for the purpose of facilitating the availability or continuation of the insurance or bond of the state credit union or the resolution of a claim, pursuant to section 533.308, subsection 3.

d. Pursuant to a confidentiality agreement that is executed pursuant to section 533.108, subsection 1.

e. Complying with the examination of credit union records by regulatory authorities .

f. Compliance with an order from a court having jurisdiction over the state credit union.

2. The board of directors may authorize participation of a state credit union in a credit or consumer reporting agency if the board has determined that use of such an agency is essential in making and extending a loan or line of credit, or guaranteeing member share drafts, and that information supplied by the state credit union to such agency will be made available only to legitimate members of that agency having a legitimate business need for the information in connection with a business transaction involving the state credit union.

2007 Acts, ch 174, §56; 2012 Acts, ch 1020, §17

Referred to in §533.113

533.326 Governmental employees.

1. When a state credit union has been organized by the employees of the state or any political subdivision of the state, the officer who writes warrants for the state or other governmental body by which any public employee state credit union member is employed,

may withhold from the salary or wages of the employee, and pay over to such state credit union, sums as may be designated by written authorization signed by the employee.

2. The provisions of section 539.4 shall have no application to this section.

2007 Acts, ch 174, §57

533.327 Change in place of business. Repealed by 2016 Acts, ch 1030, §9. See §533.201A.

533.328 Conducting business outside of state. Repealed by 2016 Acts, ch 1030, §9. See §533.115A.

533.329 Taxation.

1. A state credit union shall be deemed an institution for savings and is subject to taxation only as to its real estate and moneys and credits. The shares shall not be taxed.

2. *a.* The moneys and credits tax on state credit unions is imposed at a rate of one-half cent on each dollar of the legal and special reserves that are required to be maintained by the state credit union under section 533.303, and shall be levied by the board of supervisors and placed upon the tax list and collected by the county treasurer. However, an exemption shall be given to each state credit union in the amount of forty thousand dollars.

b. The moneys and credits tax shall be collected by the department of revenue and shall be apportioned twenty percent to the county, thirty percent to the city general fund, and fifty percent to the general fund of the state, and the amount collected in each taxing district outside of cities shall be apportioned fifty percent to the county and fifty percent to the general fund of the state.

c. The moneys and credits tax imposed under this section shall be reduced by a tax credit authorized pursuant to section 15.331C for certain sales taxes paid by a third-party developer.

d. The moneys and credits tax imposed under this section shall be reduced by an investment tax credit authorized pursuant to section 15.333.

e. The moneys and credits tax imposed under this section shall be reduced by an investment tax credit authorized pursuant to section 15E.43.

f. The moneys and credits tax imposed under this section shall be reduced by an Iowa fund of funds tax credit authorized pursuant to section 15E.66.

g. The moneys and credits tax imposed under this section shall be reduced by an endow Iowa tax credit authorized pursuant to section 15E.305.

h. The moneys and credits tax imposed under this section shall be reduced by a redevelopment tax credit allowed under chapter 15, subchapter II, part 9.

i. The moneys and credits tax imposed under this section shall be reduced by an innovation fund investment tax credit allowed under section 15E.52.

j. The moneys and credits tax imposed under this section shall be reduced by a workforce housing investment tax credit allowed under section 15.355, subsection 3.

k. The moneys and credits tax imposed under this section shall be reduced by a solar energy system tax credit allowed under section 422.11L.

3. The department of revenue shall administer and enforce the provisions of this section.

2007 Acts, ch 162, §12, 13; 2007 Acts, ch 174, §60, 99; 2008 Acts, ch 1173, §12; 2008 Acts, ch 1191, §165; 2009 Acts, ch 179, §40; 2010 Acts, ch 1138, §14, 16, 24, 26; 2011 Acts, ch 130, §45, 47, 71; 2012 Acts, ch 1136, §37, 39 – 41; 2014 Acts, ch 1130, §23 – 26; 2015 Acts, ch 124, §8, 9, 10; 2018 Acts, ch 1172, §83 – 85

Referred to in §15.293A, 15.333, 15.355, 15E.43, 15E.44, 15E.52, 15E.62, 15E.305, 331.427

Subsection 2, paragraph j, takes effect May 30, 2014; applies retroactively to January 1, 2014, for tax years beginning on or after that date; and applies to qualifying new investment costs incurred on or after May 30, 2014; 2014 Acts, ch 1130, §24 – 26

Subsection 2, paragraph k, takes effect June 26, 2015, and applies retroactively to January 1, 2015, for tax years beginning on or after that date; 2015 Acts, ch 124, §9, 10

Subsection 2, paragraph b amended

Subsection 2, paragraph c stricken and former paragraphs d – l redesignated as paragraphs c – k

NEW subsection 3

533.330 Reports.

1. A state credit union shall report quarterly at a specified time to the superintendent in a format prescribed by the superintendent for that purpose.

a. If any quarterly report is in arrears, a penalty of one hundred dollars for each day or

fraction of a day such report is in arrears may be levied by the superintendent against the offending state credit union. This penalty shall be in addition to the penalty for failure to pay the annual fee pursuant to section 533.112.

b. If a quarterly report is not provided to the superintendent within thirty days of the due date, the superintendent may, after written notice to the board of directors of the state credit union, suspend or revoke the certificate of approval, take possession of the business and property of the state credit union, and order its dissolution.

2. In addition to the quarterly report, the superintendent may, from time to time, require a state credit union to provide other supplemental reports at a specified time. Failure of a state credit union to provide supplemental reports when due may result in the superintendent levying a penalty of fifty dollars per day for each day or fraction of a day such report is late.

2007 Acts, ch 174, §61

533.331 Data breach — duty to notify.

1. In accordance with 12 C.F.R. pt. 748, Appendix B, a state credit union shall maintain an information security response program that includes procedures for notifying the credit union division as soon as possible after the credit union becomes aware of an incident involving unauthorized access to or use of sensitive member information that would permit access to the member's account, as further detailed in 12 C.F.R. pt. 748.

2. State credit unions that experience an information security breach may be subject to chapter 715C.

2016 Acts, ch 1030, §7

533.332 through 533.400 Reserved.

SUBCHAPTER IV

MERGER, CONVERSION, AND DISSOLUTION OF CREDIT UNIONS

533.401 Merger.

1. With the approval of the superintendent and the national credit union administration, a state credit union may merge with another credit union under the existing certificate of approval of the other credit union if the merger is pursuant to a plan agreed upon by a majority of the board of directors of each credit union joining in the merger and the merger is approved by the affirmative vote of a majority of the members of the merging credit union according to the provisions of section 533.203. At least twenty days' notice shall be provided between the sending of notice and the scheduled conclusion of the vote.

2. A plan of merger, whether by act of consolidation, acquisition, or business combination, along with evidence that the plan has been approved by the members of the merging credit union in accordance with the provisions of this section, shall be submitted to the superintendent, along with any additional materials the superintendent may request.

3. The superintendent may approve a merger according to the plan agreed upon by the majority of the board of directors of each credit union if the superintendent receives a written and verified application filed by the board of directors of each credit union and finds all of the following:

a. Notice of balloting for the membership vote on the merger was mailed to each member of the merging credit union entitled to vote upon the question at least twenty days prior to the scheduled conclusion of the vote.

b. The notice of balloting disclosed the purpose of the vote and properly informed the membership that approval of the merger would be sought pursuant to this section.

c. A majority of the votes received, according to the method of voting selected by the board of directors pursuant to section 533.203, were in favor of the merger.

d. Control of the merging credit union shall transfer to the board of directors of the continuing credit union upon approval of the merger by the superintendent and the favorable

vote of a majority of the members as prescribed in paragraph "*c*". Upon transfer of control, the board of directors of the merging credit union may only do such things necessary to execute the merger.

4. The superintendent may disapprove a merger if the superintendent finds either of the following:

a. The merger would not result in a safe and sound credit union.

b. The procedures required by this section, particularly those used to obtain member approval for the merger, were not followed or were irregular.

5. The superintendent may waive the membership merger vote if the superintendent finds that an emergency exists which justifies the waiver.

6. The certificate of merger and a copy of the agreed plan of merger shall be forwarded to the superintendent, certified by the superintendent, and returned to both credit unions within thirty days of the date of receipt by the superintendent.

7. *a.* Upon return of the certificate from the superintendent, all of the merging credit union's property, property rights, and members' interests shall vest in the continuing credit union without the legal need for deeds, endorsements or other instruments of transfer, and all debts, obligations, and liabilities of the merging credit union shall be assumed by the continuing credit union.

b. The rights and privileges of the members of the merging credit union shall continue as provided in the plan.

c. Credit union membership in the continuing credit union shall be available to persons within the common bond of the merging credit union.

8. This section shall be construed to permit a credit union organized under any other statute to merge with one organized under this chapter, or to permit one organized under this chapter to merge with one organized under any other statute.

2007 Acts, ch 174, §62; 2012 Acts, ch 1020, §18, 19; 2013 Acts, ch 17, §4, 5; 2016 Acts, ch 1030, §8

533.402 Conversion of financial institution to state credit union.

1. Any financial institution may convert to a state credit union by complying with the laws of the original chartered authority and upon the approval of the superintendent. As used in this section, "*financial institution*" means any credit union, bank, savings bank, or savings and loan association chartered under federal or state law.

a. Application for approval of the conversion to a state credit union shall be submitted to the superintendent in the form prescribed by the superintendent, together with the articles of incorporation and bylaws as required for organization of a state credit union pursuant to this chapter.

b. The superintendent may cause an examination to be made of any converting financial institution. The converting financial institution shall reimburse the superintendent for the division's costs related to the conversion.

2. *a.* If the superintendent approves the application of a financial institution for conversion to a state credit union, the superintendent shall cause the articles of incorporation of the resulting state credit union to be filed and recorded in the county in which the state credit union has its principal place of business and the superintendent shall issue a certificate of authority to do business under the laws of this state to the resulting state credit union. The financial institution shall then become a state credit union subject to the laws of this state.

b. The superintendent shall furnish a copy of the certificate to the administrator of the national credit union administration.

3. *a.* Upon conversion, the existence of the original financial institution shall cease.

b. The state credit union resulting from the conversion shall have only the authority to engage in the business and exercise the powers of a state credit union.

4. *a.* A liability of the original financial institution or of its members, directors, or officers shall not be affected, and any lien on any property of the financial institution shall not be impaired by the conversion.

b. Any claim existing or action pending by or against the original financial institution may

be prosecuted to judgment as if the conversion had not taken place, or the resulting state credit union may be substituted in its place.

2007 Acts, ch 174, §63

533.403 Conversion of state credit union into federal credit union.

1. A state credit union may convert into a federal credit union with the approval of the administrator of the national credit union administration and by the affirmative vote of a majority of the credit union's members who vote on the proposal, according to the provisions of section 533.203.

2. The board of directors of the state credit union shall notify the superintendent of any proposed conversion and of any abandonment or disapproval of the conversion by the members or by the administrator of the national credit union administration. The board of directors of the state credit union shall file with the superintendent appropriate evidence of approval of the conversion by the administrator of the national credit union administration and shall notify the superintendent of the date on which the conversion is to be effective.

3. Upon receipt of satisfactory proof that the state credit union has complied with all applicable laws of this state and of the United States, the superintendent shall issue a certificate of conversion which shall be filed and recorded in the county in which the state credit union has its principal place of business and in the county in which its original articles of incorporation were filed and recorded.

2007 Acts, ch 174, §64; 2012 Acts, ch 1020, §20

533.404 Dissolution generally.

The following shall apply to dissolution of a state credit union under this chapter, whether voluntary or involuntary:

1. Distribution of the assets of the state credit union shall be made in the following order:

a. The payment of costs and expense of the administrator of dissolution.

b. The payment of claims for public funds deposited pursuant to chapter 12C and the payment of claims which are given priority by applicable statutes. If the assets are insufficient for payment of the claims in full, priority shall be determined by the statutes or, in the absence of conflicting provisions, on a pro rata basis.

c. The payment of deposits, including accrued interest, up to the date of the special meeting of the members at which voluntary dissolution was authorized, or in the case of involuntary dissolution, the date of appointment of a receiver.

d. The pro rata apportionment of the balance among the members of record on the date of the special meeting of the members at which voluntary dissolution was authorized, or in the case of involuntary dissolution, the members of record on the date of appointment of a receiver.

2. All amounts due members who are unknown, or who are under a disability and no person is legally competent to receive the amounts, or who cannot be found after the exercise of reasonable diligence, shall be transmitted to the treasurer of state who shall hold the amounts in the manner prescribed by chapter 556. All amounts due creditors as described in section 490.1440 shall be transmitted to the treasurer of state in accordance with that section, shall be retained by the treasurer of state, and are subject to claim as provided for in that section.

3. The superintendent shall assume custody of the records of a state credit union dissolved pursuant to this chapter and shall retain the records which, in the superintendent's discretion, are deemed necessary, in accordance with the provisions of section 533.322. The superintendent may cause film, photographic, photostatic, or other copies of the records to be made and the superintendent shall retain the copies in lieu of the original records.

2007 Acts, ch 174, §65; 2011 Acts, ch 34, §127; 2013 Acts, ch 17, §6

Referred to in §12C.23, 533.314, 533.405, 533.405A

533.405 Voluntary dissolution.

The process of voluntary dissolution shall be as follows:

1. A state credit union may dissolve upon the affirmative vote of a majority of its members

eligible to vote according to the provisions of section 533.203. At least twenty days' notice shall be provided between the sending of notice and the scheduled conclusion of the vote.

2. *a.* The state credit union shall cease to do business except for the purposes of liquidation immediately upon sending notice of the members' vote on dissolution.

b. The board of directors shall notify the superintendent of the intention of the state credit union to dissolve within three business days of a vote by a majority of the board of directors in favor of dissolution, and prior to sending notice of the members' vote.

c. The state credit union shall not resume its regular business unless the dissolution fails to receive the required vote of the members or unless the members have revoked prior affirmative action to dissolve as provided for in subsection 7.

d. The board of directors shall notify the national credit union administration of the intent to dissolve, as required by federal regulation.

3. *a.* The board of directors shall have power to terminate and settle the affairs of a state credit union in voluntary dissolution.

b. The state credit union shall continue in existence for the purpose of discharging its liabilities, collecting and distributing its assets, and doing all acts required in order to terminate its affairs.

c. The state credit union may sue and be sued for the purpose of enforcing such liabilities and for the purpose of collecting its assets until its affairs are fully settled.

d. During the course of dissolution proceedings, the state credit union shall make such reports and shall be subject to such examinations as the superintendent may require.

e. If at any time after the affirmative vote of a majority of the members of a state credit union to dissolve the state credit union, the superintendent finds that the state credit union is not making reasonable progress toward terminating its affairs, the superintendent may apply to the district court for appointment of a receiver to terminate the affairs of the state credit union.

f. If the superintendent finds that a dissolving state credit union is insolvent, the superintendent may proceed as otherwise provided in this chapter.

4. *a.* The board of directors may appoint by resolution any responsible person as defined in section 4.1, whose appointment has been approved by the superintendent, to exercise its powers to terminate and settle the affairs of the state credit union pursuant to this section.

b. The superintendent may adopt rules establishing the qualifications that must be met by such appointees, including but not limited to filing a surety bond with the superintendent.

5. *a.* (1) Within ten days of the conclusion of a membership vote approving the voluntary dissolution, the board of directors or the liquidating agent appointed pursuant to subsection 4 shall cause notice, as provided in this subsection, to be given to creditors of the state credit union to present their claims.

(2) A copy of the notice of voluntary dissolution shall be mailed to all creditors reflected on the records of the state credit union.

b. In addition to mailing notice to known creditors, the state credit union shall also publish notice of the voluntary dissolution as follows:

(1) State credit unions with assets in excess of five million dollars as of the month ending immediately prior to the date of the conclusion of the vote by the membership approving the dissolution shall publish the notice once a week for two successive weeks in a newspaper of general circulation in each county in which the state credit union maintains an office or branch for the transaction of business.

(2) State credit unions with assets of five million dollars or less as of the month ending immediately prior to the date of the conclusion of the vote by the membership approving the dissolution shall publish the notice once in a newspaper of general circulation in each county in which the state credit union maintains an office or branch.

c. Mailed and published notices under this subsection shall indicate all of the following:

(1) A creditor shall have thirty days from the date the notice was sent or first published to submit the creditor's claim. The state credit union must receive the claim on or before the thirtieth day, or the claim is barred.

(2) Information that must be included in a claim.

(3) A mailing address where a claim is to be sent.

6. *a.* Upon such proof as is satisfactory to the superintendent that all of the following have occurred, the superintendent shall issue a certificate of dissolution:

(1) Assets have been liquidated from which there is a reasonable expectance of realization.

(2) The liabilities of the state credit union have been discharged.

(3) Distribution has been made pursuant to section 533.404, subsection 1.

(4) The liquidation has been completed.

b. The certificate shall be filed and recorded in the county in which the state credit union has its principal place of business and in the county in which its original articles of incorporation were filed and recorded.

c. Upon the filing of a certificate of dissolution, the existence of the state credit union shall cease.

7. *a.* At any time prior to the final distribution of its assets, a state credit union may revoke the voluntary dissolution proceedings by the affirmative vote of a majority of its members eligible to vote, according to the provisions of section 533.203. At least twenty days' notice shall be provided between the sending of notice and the scheduled conclusion of the vote.

b. Upon the conclusion of the vote, the board of directors shall immediately notify the superintendent of any such action to revoke voluntary dissolution proceedings.

2007 Acts, ch 174, §66; 2012 Acts, ch 1020, §21; 2013 Acts, ch 17, §7 – 9; 2013 Acts, ch 140, §74

Referred to in §533.314, 533.405A

533.405A Involuntary dissolution.

1. If the superintendent has taken over management of the property and business of a state credit union pursuant to section 533.502, and determined that the state credit union cannot be reorganized or merged with another credit union, the superintendent may move for the involuntary dissolution of the state credit union and shall apply to the district court for appointment as receiver with the authority to dissolve the state credit union.

2. If a state credit union is in the process of a voluntary dissolution, and pursuant to section 533.405, the superintendent finds that the state credit union is not making reasonable progress toward terminating its affairs, the superintendent may move for the involuntary dissolution of the state credit union and shall apply to the district court for appointment as receiver with the authority to dissolve the state credit union.

3. The provisions of section 533.503 shall apply when the superintendent is acting as receiver, and as receiver the superintendent shall distribute the assets pursuant to the provisions of section 533.404.

2014 Acts, ch 1011, §5

533.406 State credit union merger, conversion, or dissolution.

Notwithstanding section 533.301, subsection 25, a state credit union shall comply with the state law requirements for merger, conversion, or dissolution of a state credit union.

2007 Acts, ch 174, §67

533.407 through 533.500 Reserved.

SUBCHAPTER V

SUPERVISORY ACTIONS, LIMITATIONS, AND PENALTIES

533.501 Supervisory action.

1. *Cease and desist order.*

a. (1) If the superintendent has reason to believe that an officer, director, employee, or committee member of a state credit union has violated any law, rule, or cease and desist order relating to a state credit union, or has engaged in an unsafe or unsound practice in conducting the business of a state credit union, the superintendent may cause notice to be served upon

the officer, director, employee, or committee member to appear before the superintendent to show cause why the person should not be removed from office or employment. A copy of such notice shall be sent by certified mail or restricted certified mail to each director of the state credit union affected.

(2) If the superintendent finds that the accused has violated a law, rule, or cease and desist order relating to a state credit union, or has engaged in an unsafe or unsound practice in conducting the business of a state credit union, after granting the accused a hearing before an independent administrative law judge, the superintendent in the superintendent's discretion may order that the accused be removed from office and from any position of employment with the state credit union. The superintendent may further order that the accused not accept employment in any state credit union under the superintendent's jurisdiction without the superintendent's prior approval.

(3) A copy of the order shall be served upon the accused and upon the state credit union affected, at which time the accused shall cease to be an officer, director, employee, or committee member of the state credit union.

b. (1) If the superintendent determines that a state credit union has violated any of the provisions of this chapter, after notice and opportunity for hearing, the superintendent shall order the state credit union to correct the violation, except when the state credit union is insolvent.

(2) The superintendent may specify the manner in which the violation is to be corrected and grant the state credit union not more than sixty days within which to comply with the order.

(3) The superintendent may revoke a state credit union's certificate of approval for failure to comply with the order.

(4) If the certificate of approval has been revoked, the superintendent may apply to the district court of the county in which the state credit union is located for the appointment of a receiver for the state credit union.

2. *Summary cease and desist order.*

a. (1) If it appears to the superintendent that a state credit union, or any director, officer, employee, or committee member of a state credit union, is engaging in or is about to engage in an unsafe or unsound practice or dishonest act in conducting the business of the state credit union that is likely to cause insolvency or substantial dissipation of assets or earnings of the state credit union, or is likely to seriously weaken the condition of the state credit union or otherwise seriously prejudice the interests of its members, the superintendent may issue an interim summary cease and desist order requiring the state credit union, or any director, officer, employee, or committee member, to cease and desist from any such practice or act, and may take affirmative action, including suspension of the director, officer, employee, or committee member to prevent such insolvency, dissipation, condition, or prejudice.

(2) The interim order shall become effective upon personal service upon the state credit union, or upon the director, officer, employee, or committee member of the state credit union, and remain effective and enforceable pending the completion of administrative proceedings conducted pursuant to this section and issuance of a final order.

b. (1) The interim order shall contain a concise statement of the facts constituting the alleged unsafe or unsound practice or alleged dishonest act, and shall fix a time and place at which a hearing will be held to determine whether a final order to cease and desist should issue against the state credit union, or any director, officer, employee, or committee member.

(2) The hearing shall be fixed for a date not later than thirty days after service of the interim order unless a later date is set at the request of the party served.

(3) If the state credit union, or the director, officer, employee, or committee member, fails to appear at the hearing, the state credit union, or the director, officer, employee, or committee member, is deemed to have consented to the issuance of a final cease and desist order.

(4) In the event of such consent, or if upon the record made at the hearing the superintendent finds that any unsafe or unsound practice or dishonest act specified in the interim order has been established, the superintendent may issue and serve upon the state credit union, or the director, officer, employee, or committee member, a final order to cease and desist from any such practice or act. The order may require the state credit union, or the

director, officer, employee, or committee member, to cease and desist from any such practice or act and direct affirmative action, including suspension of the director, officer, employee, or committee member.

c. (1) A hearing provided for in this section shall be presided over by an administrative law judge appointed in accordance with section 17A.11.

(2) The hearing shall be private, unless the superintendent determines after full consideration of the views of the party afforded the hearing, that a public hearing is necessary to protect the public interest.

(3) After the hearing, and within thirty days after the case has been submitted for decision, the superintendent shall review the proposed order of the administrative law judge and render a final decision, including findings of fact upon which the decision is predicated, and issue and serve upon each party to the proceeding an order consistent with this section.

(4) Records and information relating to the hearing shall be confidential and not subject to subpoena. Such records and information shall not constitute a public record subject to examination or copying under chapter 22.

d. Any final order issued by the superintendent shall become effective upon service upon the state credit union, director, officer, employee, or committee member.

e. In the case of violation or threatened violation of, or failure to obey, an order, the superintendent may apply to the district court of the county in which the state credit union has its principal place of business for the enforcement of the order and such court shall have jurisdiction and power to order and require compliance with the order.

f. (1) Within ten days after a state credit union or any director, officer, employee, or committee member is served with a summary cease and desist order, the state credit union or director, officer, employee, or committee member affected may apply to the district court in the county in which the state credit union has its principal place of business for an injunction setting aside, limiting, or suspending the enforcement, operation, or effectiveness of the interim order pending the completion of administrative proceedings.

(2) If serious prejudice to the interests of the superintendent, the state credit union, or the officer, director, employee, or committee member would result from a court hearing, the court may order the judicial proceeding to be conducted in camera.

3. *Complaint response process.* The superintendent shall adopt rules establishing a complaint response process that shall include provisions relating to but not limited to complaint intake, preliminary informal and formal investigation procedures, complaint dismissal procedures, and imposition of remedial sanctions through an administrative resolution procedure or a contested case hearing.

a. Notwithstanding chapter 22, the superintendent shall keep confidential any social security number, residence address, or residence telephone number obtained in connection with a complaint intake, investigation, dismissal, or imposition of remedial sanctions, and may keep confidential the name of the complainant, the name of the subject of the complaint, and any other information obtained in connection with a complaint intake, investigation, dismissal, or imposition of remedial sanctions, if disclosure is not required in the performance of the duties of the superintendent, or in order to accomplish the provisions of this chapter, or otherwise required by law. At the discretion of the superintendent, the name of the complainant, residence address of the complainant, and residence telephone number of the complainant may be provided to the subject of the complaint, or to an authorized agent of such person, without waiving the confidentiality afforded by this subsection, provided that the superintendent has notified the complainant in advance of such disclosure. Disclosure or release of information by the superintendent in the course of an administrative or judicial proceeding shall not constitute a violation of this subsection.

b. Notwithstanding chapter 22, or paragraph *"a"* of this subsection, if the superintendent determines it is necessary or appropriate in the public interest or for the protection of the public, the superintendent may share information with other regulatory authorities or government agencies and may publish information concerning a complaint if it is determined that there is or has been a violation of this chapter, the laws of this state or the United States, or a rule promulgated or order issued pursuant to this chapter. Such information as the superintendent deems appropriate may be redacted so that the sharing, releasing, or

publishing of the information in accordance with this subsection does not make available personally identifiable information.

2007 Acts, ch 174, §68; 2009 Acts, ch 48, §2
Referred to in §22.7(63)

533.502 Grounds for management of state credit union by superintendent.

1. Notwithstanding any other provision of this chapter, the superintendent may take over the management of the property and business of a state credit union when it appears to the superintendent that any of the following actions have occurred or conditions exist:

a. The state credit union has violated any law of this state.

b. The capital of the state credit union is impaired.

c. The state credit union is conducting its business in an unsafe or unsound manner.

d. The state credit union is in such condition that it is unsound, unsafe, or inexpedient for it to transact business.

e. The state credit union has suspended or refused payment of its deposits or other liabilities.

f. The state credit union refuses to make its records available to the superintendent for examination or otherwise refuses to make available, through an officer or employee having knowledge, information required by the superintendent for the proper discharge of the duties of the superintendent's office.

g. The state credit union neglects or refuses to observe any order of the superintendent made pursuant to the provisions of this chapter, unless the enforcement of such order is stayed in a court proceeding brought by the state credit union.

h. The state credit union has not transacted any business or performed any of the duties contemplated by its authorization to do business for a period of at least one hundred eighty days.

2. *a.* The superintendent shall manage the property and business of the state credit union until such time as the superintendent may relinquish to the state credit union the management, upon such conditions as the superintendent may prescribe, or until the affairs of the state credit union are finally dissolved as provided in this chapter. The superintendent may operate and direct the affairs of the state credit union in its regular course of business. The superintendent may also collect amounts due the state credit union and do such other acts as are necessary or expedient to conduct the affairs of the state credit union and conserve or protect its assets, property, and business.

b. The superintendent may appoint one or more persons, with powers specified in the certificate of appointment, to assist the superintendent in the duty of management, conservation, or dissolution and distribution of the business and property of a state credit union.

c. During the period of the superintendent's management of the property and business of the state credit union, and prior to the time that the superintendent may apply to the district court for appointment as receiver, the superintendent may assess the state credit union for costs and expenses incurred by the division in the management of the state credit union. Costs and expenses shall include but not be limited to costs and expenses for salaries and benefits, expenses and travel for employees, office facilities, supplies, equipment, and administrative costs and expenses incurred in the management of the state credit union.

3. Judicial review of the actions of the superintendent may be sought in accordance with chapter 17A. However, the contested case provisions of chapter 17A, the Iowa administrative procedure Act, do not apply to an action by the superintendent to take over the management of or to manage a state credit union, as authorized by this section.

2007 Acts, ch 174, §69; 2012 Acts, ch 1020, §22
Referred to in §533.405A

533.503 Superintendent as receiver.

1. In all situations in which the superintendent has been appointed as receiver as provided in this chapter, the superintendent shall make a diligent effort to collect and realize on the

assets of the state credit union, and shall make distribution of the proceeds from time to time to those entitled in the order provided for by law.

a. The superintendent may execute as receiver, or after the receivership has terminated, assignments, releases, and satisfactions to effectuate sales and transfers.

b. Upon the order of the court in which the receivership is pending, the superintendent may sell or compound all bad or doubtful debts.

c. Upon the order of the court in which the receivership is pending, the superintendent may sell all the real and personal property of the state credit union, on such terms as the court shall direct.

2. All expenses of the receivership and dissolution shall be determined by the superintendent, subject to the approval of the district court, and shall be paid out of the assets of the state credit union.

3. The superintendent as receiver may sue and defend in the superintendent's name with respect to the affairs of a state credit union.

4. At the completion of the receivership, the superintendent shall file a final report which shall contain details of receivership activity and such additional facts as the court may require.

5. *a.* Upon the submission and approval of the final report, the court shall enter a decree dissolving the state credit union and discharging the receiver, at which time the existence of the state credit union shall cease.

b. The clerk of the district court shall file and record certified copies of the decree with the county recorder of the county in which the state credit union has its principal place of business and with the county recorder of the county in which its original articles of incorporation were filed and recorded. A fee shall not be charged by the county recorder for the filing or recording of such decree.

6. The superintendent as receiver shall hold all records of the receivership for a period of two years after the court decree dissolving the state credit union and discharging the receiver, and at the termination of the two-year period, the records may then be destroyed.

2007 Acts, ch 174, §70; 2014 Acts, ch 1011, §6

Referred to in §533.405A, 602.8102(73)

533.504 Tender of receivership to insurance plan.

1. *a.* The superintendent may tender to the administrator of an account insurance plan approved under this chapter the appointment as receiver for an insured state credit union.

b. If the insurance plan administrator accepts the appointment as receiver, the rights of the members and other creditors of the insured state credit union shall be determined in accordance with the laws of this state and the insurance plan administrator shall comply with all applicable provisions of this chapter.

2. The administrator of an account insurance plan as receiver shall possess the powers, rights, and privileges given to the superintendent as provided by law.

3. If the administrator of an account insurance plan pays or makes available for payment the insured liabilities of a state credit union, the administrator shall be subrogated by operation of law to all rights of the members against the insured state credit union in the same manner and to the same extent as subrogation is provided for in applicable laws in the case of a closed federal credit union.

2007 Acts, ch 174, §71

533.505 Subpoena — contempt.

1. The superintendent or the superintendent's designee may subpoena witnesses, compel their attendance, administer an oath, examine any person under oath, and require the production of any relevant record during the period of examination.

2. An examination may be conducted on any subject relating to the duties imposed upon or powers vested in the superintendent.

3. Whenever a person subpoenaed pursuant to subsection 1 fails to produce a record or to give testimony as required by the terms of the subpoena, the superintendent may apply to the district court of Polk county for the enforcement of the subpoena or the issuance of an order compelling compliance.

4. The refusal of any person to obey an order of the district court issued pursuant to subsection 3, without reasonable cause, shall be considered a contempt of court.

2007 Acts, ch 174, §72; 2011 Acts, ch 34, §128

533.506 Limitation of actions.

1. All causes of action against a state credit union based upon a claim or claims inconsistent with an entry or entries in a state credit union record or ledger, made in the regular course of business, shall be deemed to have accrued, and shall accrue, one year after the date of such entry or entries.

2. An action founded upon such a cause shall not be brought after the expiration of ten years from the date of such accrual.

2007 Acts, ch 174, §73

533.507 False statements for credit — fraudulent practice.

A person who knowingly makes or causes to be made, directly or indirectly, any false statement in writing, or who procures, knowing that a false statement in writing has been made concerning the financial condition or means or ability to pay of such person or any other person in which such person is interested or for whom such person is acting with the intent that such statement shall be relied upon by a state credit union for the purpose of procuring the delivery of property, the payment of cash, or the receipt of credit in any form, for the benefit of such person or of any other person in which such person is interested or for whom such person is acting, is guilty of a fraudulent practice.

2007 Acts, ch 174, §74

Fraudulent practices, see §714.8 – 714.14

533.508 False statements — penalties.

1. A director, officer, or employee of a state credit union shall not intentionally publish, disseminate, or distribute any advertising or notice containing any false, misleading, or deceptive statements concerning rates, terms, or conditions on which loans are made, or deposits or share installments are received, or concerning any charge which the state credit union is authorized to impose pursuant to this chapter, or concerning the financial condition of the state credit union. Any director, officer, or employee of a state credit union who violates the provisions of this section is guilty of a fraudulent practice.

2. Any person who maliciously or with intent to deceive makes, publishes, utters, repeats, or circulates any false statement concerning any state credit union which imputes or tends to impute insolvency, unsound financial condition or financial embarrassment, or which may tend to cause or provoke or aid in causing or provoking a general withdrawal of deposits from such state credit union, or which may otherwise injure or tend to injure the business or goodwill of such state credit union, is guilty of a simple misdemeanor.

2007 Acts, ch 174, §75

Fraudulent practices, see §714.8 – 714.14

533.509 Penalty for falsification.

A director, officer, agent, or employee of a state credit union, a credit union service organization, or any other person who knowingly signs, makes, or consents to another person making any false statement or false entry in the books of the state credit union or credit union service organization, or knowingly signs, makes, or consents to the making of any false report regarding a state credit union or credit union service organization, or knowingly diverts the funds of the state credit union, is guilty of a class “C” felony and is forever after barred from holding any office or position in a state credit union or credit union service organization.

2007 Acts, ch 174, §76

CHAPTER 533A

DEBT MANAGEMENT

Referred to in §524.211, 524.212, 524.606, 546.3, 669.14, 714E.1

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533A.1 Definitions.

As used in this chapter:

1. *"Creditor"* means a person who grants credit, a person who takes assignment of the rights to payments of a person who grants credit, or a person for whose benefit moneys are being collected and distributed by a licensee.

2. *"Debt management"* means, when done for a fee, any of the following:

a. Arranging or negotiating, or attempting to arrange or negotiate, the amount or terms of debt owed by a debtor to a creditor.

b. Receiving from a debtor, directly or indirectly, money or evidences thereof for the purposes of distributing the same to one or more creditors of the debtor in payment or partial payment of the debtor's obligations.

c. Serving as an intermediary between a debtor and one or more creditors of the debtor for the purpose of obtaining concessions from the creditors.

d. Engaging in debt settlement.

3. *"Debt settlement"* means seeking to settle the amount of a debtor's debts with creditors for less than the amounts owed on the debts.

4. *"Debtor"* means any natural person.

5. *"Donation"* means money given by the debtor to a licensee as a gift for debt management and outside of the debt management contract.

6. *"Fee"* means the moneys paid by the debtor to the licensee as payment for debt management and shall not include money paid to the licensee or held by the licensee for distribution to a creditor, a distribution to the debtor as a refund, or a donation.

7. *"Gratuitous debt-management service"* means debt management without charging a fee.

8. *"Licensee"* means any person licensed under this chapter.

9. *"Natural person"* means an individual who is not an association, joint venture or joint stock company, partnership, limited partnership, business corporation, nonprofit corporation, other business entity, or any group of individuals or business entities, however organized.

10. *"Office"* means each location by street number, building number, city, and state where any person engages in debt management.

11. *"Person"* means an individual, an association, joint venture or joint stock company, partnership, limited partnership, business corporation, nonprofit corporation, or any other group of individuals however organized.

12. *"Superintendent"* means the superintendent of banking.

[C71, 73, 75, 77, 79, 81, §533A.1]

2006 Acts, ch 1042, §1; 2009 Acts, ch 34, §1

533A.2 Licenses required — exceptions.

1. A person shall not engage in the business of debt management in this state without a

license as provided for in this chapter unless exempt under subsection 2. A person engages in the business of debt management in this state if the person solicits on behalf of the person or another person to provide, or enters into a contract with one or more debtors to provide, debt management to a debtor who resides in this state.

2. The following persons, including employees of such persons, shall not be required to be licensed or to otherwise comply with the provisions of this chapter:

a. A licensed attorney admitted to practice in this state acting solely as an incident to the practice of law.

b. Banks, federally chartered savings and loan associations, credit unions, mortgage bankers and mortgage brokers licensed or registered under chapter 535B, insurance companies and similar fiduciaries, regulated loan companies licensed under chapter 536, and industrial loan companies licensed under chapter 536A, authorized and admitted to transact business in this state and performing credit and financial adjusting in the regular course of their principal business, or while performing an escrow function.

c. Abstract companies, while performing an escrow function.

d. Employees of licensees under this chapter, while performing services for the employee's licensed employer.

e. Judicial officers or others acting under court orders.

f. Nonprofit religious, fraternal, or cooperative organizations offering to debtors gratuitous debt-management service.

g. Those persons whose principal business is the origination of first mortgage loans on real estate for their own portfolios or for sale to institutional investors.

h. A person licensed under chapter 533C, including that person's authorized delegates as defined in section 533C.102, or a person exempt from licensing under section 533C.103, when engaging in money transmission or currency exchange as defined in section 533C.102.

3. The application for a license shall be in the form prescribed by the superintendent. If the applicant is not a natural person, a copy of the legal documents creating the applicant shall be filed with the application. The application shall contain all of the following:

a. The name of the applicant.

b. If the applicant is not a natural person, the type of business entity of the applicant and the date the entity was organized.

c. If the applicant is a foreign corporation, both of the following:

(1) An irrevocable consent, duly acknowledged, that suits and actions may be commenced against the licensee in the courts of this state by service of process performed as provided in section 617.3 or as provided in the Iowa rules of civil procedure.

(2) Proof of authorization to do business in this state.

d. The address where the business is to be conducted, including information as to any branch office of the applicant.

e. The name and resident address of the applicant's owner or partners, or, if a corporation, association, or agency, of the members, shareholders, directors, trustees, principal officers, managers, and agents.

f. The name, physical address, and telephone number of the licensee's agent for service of process.

g. Other pertinent information as the superintendent may require, including a credit report.

4. Each application shall be accompanied by a bond to be approved by the superintendent in favor of the people of the state of Iowa in the penal sum of twenty-five thousand dollars for each office, and conditioned that the obligor will not violate any law pertaining to such business and upon the faithful accounting of all moneys collected upon accounts entrusted to such person engaged in debt management, and their employees and agents for the purpose of indemnifying debtors for loss resulting from conduct prohibited by this chapter. The aggregate liability of the surety to all debtors doing business with the office for which the bond is filed shall, in no event, exceed the penal sum of such bond. The surety on the bond shall have the right to cancel such bond upon giving thirty days' notice to the superintendent and thereafter shall be relieved of liability for any breach of condition occurring after the effective date of the cancellation. A person shall not engage in the business of debt

management until a good and sufficient bond is filed in accordance with the provisions of this chapter.

5. Each applicant shall furnish with the application a description of its proposed debt management program, a copy of the disclosures it will be providing debtors pursuant to section 533A.8, subsection 3, and a copy of the contract the applicant proposes to use between the applicant and the debtor pursuant to section 533A.8, subsection 4.

6. At the time of making the application the applicant shall pay to the superintendent the sum of two hundred fifty dollars as a license fee for each of the applicant's offices and an investigation fee in the sum of one hundred dollars. A separate application shall be made for each office maintained by the applicant.

7. The superintendent may authorize applicants and licensees to be licensed through a nationwide licensing system and to pay the corresponding system processing fees. The superintendent may establish by rule or order new requirements as necessary, including but not limited to requirements that applicants, including officers and directors and those who have control of the applicant, submit to fingerprinting and criminal history checks.

8. For the purposes of this section and in order to reduce the points of contact which the federal bureau of investigation may be required to maintain for purposes of subsection 7, the superintendent may use the nationwide licensing system as a channeling agent for requesting information from and distributing information to the United States department of justice or other governmental agency, or to or from any other source so directed by the superintendent.

[C71, 73, 75, 77, 79, 81, §533A.2]

85 Acts, ch 158, §1; 2006 Acts, ch 1042, §2; 2007 Acts, ch 126, §92; 2008 Acts, ch 1160, §9; 2009 Acts, ch 34, §2 – 4; 2009 Acts, ch 179, §41; 2012 Acts, ch 1017, §131; 2013 Acts, ch 5, §3

Referred to in §533C.103

533A.3 Investigation.

1. Upon the filing of each application and the payment of the fees, the superintendent shall conduct an investigation of the facts concerning the application and the requirements provided in subsection 3.

2. The superintendent shall grant or deny each application for a license within sixty days from the date that the application and the required fee are filed and paid, unless the period is extended by written agreement between the applicant and the superintendent.

3. *a.* The superintendent shall enter an order granting the application, and issue and deliver a license to the applicant if the superintendent finds that both of the following are satisfied:

(1) The experience, financial responsibility, character, and general fitness of the applicant is sufficient as to command the confidence of the public and to warrant belief that the business will be operated lawfully, honestly, fairly, and efficiently within the purposes of this chapter.

(2) The applicant has not been convicted of or pled guilty to a felony or an indictable misdemeanor for financial gain, or has not had a record of having defaulted in payment of money collected for others, including the discharge of such debts through bankruptcy proceedings.

b. If the applicant is not a natural person, this subsection shall apply to the owners, partners, members, shareholders, officers, directors, and managers of the applicant.

4. If the applicant has, at the time of the application, a license for an office located within ten miles of the location of the office named in the application, a license shall not be issued unless the superintendent finds that public convenience will be served by the issuance of the license.

5. A license shall not be transferable or assignable.

6. If the superintendent finds the applicant not qualified under subsection 3, the superintendent shall enter an order denying the application and notify the applicant of the denial, returning the license fee. Within fifteen days after the entry of such order, the superintendent shall prepare written findings and shall deliver a copy to the applicant.

[C71, 73, 75, 77, 79, 81, §533A.3]

2006 Acts, ch 1042, §3

Referred to in §533A.15

533A.4 Expiration date.

The license issued under this chapter shall expire on December 31 following its issuance unless sooner surrendered, revoked, or suspended, but may be renewed as provided in this chapter.

[C71, 73, 75, 77, 79, 81, §533A.4]

2013 Acts, ch 5, §4

533A.5 Renewal.

1. To continue in the business of debt management, each licensee shall annually apply on or before December 1 to the superintendent for renewal of its license. The superintendent may assess a late fee of ten dollars per day for applications submitted and accepted for processing after December 1.

2. The renewal application shall be on the form prescribed by the superintendent and shall be accompanied by a fee of two hundred fifty dollars. A separate renewal application shall be made for each office maintained by the applicant.

[C71, 73, 75, 77, 79, 81, §533A.5]

2006 Acts, ch 1042, §4; 2007 Acts, ch 126, §93; 2013 Acts, ch 5, §5

533A.5A Change in control — name or address.

1. The prior written approval of the superintendent is required whenever a change in the control of a licensee is proposed. For purposes of this section, *"control"* in the case of a corporation means direct or indirect ownership, or the right to control, ten percent or more of the voting shares of the corporation, or the ability of a person to elect a majority of the directors or otherwise effect a change in policy. *"Control"* in the case of any other entity means the principals of the organization whether active or passive. The superintendent may require information deemed necessary to determine whether a new application is required. When requesting approval, the person shall submit a fee of one hundred dollars to the superintendent.

2. A licensee shall notify the superintendent and submit a fee of twenty-five dollars per license to the superintendent thirty days in advance of the effective date of any of the following:

a. A change in the name of the licensee.

b. A change in the address where the business is conducted.

2006 Acts, ch 1042, §5

533A.6 Appointment of process agent. Repealed by 2009 Acts, ch 34, §9. See §533A.2(3).

533A.7 Disciplinary action.

1. The superintendent may, after notice and hearing pursuant to chapter 17A, take disciplinary action against a licensee if the superintendent finds any of the following:

a. The licensee, or an owner, partner, member, shareholder, officer, director, or manager of the licensee, has been convicted of a felony or of an indictable misdemeanor for financial gain.

b. The licensee, or an owner, partner, member, shareholder, officer, director, or manager of the licensee, has violated any of the provisions of this chapter or any other state or federal law, rule, or regulation applicable to the conduct of its business.

c. The licensee, or an owner, partner, member, shareholder, officer, director, or manager of the licensee, has engaged in fraud or deceit in procuring the issuance of a license or renewal under this chapter.

d. The licensee, or an owner, partner, member, shareholder, officer, director, or manager of the licensee, has engaged in unfair conduct.

e. The licensee is insolvent, or has filed for bankruptcy, receivership, or assignment for the benefit of creditors.

f. The licensee fails to post the bond required by the provisions of this chapter or the superintendent receives notice that the required bond has been canceled.

2. The superintendent may impose one or more of the following disciplinary actions against a licensee:

a. Revoke a license.

b. Suspend a license until further order of the superintendent for a specified period of time.

c. Impose a period of probation under specified conditions.

d. Impose civil penalties in an amount not to exceed five thousand dollars for each violation.

e. Issue a citation and warning respecting licensee behavior.

f. Order the licensee to pay restitution.

3. The superintendent may order an emergency suspension of a licensee's license pursuant to section 17A.18A. A written order containing the facts or conduct which warrants the emergency action shall be timely sent to the licensee by restricted certified mail. Upon issuance of the suspension order, the licensee must also be notified of the right to an evidentiary hearing. A suspension proceeding shall be promptly instituted and determined.

4. Except as provided in this section, a license shall not be revoked or suspended except after notice and a hearing thereon in accordance with chapter 17A.

5. A licensee may surrender a license by delivering to the superintendent written notice of surrender, but a surrender does not affect the licensee's civil or criminal liability for acts committed before the surrender.

6. A revocation, suspension, or surrender of a license does not impair or affect the obligation of a preexisting lawful contract between the licensee and any person, including a debtor.

[C71, 73, 75, 77, 79, 81, §533A.7]

2006 Acts, ch 1042, §6; 2008 Acts, ch 1160, §10

Referred to in §533A.15

533A.8 Licensee requirements.

1. A licensee shall describe the methodology of its debt management program to each potential debtor client so that the debtor can make an informed decision as to whether or not the licensee's program is an appropriate option for the debtor.

2. A licensee shall conduct a comprehensive review of a debtor's debts and monthly budget and make a determination that the licensee's program is an appropriate option for the debtor before entering into a contract with the debtor. A licensee shall not accept an account unless a written and thorough budget analysis has been performed which indicates that the debtor can meet the requirements determined by the budget analysis.

3. *a.* A licensee, including any third party who markets or sells a debt management program on behalf of a licensee, shall make the following disclosures to a debtor both verbally and in writing before the debtor signs a contract to enroll in the debt management program:

(1) The total estimated fee the debtor will pay for participating in the program if the debtor remains in the program for the entire term of the contract.

(2) That the licensee cannot guarantee any specific results from participation in the program.

(3) That the debtor may elect to discontinue participation in the program without penalty at any time during the program.

(4) If the program includes obtaining concessions regarding the principal amount of the debt from creditors, that any concessions may be considered income to the debtor subject to income tax.

(5) If the program is based on a model which does not require the licensee or another licensee to receive money or evidence thereof from the debtor to distribute to the debtor's creditors, the following:

(a) That payments are not made to creditors on the debtor's behalf, so the debtor is still obligated to make payments to creditors.

(b) That creditors may continue to try to collect the debtor's debts while the debtor is enrolled in the program.

(6) If the program is a debt settlement program, that the following may occur:

(a) The debtor's credit report and credit score may be harmed by participating in the program.

(b) Failure to make required minimum payments to the debtor's creditors may violate the debtor's agreement with the creditors and may result in additional charges, such as late fees, over limit fees, and penalties and creditors may raise the debtor's interest rate.

(c) The debtor may be sued by creditors if the debtor fails to make required minimum payments to the debtor's creditors.

b. The verbal disclosures required pursuant to this subsection shall be made at a normal rate of speech in a manner designed to ensure the debtor understands the disclosures. The written disclosures shall be provided in a separate document from the contract between the licensee and the debtor and shall be designed to ensure the debtor understands the disclosures. It is a violation of this chapter for a licensee, or any third party who markets or sells a debt management program on behalf of a licensee, to contradict these disclosures in any representation, advertising, or solicitation.

4. A licensee shall make a written contract with a debtor and shall immediately and before collecting any fee, furnish the debtor with a true copy of the contract. A contract shall not extend for a period longer than sixty months. The contract between a licensee and a debtor shall include all of the following:

a. The total estimated charges agreed upon for the services of the licensee and any third parties providing services for or in conjunction with the licensee.

b. A statement of how and when the charges are to be paid.

c. A statement that the debtor may elect to discontinue participation in the program without penalty at any time during the program.

d. The beginning and expiration date of the contract.

e. The name, physical address, mailing address if different from the physical address, and telephone number of the licensee.

f. A description of the services to be provided by the licensee, which shall include educational and counseling services designed to assist the debtor in managing the debtor's borrowing, spending, and saving habits.

g. If the debt management program is a debt settlement program, the following:

(1) A comprehensive list of every debt at the time of enrollment that is to be negotiated for settlement by the licensee, including the creditors' names and identifying information.

(2) The estimated amount of money needed to fund settlements.

h. If the debt management program is based on a model which requires the licensee or any licensee to receive money or evidences thereof from the debtor to distribute to the debtor's creditors, the contract shall set forth the complete list of creditors who are to receive payments under the contract.

5. If the debt management program is based on a model which requires the licensee or any licensee to receive money or evidences thereof from the debtor to distribute to the debtor's creditors, the licensee who receives the money or evidences thereof from the debtor for distribution to the debtor's creditors shall do all of the following:

a. Maintain a separate bank trust account in which all payments received from debtors for the benefit of creditors shall be deposited and in which all payments shall remain until a remittance is made to either the debtor or the creditor.

b. Make remittances to creditors within forty-five days after initial receipt of funds, and thereafter remittances shall be made to creditors within thirty days of receipt, less fees, unless the reasonable payment of one or more of the debtor's obligations requires that such funds be held for a longer period so as to accumulate a sum certain.

c. Provide each debtor a monthly written statement of disbursements made and fees deducted from the debtor's account. The licensee shall also provide a verbal accounting of disbursements made and fees deducted from the debtor's account at any time the debtor requests it during normal business hours.

d. Not receive any fee, or have or cause any fee to be received by any other licensee, other than the initiation fee permitted in section 533A.9, subsection 2, unless the licensee has the consent of at least fifty percent of the total number of the creditors listed in the licensee's

contract with the debtor, or such a like number of creditors have accepted a distribution of payment. The debtor shall be informed by the licensee of those creditors who have not agreed to the licensee's handling of the account.

6. If the debt management program is not based on a model which requires the licensee or any licensee to receive money or evidences thereof from the debtor to distribute to the debtor's creditors, both of the following shall apply:

a. The debtor shall maintain full control of and access to any moneys set aside for payment to creditors.

b. The licensee may not receive consideration from any third party in connection with services rendered to a debtor.

7. A licensee shall keep, and use in the licensee's business, books, accounts, and records which will enable the superintendent to determine whether such licensee is complying with the provisions of this chapter, any applicable state or federal laws or regulations, and the rules and regulations of the superintendent. A licensee shall preserve such books, accounts, and records for at least five years after making the final entry on any transaction recorded therein. Records shall contain complete information regarding all contracts, extensions thereof, payments, disbursements, and charges, which records shall be open to inspection by the superintendent and the superintendent's duly appointed agents during normal business hours.

8. In the event a compromise of a debt is arranged by a licensee with one or more creditors, the debtor shall have the full benefit of such compromise.

9. All licensee advertising content, and data supporting any claims made in the advertising, shall be maintained in retrievable format and available to the superintendent for inspection for a minimum of five years.

10. If the licensee maintains an internet site, the licensee shall make available on its internet site a physical address for its headquarters, a main telephone number, and an electronic mail contact address.

11. The superintendent may adopt additional requirements applicable to licensees pursuant to administrative rule.

[C71, 73, 75, 77, 79, 81, §533A.8]

2009 Acts, ch 34, §5; 2010 Acts, ch 1061, §69; 2013 Acts, ch 90, §257

Referred to in §533A.2, 533A.11

533A.9 Fee agreed in advance.

1. The fee of a licensee charged to a debtor shall be agreed upon in advance and stated in the contract and provision for settlement in case of cancellation shall also be clearly stated in the contract.

2. A debtor may be charged a one-time initiation fee for debt management services, which shall not exceed fifty dollars.

3. If a debt management program is based on a model that required the licensee or any other licensee to receive money or evidences thereof from the debtor to distribute to the debtor's creditors, the debtor may not be charged a fee exceeding the initiation fee permitted in subsection 2 plus a fee not to exceed fifteen percent of amounts actually applied to the debtor's accounts with the creditors. Other than the initiation fee, the debtor shall at no time be required to pay fees exceeding fifteen percent of amounts actually applied to the debtor's accounts with the creditors.

4. If a debt management program is not based on a model that requires the licensee or another licensee to receive money or evidences thereof from the debtor to distribute to the debtor's creditors, a debtor may not be charged a fee exceeding the sum of the following:

a. The initiation fee permitted in subsection 2.

b. An additional fee not to exceed eighteen percent of the total amount of the debtor's debts enrolled in the licensee's program at the time the debtor enrolled in the program. The additional fee shall not be collected pursuant to a method other than the percent of total debt method or the percent of savings method, as provided in subparagraphs (1) and (2), respectively.

(1) The percent of total debt method involves the additional fee being collected in equal

monthly installments payable over the first two-thirds of the term of the contract between the debtor and the licensee. The debtor may elect to discontinue participation at any time during the program by providing written notice to the licensee at the address specified in the contract. Notice of discontinuance, if given by mail, is effective when deposited in the mail properly addressed with postage paid. If the debtor discontinues participation in the program, no future installments are due after the mailing of the notice. If participation is discontinued within the first twelve months of the contract, the licensee may retain only fifty percent of the installments it is scheduled to receive through the date the debtor gives the discontinuation notice and shall refund the excess to the debtor. Notwithstanding the foregoing, the licensee may collect a pro rata portion of the total fee upon completion of a settlement of a debtor's debt. The pro rata portion shall be calculated by multiplying the total dollar amount of the contracted additional fee by the percentage of debt settled of the original amount of debt enrolled in the program. In no event shall the additional fee exceed eighteen percent of the total amount of the debtor's debts enrolled in the licensee's program at the time the debtor enrolled in the program.

(2) The percent of savings method involves the additional fee being collected in monthly installments of fifty dollars per month, and the monthly fees collected shall be credited against any fees the licensee earns as the result of settlements. The debtor may elect to discontinue participation at any time during the program by providing written notice to the licensee at the address specified in the contract. Notice of discontinuance, if given by mail, is effective when deposited in the mail properly addressed with postage paid. If the debtor discontinues participation in the program, no future installments are due after the mailing of the notice. If participation is discontinued within the first twelve months of the contract, the licensee may retain only fifty percent of the installments it is scheduled to receive through the date the debtor gives the discontinuation notice and shall refund the excess to the debtor. Notwithstanding the foregoing, the licensee may collect a pro rata portion of the total fee upon completion of a settlement of a debtor's debt. The pro rata portion, which may be collected at the time of settlement, shall be calculated by multiplying the contracted savings percentage, not to exceed thirty percent, by the amount saved on settled debt. The amount saved on settled debt is the difference between the balance of that debt upon enrollment in the program and the amount settled. In no event shall the additional fee exceed eighteen percent of the total amount of the debtor's debts enrolled in the licensee's program at the time the debtor enrolled in the program.

5. Any services provided by a third party, other than the debtor's own banking fees, including lead generating, marketing, and selling services, shall be paid for by the licensee. Under no circumstances shall a debtor be required to pay a fee to a third party to obtain a licensee's services.

[C71, 73, 75, 77, 79, 81, §533A.9]

90 Acts, ch 1100, §1; 2006 Acts, ch 1042, §7; 2009 Acts, ch 34, §6

Referred to in §533A.8

533A.9A Donations.

A donation shall not be charged to a debtor or creditor, deducted from a payment to a creditor, deducted from the debtor's account, or deducted from payments made to the licensee pursuant to the debt management contract. If a licensee requests a donation from a debtor, the licensee must clearly indicate that any donation is voluntary and not a condition or requirement for providing debt management.

2006 Acts, ch 1042, §8; 2007 Acts, ch 126, §94

533A.10 Examination of licensee — records.

1. The superintendent may examine the condition and affairs of a licensee. In connection with any examination, the superintendent may examine on oath any licensee, and any director, officer, employee, customer, creditor, or stockholder of a licensee concerning the affairs and business of the licensee. The superintendent shall ascertain whether the licensee transacts its business in the manner prescribed by the law and applicable rules. The licensee shall pay the cost of the examination as determined by the superintendent

based on the actual cost of the operation of the finance bureau of the banking division of the department of commerce, including the proportionate share of the administrative expenses in the operation of the banking division attributable to the finance bureau, as determined by the superintendent, incurred in the discharge of duties imposed upon the superintendent by this chapter. Failure to pay the examination fee within thirty days of receipt of demand from the superintendent shall subject the licensee to a late fee of up to five percent per day of the amount of the examination fee for each day the payment is delinquent.

2. In the investigation of alleged violations of this chapter, the superintendent may compel the attendance of any person or the production of any books, accounts, records and files, and may examine under oath all persons in attendance.

3. Except as otherwise provided by this chapter, all papers, documents, examination reports and other writings relating to the supervision of licensees are not public records and are not subject to disclosure under chapter 22. The superintendent may disclose information to representatives of other state or federal regulatory authorities. The superintendent may release summary complaint information as long as the information does not specifically identify the complainant. The superintendent may prepare and circulate reports reflecting financial information examination results for all licensees on an aggregate basis, including other information considered pertinent to the purpose of each report for general statistical information. The superintendent may prepare and circulate reports provided by law. The superintendent may release the reports and correspondence in the course of an enforcement proceeding or a hearing held by the superintendent and may provide this information to the attorney general for purposes of enforcing this chapter or the consumer fraud Act, section 714.16.

4. The superintendent may receive documents, materials, or other information, including otherwise confidential and privileged documents, materials, or other information, through a nationwide licensing system and from other local, state, federal, or international regulatory agencies, the conference of state bank supervisors and its affiliates and subsidiaries, the national association of consumer credit administrators and its affiliates and subsidiaries, and any other regulator association, and shall maintain as confidential and privileged any such document, material, or other information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material, or other information.

[C71, 73, 75, 77, 79, 81, §533A.10]

2006 Acts, ch 1042, §9; 2007 Acts, ch 170, §4; 2013 Acts, ch 5, §6

533A.11 Unlawful acts of licensee.

It is unlawful and a violation of this chapter for the holder of any license issued under this chapter:

1. To purchase from a creditor any obligation of a debtor.

2. To operate as a collection agent and as a licensee as to the same debtor's account without first disclosing in writing such fact to both the debtor and creditor.

3. To execute any contract or agreement to be signed by the debtor unless the contract or agreement is fully and completely filled in and finished.

4. To receive or charge any fee in the form of a promissory note or other promise to pay, or receive or accept any mortgage or other security for any fee, both as to real or personal property.

5. To pay any bonus or other consideration to any individual, agency, partnership, unincorporated association, or corporation for the referral of a debtor to the licensee's business, or to accept or receive any bonus, commission, or other consideration for referring any debtor to any individual, partnership, unincorporated association, agency, or corporation for any reason.

6. To advertise the licensee's services, display, distribute, broadcast, or televise, or permit to be displayed, advertised, distributed, broadcast, or televised the licensee's services in any manner inconsistent with the law.

7. To make, or facilitate the debtor in making, any false or misleading claim regarding a creditor's right to collect a debt.

8. To dispute, or facilitate the debtor in disputing, the validity of a debt absent a good faith belief by the debtor that the debt is not validly owing.

9. To challenge a debt without the written consent of the debtor.

10. To provide or offer to provide legal advice or legal services, including but not limited to the negotiation of payments or the settlement of a debtor's delinquent account that is subject to pending litigation, unless the person providing or offering to provide legal advice is licensed to practice law in the state in which the debtor resides.

11. To execute a power of attorney or any other written agreement that extinguishes or limits the debtor's right to contact or communicate with any creditor.

12. To take a wage assignment, a lien of any type on real or personal property, or other security to secure the payment of compensation. Any such security is void and unenforceable.

13. To induce or attempt to induce a debtor to enter into a contract which does not comply in all respects with the requirements of this chapter.

14. Where applicable, to make any statements, or allow a third party marketing or selling the licensee's program to make any statements, in the course of advertising or solicitation that contradicts the disclosures required by section 533A.8.

15. When the licensee's program is a debt settlement program, the following:

a. To advise a debtor to stop making payments to creditors.

b. To lead a debtor to believe that a payment to a creditor is in settlement of a debt to the creditor unless the creditor provides a written certification or confirmation that the payment is in full settlement of the debt, or is part of a payment plan that is in full settlement of the debt.

c. To make any of the following representations:

(1) The licensee will furnish money to pay bills or prevent attachments.

(2) Payment of a certain amount will guarantee satisfaction of a certain amount or range of indebtedness.

(3) Participation in a program will prevent debt collection calls, litigation, garnishment, attachment, repossession, foreclosure, eviction, or loss of employment.

(4) Participation in a program will not harm the debtor's credit report or credit score.

(5) Participation in a program will prevent the debtor from having to declare bankruptcy.

(6) That the licensee is authorized or competent to furnish legal advice or perform legal services, including but not limited to the negotiation of payments or the settlement of a debtor's delinquent account that is subject to pending litigation.

(7) That the licensee's negotiations with creditors will result in the elimination of adverse information on the debtor's credit report.

[C71, 73, 75, 77, 79, 81, §533A.11]

90 Acts, ch 1100, §2; 2009 Acts, ch 34, §7

533A.12 Rules.

The superintendent may adopt administrative rules pursuant to chapter 17A to administer and enforce the provisions of this chapter.

2006 Acts, ch 1042, §10

533A.13 License mandatory to business.

It shall be unlawful for a person to engage in the business of debt management without first obtaining a license as required by this chapter. Any person or any owner, partner, member, officer, director, employee, agent, or representative thereof who shall willfully or knowingly engage in the business of debt management without the license required by this chapter shall be guilty of a serious misdemeanor.

[C71, 73, 75, 77, 79, 81, §533A.13]

2006 Acts, ch 1042, §11

533A.14 Fees to state treasurer.

All moneys received by the superintendent from fees, licenses, and examinations pursuant to this chapter shall be deposited by the superintendent with the treasurer of state for deposit in the department of commerce revolving fund created in section 546.12.

[C71, 73, 75, 77, 79, 81, §533A.14]

2009 Acts, ch 181, §105

533A.15 Judicial review.

Judicial review of actions of the superintendent pursuant to sections 533A.3 and 533A.7 may be sought in accordance with the terms of the Iowa administrative procedure Act, chapter 17A.

[C71, 73, 75, 77, 79, 81, §533A.15]

2003 Acts, ch 44, §114

533A.16 Violations — injunctions — civil penalties.

1. If the superintendent believes that a person has engaged in, or is about to engage in, an act or practice that constitutes or will constitute a violation of this chapter, the superintendent may apply to the district court for an order enjoining such act or practice. Upon a showing by the superintendent that such person has engaged, or is about to engage, in any such act or practice, the district court shall grant an injunction.

2. The superintendent may investigate or initiate complaints against persons who are not licensed under this chapter to determine whether the person is violating this chapter.

3. In addition to or as an alternative to applying to the district court for an injunction, the superintendent may issue an order to a person who is not licensed under this chapter to require compliance with this chapter, may impose a civil penalty against such person for any violation of this chapter in an amount up to five thousand dollars for each violation, and may order the person to pay restitution.

4. Before issuing an order under this section, the superintendent shall provide the person written notice and the opportunity to request a hearing. The hearing must be requested within thirty days after receipt of the notice and shall be conducted in the same manner as provided for in disciplinary proceedings involving a licensee under this chapter.

5. A person aggrieved by the imposition of a civil penalty under this section may seek judicial review pursuant to section 17A.19.

6. An action to enforce an order under this section may be joined with an action for an injunction.

2008 Acts, ch 1160, §11

533A.17 Waiver not allowed.

A waiver by a debtor of the provisions of this chapter is void and unenforceable as contrary to public policy. An attempt by a licensee to induce a debtor to waive the debtor's rights is a violation of this chapter.

2009 Acts, ch 34, §8

CHAPTER 533B

SALE OF CERTAIN INSTRUMENTS FOR PAYMENT OF MONEY

Repealed by 2003 Acts, ch 96, §41, 42; see chapter 533C

CHAPTER 533C

UNIFORM MONEY SERVICES ACT

Referred to in §524.212, 524.606, 533A.2, 546.3, 669.14

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ARTICLE 1

GENERAL PROVISIONS

533C.101 Short title.

This chapter may be cited as the *"Uniform Money Services Act"*.

2003 Acts, ch 96, §1, 42

533C.102 Definitions.

In this chapter:

1. *"Applicant"* means a person that files an application for a license under this chapter.

2. *"Authorized delegate"* means a person a licensee designates to provide money services on behalf of the licensee.

3. *"Bank"* means an institution organized under federal or state law which does any of the following:

a. Accepts demand deposits or deposits that the depositor may use for payment to third parties and engages in the business of making commercial loans.

b. Engages in credit card operations and maintains only one office that accepts deposits, does not accept demand deposits or deposits that the depositor may use for payments to third parties, does not accept a savings or time deposit less than one hundred thousand dollars, and does not engage in the business of making commercial loans.

4. *"Compensation"* means any fee, commission, or other benefit.

5. *"Conducting the business"* means engaging in activities of a licensee or money transmitter more than ten times in any calendar year for compensation.

6. *"Control"* means any of the following:

a. Ownership of, or the power to vote, directly or indirectly, at least twenty-five percent of a class of voting securities or voting interests of a licensee or person in control of a licensee.

b. Power to elect a majority of executive officers, managers, directors, trustees, or other persons exercising managerial authority of a licensee or person in control of a licensee.

c. The power to exercise, directly or indirectly, a controlling influence over the management or policies of a licensee or person in control of a licensee.

7. *"Credit union"* means a cooperative, nonprofit association incorporated under chapter 533 or the Federal Credit Union Act, 12 U.S.C. §1751 et seq., that is insured by the national credit union administration and includes an office of a credit union.

8. *"Currency exchange"* means receipt of compensation from the exchange of money of one government for money of another government.

9. *"Executive officer"* means a president, chairperson of the executive committee, chief financial officer, responsible individual, or other individual who performs similar functions.

10. *"Licensee"* means a person licensed under this chapter.

11. *"Location"* means a place of business at which activity conducted by a licensee or money transmitter occurs.

12. *"Monetary value"* means a medium of exchange, whether or not redeemable in money.

13. *"Money"* means a medium of exchange authorized or adopted by a domestic or foreign government as a part of its currency and that is customarily used and accepted as a medium of exchange in the country of issuance. The term includes a monetary unit of account established by an intergovernmental organization or by agreement between two or more governments.

14. *"Money services"* means money transmission or currency exchange.

15. *"Money transmission"* means any of the following:

a. Selling payment instruments to one or more persons or issuing payment instruments which are sold to one or more persons.

b. Conducting the business of receiving money or monetary value for transmission.

c. Conducting the business of receiving money for obligors for the purpose of paying obligors' bills, invoices, or accounts.

16. *"Outstanding"*, with respect to a payment instrument, means issued or sold by or for the licensee and reported as sold but not yet paid by or for the licensee.

17. *"Payment instrument"* means a check, draft, money order, traveler's check, stored-value, or other instrument or order for the transmission or payment of money or monetary value, sold to one or more persons, whether or not that instrument or order is negotiable. *"Payment instrument"* does not include an instrument that is redeemable by the issuer or an affiliate in merchandise or service, a credit card voucher, or a letter of credit.

18. *"Person"* means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government; governmental subdivision, agency or instrumentality; public corporation; or any other legal or commercial entity.

19. *"Proceeds"* means property acquired or derived directly or indirectly from, produced through, realized through, or caused by an act or omission and includes any property of any kind.

20. *"Property"* means anything of value, and includes any interest in property, including any benefit, privilege, claim, or right with respect to anything of value, whether real or

personal, tangible or intangible, without reduction for expenses incurred for acquisition, maintenance, production, or any other purpose.

21. *"Record"* means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

22. *"Responsible individual"* means an individual who is employed by a licensee and has principal managerial authority over the provision of money services by the licensee in this state.

23. *"State"* means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

24. *"Stored-value"* means a monetary value that is evidenced by an electronic record.

25. *"Superintendent"* means the superintendent of banking for the state of Iowa.

26. *"Transaction"* includes a purchase, sale, trade, loan, pledge, investment, gift, transfer, transmission, delivery, deposit, withdrawal, payment, transfer between accounts, exchange of currency, extension of credit, purchase or sale of any monetary instrument or stored-value, use of a safe deposit box, or any other acquisition or disposition of property by whatever means effected.

27. *"Unsafe or unsound practice"* means a practice or conduct by a person licensed to engage in money transmission or an authorized delegate of such a person which creates the likelihood of material loss, insolvency, or dissipation of the licensee's assets, or otherwise materially prejudices the interests of its customers.

2003 Acts, ch 96, §2, 42
Referred to in §533A.2

533C.103 Exclusions.

This chapter does not apply to:

1. The United States or a department, agency, or instrumentality thereof.

2. A money transmission by the United States postal service or by a contractor on behalf of the United States postal service.

3. A state, county, city, or any other governmental agency or governmental subdivision of a state.

4. The following entities whether chartered or organized under the laws of a state or of the United States: a bank, bank holding company, savings and loan association, savings bank, credit union, office of an international banking corporation, branch of a foreign bank, corporation organized pursuant to the federal Bank Service Company Act, 12 U.S.C. §1861 – 1867, or corporation organized under the federal Edge Act, 12 U.S.C. §611 – 633.

5. Electronic funds transfer of governmental benefits for a federal, state, county, or governmental agency by a contractor on behalf of the United States or a department, agency, or instrumentality thereof, or a state or governmental subdivision, agency, or instrumentality thereof.

6. A board of trade designated as a contract market under the federal Commodity Exchange Act, 7 U.S.C. §1 – 25, or a person that, in the ordinary course of business, provides clearance and settlement services for a board of trade to the extent of its operation as or for such a board.

7. A registered futures commission merchant under the federal commodities laws to the extent of its operation as such a merchant.

8. A person that provides clearance or settlement services pursuant to a registration as a clearing agency or an exemption from such registration granted under the federal securities laws to the extent of its operation as such a provider.

9. An operator of a payment system to the extent that it provides processing, clearing, or settlement services, between or among persons excluded by this section, in connection with wire transfers, credit card transactions, debit card transactions, stored-value transactions, automated clearing house transfers, or similar funds transfers.

10. A person registered as a securities broker-dealer under federal or state securities laws to the extent of its operation as such a broker-dealer.

11. A delayed deposit services business as defined in chapter 533D.

12. A real estate broker or salesperson as defined in chapter 543B.

13. Pari-mutuel wagering, racetracks, excursion gambling boats, and gambling structures as provided in chapters 99D and 99F.

14. A person engaging in the business of debt management that is licensed or exempt from licensing pursuant to section 533A.2.

15. An insurance company organized under chapter 508, 514, 514B, 515, 518, 518A, or 520, or authorized to do the business of insurance in Iowa to the extent of its operation as an insurance company.

16. An insurance producer as defined in section 522B.1 to the extent of its operation as an insurance producer.

2003 Acts, ch 96, §3, 42; 2004 Acts, ch 1101, §76; 2007 Acts, ch 188, §20
Referred to in §533A.2

ARTICLE 2

MONEY TRANSMISSION LICENSES

Referred to in §533C.301, 533C.302, 533C.401

533C.201 License required.

1. A person shall not engage in the business of money transmission or advertise, solicit, or hold itself out as providing money transmission unless the person:

a. Is licensed under this article; or

b. Is an authorized delegate of a person licensed under this article.

2. A license under this article is not transferable or assignable.

2003 Acts, ch 96, §4, 42; 2004 Acts, ch 1101, §77
Referred to in §533C.707

533C.202 Application for license.

1. In this section, "*material litigation*" means litigation that according to generally accepted accounting principles is significant to an applicant's or a licensee's financial health and would be required to be disclosed in the applicant's or licensee's annual audited financial statements, report to shareholders, or similar records.

2. A person applying for a license under this article shall do so in a form prescribed by the superintendent. The application must state or contain:

a. The legal name and residential and business addresses of the applicant and any fictitious or trade name used by the applicant in conducting its business.

b. A list of any criminal convictions of the applicant and any material litigation in which the applicant has been involved in the ten-year period next preceding the submission of the application.

c. A description of any money services previously provided by the applicant and the money services that the applicant seeks to provide in this state.

d. A list of the applicant's proposed authorized delegates and the locations in this state where the applicant and its authorized delegates propose to engage in money transmission or provide other money services.

e. A list of other states in which the applicant is licensed to engage in money transmission or provide other money services and of any license revocations, suspensions, or other disciplinary action taken against the applicant in another state.

f. Information concerning any bankruptcy or receivership proceedings affecting the licensee.

g. A sample form of contract for authorized delegates, if applicable, and a sample form of payment instrument or instrument upon which stored-value is recorded, if applicable.

h. The name and address of any bank through which the applicant's payment instruments and stored-value will be paid.

i. A description of the source of money and credit to be used by the applicant to provide money services.

j. Any other information the superintendent reasonably requires with respect to the applicant.

3. If an applicant is a corporation, limited liability company, partnership, or other entity, the applicant shall also provide all of the following:

a. The date of the applicant's incorporation or formation and state or country of incorporation or formation.

b. If applicable, a certificate of good standing from the state or country in which the applicant is incorporated or formed.

c. A brief description of the structure or organization of the applicant, including any parent or subsidiary of the applicant, and whether any parent or subsidiary is publicly traded.

d. The legal name, any fictitious or trade name, all business and residential addresses, and the employment, in the ten-year period next preceding the submission of the application of each executive officer, manager, director, or person that has control, of the applicant.

e. A list of any criminal convictions and material litigation in which any executive officer, manager, director, or person in control of the applicant has been involved in the ten-year period next preceding the submission of the application.

f. A copy of the applicant's audited financial statements for the most recent fiscal year and, if available, for the two-year period next preceding the submission of the application.

g. A copy of the applicant's unconsolidated financial statements for the current fiscal year, whether audited or not, and, if available, for the two-year period next preceding the submission of the application.

h. If the applicant is publicly traded, a copy of the most recent report filed with the United States securities and exchange commission under section 13 of the federal Securities Exchange Act of 1934, 15 U.S.C. §78m.

i. If the applicant is a wholly owned subsidiary of:

(1) A corporation publicly traded in the United States, a copy of audited financial statements for the parent corporation for the most recent fiscal year or a copy of the parent corporation's most recent report filed under section 13 of the federal Securities Exchange Act of 1934, 15 U.S.C. §78m.

(2) A corporation publicly traded outside the United States, a copy of similar documentation filed with the regulator of the parent corporation's domicile outside the United States.

j. If the applicant has a registered agent in this state, the name and address of the applicant's registered agent in this state.

k. Any other information the superintendent reasonably requires with respect to the applicant.

4. A nonrefundable application fee of one thousand dollars and a license fee must accompany an application for a license under this article. The license fee must be refunded if the application is denied. The license fee shall be the sum of five hundred dollars plus an additional ten dollars for each location in this state at which business is conducted through authorized delegates or employees of the licensee, but shall not exceed five thousand dollars. Fees for locations added after the initial application shall be submitted with the quarterly reports pursuant to section 533C.503, subsection 2. If the licensee has no locations in this state at which business is conducted through authorized delegates or employees of the licensee, the license fee shall be set by the superintendent, but shall not exceed five thousand dollars. A license under this article expires on the next December 31 after its issuance. The initial license fee is considered an annual fee and the superintendent shall prorate the license fee, refunding any amount due to a partial license year. However, no refund of a license fee shall be made when a license is suspended, revoked, or surrendered.

5. The superintendent may waive one or more requirements of subsections 2 and 3, or permit an applicant to submit other information in lieu of the required information.

6. The superintendent may authorize applicants and licensees to be licensed through a nationwide licensing system and to pay the corresponding system processing fees. The superintendent may establish by rule or order new licensing requirements as necessary, including but not limited to requirements that applicants, including officers and directors

and those who have control of the applicant, submit to fingerprinting and criminal history checks.

7. For the purposes of this section and in order to reduce the points of contact which the federal bureau of investigation may be required to maintain for purposes of subsection 6, the superintendent may use the nationwide licensing system as a channeling agent for requesting information from and distributing information to the United States department of justice or other governmental agency, or to or from any other source so directed by the superintendent.

2003 Acts, ch 96, §5, 42; 2004 Acts, ch 1086, §88; 2013 Acts, ch 5, §7, 8
Referred to in §533C.204

533C.203 Security.

1. Except as otherwise provided in subsection 2, a surety bond, letter of credit, or other similar security acceptable to the superintendent in the amount of fifty thousand dollars plus ten thousand dollars per location, not exceeding a total addition of three hundred thousand dollars, must accompany an application for a license. If the licensee has no locations in this state, the superintendent shall set the bond amount not to exceed three hundred thousand dollars.

2. Security must be in a form satisfactory to the superintendent and payable to the state for the benefit of any claimant against the licensee to secure the faithful performance of the obligations of the licensee with respect to money transmission.

3. The aggregate liability on a surety bond shall not exceed the principal sum of the bond. A claimant against a licensee may maintain an action on the bond, or the superintendent may maintain an action on behalf of the claimant.

4. A surety bond must cover claims for so long as the superintendent specifies, but for at least five years after the licensee ceases to provide money services in this state. However, the superintendent may permit the amount of security to be reduced or eliminated before the expiration of that time to the extent the amount of the licensee's payment instruments or stored-value obligations outstanding in this state is reduced. The superintendent may permit a licensee to substitute another form of security acceptable to the superintendent for the security effective at the time the licensee ceases to provide money services in this state.

5. In lieu of the security prescribed in this section, an applicant for a license or a licensee may provide security in a form prescribed by the superintendent.

6. The superintendent may increase the amount of security required to a maximum of one million dollars if the financial condition of a licensee so requires, as evidenced by reduction of net worth, financial losses, or other relevant criteria.

2003 Acts, ch 96, §6, 42
Referred to in §533C.204, 533C.205

533C.204 Issuance of license.

1. When an application is filed under this article, the superintendent shall investigate the applicant's financial condition and responsibility, financial and business experience, character, and general fitness. The superintendent may conduct an on-site investigation of the applicant, the reasonable cost of which the applicant must pay. The superintendent shall issue a license to an applicant under this article if the superintendent finds that all of the following conditions have been fulfilled:

a. The applicant has complied with sections 533C.202, 533C.203, and 533C.206.

b. The applicant has not been convicted of or pled guilty to a felony or an indictable misdemeanor for financial gain within the past ten years.

c. The applicant has paid a fee set by the department of public safety, division of criminal investigation, to defray the costs associated with the search of criminal history records of the applicant. If the applicant is a corporation, the applicant shall pay the fee associated with a criminal history record check for the directors and officers of the corporation. If the applicant is a partnership, the applicant shall pay the fee associated with a criminal history record check for each of the partners. The superintendent may require the applicant to provide additional information from the applicant if the department of public safety records indicate that a person with the same name has a criminal history. If the applicant is a publicly traded

corporation or a subsidiary or affiliate of a publicly traded corporation, no criminal history record check shall be required.

2. When an application for an original license under this article is complete, the superintendent shall promptly notify the applicant of the date on which the application was determined to be complete and the superintendent shall approve or deny the application within one hundred twenty days after that date.

3. The superintendent may for good cause extend the application period.

4. An applicant whose application is denied by the superintendent under this article may appeal, within thirty days after receipt of the notice of the denial, from the denial and request a hearing. The denial of a license shall not be deemed a contested case.

2003 Acts, ch 96, §7, 42; 2005 Acts, ch 35, §31

533C.205 Renewal of license.

1. A licensee under this article shall pay an annual renewal fee as determined below by no later than December 1 of the year of expiration. The renewal fee shall be five hundred dollars plus an additional ten dollars for each location in this state at which business is conducted through authorized delegates or employees of the licensee, but shall not exceed five thousand dollars. Fees for locations added after submission of the renewal application shall be submitted with the quarterly reports pursuant to section 533C.503, subsection 2. If the licensee has no locations in this state at which business is conducted through authorized delegates or employees of the licensee, the license fee shall be set by the superintendent, but shall not exceed five thousand dollars.

2. A licensee under this article shall submit a renewal report with the renewal fee, in a form prescribed by the superintendent. The renewal report must state or contain:

a. A copy of the licensee's most recent audited annual financial statement or, if the licensee is a wholly owned subsidiary of another corporation, the most recent audited consolidated annual financial statement of the parent corporation or the licensee's most recent audited consolidated annual financial statement.

b. The number and monetary amount of payment instruments sold by the licensee in this state which have not been included in a renewal report, and the monetary amount of payment instruments and stored-value currently outstanding.

c. A description of each material change in information submitted by the licensee in its original license application which has not been reported to the superintendent on any required report.

d. A list of the licensee's permissible investments and a certification that the licensee continues to maintain permissible investments according to the requirements set forth in sections 533C.601 and 533C.602.

e. Proof that the licensee continues to maintain adequate security as required by section 533C.203; and

f. A list of the locations in this state where the licensee or an authorized delegate of the licensee engages in money transmission or provides other money services.

3. If a licensee does not file a renewal report or pay its renewal fee by December 1, or any extension of time granted by the superintendent, the superintendent may assess a late fee of one hundred dollars per day.

2003 Acts, ch 96, §8, 42; 2013 Acts, ch 5, §9

533C.206 Net worth.

A licensee under this article shall maintain a net worth of at least one hundred thousand dollars plus ten thousand dollars per authorized delegate not to exceed five hundred thousand dollars determined in accordance with generally accepted accounting principles. If the licensee has no locations in this state at which business is conducted through authorized delegates or employees of the licensee, the minimum net worth, not to exceed five hundred thousand dollars, shall be set by the superintendent.

2003 Acts, ch 96, §9, 42

Referred to in §533C.204

ARTICLE 3
CURRENCY EXCHANGE LICENSES

Referred to in §533C.401

533C.301 License required.

1. A person shall not engage in currency exchange or advertise, solicit, or hold itself out as providing currency exchange for which the person receives revenues equal to or greater than five percent of total revenues unless the person:

a. Is licensed under this article.

b. Is licensed for money transmission under article 2.

c. Is an authorized delegate of a person licensed under article 2.

2. A license under this article is not transferable or assignable.

2003 Acts, ch 96, §10, 42; 2004 Acts, ch 1086, §89

Referred to in §533C.707

533C.302 Application for license.

1. A person applying for a license under this article shall do so in a form prescribed by the superintendent. The application must state or contain:

a. The legal name and residential and business addresses of the applicant, if the applicant is an individual, or, if the applicant is not an individual, the name of each partner, executive officer, manager, and director.

b. The location of the principal office of the applicant.

c. The complete addresses of other locations in this state where the applicant proposes to engage in currency exchange, including all limited stations and mobile locations.

d. A description of the source of money and credit to be used by the applicant to engage in currency exchange.

e. Other information the superintendent reasonably requires with respect to the applicant, but not more than the superintendent may require under article 2.

2. A nonrefundable application fee of one thousand dollars and the license fee must accompany an application for a license under this article. The license fee shall be the sum of two hundred fifty dollars plus an additional fifty dollars for each location at which business is conducted, but not to exceed one thousand dollars. Fees for locations added after the initial application shall be submitted with the quarterly reports pursuant to section 533C.503, subsection 2. The license fee must be refunded if the application is denied. A license under this article expires on the next December 31 after its issuance. The initial license fee is considered an annual fee and the superintendent shall prorate the license fee, refunding any amount due to a partial license period. However, no refund of a license fee shall be made when a license is suspended, revoked, or surrendered.

3. The superintendent may authorize applicants and licensees to be licensed through a nationwide licensing system and to pay the corresponding system processing fees. The superintendent may establish by rule or order new requirements as necessary, including but not limited to requirements that applicants, including officers and directors and those who have control of the applicant, submit to fingerprinting and criminal history checks.

4. For the purposes of this section and in order to reduce the points of contact which the federal bureau of investigation may be required to maintain for purposes of subsection 3, the superintendent may use the nationwide licensing system as a channeling agent for requesting information from and distributing information to the United States department of justice or other governmental agency, or to or from any other source so directed by the superintendent.

2003 Acts, ch 96, §11, 42; 2013 Acts, ch 5, §10, 11; 2013 Acts, ch 70, §25

Referred to in §533C.303

533C.303 Issuance of license.

1. Upon the filing of an application under this article, the superintendent shall investigate the applicant's financial condition and responsibility, financial and business experience, character, and general fitness. The superintendent may conduct an on-site investigation of the applicant, the reasonable cost of which the applicant must pay. The superintendent shall

issue a license to an applicant under this article if the superintendent finds that all of the following conditions have been fulfilled:

a. The applicant has complied with section 533C.302.

b. The applicant has not been convicted of or pled guilty to any felony or an indictable misdemeanor for financial gain within the past ten years.

c. The applicant has paid a fee set by the department of public safety, division of criminal investigation, to defray the costs associated with the search of criminal history records of the applicant. If the applicant is a corporation, the applicant shall pay the fee associated with a criminal history record check for the directors and officers of the corporation. If the applicant is a partnership, the applicant shall pay the fee associated with a criminal history record check for each of the partners. The superintendent may require the applicant to provide additional information from the applicant if the department of public safety records indicate that a person with the same name has a criminal history. If the applicant is a publicly traded corporation or a subsidiary or affiliate of a publicly traded corporation, no criminal history record check shall be required.

d. The financial condition and responsibility, financial and business experience, competence, character, and general fitness of the applicant; and the competence, experience, character, and general fitness of the executive officers, managers, directors, and persons in control of the applicant indicate that it is in the interest of the public to permit the applicant to engage in currency exchange.

2. When an application for an original license under this article is complete, the superintendent shall promptly notify the applicant of the date on which the application was determined to be complete and the superintendent shall approve or deny the application within one hundred twenty days after that date.

3. The superintendent may for good cause extend the application period.

4. An applicant who is denied a license by the superintendent under this article may appeal, within thirty days after receipt of the notice of the denial, from the denial and request a hearing. The denial of a license shall not be deemed a contested case under chapter 17A.

2003 Acts, ch 96, §12, 42; 2004 Acts, ch 1101, §78; 2005 Acts, ch 35, §31

533C.304 Renewal of license.

1. A licensee under this article shall pay an annual renewal fee no later than December 1. The annual renewal fee shall be the sum of two hundred fifty dollars plus an additional fifty dollars for each location at which business is conducted, but shall not exceed one thousand dollars. Fees for locations added after the initial application shall be submitted with the quarterly reports pursuant to section 533C.503, subsection 2.

2. A licensee under this article shall submit a renewal report with the renewal fee, in a form prescribed by the superintendent. The renewal report must state or contain:

a. A description of each material change in information submitted by the licensee in its original license application that has not been reported to the superintendent on any required report.

b. A list of the locations in this state where the licensee or an authorized delegate of the licensee engages in currency exchange.

3. If a licensee does not file a renewal report and pay its renewal fee by December 1, or any extension of time granted by the superintendent, the superintendent may assess a late fee of one hundred dollars per day.

4. The superintendent for good cause may grant an extension of the renewal date.

2003 Acts, ch 96, §13, 42; 2013 Acts, ch 5, §12; 2013 Acts, ch 70, §26

ARTICLE 4
AUTHORIZED DELEGATES

533C.401 Relationship between licensee and authorized delegate.

1. In this section, "*remit*" means to make direct payments of money to a licensee or its

representative authorized to receive money or to deposit money in a bank in an account specified by the licensee.

2. A contract between a licensee and an authorized delegate must require the authorized delegate to operate in full compliance with this chapter. The licensee shall furnish in a record to each authorized delegate policies and procedures for the operation of the money services business.

3. An authorized delegate shall remit all money owing to the licensee in accordance with the terms of the contract between the licensee and the authorized delegate.

4. If a license is suspended or revoked or a licensee does not renew its license, the superintendent shall notify all authorized delegates of the licensee whose names are in a record filed with the superintendent of the suspension, revocation, or nonrenewal. After notice is sent or publication is made, an authorized delegate shall immediately cease to provide money services as a delegate of the licensee.

5. An authorized delegate shall not provide money services outside the scope of activity permissible under the contract between the authorized delegate and the licensee, except activity in which the authorized delegate is licensed to engage under article 2 or 3. An authorized delegate of a licensee holds in trust for the benefit of the licensee all money net of fees received from money transmission.

6. A person operating under a written contract with a licensee as required under subsection 2 shall not be deemed to be conducting unauthorized money services because the licensee has failed to properly designate the person as an authorized delegate under this chapter provided that the person is otherwise operating in full compliance with this chapter.

2003 Acts, ch 96, §14, 42
Referred to in §533C.707

533C.402 Unauthorized activities.

A person shall not provide money services on behalf of another person not licensed under this chapter. A person who engages in that activity provides money services to the same extent as if the person were a licensee.

2003 Acts, ch 96, §15, 42
Referred to in §533C.707

ARTICLE 5

EXAMINATIONS — REPORTS — RECORDS

533C.501 Authority to conduct examinations.

1. The superintendent may conduct an annual examination of a licensee upon reasonable notice in a record to the licensee. The superintendent may conduct an annual examination of any authorized delegate of a licensee upon reasonable notice in a record to the authorized delegate and the licensee.

2. The superintendent may examine a licensee or its authorized delegate, at any time, without notice, if the superintendent has reason to believe that the licensee or authorized delegate is engaging in an unsafe or unsound practice or has violated or is violating this chapter or a rule adopted or an order issued under this chapter.

3. The licensee shall pay the reasonable cost of the examination.

4. Information obtained during an examination under this chapter may be disclosed only as provided in section 533C.507.

2003 Acts, ch 96, §16, 42
Referred to in §533C.505

533C.502 Joint examinations.

1. The superintendent may conduct an on-site examination of records listed in section 533C.505 in conjunction with representatives of other state agencies or agencies of another state or of the federal government. Instead of an examination, the superintendent may

accept the examination report of an agency of this state or of another state or of the federal government or a report prepared by an independent licensed or certified public accountant.

2. A joint examination or an acceptance of an examination report does not preclude the superintendent from conducting an examination as provided by law. A joint report or a report accepted under this section is an official report of the superintendent for all purposes.

2003 Acts, ch 96, §17, 42

533C.503 Reports.

1. A licensee shall file with the superintendent within fifteen business days any material changes in information provided in a licensee's application as prescribed by the superintendent.

2. A licensee shall file with the superintendent within forty-five days after the end of each fiscal quarter a current list of all authorized delegates and locations in this state where the licensee or an authorized delegate of the licensee provides money services. The licensee shall state the name and street address of each location and authorized delegate.

3. A licensee shall file a report with the superintendent within one business day after the licensee has reason to know of the occurrence of any of the following events:

a. The filing of a petition by or against the licensee under the United States bankruptcy code, 11 U.S.C. §101 et seq., for bankruptcy or reorganization.

b. The filing of a petition by or against the licensee for receivership, the commencement of any other judicial or administrative proceeding for its dissolution or reorganization, or the making of a general assignment for the benefit of its creditors.

c. The commencement of a proceeding to revoke or suspend its license in a state or country in which the licensee engages in business or is licensed.

d. The cancellation or other impairment of the licensee's bond or other security.

e. A charge filed against or conviction of the licensee or of an executive officer, manager, or director of, or person in control of, the licensee for a felony.

f. A charge filed against or conviction of an authorized delegate for a felony.

2003 Acts, ch 96, §18, 42; 2004 Acts, ch 1101, §79

Referred to in §533C.202, 533C.205, 533C.302, 533C.304

533C.504 Change of control.

1. A licensee shall:

a. Request approval from the superintendent of a proposed change of control.

b. Submit a nonrefundable fee of one thousand dollars with the request.

2. After review of a request for approval under subsection 1, the superintendent may require the licensee to provide additional information concerning the proposed persons in control of the licensee. The additional information must be limited to the same types required of the licensee or persons in control of the licensee as part of its original license or renewal application.

3. The superintendent shall approve a request for change of control under subsection 1 if, after investigation, the superintendent determines that the person or group of persons requesting approval has the competence, experience, character, and general fitness to operate the licensee or person in control of the licensee in a lawful and proper manner and that the public interest will not be jeopardized by the change of control.

4. When an application for a change of control under this article is complete, the superintendent shall notify the licensee in a record of the date on which the request was determined to be complete and shall approve or deny the request within one hundred twenty days after that date.

5. The superintendent, by rule or order, may exempt a person from any of the requirements of subsection 1, paragraph "*b*", if it is in the public interest to do so.

6. Subsection 1 does not apply to a public offering of securities.

7. Before filing a request for approval to acquire control of a licensee or person in control of a licensee, a person may request in a record a determination from the superintendent as to whether the person would be considered a person in control of a licensee upon consummation of a proposed transaction. If the superintendent determines that the person would not be a

person in control of a licensee, the superintendent shall enter an order to that effect and the proposed person and transaction is not subject to the requirements of subsections 1 through 3.

2003 Acts, ch 96, §19, 42

533C.505 Records.

1. A licensee shall maintain the following records for determining its compliance with this chapter for at least three years:

a. A record of each payment instrument sold.

b. A general ledger posted at least monthly containing all asset, liability, capital, income, and expense accounts.

c. Bank statements and bank reconciliation records.

d. Records of outstanding payment instruments and stored-value obligations.

e. Records of each payment instrument and stored-value obligation paid within the three-year period.

f. A list of the last known names and addresses of all of the licensee's authorized delegates.

g. Any other records the superintendent reasonably requires by rule.

2. The items specified in subsection 1 may be maintained in any form of record.

3. Records may be maintained outside this state if they are made accessible within seven business days of receipt of a written request from the superintendent.

4. All records maintained by the licensee as required in subsections 1 through 3 shall be open to inspection by the superintendent pursuant to section 533C.501.

5. A licensee, authorized delegate, or any officer, employee, agent, or any public official or governmental employee who keeps or files a record pursuant to this section or who communicates or discloses information or records under this section is not liable to its customer, to a state or local agency, or to any person for any loss or damage caused in whole or in part by the making, filing, or governmental use of the record, or any information contained in that record.

6. The licensee shall keep such records as the superintendent may require in order to determine whether such licensee is complying with the provisions of this chapter and with the rules and orders lawfully made by the superintendent under this chapter.

2003 Acts, ch 96, §20, 42; 2004 Acts, ch 1101, §80

Referred to in §533C.502

533C.506 Money laundering reports.

A licensee and an authorized delegate shall file all reports required by federal currency reporting, recordkeeping, and suspicious activity reporting requirements as set forth in 31 U.S.C. §5311 – 5330, and 31 C.F.R. §103.11 – 103.170.

2003 Acts, ch 96, §21, 42

533C.507 Disclosure.

1. Except as otherwise provided by this chapter, the records of the superintendent relating to examinations or supervision and regulation of a person licensed pursuant to this chapter, or authorized delegates of a person licensed pursuant to this chapter, are not public records and are not subject to disclosure under chapter 22. Neither the superintendent nor any member of the superintendent's staff shall disclose any information obtained in the discharge of the superintendent's official duties to any person not connected with the department, except that the superintendent or the superintendent's designee may disclose the information:

a. To representatives of federal agencies insuring accounts in the financial institution.

b. To representatives of state or federal agencies and foreign countries having regulatory or supervisory authority over the activities of the financial institution or similar financial institutions if those representatives are permitted to and do, upon request of the superintendent, disclose similar information respecting those financial institutions under their regulation or supervision or to those representatives who state in writing under oath that they will maintain the confidentiality of that information.

c. To the attorney general of this state.

d. To a federal or state grand jury in response to a lawful subpoena, or pursuant to a county attorney subpoena.

e. To the auditor of this state for the purpose of conducting audits authorized by law.

2. The superintendent may:

a. Disclose the fact of filing of applications with the department pursuant to this chapter, give notice of a hearing, if any, regarding those applications, and announce the superintendent's action thereon.

b. Disclose final decisions in connection with proceedings for the suspension or revocation of licenses or certificates issued pursuant to this chapter.

c. Prepare and circulate reports reflecting the assets and liabilities of licensees on an aggregate basis, including other information considered pertinent to the purpose of each report for general statistical information.

d. Prepare and circulate reports provided by law.

3. Every official report of the department is prima facie evidence of the facts therein stated in any action or proceeding wherein the superintendent is a party.

4. Nothing in this section shall be construed to prevent the disclosure of information that is:

a. Admissible in evidence in any civil or criminal proceeding brought by or at the request of the superintendent or this state to enforce or prosecute violations of this chapter, chapter 706B, or the rules adopted, or orders issued pursuant to this chapter.

b. Requested by or provided to a federal agency, including but not limited to the department of defense, department of energy, department of homeland security, nuclear regulatory commission, and centers for disease control and prevention, to assist state and local government with domestic preparedness for acts of terrorism.

5. The attorney general or the department of public safety may report any possible violations indicated by analysis of the reports required by this chapter to any appropriate law enforcement or regulatory agency for use in the proper discharge of its official duties. The attorney general or the department of public safety shall provide copies of the reports required by this chapter to any appropriate prosecutorial or law enforcement agency upon being provided with a written request for records relating to a specific individual or entity and stating that the agency has an articulable suspicion that such individual or entity has committed a felony offense or a violation of this chapter to which the reports are relevant. A person who releases information received pursuant to this subsection except in the proper discharge of the person's official duties is guilty of a serious misdemeanor.

6. Any report, record, information, analysis, or request obtained by the attorney general or department of public safety pursuant to this chapter is not a public record as defined in chapter 22 and is not subject to disclosure.

7. The superintendent may receive documents, materials, or other information, including otherwise confidential and privileged documents, materials, or other information, through a nationwide licensing system and from other local, state, federal, or international regulatory agencies, the conference of state bank supervisors and its affiliates and subsidiaries, the national association of consumer credit administrators and its affiliates and subsidiaries, the money transmitter regulators association, and any other regulator associations, and shall maintain as confidential and privileged any such document, material, or other information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material, or other information.

2003 Acts, ch 96, §22, 42; 2013 Acts, ch 5, §13

Referred to in §533C.501

ARTICLE 6

PERMISSIBLE INVESTMENTS

533C.601 Maintenance of permissible investments.

1. A licensee shall maintain at all times permissible investments that have a market value computed in accordance with generally accepted accounting principles of not less than the

aggregate amount of all of its outstanding payment instruments and stored-value obligations issued or sold and money transmitted by the licensee in the United States.

2. The superintendent, with respect to any licensees, may limit the extent to which a type of investment within a class of permissible investments may be considered a permissible investment, except for money and certificates of deposit issued by a bank. The superintendent by rule may prescribe or by order allow other types of investments that the superintendent determines to have a safety substantially equivalent to other permissible investments.

3. Permissible investments, even if commingled with other assets of the licensee, are held in trust for the benefit of the purchasers and holders of the licensee's outstanding payment instruments and stored-value obligations in the event of bankruptcy or receivership of the licensee.

2003 Acts, ch 96, §23, 42
Referred to in §533C.205, 533C.602

533C.602 Types of permissible investments.

1. Except to the extent otherwise limited by the superintendent pursuant to section 533C.601, the following investments are permissible under section 533C.601:

a. Cash, a certificate of deposit, or senior debt obligation of an insured depositary institution, as defined in section 3 of the Federal Deposit Insurance Act, 12 U.S.C. §1813.

b. Banker's acceptance or bill of exchange that is eligible for purchase upon endorsement by a member bank of the federal reserve system and is eligible for purchase by a federal reserve bank.

c. An investment bearing a rating of one of the three highest grades as defined by a nationally recognized organization that rates securities.

d. An investment security that is an obligation of the United States or a department, agency, or instrumentality thereof; an investment in an obligation that is guaranteed fully as to principal and interest by the United States; or an investment in an obligation of a state or a governmental subdivision, agency, or instrumentality thereof.

e. Receivables that are payable to a licensee from its authorized delegates, in the ordinary course of business, pursuant to contracts which are not past due or doubtful of collection if the aggregate amount of receivables under this paragraph does not exceed twenty percent of the total permissible investments of a licensee and the licensee does not hold at one time receivables under this paragraph in any one person aggregating more than ten percent of the licensee's total permissible investments.

f. A share or a certificate issued by an open-end management investment company that is registered with the United States securities and exchange commission under the federal Investment Companies Act of 1940, 15 U.S.C. §80a-1 – 80a-64, and whose portfolio is restricted by the management investment company's investment policy to investments specified in paragraphs *"a"* through *"d"*.

2. The following investments are permissible under section 533C.601, but only to the extent specified:

a. An interest-bearing bill, note, bond, or debenture of a person whose equity shares are traded on a national securities exchange or on a national over-the-counter market, if the aggregate of investments under this paragraph does not exceed twenty percent of the total permissible investments of a licensee and the licensee does not at one time hold investments under this paragraph in any one person aggregating more than ten percent of the licensee's total permissible investments.

b. A share of a person traded on a national securities exchange or a national over-the-counter market or a share or a certificate issued by an open-end management investment company that is registered with the United States securities and exchange commission under the federal Investment Companies Act of 1940, 15 U.S.C. §80a-1 – 80a-64, and whose portfolio is restricted by the management investment company's investment policy to shares of a person traded on a national securities exchange or a national over-the-counter market, if the aggregate of investments under this paragraph does not exceed twenty percent of the total permissible investments of a licensee and the licensee

does not at one time hold investments in any one person aggregating more than ten percent of the licensee's total permissible investments.

c. A demand-borrowing agreement made with a corporation or a subsidiary of a corporation whose securities are traded on a national securities exchange if the aggregate of the amount of principal and interest outstanding under demand-borrowing agreements under this paragraph does not exceed twenty percent of the total permissible investments of a licensee and the licensee does not at one time hold principal and interest outstanding under demand-borrowing agreements under this paragraph with any one person aggregating more than ten percent of the licensee's total permissible investments.

d. Any other investment the superintendent designates, to the extent specified by the superintendent.

3. The aggregate of investments under subsection 2 may not exceed fifty percent of the total permissible investments of a licensee calculated in accordance with section 533C.601.

2003 Acts, ch 96, §24, 42
Referred to in §533C.205

ARTICLE 7
ENFORCEMENT

533C.701 Suspension and revocation — receivership.

1. The superintendent may suspend or revoke a license, place a licensee in receivership, or order a licensee to revoke the designation of an authorized delegate if:

a. The licensee violates this chapter or a rule adopted or an order issued under this chapter.

b. The licensee does not cooperate with an examination or investigation by the superintendent.

c. The licensee engages in fraud, intentional misrepresentation, or gross negligence.

d. An authorized delegate is convicted of a violation of a state or federal anti-money laundering statute, or violates a rule adopted or an order issued under this chapter, as a result of the licensee's willful misconduct or willful blindness.

e. The competence, experience, character, or general fitness of the licensee, authorized delegate, person in control of a licensee, or responsible individual of the licensee or authorized delegate indicates that it is not in the public interest to permit the person to provide money services.

f. The licensee engages in an unsafe or unsound practice.

g. The licensee is insolvent, suspends payment of its obligations, or makes a general assignment for the benefit of its creditors.

h. The licensee does not remove an authorized delegate after the superintendent issues and serves upon the licensee a final order finding that the authorized delegate has violated this chapter.

2. In determining whether a licensee is engaging in an unsafe or unsound practice, the superintendent may consider the size and condition of the licensee's money transmission, the magnitude of the loss, the gravity of the violation of this chapter, and the previous conduct of the person involved.

2003 Acts, ch 96, §25, 42
Referred to in §533C.703, 533C.707

533C.702 Suspension and revocation of authorized delegates.

1. The superintendent may issue an order suspending or revoking the designation of an authorized delegate if the superintendent finds that:

a. The authorized delegate violated this chapter or a rule adopted or an order issued under this chapter.

b. The authorized delegate did not cooperate with an examination or investigation by the superintendent.

c. The authorized delegate engaged in fraud, intentional misrepresentation, or gross negligence.

d. The authorized delegate is convicted of a violation of a state or federal anti-money laundering statute.

e. The competence, experience, character, or general fitness of the authorized delegate or a person in control of the authorized delegate indicates that it is not in the public interest to permit the authorized delegate to provide money services.

f. The authorized delegate is engaging in an unsafe or unsound practice.

2. In determining whether an authorized delegate is engaging in an unsafe or unsound practice, the superintendent may consider the size and condition of the authorized delegate's provision of money services, the magnitude of the loss, the gravity of the violation of this chapter or a rule adopted or order issued under this chapter, and the previous conduct of the authorized delegate.

3. An authorized delegate may apply for relief from a suspension or revocation of designation as an authorized delegate according to procedures prescribed by the superintendent.

2003 Acts, ch 96, §26, 42
Referred to in §533C.703, 533C.707

533C.703 Orders to cease and desist.

1. If the superintendent determines that a violation of this chapter or of a rule adopted or an order issued under this chapter by a licensee or authorized delegate is likely to cause immediate and irreparable harm to the licensee, its customers, or the public as a result of the violation, or cause insolvency or significant dissipation of assets of the licensee, the superintendent may issue an order requiring the licensee or authorized delegate to cease and desist from the violation. The order becomes effective upon service of it upon the licensee or authorized delegate.

2. The superintendent may issue an order against a licensee to cease and desist from providing money services through an authorized delegate that is the subject of a separate order by the superintendent.

3. Once the superintendent has commenced an administrative proceeding pursuant to section 533C.701 or 533C.702, an order to cease and desist remains effective and enforceable pending the completion of the proceeding.

4. A licensee or an authorized delegate who is served with an order to cease and desist may petition the appropriate court for a judicial order setting aside, limiting, or suspending the enforcement, operation, or effectiveness of the order pending the completion of an administrative proceeding pursuant to section 533C.701 or 533C.702.

5. An order to cease and desist expires unless the superintendent commences an administrative proceeding pursuant to section 533C.701 or 533C.702 within ten days after it is issued.

2003 Acts, ch 96, §27, 42; 2004 Acts, ch 1101, §81
Referred to in §533C.802

533C.704 Consent orders.

The superintendent may enter into a consent order at any time with a person to resolve a matter arising under this chapter or a rule adopted or order issued under this chapter. A consent order must be signed by the person to whom it is issued or by the person's authorized representative, and must indicate agreement with the terms contained in the order. A consent order may provide that it does not constitute an admission by a person that this chapter or a rule adopted or an order issued under this chapter has been violated.

2003 Acts, ch 96, §28, 42

533C.705 Civil penalties.

The superintendent may assess a civil penalty against a person who violates this chapter or a rule adopted or an order issued under this chapter in an amount not to exceed one thousand

dollars per day for each day the violation is outstanding, plus this state's costs and expenses for the investigation and prosecution of the matter, including reasonable attorney fees.

2003 Acts, ch 96, §29, 42

533C.706 Criminal penalties.

1. A person who intentionally makes a false statement, misrepresentation, or false certification in a record filed or required to be maintained under this chapter or who intentionally makes a false entry or omits a material entry in such a record is guilty of a class "D" felony.

2. A person who knowingly engages in an activity for which a license is required under this chapter without being licensed under this chapter is guilty of an aggravated misdemeanor.

3. It shall be unlawful for any person to do any of the following:

a. With intent to disguise the fact that money or a payment instrument is the proceeds of criminal conduct, or with intent to promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on of any criminal conduct, to knowingly furnish or provide to a licensee, authorized delegate, financial institution, person engaged in a trade or business, or any officer, employee, agent, or authorized delegate of any of them, or to the attorney general or department of public safety, any false, inaccurate, or incomplete information; or to knowingly conceal a material fact in connection with a transaction for which a report is required to be filed pursuant to this chapter.

b. With the intent to disguise the fact that money or a payment instrument is the proceeds of criminal conduct, or with intent to promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on of any criminal conduct, or with intent to evade the making or filing of a report required under this chapter, or with intent to cause the making or filing of a report that contains a material omission or misstatement of fact, to conduct or structure a transaction or series of transactions by or through one or more licensees, authorized delegates, financial institutions, or persons engaged in a trade or business.

4. A person who violates subsection 3 is guilty of a class "C" felony and is also subject to a civil penalty of three times the value of the property involved in the transaction, or, if no transaction is involved, five thousand dollars.

5. Notwithstanding any other provision of law, each violation of this section constitutes a separate, punishable offense.

2003 Acts, ch 96, §30, 42

533C.707 Unlicensed persons.

1. If the superintendent has reason to believe that a person has violated or is violating section 533C.201, 533C.301, 533C.401, or 533C.402, the superintendent may issue an order to show cause why an order to cease and desist should not issue requiring that the person cease and desist from the violation of section 533C.201, 533C.301, 533C.401, or 533C.402.

2. In an emergency, the superintendent may petition the district court for the issuance of a temporary restraining order ex parte pursuant to the rules of civil procedure.

3. An order to cease and desist becomes effective upon service of it upon the person.

4. An order to cease and desist remains effective and enforceable pending the completion of an administrative proceeding pursuant to sections 533C.701 and 533C.702.

5. A person who is served with an order to cease and desist under this section may petition the district court for a judicial order setting aside, limiting, or suspending the enforcement, operation, or effectiveness of the order pending the completion of an administrative proceeding pursuant to sections 533C.701 and 533C.702.

6. An order to cease and desist expires unless the superintendent commences an administrative proceeding within ten days after it is issued.

2003 Acts, ch 96, §31, 42

Referred to in §533C.802

533C.708 Investigations.

1. The attorney general or county attorney may conduct investigations within or outside

this state to determine if any licensee, authorized delegate, or person engaged in a trade or business has failed to file a report required by this chapter or has engaged or is engaging in any act, practice, or transaction that constitutes a violation of this chapter.

2. Upon presentation of a subpoena from a prosecuting attorney, all licensees, authorized delegates, and financial institutions shall make their books and records available to the attorney general or county attorney or peace officer during normal business hours for inspection and examination in connection with an investigation pursuant to this section.

2003 Acts, ch 96, §32, 42

ARTICLE 8
ADMINISTRATIVE PROCEDURES

533C.801 Administrative proceedings.

All administrative proceedings under this chapter must be conducted in accordance with chapter 17A.

2003 Acts, ch 96, §33, 42

533C.802 Hearings.

Except as otherwise provided in sections 533C.703 and 533C.707, the superintendent shall not suspend or revoke a license, place a licensee in receivership, issue an order to cease and desist, suspend or revoke the designation of an authorized delegate, or assess a civil penalty without notice and an opportunity to be heard. The superintendent shall also hold a hearing when requested to do so by an applicant whose application for a license is denied.

2003 Acts, ch 96, §34, 42

533C.803 Rules.

The superintendent may adopt pursuant to chapter 17A such reasonable and relevant rules, not inconsistent with this chapter, as may be necessary for the enforcement of the provisions of this chapter.

2003 Acts, ch 96, §35, 42

ARTICLE 9
MISCELLANEOUS PROVISIONS

533C.901 Uniformity of application and construction.

1. The provisions of this chapter shall be liberally construed to effectuate its remedial purposes. Civil remedies under this chapter shall be supplemental and not mutually exclusive. The civil remedies do not preclude and are not precluded by other provisions of law.

2. The provisions of this chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting the law and to make the reporting requirements regarding financial transactions under Iowa law uniform with the reporting requirements regarding financial transactions under federal law.

3. The attorney general may enter into reciprocal agreements with the attorney general or chief prosecuting attorney of any state to effectuate the purposes of this chapter.

2003 Acts, ch 96, §36, 42

533C.902 Financial services licensing fund.

1. A financial services licensing fund is created as a separate fund in the state treasury under the authority of the banking division of the department of commerce. Moneys deposited in the fund shall be used to pay for staffing necessary to perform examinations,

audits, and other duties required of the superintendent and the banking division under this chapter.

2. The fund shall receive moneys including, but not limited to, any fees, costs, expenses, or penalties collected pursuant to this chapter.

3. Notwithstanding section 8.33, moneys appropriated to the fund and other moneys credited to the fund shall not revert at the close of the fiscal year but shall remain in the financial services licensing fund and shall remain available for expenditure for the purposes designated.

2003 Acts, ch 96, §37, 42

533C.903 Severability clause.

The provisions of this chapter are severable pursuant to section 4.12.

2003 Acts, ch 96, §38, 42

533C.904 Applicability.

This chapter applies to the provision of money services on or after October 1, 2003.

2003 Acts, ch 96, §39, 42; 2013 Acts, ch 5, §14

CHAPTER 533D

DELAYED DEPOSIT SERVICES

Referred to in §524.211, 524.606, 533C.103, 537.7102, 546.3, 669.14

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533D.1 Title.

This chapter shall be known and may be cited as the *"Delayed Deposit Services Licensing Act"*.

95 Acts, ch 139, §1

533D.2 Definitions.

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

1. *"Check"* means a check, draft, share draft, or other instrument for the payment of money.

2. *"Delayed deposit services business"* means a person who for a fee does either of the following:

a. Accepts a check dated subsequent to the date it was written.

b. Accepts a check dated on the date it was written and holds the check for a period of time prior to deposit or presentment pursuant to an agreement with, or any representation made to, the maker of the check, whether express or implied.

3. *"Licensee"* means a person licensed to operate pursuant to this chapter.

4. *"Person"* means an individual, group of individuals, partnership, association, corporation, or any other business unit or legal entity.

5. *"Superintendent"* means the superintendent of banking.

95 Acts, ch 139, §2

533D.3 License required — application process — display.

1. A person shall not operate a delayed deposit services business in this state unless the person is physically located in this state and licensed by the superintendent as provided in this chapter.

2. An applicant for a license shall submit an application to the superintendent on forms prescribed by the superintendent. The forms shall contain such information as the superintendent may prescribe.

3. The application required by this section shall be submitted with the following:

a. An application fee of one hundred dollars.

b. A surety bond executed by a surety company authorized to do business in this state in the sum of twenty-five thousand dollars, which bond shall be continuous in nature until canceled by the surety. A surety shall provide at least thirty days' notice in writing to the licensee and to the superintendent indicating the surety's intent to cancel the bond and the effective date of the cancellation. The surety bond shall be for the benefit of the citizens of this state and shall be conditioned upon the licensee's willingness to comply with this chapter, the faithful performance by the licensee of the duties and obligations pertaining to the delayed deposit services business so licensed, and the prompt payment of any judgment recovered against the licensee. The surety's liability under this chapter is limited to the amount of the bond regardless of the number of years the bond is in effect.

4. The superintendent shall issue a license to an applicant if the superintendent finds all of the following:

a. The experience, character, and general fitness of the applicant and its officers, directors, shareholders, partners, or members are such as to warrant a finding that the applicant will conduct the delayed deposit services business honestly, fairly, and efficiently.

b. The applicant and its officers, directors, shareholders, partners, or members have not been convicted of a felony in this state, or convicted of a crime in another jurisdiction which would be a felony in this state.

c. The applicant is financially responsible and will conduct the delayed deposit services business pursuant to this chapter and other applicable laws.

d. The applicant has unencumbered assets of at least twenty-five thousand dollars available for operating the delayed deposit services business.

5. The superintendent shall approve or deny an application for a license by written order not more than ninety days after the filing of an application. An order of the superintendent issued pursuant to this section may be appealed pursuant to chapter 17A.

6. *a.* A license issued pursuant to this chapter shall be conspicuously posted at the licensee's place of business. A license shall remain in effect until the next succeeding January 1, unless earlier suspended or revoked by the superintendent.

b. A license shall be renewed annually by filing with the superintendent on or before December 1 an application for renewal containing such information as the superintendent may require to indicate any material change in the information contained in the original application or succeeding renewal applications and a renewal fee of two hundred fifty dollars.

c. The superintendent may assess a late fee of ten dollars per day for applications submitted and accepted for processing after December 1.

7. The superintendent may authorize applicants and licensees to be licensed through a nationwide licensing system and to pay the corresponding system processing fees. The superintendent may establish by rule or order new requirements as necessary, including but not limited to requirements that applicants, including officers and directors and those who have control of the applicant, submit to fingerprinting and criminal history checks.

8. For the purposes of this section and in order to reduce the points of contact which the federal bureau of investigation may be required to maintain for purposes of subsection 7, the superintendent may use the nationwide licensing system as a channeling agent for requesting

information from and distributing information to the United States department of justice or other governmental agency, or to or from any other source so directed by the superintendent.

95 Acts, ch 139, §3; 2006 Acts, ch 1042, §25 – 27; 2008 Acts, ch 1160, §12; 2013 Acts, ch 5, §15 – 17

533D.4 Surrender of license.

A licensee may surrender a delayed deposit services license by delivering to the superintendent written notice that the license is surrendered. The surrender does not affect the licensee's civil or criminal liability for acts committed prior to such surrender, the liability of the surety on the bond, or entitle such licensee to a return of any part of the annual license fee. The superintendent may establish procedures for the disposition of the books, accounts, and records of the licensee and may require such action as deemed necessary for the protection of the makers of checks which are outstanding at the time of surrender of the license.

95 Acts, ch 139, §4

533D.5 Change in circumstances — notification of superintendent.

A licensee is to notify the superintendent in writing within thirty days of the occurrence of a material development affecting the licensee, including, but not limited to, any of the following:

1. Filing for bankruptcy or reorganization.
2. Reorganization of the business.
3. Commencement of license revocation or any other civil or criminal proceedings by any other state or jurisdiction.
4. The filing of a criminal indictment or complaint against the licensee or any of the licensee's officers, directors, shareholders, partners, members, employees, or agents.
5. A felony conviction against the licensee or any of the licensee's officers, directors, shareholders, partners, members, employees, or agents.

95 Acts, ch 139, §5

533D.6 Continued operation after change in ownership — approval of superintendent required.

1. The prior written approval of the superintendent is required for the continued operation of a delayed deposit services business whenever a change in control of a licensee is proposed. The person requesting such approval shall pay to the superintendent a fee of one hundred dollars. Control in the case of a corporation means direct or indirect ownership of, or the right to control, ten percent or more of the voting shares of the corporation, or the ability of a person to elect a majority of the directors or otherwise effect a change in policy. Control in the case of any other entity means any change in the principals of the organization, whether active or passive. The superintendent may require information deemed necessary to determine whether a new application is required. Costs incurred by the superintendent in investigating a change of control request shall be paid by the person requesting such approval.
2. A license issued pursuant to this chapter is not transferable or assignable.

95 Acts, ch 139, §6; 2006 Acts, ch 1042, §28; 2007 Acts, ch 22, §94

533D.7 Principal place of business — branch offices authorized.

1. Except as provided in subsection 2, a licensee may operate a delayed deposit services business only at an office designated as its principal place of business in the application. The licensee shall maintain its books, accounts, and records at its designated principal place of business. A licensee may change the location of its designated principal place of business with the prior written approval of the superintendent. The superintendent shall establish forms and procedures for determining whether the change of location should be approved.
2. A licensee may operate branch offices only in the same county in which the licensee's designated principal place of business is located. The licensee may establish a branch office or change the location of a branch office with the prior written approval of the

superintendent. The superintendent shall establish forms and procedures for determining whether the location of a branch office should be approved.

3. A fee of twenty-five dollars shall be paid to the superintendent for each request made pursuant to subsection 1 or 2 for a change of location. For each new branch office established, a fee of two hundred fifty dollars shall be paid to the superintendent.

95 Acts, ch 139, §7; 2006 Acts, ch 1042, §29

533D.7A Notice of name change.

A licensee shall notify the superintendent thirty days in advance of the effective date of a change in the name of the licensee. With the notice of change, the licensee shall submit a fee of twenty-five dollars per license to the superintendent.

2006 Acts, ch 1042, §30

533D.8 Other business operations at same site — restrictions.

1. A licensee may operate a delayed deposit services business at a location where any other business is operated or in association or conjunction with any other business with the written approval of the superintendent and consistent with both of the following requirements:

a. The books, accounts, and records of the delayed deposit services business are kept and maintained separate and apart from the books, accounts, and records of the other business.

b. The other business is not of a type which would tend to enable the concealment of acts engaged in to evade the requirements of this chapter. If the superintendent determines upon investigation that the other business is of a type which would conceal such acts the superintendent shall order the licensee to cease the operation of the delayed deposit services business at the location.

2. The department may order the licensee to cease operations of the business if it fails to obtain written approval of the superintendent before operating a business in association or conjunction with services provided under this chapter.

95 Acts, ch 139, §8

533D.9 Fee restriction — required disclosure.

1. A licensee shall not charge a fee in excess of fifteen dollars on the first one hundred dollars on the face amount of a check or more than ten dollars on subsequent one hundred dollar increments on the face amount of the check for services provided by the licensee, or pro rata for any portion of one hundred dollars face value.

2. A licensee shall give to the maker of the check, at the time any delayed deposit service transaction is made, or if there are two or more makers, to one of them, notice written in clear, understandable language disclosing all of the following:

a. The fee to be charged for the transaction.

b. The annual percentage rate as computed pursuant to the federal Truth in Lending Act.

c. The date on which the check will be deposited or presented for negotiation.

d. Any penalty, not to exceed fifteen dollars, which the licensee will charge if the check is not negotiable on the date agreed upon. A penalty to be charged pursuant to this section shall only be collected by the licensee once on a check no matter how long the check remains unpaid. A penalty to be charged pursuant to this section is a licensee's exclusive remedy and if a licensee charges a penalty pursuant to this section no other penalties under this chapter or any other provision apply.

3. In addition to the notice required by subsection 2, every licensee shall conspicuously display a schedule of all fees, charges, and penalties for all services provided by the licensee authorized by this section. The notice shall be posted at the office and every branch office of the licensee.

95 Acts, ch 139, §9; 2006 Acts, ch 1042, §31

Referred to in §533D.10

533D.10 Prohibited acts by licensee.

1. A licensee shall not do any of the following:

a. Hold from any one maker more than two checks at any one time.

b. Hold from any one maker a check or checks in an aggregate face amount of more than five hundred dollars at any one time.

c. Hold or agree to hold a check for more than thirty-one days.

d. Require the maker to receive payment by a method which causes the maker to pay additional or further fees and charges to the licensee or another person.

e. Repay, refinance, or otherwise consolidate a postdated check transaction with the proceeds of another postdated check transaction made by the same licensee.

f. Receive any other charges or fees in addition to the fees listed in section 533D.9, subsections 1 and 2.

2. For purposes of this section, *"licensee"* includes a person related to the licensee by common ownership or control, a person in whom the licensee has any financial interest, or any employee or agent of the licensee.

95 Acts, ch 139, §10

533D.11 Examination of records by superintendent — fees.

1. The superintendent shall examine the books, accounts, and records of each licensee at least once a year and as needed to secure information required pursuant to this chapter and to determine whether any violations of this chapter have occurred. The licensee shall pay the cost of the examination.

2. The superintendent may examine or investigate complaints or reports concerning alleged violations of this chapter or any rule adopted or order issued by the superintendent. The superintendent may order the actual cost of the examination or investigation to be paid by the person who is the subject of the examination or investigation, whether or not the alleged violator is licensed.

3. The superintendent shall determine the cost of the examination or investigation based upon the actual cost of the operation of the finance bureau of the banking division of the department of commerce, including the proportionate share of administrative expenses in the operation of the banking division attributable to the finance bureau as determined by the superintendent, incurred in the discharge of duties imposed upon the superintendent by this chapter.

4. Failure to pay the examination or investigation fee within thirty days of receipt of demand from the superintendent shall subject the licensee to a late fee of up to five percent of the amount of the examination or investigation fee for each day the payment is delinquent.

5. The superintendent may disclose information to representatives of other state or federal regulatory authorities. The superintendent may release summary complaint information so long as the information does not specifically identify the complainant. The superintendent may prepare and circulate reports reflecting financial information and examination results for all licensees on an aggregate basis, including other information considered pertinent to the purpose of each report for general statistical information. The superintendent may prepare and circulate reports provided by law. The superintendent may release the reports and correspondence in the course of an enforcement proceeding or a hearing held by the superintendent. The superintendent may also provide this information to the attorney general for purposes of enforcing this chapter or the consumer fraud Act, section 714.16.

6. The superintendent may receive documents, materials, or other information, including otherwise confidential and privileged documents, materials, or other information, through a nationwide licensing system and from other local, state, federal, or international regulatory agencies, the conference of state bank supervisors and its affiliates and subsidiaries, the national association of consumer credit administrators and its affiliates and subsidiaries, and any other regulator association, and shall maintain as confidential and privileged any such document, material, or other information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material, or other information.

95 Acts, ch 139, §11; 2006 Acts, ch 1042, §32; 2013 Acts, ch 5, §18

533D.12 Disciplinary action.

1. The superintendent may, after notice and hearing pursuant to chapter 17A, take disciplinary action against a licensee if the superintendent finds any of the following:

a. The licensee or any of its officers, directors, shareholders, partners, or members has violated this chapter, any rule adopted by the superintendent, or any other state or federal law applicable to the conduct of its business.

b. The licensee has failed to pay a license fee required under this chapter or to maintain in effect the bond or bonds required under this chapter.

c. A fact or condition existing which, if it had existed at the time of the original application for the license, would have resulted in the denial of issuance of a license.

d. The licensee has abandoned its place of business for a period of sixty days or more.

e. The licensee fails to pay an administrative penalty or the cost of investigation as ordered by the superintendent.

f. The licensee has violated an order of the superintendent.

2. The superintendent may impose one or more of the following disciplinary actions against a licensee:

a. Revoke a license.

b. Suspend a license until further order of the superintendent or for a specified period of time.

c. Impose a period of probation under specified conditions.

d. Impose civil penalties in an amount not to exceed five thousand dollars for each violation.

e. Issue a citation and warning respecting licensee behavior.

f. Order the licensee to pay restitution.

3. The superintendent may order an emergency suspension of a licensee's license pursuant to section 17A.18A. A written order containing the facts or conduct which warrants the emergency action shall be timely sent to the licensee by restricted certified mail. Upon issuance of the suspension order, the licensee must also be notified of the right to an evidentiary hearing. A suspension proceeding shall be promptly instituted and determined.

4. Except as provided in this section, a license shall not be revoked or suspended except after notice and a hearing thereon in accordance with chapter 17A.

5. A licensee may surrender a license by delivering to the superintendent written notice of surrender, but a surrender does not affect the licensee's civil or criminal liability for acts committed before the surrender.

6. A revocation, suspension, or surrender of a license does not impair or affect the obligation of a preexisting lawful contract between the licensee and any person, including a debtor.

95 Acts, ch 139, §12; 2008 Acts, ch 1160, §13

533D.13 Cease and desist order — injunction.

1. If the superintendent believes that any person has engaged in or is about to engage in an act or practice constituting a violation of this chapter or any rule adopted or order issued by the superintendent, the superintendent may issue and serve on the person a cease and desist order. Upon entry of a cease and desist order the superintendent shall promptly notify in writing all persons to whom the order is directed that it has been entered and the reasons for the order. Any person to whom the order is directed may request in writing a hearing within fifteen business days after the date of the issuance of the order. Upon receipt of the written request, the matter shall be set for hearing within fifteen business days of the receipt by the superintendent, unless the person requesting the hearing consents to a later date. If a hearing is not requested within fifteen business days and none is ordered by the superintendent, the order of the superintendent shall automatically become final and remain in effect until modified or vacated by the superintendent. If a hearing is requested or ordered, the superintendent, after notice and hearing, shall issue written findings of fact and conclusions of law and shall affirm, vacate, or modify the order.

2. The superintendent may vacate or modify an order if the superintendent finds that the conditions which caused its entry have changed or that it is otherwise in the public interest

to do so. Any person aggrieved by a final order of the superintendent may appeal the order as provided in chapter 17A.

3. If it appears that a person has engaged in or is engaging in an act or practice in violation of this chapter, the attorney general may initiate an action in the district court to enjoin such acts or practices and to enforce compliance with this chapter. Upon a showing of a violation of this chapter, a permanent or temporary injunction, restraining order, or writ of mandamus shall be granted or a receiver or conservator may be appointed to oversee the person's assets. The attorney general shall not be required to post a bond.

95 Acts, ch 139, §13; 2018 Acts, ch 1041, §127
Code editor directive applied

533D.14 Administrative penalty.

1. If the superintendent finds, after notice and hearing as provided in this chapter, that a person has violated this chapter, a rule adopted pursuant to this chapter, or an order of the superintendent, the superintendent may order the person to pay an administrative fine of not more than five thousand dollars for each violation, in addition to the costs of investigation.

2. If a person fails to pay an administrative fine and the costs of investigation ordered pursuant to subsection 1, a lien in the amount of the fine and costs may be imposed upon all assets and property of the person in this state and may be recovered in a civil action by the superintendent. Failure of the person to pay the fine and costs constitutes a separate violation of this chapter.

95 Acts, ch 139, §14

533D.15 Criminal violation — operation of business without license — injunction.

A person required to be licensed under this chapter who operates a delayed deposit services business in this state without first obtaining a license under this chapter or while such license is suspended or revoked by the superintendent is guilty of a serious misdemeanor. In addition to the criminal penalty provided for in this section, the superintendent may also commence an action to enjoin the operation of the business.

95 Acts, ch 139, §15

533D.16 Applicability.

This chapter does not apply to a bank incorporated under the provisions of any state or federal law, a savings and loan association incorporated under the provisions of any state or federal law, a credit union organized under the provisions of any state or federal law, a corporation licensed as an industrial loan company under chapter 536A, or an affiliate of a bank, savings and loan association, credit union, or industrial loan company.

95 Acts, ch 139, §16

CHAPTER 534

SAVINGS AND LOAN ASSOCIATIONS

Repealed by 2012 Acts, ch 1017, §157

SUBTITLE 3

MONEY AND CREDIT

CHAPTER 535

MONEY AND INTEREST

Referred to in §16.75, 535B.7, 535D.13, 536.13, 536.16, 536A.30, 537.1301, 537.2301, 669.14

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535.16 Delivery of copies of debt documents.
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535.18 Consumer credit terms for service members — enforcement.

535.1 Denominations of money.

The money of account of this state is the dollar, cent, and mill, and all public accounts, and the proceedings of all courts in relation to money, shall be kept and expressed in the above denominations. Demands expressed in money of another denomination shall not be affected by the provisions of this section, but in any action or proceeding based thereon it shall be reduced to and computed by the denominations given.

[C51, §943, 944; R60, §1785, 1786; C73, §2075, 2076; C97, §3037; C24, 27, 31, 35, 39, §**9403;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, S79, C81, §535.1]

535.2 Rate of interest.

1. Except as provided in subsection 2, the rate of interest shall be five cents on the hundred by the year in the following cases, unless the parties shall agree in writing for the payment of interest at a rate not exceeding the rate permitted by subsection 3:

a. Money due by express contract.

b. Money after the same becomes due.

c. Money loaned.

d. Money received to the use of another and retained beyond a reasonable time, without the owner's consent, express or implied.

e. Money due on the settlement of accounts from the day the balance is ascertained.

f. Money due upon open accounts after six months from the date of the last item.

g. Money due, or to become due, where there is a contract to pay interest, and no rate is stipulated.

2. *a.* The following persons may agree in writing to pay any rate of interest, and a person so agreeing in writing shall not plead or interpose the claim or defense of usury in any action or proceeding, and the person agreeing to receive the interest is not subject to any penalty or forfeiture for agreeing to receive or for receiving the interest:

(1) A person borrowing money for the purpose of acquiring real property or refinancing a contract for deed.

(2) A person borrowing money or obtaining credit in an amount which exceeds the threshold amount as defined in section 537.1301, exclusive of interest, for the purpose of

constructing improvements on real property, whether or not the real property is owned by the person.

(3) A vendee under a contract for deed to real property.

(4) A domestic or foreign corporation, and a real estate investment trust as defined in section 856 of the Internal Revenue Code, and a person purchasing securities as defined in chapter 502 on credit from a broker or dealer registered or licensed under chapter 502 or under the federal Securities Exchange Act of 1934, 15 U.S.C. §78a et seq., as amended.

(5) A person borrowing money or obtaining credit for business or agricultural purposes, or a person borrowing money or obtaining credit in an amount which exceeds the threshold amount, as defined in section 537.1301, for personal, family, or household purposes. As used in this paragraph, *"agricultural purpose"* means as defined in section 535.13, and *"business purpose"* includes but is not limited to a commercial, service, or industrial enterprise carried on for profit and an investment activity.

b. In determining exemptions under this subsection, the rules of construction stated in this paragraph apply:

(1) The purpose for which money is borrowed is the purpose to which a majority of the loan proceeds are applied or are designated in the agreement to be applied.

(2) Loan proceeds used to refinance or pay a prior loan owed by the same borrower are applied for the same purposes and in the same proportion as the original principal of the loan that is refinanced or paid.

(3) If the lender releases the original borrower from all personal liability with respect to the loan, loan proceeds used to pay a prior loan by a different borrower are applied for the new borrower's purposes in agreeing to pay the prior loan.

(4) If the lender releases the original borrower from all personal liability with respect to the loan, the assumption of a loan by a new borrower is treated as if the new borrower had obtained a new loan and had used all of the proceeds to pay the loan assumed.

(5) This paragraph does not modify or limit section 535.8, subsection 4, paragraph *"c"* or *"e"*.

(6) With respect to any transaction referred to in paragraph *"a"* of this subsection, this subsection supersedes any interest-rate or finance-charge limitations contained in the Code, including but not limited to this chapter and chapters 321, 322, 524, 533, 536A, and 537.

3. *a.* (1) The maximum lawful rate of interest which may be provided for in any written agreement for the payment of interest entered into during any calendar month commencing on or after April 13, 1979, shall be two percentage points above the monthly average ten-year constant maturity interest rate of United States government notes and bonds as published by the board of governors of the federal reserve system for the calendar month second preceding the month during which the maximum rate based thereon will be effective, rounded to the nearest one-fourth of one percent per year.

(2) On or before the twentieth day of each month the superintendent of banking shall determine the maximum lawful rate of interest for the following calendar month as prescribed herein, and shall cause this rate to be published, as a notice in the Iowa administrative bulletin or as a legal notice in a newspaper of general circulation published in Polk county, prior to the first day of the following calendar month. This maximum lawful rate of interest shall be effective on the first day of the calendar month following publication. The determination of the maximum lawful rate of interest by the superintendent of banking shall be exempt from the provisions of chapter 17A.

b. Any rate of interest specified in any written agreement providing for the payment of interest shall, if such rate was lawful at the time the agreement was made, remain lawful during the entire term of the agreement, including any extensions or renewals thereof, for all money due or to become due thereunder including future advances, if any.

c. Any written agreement for the payment of interest made pursuant to a prior written agreement by a lender to lend money in the future, either to the other party to such prior written agreement or a third party beneficiary of such prior agreement, may provide for payment of interest at the lawful rate of interest at the time of the execution of the prior agreement regardless of the time at which the subsequent agreement is executed.

d. Any contract, note or other written agreement providing for the payment of a rate of

interest permitted by this subsection which contains any provisions providing for an increase in the rate of interest prescribed therein shall, if such increase could be to a rate which would have been unlawful at the time the agreement was made, also provide for a reduction in the rate of interest prescribed therein, to be determined in the same manner and with the same frequency as any increase so provided for.

4. *a.* Notwithstanding the provisions of subsection 3, with respect to any agreement which was executed prior to August 3, 1978, and which contained a provision for the adjustment of the rate of interest specified in that agreement, the maximum lawful rate of interest which may be imposed under that agreement shall be nine cents on the hundred by the year, and any excess charge shall be a violation of section 535.4.

b. Notwithstanding the limitation contained in paragraph *"a"* of this subsection, with respect to a written agreement for the repayment of money loaned, which was executed prior to August 3, 1978, and which provided for the payment of over fifty percent of the initial principal amount of the loan as a single payment due at the end of the term of the agreement, the interest rate may be adjusted after June 3, 1980, according to the terms of the agreement to any rate of interest permitted by the laws of this state as of the date an adjustment in interest is to be made. This paragraph does not authorize adjustment of interest in any manner other than that expressly permitted by the terms of the written agreement, and nothing contained in this paragraph authorizes the collection of additional interest with respect to any portion of a loan which was repaid prior to the effective date of an interest rate adjustment.

c. Notwithstanding paragraph *"a"*, when a written agreement providing for the repayment of money loaned, and requiring the payment of over fifty percent of the initial principal amount of the loan as a single payment due at the end of the term of the agreement is extended, renewed, or otherwise amended by the parties on or after August 3, 1978, the parties may agree to the payment of interest from the effective date of the extension, renewal, or amendment, at a rate and in a manner that is lawful for a new agreement made on that date.

5. This section shall not apply to any loan which is subject to the provisions of section 636.46.

6. *a.* Notwithstanding the provisions of 1980 Iowa Acts, ch. 1156, with respect to any agreement which was executed on or after August 3, 1978, and prior to July 1, 1979, and which contained a provision for the adjustment of the rate of interest specified in the agreement, the maximum lawful rate of interest which may be imposed under that agreement shall be that rate which is two and one-half percentage points above the rate initially to be paid under the agreement, provided that the greatest interest rate adjustment which may be made at any one time shall be one-half of one percent and an interest rate adjustment may not be made until at least one year has passed since the last interest rate adjustment, and any excess charge shall be a violation of section 535.4.

b. Notwithstanding the limitation contained in paragraph *"a"* of this subsection, with respect to a written agreement for the repayment of money loaned which was executed on or after August 3, 1978, and prior to July 1, 1979, and which provided for the payment of over fifty percent of the initial principal amount of the loan as a single payment due at the end of the term of the agreement, the interest rate may be adjusted after June 3, 1980, according to the terms of the agreement to any rate of interest permitted by the laws of this state as of the date an adjustment in interest is to be made. This paragraph does not authorize adjustment of interest in any manner other than that expressly permitted by the terms of the written agreement, and nothing contained in this paragraph authorizes the collection of additional interest with respect to any portion of a loan which was repaid prior to the effective date of an interest rate adjustment.

7. This section does not apply to a charge imposed for late payment of rent.

[C51, §945; R60, §1787; C73, §2077; C97, §3038; C24, 27, 31, 35, 39, §**9404;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, S79, C81, §535.2; 82 Acts, ch 1153, §4, 5]

93 Acts, ch 154, §5; 95 Acts, ch 125, §1; 2011 Acts, ch 25, §65; 2012 Acts, ch 1017, §132; 2013 Acts, ch 97, §1; 2014 Acts, ch 1026, §143; 2014 Acts, ch 1037, §1, 2; 2014 Acts, ch 1092, §119, 189

Referred to in §103A.58, 322C.12, 455B.396, 533.316, 535.8, 535.11, 535.12, 536A.23, 602.8102(5), 668.13
Life insurance policy loans; see §511.36

535.3 Interest rate — judgments and decrees — periodic compensation payments.

1. *a.* Interest shall be allowed on all money due on judgments and decrees of courts at a rate calculated according to section 668.13.

b. Notwithstanding paragraph *"a"*, interest due pursuant to section 85.30 shall accrue from the date each compensation payment is due at an annual rate equal to the one-year treasury constant maturity published by the federal reserve in the most recent H15 report settled as of the date of injury, plus two percent.

2. Interest on periodic payments for child, spousal, or medical support shall not accrue until thirty days after the payment becomes due and owing and shall accrue at a rate of ten percent per annum thereafter. Additionally, interest on these payments shall not accrue on amounts being paid through income withholding pursuant to chapter 252D for the time these payments are unpaid solely because the date on which the payor of income withholds income based upon the payor's regular pay cycle varies from the provisions of the support order.

[C51, §946; R60, §1789; C73, §2078; C97, §3039; C24, 27, 31, 35, 39, §**9405;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, S79, C81, §535.3]

87 Acts, ch 157, §1; 96 Acts, ch 1141, §33; 97 Acts, ch 175, §232; 97 Acts, ch 197, §2 – 4, 16; 2017 Acts, ch 23, §23

Referred to in §85.22, 85.30, 85.47, 85.48, 87.11, 97A.14A, 97B.50A, 249A.53, 249B.6, 252C.6, 411.22, 445.3, 486A.104, 488.107, 502.102, 515B.5, 535.11, 657A.3, 657A.6, 715B.4

535.4 Illegal rate prohibited — usury.

No person shall, directly or indirectly, receive in money or in any other thing, or in any manner, any greater sum or value for the loan of money, or upon contract founded upon any sale or loan of real or personal property, than is in this chapter prescribed.

[R60, §1790; C73, §2079; C97, §3040; C24, 27, 31, 35, 39, §**9406;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, S79, C81, §535.4]

Referred to in §535.2

535.5 Penalty for usury.

If it is ascertained in an action brought on a contract that a rate of interest has been contracted for, directly or indirectly, in money or in property, greater than is authorized by this chapter, the rate shall work a forfeiture of eight cents on the hundred by the year upon the amount of the principal remaining unpaid upon the contract at the time judgment is rendered, and the court shall enter final judgment in favor of the plaintiff and against the defendant for the principal sum remaining unpaid without costs, and also against the defendant and in favor of the state, to be paid to the treasurer of state for deposit in the general fund of the state, for the amount of the forfeiture. If unlawful interest is contracted for the plaintiff shall not have judgment for more than the principal sum, whether the unlawful interest is incorporated with the principal or not.

[R60, §1791; C73, §2080; C97, §3041; C24, 27, 31, 35, 39, §**9407;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, S79, C81, §535.5]

83 Acts, ch 185, §52, 62; 83 Acts, ch 186, §10109, 10201, 10204

535.6 Reserved.

535.7 Assignee of usurious contract.

Any assignee of a usurious contract, becoming such in good faith in the usual course of business and without notice of such fact, may recover of the usurer the full amount of the

consideration paid by the assignee therefor, less any sum that may have been realized on the contract, anything in this chapter contained to the contrary notwithstanding.

[R60, §1792; C73, §2081; C97, §3042; C24, 27, 31, 35, 39, §**9409;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, S79, C81, §535.7]

535.8 Loan charges limited.

1. *Definitions.* For purposes of this section, unless the context otherwise requires:

a. "Lender" means a person who makes or originates a loan; a person who is identified as a lender on the loan documents; a person who arranges, negotiates, or brokers a loan; and a person who provides any goods or services as an incident to or as a condition required for the making or closing of the loan. *"Lender"* does not include a licensed attorney admitted to practice in this state acting solely as an incident to the practice of law.

b. "Loan" means a loan of money which is wholly or in part to be used for the purpose of purchasing real property which is a single-family or two-family dwelling occupied or to be occupied by the borrower. A loan includes the refinancing of a contract of sale, and the refinancing of a prior loan, whether or not the borrower also was the borrower under the prior loan, and the assumption of a prior loan.

c. "Points and fees" means the fees and charges that are included in the definition of points and fees in 12 C.F.R. §1026.32(b)(1).

2. If a lender that is a financial institution as defined in section 537.1301 makes a loan in which the points and fees the borrower is charged by all lenders in connection with the loan do not exceed the amounts specified in 12 C.F.R. §1026.43(e)(3), the loan shall not be subject to the provisions of subsection 4, paragraphs *"a"*, *"b"*, and *"d"*, or subsection 5. This subsection applies to the financial institution lender that originates the loan and to subsequent purchasers of the loan originated by the financial institution.

3. This section shall not be construed to change the prohibition against the sale of title insurance or sale of insurance against loss or damage by reason of defective title or encumbrances as provided in section 515.48, subsection 10.

4. *a.* A borrower may be charged by a lender, in connection with a loan made pursuant to a written agreement executed by the borrower on or after July 1, 1983, or in connection with a loan made pursuant to a written commitment by the lender mailed or delivered to the borrower on or after that date, a loan origination or processing fee, a broker fee, or both, which together do not exceed two percent of an amount which is equal to the loan principal; except that to the extent of an assumption by a new borrower of the obligation to make payments under a prior loan, or to the extent that the loan principal is used to refinance a prior loan between the same borrower and the same lender, the borrower may be charged by a lender a loan origination or processing fee, a broker fee, or both, which together do not exceed an amount which is a reasonable estimate of the expenses of processing the loan assumption or refinancing but which does not exceed one percent of the unpaid balance of the loan that is assumed or refinanced. In addition, a borrower may be charged by a lender, in contemplation of or in connection with a loan, a commitment fee, closing fee, or both, that is agreed to in writing by the lender and the borrower. A loan fee paid by a borrower to a lender under this paragraph is compensation to the lender solely for the use of money, notwithstanding any provision of the agreement to the contrary. However, a loan fee collected under this paragraph shall be disregarded for purposes of determining the maximum charge permitted by section 535.2 or 535.9, subsection 2. A lender is prohibited from charging a borrower in connection with a loan a loan origination or processing fee, broker fee, closing fee, commitment fee, or similar charge other than expressly authorized by this paragraph or a payment reduction fee authorized by subsection 5.

b. (1) A borrower may be charged by a lender in connection with a loan any of the following costs which are incurred by the lender in connection with the loan and which are disclosed to the borrower:

(a) Credit reports.

(b) Appraisal fees paid to a third party, or when the appraisal is performed by the lender, a fee which is a reasonable estimate of the expense incurred by the lender in performing the appraisal.

(c) Attorney's opinions.

(d) Abstracting fees paid to a third party, or when the abstracting is performed by the lender, a fee which is a reasonable estimate of the expense incurred by the lender in performing the abstracting.

(e) County recorder's fees.

(f) Inspection fees.

(g) Mortgage guarantee insurance charge.

(h) Surveying of property.

(i) Termite inspection.

(j) The cost of a title guaranty issued by the Iowa finance authority pursuant to chapter 16.

(k) A bona fide and reasonable settlement or closing fee which is paid to a third party to settle or close the loan.

(2) The lender shall not charge the borrower for the cost of revenue stamps or real estate commissions which are paid by the seller.

(3) A lender shall not charge the borrower any costs other than expressly permitted by this paragraph *"b"*. However, additional costs incurred in connection with a loan under this paragraph *"b"*, if bona fide and reasonable, may be collected by a state-chartered financial institution licensed under chapter 524 or 533, to the extent permitted under applicable federal law as determined by the office of the comptroller of the currency of the United States department of treasury, the national credit union administration, or the office of thrift supervision of the United States department of treasury. Such costs shall apply only to the same type of state-chartered entity as the federally chartered entity affected and shall apply to and may be collected by an insurer organized under chapter 508 or 515, or otherwise authorized to conduct the business of insurance in this state.

c. If the purpose of the loan is to enable the borrower to purchase a single-family or two-family dwelling, for the borrower's residence, any provision of a loan agreement which prohibits the borrower from transferring the borrower's interest in the property to a third party for use by the third party as the third party's residence, or any provision which requires or permits the lender to make a change in the interest rate, the repayment schedule or the term of the loan as a result of a transfer by the borrower of the borrower's interest in the property to a third party for use by the third party as the third party's residence shall not be enforceable except as provided in the following sentence. If the lender on reasonable grounds believes that its security interest or the likelihood of repayment is impaired, based solely on criteria which is not more restrictive than that used to evaluate a new mortgage loan application, the lender may accelerate the loan, or to offset any such impairment, may adjust the interest rate, the repayment schedule or the term of the loan. A provision of a loan agreement which violates this paragraph is void.

d. If a lender collects a fee or charge which is prohibited by paragraph *"a"* or *"b"* of this subsection or which exceeds the amount permitted by paragraph *"a"* or *"b"* of this subsection, the person from whom the fee was collected has the right to recover the unlawful fee or charge or the unlawful portion of the fee or charge, plus attorney fees and costs incurred in any action necessary to effect recovery.

e. (1) Notwithstanding section 628.3 when a foreclosure of a mortgage on real property results from the enforcement of a due-on-sale clause, the mortgagor may redeem the real property at any time within eighteen months from the day of sale under the levy, and the mortgagor shall, in the meantime, be entitled to the possession thereof; and for the first fifteen months thereafter such right of redemption is exclusive. Any real property redeemed by the debtor shall thereafter be free and clear from any liability for any unpaid portion of the judgment under which the real property was sold. The right of redemption established by this paragraph is not subject to waiver by the mortgagor and the period of redemption established by this paragraph shall not be reduced. The times for redemption by creditors provided in sections 628.5, 628.15, and 628.16 shall be extended to sixteen months in any case in which the mortgagor's period for redemption is extended by this paragraph. This paragraph does not apply to foreclosure of a mortgage if for any reason other than enforcement of a due-on-sale clause. As used in this paragraph, *"due-on-sale clause"*

means any type of covenant which gives the mortgagee the right to demand payment of the outstanding balance or a major part thereof upon a transfer by the mortgagor to a third party of an interest of the mortgagor in property covered by the mortgage. This paragraph applies to any foreclosure occurring on or after May 10, 1980. However, this paragraph does not apply if the lender establishes, based on reasonable criteria which are not more restrictive than those used to evaluate new mortgage-loan applications, that the security interest or the likelihood of repayment is impaired as a result of the transfer of interest.

(2) This lettered paragraph applies only to a mortgage given in connection with a loan as defined in subsection 1 of this section.

5. A lender who offers to make a loan with only those fees authorized by subsection 4 may also offer in exchange for the payment of an interest reduction fee to make a loan on all of the same terms except at a lower interest rate and with the lower payments resulting from the lower interest rate. Prior to accepting an application for a loan which includes a payment reduction fee, the lender shall provide the potential borrower with a written disclosure describing in plain language the specific terms which the loan would have both with the payment reduction fee and without it. This disclosure shall include a good faith example showing the amount of the payment reduction fee and the reduction in payments which would result from the payment of this fee in a typical loan transaction. A payment reduction fee which complies with this subsection may be collected in connection with a loan in addition to the fees authorized by subsection 4.

6. A lender shall not, as a condition of making a loan as defined in this section, require the borrower to place money, or to place property other than that which is given as security for the loan, on deposit with or in the possession or control of the lender or some other person if the effect is to increase the yield to the lender with respect to that loan; provided that this subsection shall not prohibit a lender from requiring the borrower to deposit money without interest with the lender in an escrow account for the payment of insurance premiums, property taxes and special assessments payable by the borrower to third persons. Any lender who requires an escrow account shall not violate the provisions of section 507B.5, subsection 1, paragraph *"a"*.

7. If any lender receives interest either in a manner or in an amount which is prohibited by subsection 6 of this section, the borrower shall have the right to recover all amounts collected or earned by the lender, whether or not from the borrower, in violation of this section, plus attorney fees, plus court costs incurred in any action necessary to effect such recovery.

8. A lender shall not use an appraisal for any purpose in connection with making a loan under this section if the appraisal is performed by a person who is employed by or affiliated with any person receiving a commission or fee from the seller of the property. If a lender violates this subsection the borrower is entitled to recover any actual damages plus the costs paid by the borrower, plus attorney fees incurred in an action necessary to effect recovery.

[C79, S79, C81, §535.8; 81 Acts, ch 176, §1, 2]

83 Acts, ch 124, §19, 20; 85 Acts, ch 252, §39; 2004 Acts, ch 1141, §74; 2004 Acts, ch 1175, §262; 2005 Acts, ch 19, §113, 114; 2008 Acts, ch 1160, §14; 2008 Acts, ch 1191, §79, 80; 2012 Acts, ch 1017, §133; 2014 Acts, ch 1037, §3 – 6; 2018 Acts, ch 1148, §1

Referred to in §16.18, 524.905, 533.315, 535.2, 535.10, 536A.20, 537.1301, 537.2501

Subsection 4, paragraph e, subparagraph (1) amended

535.9 Prepayment penalties on loans secured by real estate mortgages prohibited.

1. As used in this section, *"loan"* means a loan of money which is wholly or in part to be used for the purpose of purchasing real property which is a single-family or a two-family dwelling occupied or to be occupied by the borrower, or which is payable over a term of five years or less for the purpose of purchasing agricultural land. *"Loan"* includes the refinancing of a contract of sale, and the refinancing of a prior loan, whether or not the borrower also was the borrower under the prior loan, and the assumption of a prior loan.

2. Whenever a borrower under a loan prepays part or all of the outstanding balance of the loan the lender shall not receive an amount in payment of interest which is greater than the amount determined by applying the rate of interest agreed upon by the lender and the borrower to the unpaid balance of the loan for a period of time during which the borrower had

the use of the money loaned; and the lender shall not impose any penalty or other charge in addition to the amount of interest due as a result of the repayment of that loan at a date earlier than is required by the terms of the loan agreement. A lender may, however, require advance notice of not more than thirty days of a borrower's intent to repay the entire outstanding balance of a loan if the payment of that balance, together with any partial prepayments made previously by the borrower, will result in the repayment of the loan at a date earlier than is required by the terms of the loan agreement.

3. If any lender receives an amount of interest greater than permitted by subsection 2 of this section, or imposes any penalty or other charge prohibited by subsection 2 of this section, the borrower shall have the right to recover all amounts paid the lender which are in excess of the amounts permitted by subsection 2 of this section, plus attorney's fees and court costs incurred in any action necessary to effect such recovery.

[C79, S79, C81, §535.9]

2006 Acts, ch 1075, §1

Referred to in §533.315, 535.8, 536A.23

535.10 Home equity line of credit.

1. As used in this chapter, the term *"home equity line of credit"* means an arrangement pursuant to which all of the following are applicable:

a. The amounts borrowed and the interest and other charges are debited to an account.

b. The interest is computed on the account periodically.

c. The borrower has the right to pay in full at any time without penalty or to pay in the installments which are established by the loan agreement.

d. The lender agrees to permit the borrower to borrow money from time to time with the maximum amount of each borrowing established by the loan agreement.

e. The account is secured by an interest in real estate. The priority of the secured interest in the real estate shall be determined by section 654.12A.

2. Except as provided in this section, a home equity line of credit is subject to chapter 537. However, sections 537.2307, 537.2402, and 537.2510 do not apply.

3. *a.* A lender may collect in connection with establishing or renewing a home equity line of credit the costs listed in section 535.8, subsection 4, paragraph *"a"* or *"b"*, charges for insurance as described in section 537.2501, subsection 2, and a loan processing fee as agreed between the borrower and the lender, and annually may collect an account maintenance fee of not more than fifteen dollars. Fees collected under this subsection shall be disregarded for purposes of determining the maximum charge permitted by subsection 4.

b. The parties to a home equity line of credit which is not a consumer credit transaction, as defined in section 537.1301, may contract for a delinquency charge under terms no more favorable than those permitted for open-end credit under section 537.2502.

4. The interest rate on a home equity line of credit shall not exceed one and three-quarters percent per month.

5. Real estate which is the consumer's principal dwelling shall not be subject to foreclosure when the balance secured is two thousand dollars or less.

84 Acts, ch 1272, §1; 95 Acts, ch 35, §1; 99 Acts, ch 15, §1; 2014 Acts, ch 1037, §7; 2015 Acts, ch 29, §84

Referred to in §535.17

535.11 Finance charge on accounts receivable.

1. Except where the parties have agreed in writing for the payment of a different finance charge or rate of interest, a creditor may charge a finance charge on the unpaid balances of an account receivable at a rate not exceeding that permitted by subsection 3 or 4 of this section if the creditor gives notice as required by subsection 2 of this section.

2. As a condition of imposing a finance charge under this section, the creditor shall give notice to the debtor as follows:

a. In a transaction that is subject to the Truth in Lending Act, the creditor shall give all disclosures as required by that Act and at the time or times required by that Act.

b. In a transaction that is not subject to the Truth in Lending Act, the creditor shall give

written notice to the debtor at the time the debt arises. The notice shall be contained on the invoice or bill of sale evidencing the credit transaction, and shall disclose the rate of the finance charge and the date or day of the month before which payment must be received if the finance charge is to be avoided. With respect to open accounts, this notice shall be given at the time credit is initially extended; provided that additional advance notice in writing shall be given to the debtor not less than ninety days prior to any change in the terms of the agreement or of rate of the finance charge or date payment is due. For purposes of this paragraph, notice is given if the invoice or bill of sale is delivered with the goods, whether or not the debtor is present at the time of delivery.

c. As used in this subsection, *"Truth in Lending Act"* means as defined in section 537.1302.

3. With respect to an account other than an open account, the creditor may impose a finance charge not exceeding that permitted by section 537.2201, subsections 2 to 5.

4. With respect to an open account, the creditor may impose a finance charge not exceeding that permitted by section 537.2202, subsection 2.

5. As used in this section, *"finance charge"* means as defined in section 537.1301; and *"account receivable"* means a debt arising from the retail sale of goods or services or both on credit; and *"open account"* means an account receivable consisting of debt arising from the extension of open-end credit, as defined in section 537.1301.

6. This section does not supersede any of the provisions of chapter 537, except that section 537.3212 does not apply to a consumer credit transaction in which a finance charge is imposed under this section. This section does not authorize the compounding of a finance charge.

7. The finance charge authorized by this section is in lieu of interest or a finance charge authorized under section 535.2, subsection 1 or any other provision of law. The rate of a finance charge imposed pursuant to this section is applicable to a judgment in an action on the account, notwithstanding section 535.3.

8. If a creditor imposes a finance charge in violation of this section, the debtor shall have the right to recover all amounts unlawfully received by the creditor as finance charges, plus attorney's fees and court costs incurred in any action to effect recovery. This subsection does not limit remedies which may be available under chapter 537.

[C81, §535.11; 82 Acts, ch 1153, §6, 18(1)]
98 Acts, ch 1100, §72

535.12 Loans by agricultural credit corporation.

1. An agricultural credit corporation may lend money pursuant to a written promissory note or other writing evidencing the loan obligation, at a rate of interest which is not more than four percentage points above the lending rate in effect at the farm credit bank of Omaha, Nebraska, for the month during which the writing evidencing the loan obligation is made, provided that the loan is for an agricultural production purpose and further provided that the loan would, but for this section, be subject to the maximum rate of interest prescribed by section 535.2, subsection 3, paragraph *"a"*.

2. On or prior to the first day of each calendar month following June 13, 1980, the superintendent of banking shall determine the maximum rate of interest which may be charged pursuant to subsection 1 of this section on loans made by an agricultural credit corporation during that month, and shall cause the maximum rate to be published as soon after determination as possible, as a notice in the Iowa administrative bulletin or as a legal notice in a newspaper of general circulation published in Polk county. The maximum rate so determined shall be effective as provided in subsection 1 of this section regardless of the date of publication of the notice, except that no agricultural credit corporation shall be found in violation of this chapter solely on account of having made a loan on or prior to the day on which a notice of a maximum rate is published as provided in this subsection, if the loan would have been lawful if made during the preceding calendar month.

3. This section does not prohibit an agricultural credit corporation from lending money as otherwise permitted by law.

4. As used in this section:

a. *"Agricultural credit corporation"* means a corporation which has been designated by the

farm credit bank of Omaha, Nebraska, as an agricultural credit corporation eligible to sell or discount loans to that bank pursuant to 12 U.S.C. §2075.

b. "Agricultural production purpose" means a purpose related to the production of agricultural products.

c. "Agricultural products" includes agricultural, horticultural, viticultural, and dairy products, livestock, wildlife, poultry, bees, forest products thereof, and any and all products produced on farms.

[C81, §535.12]

89 Acts, ch 257, §26; 2014 Acts, ch 1092, §190; 2016 Acts, ch 1011, §104, 105

Referred to in §524.103

535.13 Definitions.

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

1. *"Agricultural products"* includes agricultural, horticultural, viticultural, and dairy products, livestock, wildlife, poultry, bees, forest products, fish and shellfish, and any products thereof, including processed and manufactured products, and any and all products raised or produced on farms and any processed or manufactured products thereof.

2. *"Agricultural purpose"* means a purpose related to the production, harvest, exhibition, marketing, transportation, processing, or manufacture of agricultural products by a person who cultivates, plants, propagates, or nurtures the agricultural products.

[C81, §535.13; 82 Acts, ch 1153, §7]

2017 Acts, ch 29, §155

Referred to in §535.2, 558.70, 615.1, 615.3, 628.26, 628.28, 654.20, 655A.9

535.14 Prompt crediting of payment on loans secured by residential real property.

A lender is subject to the requirements set forth in section 537.3206, regarding the prompt crediting of payments, with respect to a loan secured by a lien or security interest on owner-occupied residential real property. For purposes of this section, *"residential real property"* means residential real property as defined in section 535B.1.

99 Acts, ch 15, §2

535.15 Open-end credit and credit card disclosure. Repealed by 99 Acts, ch 73, §1.

535.16 Delivery of copies of debt documents.

1. A lender or other secured party shall provide to a debtor, at the time a document relating to a debt is signed, a copy of the document signed by the debtor. Receipt of a copy required by this section may be acknowledged anywhere on the document or on a separate acknowledgment of receipt.

2. A lender or other secured party shall provide to a debtor copies of all documents signed by the debtor relating to the debt at any other time, upon request, for a charge that shall not exceed the reasonable cost of copying the document.

86 Acts, ch 1081, §1; 87 Acts, ch 163, §1; 88 Acts, ch 1023, §1; 2018 Acts, ch 1041, §127

Code editor directive applied

535.17 Requirements of credit agreements — statute of frauds — modifications.

1. A credit agreement is not enforceable in contract law by way of action or defense by any party unless a writing exists which contains all of the material terms of the agreement and is signed by the party against whom enforcement is sought.

2. Unless otherwise expressly agreed in writing, a modification of a credit agreement which occurs after the person asserting the modification has been notified in writing that oral or implied modifications to the credit agreement are unenforceable and should not be relied upon, is not enforceable in contract law by way of action or defense by any party unless a writing exists containing the material terms of the modification and is signed by the party against whom enforcement is sought. This notification can be included among the terms of a credit agreement, can be included on a separate form or together with other disclosures that are provided when the agreement is made, or can be given wholly apart from the agreement and at any time after the agreement has been made. To be effective, the notification and its

language must be conspicuous. A person who gives a notification is bound by it to the same extent as the person notified. A notification with respect to any credit agreement is effective with respect to all other credit agreements then in effect between the parties if the notification conspicuously so provides. When a modification is required by this section to be in writing and signed, such requirement cannot be modified except by clear and explicit language in a writing signed by the person against whom the modification is to be enforced.

3. A notification referred to in subsection 2 in the following form in boldface, ten point type, complies with the requirements of this section:

> IMPORTANT: READ BEFORE SIGNING. The terms of this agreement should be read carefully because only those terms in writing are enforceable. No other terms or oral promises not contained in this written contract may be legally enforced. You may change the terms of this agreement only by another written agreement.

4. Notwithstanding subsections 1 and 2, a credit agreement or modification of a credit agreement which is not in writing, but which is valid in other respects, is enforceable if the party against whom enforcement is sought admits in court that the agreement or modification was made, but no agreement or modification is enforceable under this subsection beyond the terms admitted.

5. For purposes of this section, unless the context otherwise requires:

a. *"Action"* includes petition, complaint, counterclaim, cross-claim, or any other pleading or proceeding to enforce affirmatively any right or duty or to recover damages for the nonperformance of any duty.

b. *"Contract"* means a promise or set of promises for the breach of which the law would give a remedy or the performance of which the law would recognize a duty, and includes promissory obligations based on instruments and similar documents or on the contract doctrine of promissory estoppel.

c. *"Credit agreement"* means any contract made or acquired by a lender to loan money, finance any transaction, or otherwise extend credit for any purpose, and includes all of the terms of the contract. *"Credit agreement"* does not mean a contract to loan money, finance a transaction, or otherwise extend credit by means of or pursuant to a credit card, as defined in section 537.1301, subsection 17, or pursuant to open-end credit, as defined in section 537.1301, subsection 32, or pursuant to a home equity line of credit, as defined in section 535.10 whether the loan, financing, or credit is for consumer or business purposes or a consumer rental purchase agreement as defined in section 537.3604, subsection 8.

d. *"Defense"* includes setoff, recoupment, and any basis or means for barring or reducing liability or obligation on any claim.

e. *"Lender"* means any person primarily in the business of loaning money, or financing sales, leases, or other provision of property or services.

f. *"Modification"* includes change, addition, waiver, rescission, and any other variation of any kind whether expressly made or implied by, or inferred from, conduct of any kind.

6. This section shall be interpreted and applied purposively to ensure that contract actions and defenses on credit agreements are supported by clear and certain written proof of the terms of such agreements to protect against fraud and to enhance the clear and predictable understanding of rights and duties under credit agreements.

7. This section entirely displaces principles of common law and equity that would make or recognize exceptions to or otherwise limit or dilute the force and effect of its provisions concerning the enforcement in contract law of credit agreements or modifications of credit agreements. However, this section does not displace any additional or other requirements of contract law, which shall continue to apply, with respect to the making of enforceable contracts, including the requirement of consideration or other basis of validation.

8. This section does not apply to a credit agreement made primarily for a personal, family, or household purpose where the credit extended is twenty thousand dollars or less.

90 Acts, ch 1176, §1; 2017 Acts, ch 54, §76

535.18 Consumer credit terms for service members — enforcement.

The superintendent of banking and the superintendent of credit unions, as applicable, shall have the authority to enforce the consumer protection provisions of 10 U.S.C. §987 concerning limitations on terms of consumer credit extended to service members and their dependents.

2010 Acts, ch 1171, §5

CHAPTER 535A

MORTGAGE LOANS — RED-LINING

Referred to in §535B.7, 535D.13, 669.14

535A.1	Definitions.	535A.6	Action for damages.
535A.2	Discriminatory — real estate mortgages.	535A.7	Criminal penalty.
535A.3	Discretion of financial institution.	535A.8	Civil penalty.
535A.4	and 535A.5 Repealed by 2010 Acts, ch 1114, §5.	535A.9	Tying arrangements prohibited.
		535A.10	and 535A.11 Reserved.
		535A.12	Repealed by 88 Acts, ch 1145, §6.

535A.1 Definitions.

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

1. *"Financial institution"* means any bank, credit union, insurance company, mortgage banking company or savings and loan association, industrial loan company, or like institution or any other person who makes mortgage loans and which operates or has a place of business in this state. *"Financial institution"* does not include an individual who makes less than five mortgage loans a year.

2. *"Mortgage loan"* means a loan for the purchase, construction, improvement, or rehabilitation of residential property containing or to contain four or fewer family dwelling units in which the property is used as security for the loan.

3. *"Red-lining"* means the practice by which a financial institution may designate certain areas as unsuitable for the making of mortgage loans and reject applications for mortgage loans or vary the terms of a mortgage loan upon property within that area because of the prevailing income, racial, or ethnic characteristics of the area, or because of the age of the structures in the area.

4. *"Vary the terms of a mortgage loan"* includes but is not limited to the following:

a. Requiring a greater than average down payment than is usual for the particular type of mortgage loan involved.

b. Requiring a shorter period of amortization than is usual for the particular type of mortgage loan involved.

c. Charging a higher interest rate or higher loan origination fees than is usual for the particular type of mortgage loan involved.

d. An unreasonable underappraisal of real estate or item of property offered as security.

[C79, 81, §535A.1; 81 Acts, ch 174, §4, 5]

85 Acts, ch 238, §1; 2010 Acts, ch 1114, §1

Referred to in §528.2, 535A.2, 535A.6

535A.2 Discriminatory — real estate mortgages.

1. It is a discriminatory practice for any financial institution accepting mortgage loan applications to engage in the practice of red-lining as defined in section 535A.1.

2. This section shall be administered and enforced by the following agencies:

a. The superintendent of banking or the superintendent's designee in regard to banks, persons licensed under chapter 536A, and mortgage banking companies.

b. The commissioner of insurance or the commissioner's designee pursuant to chapter 505 in regard to all insurance companies.

c. The superintendent of credit unions or the superintendent's designee in regard to all credit unions.

[C79, 81, §535A.2]

2010 Acts, ch 1114, §2; 2012 Acts, ch 1017, §134

Referred to in §535A.6, 535A.7

535A.3 Discretion of financial institution.

Nothing contained in this chapter shall preclude a financial institution from applying economically sound underwriting practices in contemplation of any mortgage loan to any person. Such practices shall include but are not limited to the following:

1. The willingness and the financial ability of the borrower to repay the mortgage loan.
2. The appraised value of any real estate or other item of property proposed as security for any mortgage loan.
3. Diversification of the financial institution's investment portfolio.

[C79, 81, §535A.3]

Referred to in §535A.6

535A.4 and 535A.5 Repealed by 2010 Acts, ch 1114, §5.

535A.6 Action for damages.

1. Any person who has been aggrieved as a result of a violation of sections 535A.1 through 535A.3, this section, or sections 535A.7 through 535A.9 may bring an action in the district court of the county in which the violation occurred or in the county where the financial institution involved is located.
2. Upon a finding that a financial institution has committed a violation of either section 535A.2 or 535A.9, the court may award actual damages, court costs, and attorney fees.

[C79, 81, §535A.6]

85 Acts, ch 238, §2; 2010 Acts, ch 1114, §3; 2011 Acts, ch 25, §66

Referred to in §535A.8

535A.7 Criminal penalty.

Any person who knowingly engages in a practice which violates the provisions of section 535A.2 or 535A.9 is guilty of a serious misdemeanor.

[C79, 81, §535A.7]

85 Acts, ch 238, §3; 2010 Acts, ch 1114, §4

Referred to in §535A.6

535A.8 Civil penalty.

Any person who in bad faith fails to comply with the provisions of this chapter is subject to punitive damages not to exceed one thousand dollars in addition to actual damages as set forth in section 535A.6.

[C79, 81, §535A.8]

Referred to in §535A.6

535A.9 Tying arrangements prohibited.

1. A financial institution which makes or offers to make real estate mortgage loans shall not:

a. Grant or offer to grant a loan on the prior condition, that the borrower is required to contract with any specific person or organization for either of the following:

(1) Services of a real estate agent or broker.

(2) Insurance services as an agent, broker, or underwriter.

b. Use confidential credit status information that is used for qualifying a person for the purchase of real property for solicitation purposes either directly or indirectly by an affiliate subsidiary.

c. Attempt or permit a real estate or insurance subsidiary to attempt to create the impression in its advertising or in any communication that the customers of the subsidiary shall have priority access to the funds of the financial institution or are entitled to preferential interest rates or other terms.

2. This section does not apply to the Iowa finance authority or a program operated pursuant to chapter 16.

85 Acts, ch 238, §4; 85 Acts, ch 252, §56
Referred to in §535A.6, 535A.7

535A.10 and 535A.11 Reserved.

535A.12 Repealed by 88 Acts, ch 1145, §6.

CHAPTER 535B

MORTGAGE BANKERS, MORTGAGE BROKERS, AND CLOSING AGENTS

Referred to in §16.92, 524.211, 524.606, 533A.2, 535C.2, 535D.3, 535D.14, 536.12, 536A.23, 546.3, 669.14, 714E.1

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535B.19 Trust account requirements for closing agents.
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535B.1 Definitions.

As used in this chapter unless the context otherwise requires:

1. *"Administrator"* means the superintendent of the division of banking of the department of commerce.

2. *"Closing agent"* means a person who is not a party to the real estate transaction, who provides real estate closing services.

3. *"Licensee"* means a person licensed under this chapter; however, any natural person who is acting solely as an employee or agent of a mortgage banker, mortgage broker, or closing agent licensed under this chapter need not be separately licensed under this chapter.

4. *"Mortgage banker"* means a person who does one or more of the following:

a. Makes at least four mortgage loans on residential real property located in this state in a calendar year.

b. Originates at least four mortgage loans on residential real property located in this state in a calendar year and sells four or more such loans in the secondary market.

c. Services at least four mortgage loans on residential real property located in this state. However, a natural person, who services less than fifteen mortgage loans on residential real estate within the state and who does not sell or transfer mortgage loans, is exempt from this paragraph if that person is otherwise exempt from the provisions of this chapter.

5. *"Mortgage broker"* means a person who arranges or negotiates, or attempts to arrange or negotiate, at least four mortgage loans or commitments for four or more such loans on residential real property located in this state in a calendar year.

6. *"Mortgage loan"* means a loan of money secured by a lien on residential real property

and includes a refinancing of a contract of sale, an assumption of a prior mortgage loan, and a refinancing of a prior mortgage loan.

7. *"Party to the real estate transaction"* means, with respect to a particular real estate transaction, a lender, seller, purchaser, or borrower.

8. *"Person"* means a natural person, an association, joint venture or joint stock company, partnership, limited partnership, business corporation, nonprofit corporation, or any other group of individuals however organized.

9. *"Natural person"* means an individual who is not an association, joint venture or joint stock company, partnership, limited partnership, business corporation, nonprofit corporation, other business entity, or any other group of individuals or business entities, however organized.

10. *"Registrant"* means a person registered under section 535B.3.

11. *"Real estate closing services"* means the administrative and clerical services required to carry out the conveyance or transfer of real estate or an interest in real estate located in this state to a purchaser or lender. *"Real estate closing services"* includes but is not limited to preparing settlement statements, determining that all closing documents conform to the parties' contract requirements, ascertaining that the lender's instructions have been satisfied, conducting a closing conference, receiving and disbursing funds, and completing form documents and instruments selected by and in accordance with instructions of the parties to the transaction. *"Real estate closing services"* does not include performing solely notarial acts as provided in chapter 9B.

12. *"Residential real estate"* means the same as defined in section 535D.3.

13. *"Residential real property"* means real property, which is an owner-occupied single-family or two-family dwelling, located in this state, occupied or used or intended to be occupied or used for residential purposes, including an interest in any real property covered under chapter 499B.

14. *"Trust account"* means a checking account with a federally insured bank, savings and loan association, credit union, or savings bank, which is used exclusively for the deposit of funds transferred electronically or otherwise, cash, money orders, or negotiable instruments that are received by a closing agent to effect a real estate closing.

88 Acts, ch 1146, §1; 89 Acts, ch 133, §1 – 3; 91 Acts, ch 65, §1; 2005 Acts, ch 83, §1 – 3, 10; 2006 Acts, ch 1042, §12 – 14; 2009 Acts, ch 61, §26, 27, 39; 2010 Acts, ch 1111, §1, 13; 2011 Acts, ch 34, §130; 2012 Acts, ch 1050, §45, 60; 2013 Acts, ch 30, §132

Referred to in §535.14

535B.2 Exemptions.

This chapter, except for sections 535B.3, 535B.11, 535B.12, and 535B.13, does not apply to any of the following:

1. A bank, bank holding company, savings bank, savings and loan association, or credit union organized under the laws of this state, another state, or the United States, or a subsidiary owned or controlled by such a bank, bank holding company, savings bank, savings and loan association, or credit union.

2. A loan company licensed under chapter 536 or 536A, except when acting as a closing agent.

3. An insurance company or a subsidiary or affiliate of an insurance company organized under the laws of this state, another state, or the United States, and subject to regulation by the commissioner of insurance.

4. Mortgage lenders or mortgage bankers maintaining an office in this state whose principal business in this state is conducted with or through mortgage lenders or mortgage bankers otherwise exempt under this section and which maintain a place of business in this state.

5. An individual who is employed by a person otherwise exempt under this section, or who, by contract, operates exclusively on behalf of a person otherwise exempt under this section to the extent that the individual is acting within the scope of the individual's employment or exclusive contract with the exempt person and is acting within the scope of the exempt person's charter, license, authority, approval, or certificate.

6. A real estate broker licensed under chapter 543B while engaged in practice as a real estate broker.

7. A nonprofit organization qualifying for tax-exempt status under the Internal Revenue Code as defined in section 422.3 which offers housing services to low and moderate income families.

8. An attorney licensed to practice law in this state or the attorney's employees or agents acting under the attorney's direction, in a transaction where the conduct of the attorney is regulated by the Iowa supreme court in its capacity as disciplinary authority over attorneys.

9. An officer or employee of the federal government, any state government, or a political subdivision of the state acting in an official capacity.

10. A qualified intermediary or an exchange accommodation titleholder facilitating an exchange under section 1031 of the Internal Revenue Code whose role in the transaction is limited to acting in such a capacity.

88 Acts, ch 1146, §2; 89 Acts, ch 83, §76; 89 Acts, ch 133, §4, 5; 96 Acts, ch 1056, §21; 2005 Acts, ch 83, §4, 10; 2008 Acts, ch 1160, §15; 2010 Acts, ch 1111, §2, 13

Referred to in §535B.2A, 535B.3, 558.70

535B.2A Closing agents affiliated with attorneys.

1. A closing agent affiliated with an attorney is not exempt from licensure under this chapter if the closing agent engages in transactions not exempt under section 535B.2, subsection 8.

2. Licensure under, and compliance with the provisions of, this chapter shall not exempt any attorney from discipline by the Iowa supreme court in its capacity as regulatory authority over attorneys licensed to practice in this state, nor from discipline by the regulatory authorities over attorneys licensed in other jurisdictions.

3. If a complaint is filed with the administrator against a closing agent affiliated with an attorney licensed to practice in this state, the administrator shall promptly give notice of the complaint to the Iowa supreme court or its designee, and cooperate in any disciplinary investigation which the court initiates against the attorney. On request of the court, the administrator shall stay any pending disciplinary action to the extent that the court determines necessary to avoid prejudice to a disciplinary action against the attorney.

2010 Acts, ch 1111, §3, 13

535B.3 Registration.

1. A person exempt under section 535B.2, subsection 4 or 7, shall register with the administrator.

2. A registrant shall submit to the administrator a registration statement on forms provided by the administrator. The forms shall include all addresses at which business is to be conducted, the names and titles of each director and principal officer of the business, and a description of the activities of the applicant in such detail as the administrator may require.

3. The registrant, except a nonprofit organization exempt under section 535B.2, subsection 7, shall pay an annual registration fee of one hundred dollars.

4. A registration under this chapter is not assignable.

88 Acts, ch 1146, §3; 89 Acts, ch 133, §6; 96 Acts, ch 1056, §22; 2005 Acts, ch 83, §5, 10; 2008 Acts, ch 1160, §16

Referred to in §535B.1, 535B.2

535B.4 General licensing requirements.

1. A person shall not act as a mortgage banker, mortgage broker, or closing agent in this state or use the title "mortgage banker" or "mortgage broker" without first obtaining a license from the administrator.

2. *a.* License applicants shall submit to the administrator an application on forms provided by the administrator. The forms shall include, at a minimum, all addresses at which business is to be conducted, the names and titles of each director and principal officers of the business, and a description of the activities of the applicant in such detail as the administrator may require.

b. The administrator may require applicants and licensees to be licensed through the

nationwide mortgage licensing system and registry as defined in section 535D.3, and may participate in the nationwide mortgage licensing system and registry if this requirement is implemented. In the event the requirement is implemented, the administrator may establish by rule or order new requirements as necessary and appropriate, including but not limited to requirements that applicants, and officers, directors, and others in a position of authority in relation to the applicant, submit to fingerprinting and criminal history checks, and pay associated fees relating thereto.

3. The applicant shall also submit a recently prepared certified financial statement.

4. The applicant for an initial license shall submit a fee in the amount of five hundred dollars.

5. Licenses granted under this chapter are not assignable.

6. Licenses granted under this chapter expire on the next December 31 after their issuance.

7. Applications for renewals of licenses under this chapter must be filed with the administrator before December 1 of the year of expiration on forms prescribed by the administrator. A renewal application must be accompanied by a fee of two hundred dollars for a license to transact business solely as a mortgage broker, four hundred dollars for a license to transact business as a mortgage banker, and two hundred dollars for a license to transact business as a closing agent. The administrator may assess a late fee of ten dollars per day for applications or registrations accepted for processing after December 1.

8. A mortgage banker or mortgage broker licensee shall not conduct business under any other name than that given in the license. A fictitious name may be used, but a mortgage banker or mortgage broker licensee shall conduct business only under one name at a time. However, the administrator may issue more than one license to the same person to conduct business under different names at the same time upon compliance for each such additional mortgage banker or mortgage broker license with all of the provisions of this chapter governing an original issuance of a license.

9. A licensee may not establish branch locations outside of the United States.

10. In addition to the application and renewal fees provided for in subsections 4 and 7, the administrator may assess application and renewal fees for each branch location of the licensee, sponsor fees, and change of sponsor fees.

88 Acts, ch 1146, §4; 89 Acts, ch 133, §7; 2006 Acts, ch 1042, §15, 16; 2007 Acts, ch 22, §95; 2008 Acts, ch 1160, §17, 18; 2009 Acts, ch 61, §28, 39; 2010 Acts, ch 1111, §4, 13; 2011 Acts, ch 102, §6

535B.4A Individual registration requirements — fees. Repealed by 2009 Acts, ch 61, §37, 39. See chapter 535D.

535B.5 Granting and denial of license.

1. Upon the filing of an application for a license, if the administrator finds that the financial responsibility, character, and general fitness of the applicant and of the members thereof if the applicant is a partnership, association, or other organization and of the officers, directors, and principal employees if the applicant is a corporation, are such as to warrant belief that the business will be operated honestly, soundly, and efficiently in the public interest consistent with the purposes of this chapter, the administrator shall issue the applicant a license as a mortgage broker, mortgage banker, or closing agent. The administrator shall approve or deny an application for a license within ninety days after the filing of the application for a license.

2. If the administrator does not so find, the license shall not be issued, and the administrator shall notify the applicant in writing of the denial and the reasons for the denial.

88 Acts, ch 1146, §5; 2010 Acts, ch 1111, §5, 13

535B.6 Licensing of certain corporations.

1. An applicant that is incorporated under the laws of another state in the United States must be authorized to do business in this state. Such a corporation shall file with the license application both of the following:

a. An irrevocable consent, duly acknowledged, that suits and actions may be commenced

against that licensee in the courts of this state by service of process in the usual manner provided for by the statutes and court rules of this state.

b. Proof of authorization to do business in this state.

2. Businesses that are incorporated outside of the United States are not eligible for a license.

88 Acts, ch 1146, §6; 2011 Acts, ch 102, §7

535B.6A Change of name — change of control — notice and approval required.

1. A licensee shall submit a notice of name change and a twenty-five dollar fee for each license to the administrator thirty days prior to changing the name of the licensee.

2. The prior written approval is required whenever a change in control of a licensee or registrant is proposed. For purposes of this section, *"control"* means as defined in section 524.103. The administrator may require the licensee to provide any information deemed necessary by the administrator to determine whether a new application is required. At the time of requesting the approval, the licensee or registrant requesting the change of control shall pay to the administrator a fee of one hundred dollars.

2006 Acts, ch 1042, §18

535B.7 Disciplinary action.

1. The administrator may, pursuant to chapter 17A, take disciplinary action against a licensee if the administrator finds any of the following:

a. The licensee has violated a provision of this chapter or a rule adopted under this chapter or any other state or federal law applicable to the conduct of its business including but not limited to chapters 535 and 535A.

b. A fact or condition exists which, if it had existed at the time of the original application for the license, would have warranted the administrator to refuse originally to issue the license.

c. The licensee is found upon investigation to be insolvent, in which case the license shall be revoked immediately.

d. The licensee has violated an order of the administrator.

2. The administrator may impose one or more of the following disciplinary actions against a licensee:

a. Revoke a license.

b. Suspend a license until further order of the administrator or for a specified period of time.

c. Impose a period of probation under specified conditions.

d. Impose civil penalties in an amount not to exceed five thousand dollars for each violation.

e. Issue a citation and warning respecting licensee behavior.

f. Order the licensee to pay restitution.

3. The administrator may order an emergency suspension of a licensee's license pursuant to section 17A.18A. A written order containing the facts or conduct which warrants the emergency action shall be timely sent to the licensee by restricted certified mail. Upon issuance of the suspension order, the licensee must also be notified of the right to an evidentiary hearing. A suspension proceeding shall be promptly instituted and determined.

4. Except as provided in this section, a license shall not be revoked or suspended except after notice and a hearing thereon in accordance with chapter 17A.

5. A licensee may surrender a license by delivering to the administrator written notice of surrender, but a surrender does not affect the licensee's civil or criminal liability for acts committed before the surrender.

6. A revocation, suspension, or surrender of a license does not impair or affect the obligation of a preexisting lawful contract between the licensee and any person, including a mortgagor.

88 Acts, ch 1146, §7; 98 Acts, ch 1202, §42, 46; 2006 Acts, ch 1042, §19; 2008 Acts, ch 1160, §20; 2009 Acts, ch 61, §29, 39

535B.7A Prohibited acts.

It is a violation of this chapter for a licensee to engage in any of the prohibited acts or practices in section 535D.17.

2009 Acts, ch 61, §30, 39; 2009 Acts, ch 179, §43

535B.8 Operating without a license.

A person who, without first obtaining a license under this chapter, engages in the business or occupation of, or advertises or holds the person out as, or claims to be, or temporarily acts as, a mortgage banker, mortgage broker, or closing agent in this state is guilty of a class "D" felony and may be prosecuted by the attorney general or a county attorney.

88 Acts, ch 1146, §8; 2008 Acts, ch 1160, §21; 2009 Acts, ch 61, §31, 39; 2010 Acts, ch 1111, §6, 13

535B.9 Bonds required of license applicants.

1. An applicant for a license shall file with the administrator a bond furnished by a surety company authorized to do business in this state, together with evidence of whether the applicant is seeking to transact business as a mortgage broker, mortgage banker, or closing agent. Until such time as the superintendent pursuant to administrative rule determines a bond amount that reflects the dollar value of loans originated, the bond shall be in the amount of one hundred thousand dollars for applicants seeking to transact business as a mortgage broker or mortgage banker. For applicants seeking to transact business as a closing agent, the bond shall be in the amount of twenty-five thousand dollars, unless the administrator by rule establishes a higher bond amount. The bond shall be continuous in nature until canceled by the surety with not less than thirty days' notice in writing to the mortgage broker, mortgage banker, or closing agent and to the administrator indicating the surety's intention to cancel the bond on a specific date.

2. For applicants seeking to transact business as a mortgage broker or mortgage banker, the bond shall be for the use of the state and any persons who may have causes of action against the applicant. The bond shall be conditioned upon the applicant's faithfully conforming to and abiding by this chapter and any rules adopted under this chapter and shall require that the surety pay to the state and to any persons all moneys that become due or owing to the state and to the persons from the applicant by virtue of this chapter.

3. For applicants seeking to transact business as a closing agent, the bond shall be conditioned upon the applicant's faithfully conforming to and abiding by this chapter and any rules adopted under this chapter and shall require that the surety pay to the state all moneys that become due or owing to the state from the applicant by virtue of this chapter.

4. In lieu of filing a bond, the applicant may pledge an alternative form of collateral acceptable to the administrator, if the alternative collateral provides protection to the state and any aggrieved person that is equivalent to that provided by a bond.

5. A licensee may not act as a closing agent unless the bond requirements in this section are in place at the time of a real estate closing.

88 Acts, ch 1146, §9; 89 Acts, ch 133, §8; 2005 Acts, ch 83, §7, 10; 2006 Acts, ch 1042, §20; 2008 Acts, ch 1160, §22; 2009 Acts, ch 61, §32, 39; 2010 Acts, ch 1111, §7, 13

535B.9A Continuing education requirements. Repealed by 2009 Acts, ch 61, §38, 39.

535B.10 Investigations and examinations.

1. Within one hundred twenty days after the end of a mortgage banker licensee's fiscal year, the mortgage banker licensee shall file financial statements which are audited by an independent certified public accounting firm.

2. For the purposes of discovering violations of this chapter or any related rules or for securing information lawfully required under this chapter, the administrator may at any time and as often as the administrator deems necessary, but in no event less frequently than once during each two-year period, investigate the business and examine the books, accounts, records, and files used by a licensee.

3. In conducting any examination under this section, the administrator may rely on

current reports made by the licensee which have been prepared for the following federal agencies or federally related entities:

a. United States department of housing and urban development.

b. Federal housing administration.

c. Federal national mortgage association.

d. Government national mortgage association.

e. Federal home loan mortgage corporation.

f. United States department of veterans affairs.

4. With respect to mortgage lenders or mortgage bankers who are specifically exempted from this chapter but are subject to sections 535B.11, 535B.12, and 535B.13, the powers of examination and investigation concerning compliance with sections 535B.11, 535B.12, and 535B.13 shall be exercised by the official or agency to whose supervision the exempted person is subject. If the administrator receives a complaint or other information concerning noncompliance with this chapter by an exempted person, the administrator shall inform the official or agency having supervisory authority over that person.

5. *a.* The licensee shall pay the cost of the examination or investigation as determined by the administrator based on the actual cost of the operation of the finance bureau of the banking division of the department of commerce, including the proportionate share of administrative expenses in the operation of the banking division attributable to the finance bureau as determined by the administrator, incurred in the discharge of duties imposed upon the administrator by this chapter.

b. The total charge for an examination or investigation shall be paid by the licensee to the administrator within thirty days after the administrator has requested payment. Failure to pay the charge within thirty days shall subject the licensee to a late fee of up to five percent of the amount of the examination or investigation charge for each day the payment is delinquent.

6. *a.* All papers, documents, examination reports, and other writings relating to the supervision of licensees and registrants shall be kept confidential except as provided in this subsection, notwithstanding chapter 22.

b. The administrator may furnish information relating to the supervision of licensees and registrants to the federal agencies or federally related entities listed in subsection 3, the federal deposit insurance corporation, the federal reserve system, the office of the comptroller of the currency, the office of thrift supervision, the national credit union administration, the federal home loan bank, a financial institution regulatory authority of any other state, a professional licensing authority of this state or any other state, or a law enforcement agency, or to any official or supervising examiner of such regulatory authorities.

c. The administrator may release summary complaint information regarding a particular licensee so long as the information does not specifically identify the complainant.

d. The administrator may prepare and circulate reports reflecting financial information and examination results for all licensees on an aggregate basis, including other information considered pertinent to the purpose of each report for general statistical information.

e. The administrator may prepare and circulate reports provided by law.

f. The administrator may release the reports and correspondence in the course of an enforcement proceeding or a hearing held by the administrator.

g. The administrator may also provide this information to the attorney general for purposes of enforcing this chapter or the consumer fraud Act, section 714.16.

h. The administrator may furnish information to the Iowa title guaranty division of the Iowa finance authority relating to supervision of closing agent licensees whose activities relate to the issuance of title guaranty certificates issued by the Iowa title guaranty division. The Iowa title guaranty division may use this information to satisfy its reinsurance requirements and may provide the information to its reinsurer to the extent necessary to satisfy reinsurer requirements provided the reinsurer agrees to maintain the confidentiality of the information. The Iowa title guaranty division shall maintain the confidentiality of the information provided pursuant to this paragraph in all other respects.

88 Acts, ch 1146, §10; 2005 Acts, ch 3, §89; 2006 Acts, ch 1042, §21; 2008 Acts, ch 1160, §23, 24; 2009 Acts, ch 26, §16; 2009 Acts, ch 61, §33, 39; 2012 Acts, ch 1017, §25; 2013 Acts, ch 90, §164; 2014 Acts, ch 1080, §94, 98

535B.11 Servicing mortgages and payoffs.

A licensee or other mortgagee who services mortgages on residential real estate located in this state shall do all of the following:

1. Disburse required funds paid by the mortgagor and held in escrow for the payment of real estate taxes and insurance payments no later than their final due date.

2. Pay penalties incurred by the mortgagor due to the licensee's or mortgagee's failure to meet the due dates referred to in subsection 1 unless the licensee or mortgagee can show that the failure was due solely to the fact that the mortgagor received a statement of the amount due more than fifteen days before the due date and has failed to remit it to the licensee or mortgagee.

3. *a.* Perform a complete escrow analysis yearly. A clear and legible copy of the yearly analysis shall be promptly mailed to the mortgagor. If there is a change in the payment amount, the analysis shall be mailed at least twenty days before the effective date of the change. The summary shall contain all of the following information:

(1) The name and address of the mortgagee.

(2) The name and address of the mortgagor.

(3) A summary of escrow account activity during the year which includes all of the following:

(a) The balance of the escrow account at the beginning of the year.

(b) The aggregate amount of deposits to the escrow account during the year.

(c) The aggregate amount of withdrawals from the escrow account for each of the following categories:

(i) Payments against loan principal.

(ii) Payments against interest.

(iii) Payments against real estate taxes.

(iv) Payments for real property insurance premiums.

(v) All other withdrawals.

(d) A summary of loan principal for the year as follows:

(i) The amount of principal outstanding at the beginning of the year.

(ii) The aggregate amount of payments against principal during the year.

(iii) The amount of principal outstanding at the end of the year.

b. Compliance with sections 524.905, 533.315, and 536A.20 shall constitute compliance with this subsection.

4. Answer in writing, within ten business days of receipt, any written request for payoff information received from a mortgagor or the mortgagor's designated representative.

5. If a person in connection with a mortgage loan has possession of an abstract of title and fails to deliver the abstract to the borrower within twenty calendar days of the borrower's request made by certified mail return receipt requested in connection with a proposed sale of the property, then the borrower may authorize the preparation of a new abstract of title to the property and the person failing to deliver the original abstract shall pay to the borrower the reasonable costs of preparation. If the borrower brings an action against the person failing to deliver to recover the payment and in the action recovers the payment, then the borrower shall also be entitled to recover attorney fees and court costs incurred in the action.

6. When the servicing of a mortgage loan is transferred, sold, purchased, or accepted by a licensee or registrant, the licensee or registrant who is transferring or selling the servicing shall issue to the mortgagor, within fifteen calendar days prior to the effective date of the transfer, a notice which shall include at a minimum:

a. The name and address of the licensee or registrant transferring or selling the servicing.

b. The name and address of the licensee or registrant accepting or purchasing the servicing.

c. The effective date of the transfer.

d. A statement concerning the effect of the transfer on the terms and conditions of the mortgage.

e. The address where payments are to be submitted for at least the next three months.

f. The name and address of the licensee or registrant to whom questions related to the mortgage may be addressed.

88 Acts, ch 1146, §11; 89 Acts, ch 133, §9; 2006 Acts, ch 1042, §22, 23; 2007 Acts, ch 174, §94; 2012 Acts, ch 1017, §135; 2018 Acts, ch 1036, §1
Referred to in §535B.2, 535B.10, 535D.23
Subsection 5 stricken and former subsections 6 and 7 renumbered as 5 and 6

535B.12 Payment processing.

A licensee or other mortgagee shall not assess a late charge if full payment is received before the date late charges are authorized in the mortgage documents and shall post all periodic payments in full within two business days of receipt.

88 Acts, ch 1146, §12
Referred to in §535B.2, 535B.10

535B.13 Civil enforcement authority.

1. If the administrator believes that a person has engaged in, or is about to engage in, an act or practice that constitutes or will constitute a violation of this chapter, the administrator may apply to the district court for an order enjoining such act or practice. Upon showing by the administrator that such person has engaged, or is about to engage, in any such act or practice, the district court shall grant an injunction.

2. The administrator may investigate or initiate a complaint against a person who is not licensed under this chapter to determine whether the person is violating this chapter.

3. In addition to or as an alternative to applying to the district court for an injunction, the administrator may issue an order to a person who is not licensed under this chapter to require compliance with this chapter, including to cease and desist from conducting business or from any harmful activities or violations of law or regulation; may impose a civil penalty against such person for any violation of this chapter in an amount up to five thousand dollars for each violation; may order the person to pay restitution; and may order the person to pay the costs for the investigation and prosecution of the enforcement action including attorney fees.

4. Before issuing an order under subsection 3, the administrator shall provide the person written notice and the opportunity to request a hearing. The hearing must be requested within thirty days after receipt of the notice and shall be conducted in the same manner as provided for in disciplinary proceedings involving a licensee under this chapter.

5. A person aggrieved by the imposition of a civil penalty under subsection 3 may seek judicial review pursuant to section 17A.19.

6. An action to enforce an order under this section may be joined with an action for an injunction.

7. This chapter does not limit the power of the attorney general to determine that any other practice is unlawful under the Iowa consumer fraud Act contained in section 714.16, and to file an action under that section.

88 Acts, ch 1146, §13; 91 Acts, ch 65, §2; 2010 Acts, ch 1111, §8, 13
Referred to in §535B.2, 535B.10

535B.14 Administrative authority.

The administrator shall have broad administrative authority to administer, interpret, and enforce this chapter and to promulgate rules implementing this chapter, including rules providing the grounds for denial of a license based on information received as a result of a background check, character and fitness grounds, and any other grounds for which a licensee may be disciplined.

88 Acts, ch 1146, §14; 2007 Acts, ch 170, §5; 2009 Acts, ch 61, §34, 39; 2010 Acts, ch 1111, §9, 13

535B.15 Liability of state.

An act or omission by the state pursuant to this chapter including, but not limited to, an examination, inspection, audit, or other financial oversight responsibility shall not subject the state to liability.

88 Acts, ch 1146, §15

535B.16 Notice to administrator.

A licensee or registrant maintaining an office in the state shall notify the administrator in writing at least thirty days before closing or otherwise ceasing operations at any office in the state.

89 Acts, ch 133, §10

535B.17 Powers and duties of the administrator — waiver authority. Repealed by 2010 Acts, ch 1111, §12, 13. See §535B.4.

535B.18 Mortgage call reports.

Each licensee shall submit to the nationwide mortgage licensing system and registry, as defined in section 535D.3, reports of condition, which shall be in such form and shall contain such information as the nationwide mortgage licensing system and registry may require.

2009 Acts, ch 61, §36, 39

Referred to in §535D.23

535B.19 Trust account requirements for closing agents.

A licensee acting as a closing agent shall comply with all of the following:

1. All moneys received for disbursement during a real estate closing shall be deposited in a trust account and, when deposited, the moneys shall be designated as trust funds or trust accounts or under some other appropriate name indicating that the moneys are not the moneys of the licensee.

2. All trust account moneys shall be deposited in a financial institution that is insured by the federal deposit insurance corporation or national credit union share insurance fund unless the transaction does not involve residential real estate and another financial institution has been designated in writing in the escrow instructions.

3. If the trust account earns interest and the interest earned is retained by any party other than the party to the real estate transaction who is the owner of the funds, the licensee shall disclose this fact in writing to the parties to the transaction.

4. A licensee shall enter into a written agreement to pay interest to a party to a transaction, or to a third party if requested by the parties to a transaction, if the client's trust funds can earn net interest. In determining whether a client can earn net interest on funds placed in trust, the licensee shall take into consideration all relevant factors including the following:

a. The amount of interest that the funds would earn during the period in which they are reasonably expected to be deposited.

b. The cost of establishing and administering an individual interest-bearing trust account in which the interest would be transmitted to the client, including any needed tax forms.

c. The capability of the financial institution to calculate and pay interest to individual clients through subaccounting or otherwise.

5. The licensee shall notify the administrator of the name of each financial institution in which a trust account is maintained and the name of the account on forms acceptable to the administrator. A licensee may maintain more than one trust account provided it advises the administrator of the multiple accounts.

6. A licensee shall only deposit trust funds in a trust account and shall not commingle the licensee's personal funds or other funds in the trust account with the exception that a licensee may deposit and keep a sum not to exceed one thousand dollars in the trust account from the licensee's personal funds, which sum shall be specifically identified and deposited to cover bank service charges relating to the trust account or to advance funds to pay incidental fees as permitted in section 535B.20, subsection 2.

7. Moneys deposited in a trust account are not subject to execution or attachment or to any claim against the licensee.

8. A licensee shall not knowingly keep or cause to be kept any money in any bank, credit union, or other financial institution under any name designating the moneys as belonging to a client of the licensee, unless the money was actually entrusted to the licensee for deposit in trust.

2010 Acts, ch 1111, §10, 13

535B.20 Disbursing from a trust account.

A licensee acting as a closing agent shall not make, in a real estate closing, a disbursement from a trust account on behalf of another person, unless the following conditions are met:

1. The cash, funds, money orders, checks, or negotiable instruments necessary for the disbursement have been transferred electronically to or deposited into the trust account of the closing agent and are available for withdrawal and disbursement, or have been physically received by the agent prior to disbursement and are intended for deposit no later than the next banking day after the date of disbursement.

2. Nothing in this section prohibits a closing agent licensee from advancing funds not exceeding one thousand dollars from a trust account or otherwise on behalf of a party to a real estate closing for the purpose of paying incidental fees, such as conveyance and recording fees, in order to effect and close the sale, purchase, exchange, transfer, encumbrance, or lease of residential real property that is the subject of the real estate closing.

2010 Acts, ch 1111, §11, 13
Referred to in §535B.19

CHAPTER 535C

LOAN BROKERS

Referred to in §669.14

535C.1	Title.	535C.10	Remedies.
535C.2	Definitions.	535C.11	Applicability.
535C.2A	Prohibition on advance fees.	535C.11A	Exemption — burden of proof.
535C.3	through 535C.5 Repealed by 93 Acts, ch 60, §27.	535C.12	Records.
		535C.13	Repealed by 93 Acts, ch 60, §27.
535C.6	Penalty.	535C.14	Misrepresentation of governmental approval.
535C.7	Written agreements required.		
535C.8	Waiver of rights.	535C.15	Reserved.
535C.9	Rules.	535C.16	Repealed by 93 Acts, ch 60, §27.

535C.1 Title.

This chapter may be cited as the *"Iowa Loan Brokers Act"*.

83 Acts, ch 146, §1
Referred to in §714.16

535C.2 Definitions.

1. *"Advance fee"* means consideration of any type including a payment, fee, pay-per-call charge, or deposit, which is assessed or collected prior to the closing of a loan or the issuing of a credit card.

2. *"Borrower"* means a person who seeks the services of a loan broker.

3. *"Loan"* means an agreement to advance property, including but not limited to money, in return for the promise that payment will be made for the use of the property.

4. *"Loan broker"* or *"broker"* means a person who promises to obtain a loan or credit card or assist in obtaining a loan for another from a third person, or who promises to consider making a loan or offering to issue a credit card to a person. A loan broker does not include any of the following:

a. An attorney licensed to practice in this state while engaged in the practice of law.

b. A certified public accountant licensed to practice in this state while engaged in practice as a certified public accountant.

c. An accounting practitioner, while engaged as an accounting practitioner, who procures loans as an incidental part of the accountant's practice.

d. A governmental body or employee acting in an official capacity.

e. A financial institution, to the extent the institution's activities or arrangements are

expressly approved or regulated by a regulatory body or officer acting under authority of the United States.

f. An insurance company subject to regulation by the commissioner of insurance.

g. A bank incorporated under chapter 524.

h. A credit union incorporated under chapter 533.

i. A mortgage broker or mortgage banker licensed or registered under chapter 535B.

j. A regulated loan company licensed under chapter 536.

k. An industrial loan company licensed under chapter 536A.

5. *"Loan brokerage agreement"* or *"agreement"* means an agreement between a loan broker and a borrower in which the loan broker promises to do any of the following:

a. Obtain a loan or credit card for a borrower.

b. Assist the borrower in obtaining a loan or credit card.

c. Consider making a loan or issuing a credit card to the borrower.

6. *"Records"* means books, papers, documents, accounts, agreements, memoranda, electronic records of accounts, or correspondence relating to a matter regulated under this chapter.

7. *"Successful procurement of a loan"* means the receipt by a borrower of the loan proceeds.

83 Acts, ch 146, §2; 91 Acts, ch 205, §19; 93 Acts, ch 60, §13, 14; 2012 Acts, ch 1017, §136
Referred to in §714.16

535C.2A Prohibition on advance fees.

A loan broker shall not directly or indirectly solicit, receive, or accept from a borrower an advance fee as consideration for providing services as a loan broker. A loan broker's fee may only be assessed or collected from a borrower after the successful procurement of a loan or issuance of a credit card.

93 Acts, ch 60, §15
Referred to in §714.16

535C.3 through 535C.5 Repealed by 93 Acts, ch 60, §27.

535C.6 Penalty.

A loan broker who violates a provision of this chapter is guilty of a serious misdemeanor.

83 Acts, ch 146, §6; 93 Acts, ch 60, §16
Referred to in §714.16

535C.7 Written agreements required.

A loan brokerage agreement shall be in writing, contain a description of the services that the broker agrees to perform for the borrower, and the conditions under which the borrower is obligated to pay the broker. The agreement shall be signed by the broker and the borrower. The broker shall give the borrower a copy of the agreement when the borrower signs the agreement.

83 Acts, ch 146, §7; 91 Acts, ch 205, §22
Referred to in §714.16

535C.8 Waiver of rights.

A waiver of this chapter by a borrower prior to or at the time of entering into a loan brokerage agreement is contrary to public policy and is void. An attempt by a loan broker to have a borrower waive any rights given in this chapter is a violation of this chapter.

83 Acts, ch 146, §8
Referred to in §714.16

535C.9 Rules.

The attorney general may adopt rules according to chapter 17A as necessary or appropriate to implement the purposes of this chapter.

83 Acts, ch 146, §9; 93 Acts, ch 60, §17
Referred to in §714.16

535C.10 Remedies.

1. If a broker materially violates the loan brokerage agreement, the borrower may, upon written notice, void the agreement. In addition, the borrower may recover all moneys paid the broker, a penalty of twice the amount of the fee sought by the broker, other damages, and reasonable attorney fees. A material violation includes but is not limited to any of the following:

a. Making false or misleading statements relative to the agreement.

b. Failure to comply with the agreement or the obligations arising from the agreement.

c. Failure to either grant the borrower a loan or issue a credit card or diligently attempt to obtain a loan or credit card for the borrower.

d. Failure to comply with the requirements of this chapter.

e. Soliciting or obtaining, directly or indirectly, an advance fee.

2. A violation of this chapter is a violation of the Iowa consumer fraud Act, section 714.16.

3. Remedies under this chapter are in addition to other remedies available in law or equity.

83 Acts, ch 146, §10; 93 Acts, ch 60, §18

Referred to in §714.16

535C.11 Applicability.

This chapter does not apply to activities or arrangements expressly approved or regulated by the department of commerce.

83 Acts, ch 146, §11; 91 Acts, ch 205, §23; 93 Acts, ch 60, §19

535C.11A Exemption — burden of proof.

In a civil proceeding pursuant to this chapter, a person claiming to be excluded from the definition of "loan broker" or "broker" has the burden of proof in substantiating the claim.

93 Acts, ch 60, §20

535C.12 Records.

1. A loan broker shall maintain accurate records relating to transactions regulated under this chapter. The records shall include all of the following:

a. The accounts of the broker.

b. A copy of each contract in which the broker is a party, including loan brokerage agreements.

c. The amount of receipts received by the broker and the date the receipts were received.

2. The broker shall retain each loan brokerage agreement entered into by the broker and records pertaining to each agreement for at least two years after the agreement expires.

91 Acts, ch 205, §24; 93 Acts, ch 60, §21

535C.13 Repealed by 93 Acts, ch 60, §27.

535C.14 Misrepresentation of governmental approval.

It is unlawful for a loan broker to represent or imply that the broker has been sponsored, recommended, or approved by, or that the broker's abilities or qualifications have been passed upon by a governmental entity of the state or its political subdivisions.

91 Acts, ch 205, §26; 93 Acts, ch 60, §22

535C.15 Reserved.

535C.16 Repealed by 93 Acts, ch 60, §27.

CHAPTER 535D

MORTGAGE LICENSING ACT

Referred to in §524.211, 669.14

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535D.1 Title.

This chapter shall be known and may be cited as the *"Iowa Secure and Fair Enforcement for Mortgage Licensing Act"*.

2009 Acts, ch 61, §1, 25

535D.2 Legislative findings and purpose.

The activities of mortgage loan originators and the origination or offering of financing for residential real property have a direct, valuable, and immediate impact upon this state's consumers, its economy, the neighborhoods and communities of this state, and the housing and real estate industry. The general assembly finds that accessibility to mortgage credit is vital to the state's citizens. The general assembly also finds that it is essential for the protection of the citizens of this state and the stability of the state's economy that reasonable standards for licensing and regulation of the business practices of mortgage loan originators be imposed. The general assembly further finds that the obligations of mortgage loan originators to consumers in connection with originating or making residential mortgage loans are such as to warrant the regulation of the mortgage lending process. The purpose of this chapter is to protect consumers seeking mortgage loans and to ensure that the mortgage lending industry is operating without unfair, deceptive, or fraudulent practices on the part of mortgage loan originators.

2009 Acts, ch 61, §2, 25

535D.3 Definitions.

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

1. *"Clerical or support duties"* means, subsequent to the receipt of a residential mortgage loan application, the receipt, collection, distribution, and analysis of information common for the processing or underwriting of a residential mortgage loan; and communicating with a consumer to obtain the information necessary for the processing or underwriting of a residential mortgage loan, to the extent that such communication does not include offering or negotiating loan rates or terms, or counseling consumers about residential mortgage loan rates or terms.

2. *"Depository institution"* means a depository institution as defined in 12 U.S.C. §1813(c) and a credit union organized under the laws of this state, another state, or the United States.

3. *"Federal banking agencies"* means the board of governors of the federal reserve system,

the comptroller of the currency, the director of the office of thrift supervision, the national credit union administration, and the federal deposit insurance corporation.

4. *"Immediate family member"* means a spouse, child, sibling, parent, grandparent, or grandchild. This includes stepparents, stepchildren, stepsiblings, and adoptive relationships.

5. *"Individual"* means a natural person.

6. *"Loan processor or underwriter"* means an individual who performs clerical or support duties as an employee at the direction of and subject to the supervision and instruction of a person licensed, or exempt from licensing, under chapter 535B, 536, 536A, or this chapter.

7. *"Loss mitigation efforts"* means, when a residential mortgage loan borrower is in default or default is reasonably foreseeable, working with the borrower on behalf of the residential mortgage loan servicer to modify, either temporarily or permanently, the obligation or otherwise mitigate loss on an existing residential mortgage loan.

8. *"Mortgage loan originator"* means an individual who for compensation or gain or in the expectation of compensation or gain takes a residential mortgage loan application or offers or negotiates terms of a residential mortgage loan. *"Mortgage loan originator"* does not include any of the following:

a. An individual engaged solely as a loan processor or underwriter except as otherwise provided in section 535D.4, subsection 2.

b. An individual who only performs real estate brokerage activities and is licensed in accordance with state law, unless the individual is compensated by a lender, a mortgage broker, or mortgage loan originator or by any agent of such lender, mortgage broker, or mortgage loan originator.

c. An individual solely involved in extensions of credit relating to timeshare plans, as that term is defined in 11 U.S.C. §101(53D).

d. An individual employed by a residential mortgage loan servicer if the individual is involved solely in loss mitigation efforts.

9. *"Nationwide mortgage licensing system and registry"* means a mortgage licensing system developed and maintained by the conference of state bank supervisors and the American association of residential mortgage regulators for the licensing and registration of licensed mortgage loan originators.

10. *"Nontraditional mortgage product"* means any mortgage product other than a thirty-year fixed rate mortgage.

11. *"Real estate brokerage activity"* means any activity that involves offering or providing real estate brokerage services to the public, including the following:

a. Acting as a real estate agent or real estate broker for a buyer, seller, lessor, or lessee of real property.

b. Bringing together parties interested in the sale, purchase, lease, rental, or exchange of real property.

c. Negotiating, on behalf of any party, any portion of a contract relating to the sale, purchase, lease, rental, or exchange of real property other than in connection with providing financing with respect to any such transaction.

d. Engaging in any activity for which a person engaged in the activity is required to be registered or licensed as a real estate agent or real estate broker under any applicable law.

e. Offering to engage in any activity, or act in any capacity, described in paragraphs *"a"* through *"d"*.

12. *"Registered mortgage loan originator"* means a mortgage loan originator who is an employee of a depository institution, a subsidiary that is owned and controlled by a depository institution and regulated by a federal banking agency, or an institution regulated by the farm credit administration; and is registered with and maintains a unique identifier through the nationwide mortgage licensing system and registry.

13. *"Residential mortgage loan"* means any loan primarily for personal, family, or household use that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling as defined in section 103(v) of the federal Truth in Lending Act or on residential real estate.

14. *"Residential real estate"* means any real property located in this state, upon which

is constructed or intended to be constructed a dwelling as defined in section 103(v) of the federal Truth in Lending Act.

15. *"Superintendent"* means the superintendent of banking appointed pursuant to section 524.201.

16. *"Unique identifier"* means a number or other identifier assigned by protocols established by the nationwide mortgage licensing system and registry.

2009 Acts, ch 61, §3, 25
Referred to in §535B.1, 535B.4, 535B.18, 535D.4A, 536.11, 536.30, 536A.14, 536A.32, 543D.22, 543E.20

535D.4 License and registration required.

1. On or after January 1, 2010, an individual shall not engage in the business of a mortgage loan originator with respect to any dwelling or residential real estate located in this state without first obtaining and maintaining annually a license under this chapter. Each licensed mortgage loan originator must register with and maintain a valid unique identifier issued by the nationwide mortgage licensing system and registry.

2. A loan processor or underwriter who is an independent contractor may not engage in the activities of a loan processor or underwriter unless such independent contractor loan processor or underwriter obtains and maintains a license pursuant to this section, and registers with and maintains a valid unique identifier issued by the nationwide mortgage licensing system and registry.

3. An individual engaging solely in loan processor or underwriter activities shall not represent to the public, through advertising or other means of communicating or providing information including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items, that the individual can or will perform any of the activities of a mortgage loan originator.

2009 Acts, ch 61, §4, 25; 2011 Acts, ch 102, §8
Referred to in §535D.3

535D.4A Exemptions.

This chapter does not apply to any of the following:

1. A registered mortgage loan originator when acting for an employer described in section 535D.3, subsection 12.

2. An individual who offers or negotiates terms of a residential mortgage loan with or on behalf of an immediate family member of the individual.

3. An individual who offers or negotiates terms of a residential mortgage loan secured by a dwelling that served as the individual's residence.

4. A licensed attorney who negotiates the terms of a residential mortgage loan on behalf of a client as an ancillary matter to the attorney's representation of the client, unless the attorney is compensated by a lender, a mortgage broker, or other mortgage loan originator or by any agent of such lender, mortgage broker, or other mortgage loan originator.

5. A licensed manufactured housing retailer selling mobile, manufactured, or modular homes, if the retailer only assists the consumer in filling out a loan application and does not offer or negotiate loan rates or terms, and does not do any counseling with consumers about residential mortgage loan rates or terms and does not receive any payment or fee from any company or individual for assisting the consumer.

2009 Acts, ch 61, §5, 25; 2009 Acts, ch 179, §42

535D.5 License and registration — application and issuance.

1. An applicant for licensure shall submit an application on a form prescribed by the superintendent.

2. The superintendent may enter into a contract with the nationwide mortgage licensing system and registry or other entities designated by the nationwide mortgage licensing system and registry to collect and maintain records and process transaction fees or other fees related to licensees or other persons subject to this chapter.

3. For the purpose of participating in the nationwide mortgage licensing system and registry, the superintendent may adopt rules which waive or modify, in whole or in part,

requirements of this chapter and replace them with requirements reasonably necessary to participate in the nationwide mortgage licensing system and registry.

4. In connection with an application for licensing as a mortgage loan originator, the applicant shall, at a minimum, furnish to the nationwide mortgage licensing system and registry information concerning the applicant's identity, including all of the following:

a. Fingerprints for submission to the federal bureau of investigation, and any governmental agency or entity authorized to receive such information for a state, national, and international criminal history background check.

b. Personal history and experience in a form prescribed by the nationwide mortgage licensing system and registry, including the submission of authorization for the nationwide mortgage licensing system and registry and the superintendent to obtain an independent credit report obtained from a consumer reporting agency described in section 603(p) of the federal Fair Credit Reporting Act; and information related to any administrative, civil, or criminal findings by any governmental jurisdiction.

c. Any other information requested by the superintendent.

5. For the purposes of this section and in order to reduce the points of contact which the federal bureau of investigation may have to maintain for purposes of subsection 4, the superintendent may use the nationwide mortgage licensing system and registry as a channeling agent for requesting information from and distributing information to the United States department of justice or other governmental agency, or to or from any other source so directed by the superintendent.

2009 Acts, ch 61, §6, 25

535D.6 Conditions of licensure.

An applicant for licensure as a mortgage loan originator shall demonstrate qualifications as follows:

1. The applicant has never had a mortgage loan originator license revoked in any governmental jurisdiction, except that a subsequent formal vacation of such revocation shall not be deemed a revocation.

2. The applicant has not been convicted of, or pled guilty or no contest to, a felony in a domestic, foreign, or military court during the seven-year period preceding the date of the application for licensure; or at any time preceding such date of application, if such felony involved an act of fraud, dishonesty, or a breach of trust, or money laundering. A pardon of a conviction shall not constitute a conviction for purposes of this subsection.

3. The applicant has demonstrated financial responsibility, character, and general fitness such as to command the confidence of the community and to warrant a determination that the applicant will operate honestly, fairly, and efficiently within the purposes of this chapter. For purposes of this subsection, a person has shown that the person is not financially responsible when the person has shown a disregard in the management of their own financial condition. The superintendent shall not deny a license on the sole basis of an applicant's credit score. A determination that an individual has not shown financial responsibility may include but not be limited to current outstanding judgments, except judgments solely as a result of medical expenses; current outstanding tax liens or other government liens or filings; foreclosures within the past three years; or a pattern of seriously delinquent accounts within the past three years.

4. The applicant has completed the prelicensing education requirements pursuant to section 535D.7.

5. The applicant has passed a written test that meets the requirements of section 535D.8.

6. The applicant has met the surety bond requirement or paid into a recovery fund as required pursuant to section 535D.14.

7. There are no other grounds to deny the applicant a license pursuant to rules adopted by the superintendent. Such rules may include discretionary grounds for license denial.

2009 Acts, ch 61, §7, 25

Referred to in §535D.9, 535D.13

535D.7 Prelicensing education of loan originators.

1. An applicant for licensure shall complete at least twenty hours of prelicensing education approved in accordance with subsection 2, which shall include at a minimum the following:

a. Three hours of federal laws and regulations pertaining to residential mortgage loan origination.

b. Three hours of ethics, which shall include instruction on fraud, consumer protection, and fair lending issues.

c. Two hours of training related to lending standards for the nontraditional mortgage product marketplace.

2. Prelicensing education courses shall be reviewed and approved by the nationwide mortgage licensing system and registry based upon reasonable standards. Review and approval of a prelicensing education course shall include review and approval of the course provider.

3. A prelicensing education course that is approved by the nationwide mortgage licensing system and registry and is provided by the employer of the applicant or an entity which is affiliated with the applicant by an agency contract, or any subsidiary or affiliate of such employer or entity, shall meet the requirements of this section.

4. Prelicensing education may be offered either in a classroom, online, or by any other means approved by the nationwide mortgage licensing system and registry.

5. Prelicensing education requirements approved by the nationwide mortgage licensing system and registry for any state shall be accepted as credit towards completion of prelicensing education requirements in this state.

2009 Acts, ch 61, §8, 25
Referred to in §535D.6

535D.8 Test requirements.

1. An applicant for licensure shall pass a qualified written test developed by the nationwide mortgage licensing system and registry and administered by a test provider approved by the nationwide mortgage licensing system and registry based upon reasonable standards.

2. A written test shall not be treated as a qualified written test for purposes of subsection 1 unless the test, in the determination of the nationwide mortgage licensing system and registry, adequately measures the applicant's knowledge and comprehension in appropriate subject areas including the following:

a. Ethics.

b. Federal laws and regulations pertaining to residential mortgage loan origination.

c. State laws and regulations pertaining to residential mortgage loan origination.

d. Other relevant federal and state laws and regulations, including instruction on fraud, consumer protection, the nontraditional mortgage marketplace, and fair lending issues.

3. Nothing in this section shall prohibit a test provider approved by the nationwide mortgage licensing system and registry from providing a test at the location of the employer of the applicant or the location of any subsidiary or affiliate of the employer of the applicant, or the location of any entity with which the applicant holds an exclusive arrangement to conduct the business of a mortgage loan originator.

4. An applicant shall not be considered to have passed a qualified written test unless the applicant achieves a test score of not less than seventy-five percent correct answers to questions. An applicant who fails to achieve a test score of not less than seventy-five percent correct answers to questions may retake the test three consecutive times with each consecutive retake occurring at least thirty days after the preceding test. After three consecutive failed tests, an individual shall be required to wait at least six months before taking the test again. A licensed mortgage loan originator who fails to maintain a valid license for a period of five years or longer shall be required to retake and successfully pass the test, not taking into account any time during which such individual is a registered mortgage loan originator.

2009 Acts, ch 61, §9, 25
Referred to in §535D.6

535D.9 Standards for license renewal and nonrenewal.

1. The minimum standards for license renewal for a mortgage loan originator include the following:

a. The mortgage loan originator continues to meet the conditions for licensure under section 535D.6.

b. The mortgage loan originator has satisfied the annual continuing education requirements described in section 535D.10.

c. The mortgage loan originator has paid all required fees for renewal of the license.

2. The license of a mortgage loan originator failing to satisfy the minimum standards for license renewal shall not be renewed. The superintendent may adopt rules for the reinstatement of a license not renewed pursuant to this subsection consistent with the standards established by the nationwide mortgage licensing system and registry.

2009 Acts, ch 61, §10, 25
Referred to in §535D.10, 535D.13

535D.10 Continuing education.

1. A licensed mortgage loan originator shall annually complete at least eight hours of education approved in accordance with subsection 2, which shall include at a minimum the following:

a. Three hours of federal laws and regulations pertaining to residential mortgage loan origination.

b. Two hours of ethics, which shall include instruction on fraud, consumer protection, and fair lending issues.

c. Two hours of training related to lending standards for the nontraditional mortgage product marketplace.

2. Continuing education courses shall be reviewed and approved by the nationwide mortgage licensing system and registry based upon reasonable standards. Review and approval of a continuing education course shall include review and approval of the course provider.

3. A continuing education course that is approved by the nationwide mortgage licensing system and registry and is provided by the employer of the mortgage loan originator or an entity which is affiliated with the mortgage loan originator by an agency contract, or any subsidiary or affiliate of such employer or entity, shall meet the requirements of this section.

4. Continuing education may be offered either in a classroom, online, or by any other means approved by the nationwide mortgage licensing system and registry.

5. A licensed mortgage loan originator, other than an originator subject to license nonrenewal pursuant to section 535D.9, subsection 2, or making up continuing education pursuant to subsection 9 of this section, may only receive credit for a continuing education course in the year in which the course is taken and may not take the same approved course in the same or successive years to meet the annual requirements for continuing education.

6. A licensed mortgage loan originator who is an approved instructor of an approved continuing education course may receive credit for the licensed mortgage loan originator's own annual continuing education requirement at the rate of two hours credit for every one hour taught.

7. Completion of continuing education requirements that have been approved by the nationwide mortgage licensing system and registry for any state shall be accepted as credit towards completion of continuing education requirements in this state.

8. A licensed mortgage loan originator who subsequently becomes unlicensed must complete the continuing education requirements for the last year in which the license was held prior to issuance of a new or renewed license.

9. A person meeting the requirements of section 535D.9, subsection 1, paragraphs "*a*" and "*c*", may make up any deficiency in continuing education as established by rule of the superintendent.

2009 Acts, ch 61, §11, 25
Referred to in §535D.9

535D.11 Duties and powers of superintendent.

In addition to any other duties imposed upon the superintendent by law, the superintendent shall require mortgage loan originators to be licensed and registered, as provided in this chapter, through the nationwide mortgage licensing system and registry. In order to carry out this requirement the superintendent may participate in the nationwide mortgage licensing system and registry. For this purpose, the superintendent may establish by rule requirements as necessary, including but not limited to the following:

1. Applicant background checks for criminal history through fingerprint or other databases or through civil or administrative records; applicant background checks for credit history; or applicant background checks for any other information as deemed necessary by the nationwide mortgage licensing system and registry.

2. The payment of application and renewal fees for licenses through the nationwide mortgage licensing system and registry and any additional fees as determined by the superintendent based on the actual cost of the operation of the finance bureau of the banking division of the department of commerce, including the proportionate share of administrative expenses in the operation of the banking division attributable to the finance bureau as determined by the superintendent, incurred in the discharge of duties imposed by this chapter.

3. Establishment of licensure renewal or reporting dates.

4. Requirements for amending or surrendering a license or any other such activities as the superintendent deems necessary for participation in the nationwide mortgage licensing system and registry.

2009 Acts, ch 61, §12, 25

535D.12 Nationwide mortgage licensing system and registry information — challenge process.

The superintendent shall establish a process by rule whereby mortgage loan originators may challenge information entered into the nationwide mortgage licensing system and registry by the superintendent.

2009 Acts, ch 61, §13, 25

535D.13 Disciplinary action and civil enforcement authority.

1. The superintendent may, pursuant to chapter 17A, take disciplinary action against a licensed mortgage loan originator if the superintendent finds any of the following:

a. The licensee has violated a provision of this chapter or a rule adopted pursuant to this chapter or any other state or federal law or regulation applicable to the conduct of the licensee's business including but not limited to chapters 535 and 535A.

b. A fact or condition exists which, had it existed at the time of the original application for the license, would have warranted the superintendent to refuse to issue the original license.

c. The licensee fails at any time to meet the requirements of section 535D.6 or 535D.9, or withholds information or makes a material misstatement in an application for a license or renewal of a license.

d. The licensee has violated an order of the superintendent.

2. The superintendent may impose one or more of the following disciplinary actions against a licensee:

a. Revoke a license.

b. Suspend a license until further order of the superintendent or for a specified period of time.

c. Impose a period of probation under specified conditions.

d. Impose civil penalties in an amount not to exceed five thousand dollars for each violation.

e. Issue a citation and warning concerning licensee behavior.

f. Order a licensee to cease and desist from conducting business or from any harmful activities or violations of law or rule.

g. Order the licensee to pay restitution.

3. The superintendent may order an emergency suspension of a licensee's license or issue

an order to immediately cease and desist from conducting business or from any harmful activities or violations of law or rule pursuant to section 17A.18A. A written order containing the facts or conduct which warrants the emergency action shall be timely sent to the licensee by restricted certified mail. Upon issuance of an emergency suspension order, the licensee must also be notified of the right to an evidentiary hearing. A suspension proceeding shall be promptly instituted and determined.

4. A licensee may surrender a license by delivering to the superintendent written notice of surrender, but a surrender does not affect the licensee's civil or criminal liability for acts committed before the surrender.

5. A revocation, suspension, or surrender of a license does not impair or affect the obligation of a preexisting lawful contract between the licensee and any person, including a mortgagor.

6. The superintendent may issue an order to a person who is not licensed under this chapter to require compliance with this chapter, including to cease and desist from conducting business or from any harmful activities or violations of law or rule, may impose a civil penalty against such person for any violation of this chapter in an amount up to five thousand dollars for each violation, and may order the person to pay restitution.

7. Before issuing an order under subsection 6, the superintendent shall provide the person written notice and the opportunity to request a hearing. The hearing must be requested within thirty days after receipt of the notice and shall be conducted in the same manner as provided for disciplinary proceedings involving a licensee under this chapter.

8. A person aggrieved by the imposition of a civil penalty under subsection 6 may seek judicial review pursuant to section 17A.19.

9. An action to enforce an order under this section may be joined with an action for an injunction.

2009 Acts, ch 61, §14, 25

535D.14 Surety bond required or recovery fund.

1. *a.* A mortgage loan originator shall be covered by a surety bond in accordance with this section unless the superintendent establishes a recovery fund pursuant to subsection 4 into which the mortgage loan originator makes payments. In the event that the mortgage loan originator is an employee or exclusive agent of a person subject to chapter 535B, 536, or 536A, the surety bond of such person can be used in lieu of the mortgage loan originator's surety bond requirement.

b. The surety bond shall provide coverage for each mortgage loan originator in an amount as prescribed in subsection 2. The surety bond shall be in a form as prescribed by the superintendent. The superintendent may, pursuant to rule, determine requirements for such surety bonds as are necessary to accomplish the purposes of this chapter.

2. The bond shall be maintained in an amount that reflects the dollar value of loans originated as determined by the superintendent.

3. When an action is commenced on a licensee's bond the superintendent may require the filing of a new bond. Immediately upon recovery upon any action on the bond the licensee shall file a new bond.

4. If the superintendent determines it is not feasible to establish surety bonding requirements that reflect the dollar amount of loans originated by a mortgage loan originator, as provided in subsection 1508(d)(6) of the federal Housing and Economic Recovery Act of 2008, Pub. L. No. 110-289, the superintendent may establish by rule a recovery fund to be paid into by mortgage loan originators. The rules shall provide for the amounts to be paid into the fund by mortgage loan originators. In the event the superintendent establishes a recovery fund, the fund shall be established as a separate fund in the state treasury. Moneys deposited in the fund shall be administered by the superintendent and used for the purposes of compensating members of the public for losses caused by licensees. In addition, the superintendent may use moneys from the fund for the purpose of investigating and prosecuting violations of this chapter or any other state or federal law, rule, or regulation applicable to the conduct of a licensee's business. Notwithstanding section 12C.7, interest earned on amounts deposited in the fund, if established, shall be credited to the fund. Any

balance in the fund on June 30 of any fiscal year shall not revert to the general fund of the state.

2009 Acts, ch 61, §15, 25
Referred to in §535D.6

535D.15 Confidentiality.

1. Except as otherwise provided by this chapter, all papers, documents, examination reports, and other writings relating to the supervision of licensees are not public records and are not subject to disclosure under chapter 22. Except as otherwise provided in section 1512 of the federal Housing and Economic Recovery Act of 2008, Pub. L. No. 110-289, the requirements under any federal law or chapter 22 or 692 regarding the privacy or confidentiality of any information or material provided to the nationwide mortgage licensing system and registry, and any privilege arising under federal or state law, including the rules of any federal or state court, with respect to such information or material, shall continue to apply to such information or material after the information or material has been disclosed to the nationwide mortgage licensing system and registry. Such information and material may be shared with any state or federal regulatory official with mortgage industry oversight authority without the loss of privilege or the loss of confidentiality protections provided by federal law or chapter 22 or 692.

2. The superintendent may enter into agreements or sharing arrangements with other governmental agencies, the conference of state bank supervisors, the American association of residential mortgage regulators, or other associations representing governmental agencies.

3. Information or material that is subject to privilege or confidentiality under subsection 1 shall not be subject to any of the following:

a. Disclosure under any federal or state law governing the disclosure to the public of information held by an officer or an agency of the federal government or this state.

b. Subpoena or discovery, or admission into evidence, in any private civil action or administrative process, unless with respect to any privilege held by the nationwide mortgage licensing system and registry with respect to such information or material, the person to whom such information or material pertains waives, in whole or in part, that privilege.

4. This section supersedes any provision of chapter 22 relating to the disclosure of confidential supervisory information or any information or material described in subsection 1 of this section that is inconsistent with subsection 1.

5. This section shall not apply with respect to information or material relating to the employment history of, and publicly adjudicated disciplinary and enforcement actions against, mortgage loan originators that are included in the nationwide mortgage licensing system and registry for access by the public.

2009 Acts, ch 61, §16, 25; 2013 Acts, ch 5, §19
Referred to in §535D.18

535D.16 Investigation and examination authority.

The superintendent may conduct investigations and examinations as follows:

1. For purposes of initial licensing, license renewal, license suspension, license conditioning, license revocation or termination, or general or specific inquiry or investigation to determine compliance with this chapter, the superintendent may access, receive, and use any relevant books, accounts, records, files, documents, information, or evidence including but not limited to:

a. Criminal, civil, and administrative history information, which is accessible to licensing authorities.

b. Personal history and experience information including independent credit reports obtained from a consumer reporting agency described in section 603(p) of the federal Fair Credit Reporting Act.

c. Any other documents, information, or evidence the superintendent deems relevant to the inquiry or investigation regardless of the location, possession, control, or custody of such documents, information, or evidence.

2. For the purposes of investigating violations or complaints arising under this chapter,

or for the purposes of examination, the superintendent may review, investigate, or examine any licensee, individual, or person subject to this chapter, as often as necessary in order to carry out the purposes of this chapter. The superintendent may direct, subpoena, or order the attendance of and examine under oath all persons whose testimony may be required about the loans or the business or subject matter of any such examination or investigation, and may direct, subpoena, or order such person to produce books, accounts, records, files, and any other documents the superintendent deems relevant to the inquiry.

3. Each licensee, individual, or person subject to this chapter shall make available to the superintendent upon request the books and records relating to the operations of such licensee, individual, or person. The superintendent shall have access to such books and records and interview the officers, principals, mortgage loan originators, employers, employees, independent contractors, agents, and customers of the licensee, individual, or person subject to this chapter concerning their business.

4. Each licensee, individual, or person subject to this chapter shall make or compile reports or prepare other information as directed by the superintendent in order to carry out the purposes of this section including but not limited to the following:

a. Accounting compilations.

b. Information lists and data concerning loan transactions in a format prescribed by the superintendent.

c. Such other information deemed necessary to carry out the purposes of this section.

5. In making any examination or investigation authorized by this chapter, the superintendent may control access to any documents and records of the licensee or person under examination or investigation. The superintendent may take possession of the documents and records or place a person in exclusive charge of the documents and records in the place where they are usually kept. During the period of control, an individual or person shall not remove or attempt to remove any of the documents or records except pursuant to a court order or with the consent of the superintendent. Unless the superintendent has reasonable grounds to believe the documents or records of the licensee have been or are at risk of being altered or destroyed for purposes of concealing a violation of this chapter, the licensee or owner of the documents or records shall have access to the documents or records as necessary to conduct its ordinary business affairs.

6. In order to carry out the purposes of this section, the superintendent may:

a. Retain attorneys, accountants, or other professionals or specialists as examiners, auditors, or investigators to conduct or assist in the conduct of examinations or investigations.

b. Enter into agreements or relationships with other government officials or regulatory associations in order to improve efficiencies and reduce regulatory burden by sharing resources, standardized or uniform methods or procedures, and documents, records, information, or evidence obtained under this section.

c. Use, hire, contract, or employ publicly or privately available analytical systems, methods, or software to examine or investigate the licensee, individual, or person subject to this chapter.

d. Accept and rely on examination or investigation reports made by other government officials, within or without this state.

e. Accept audit reports made by an independent certified public accountant for the licensee, individual, or person subject to this chapter in the course of that part of the examination covering the same general subject matter as the audit and may incorporate the audit report in the report of the examination, report of investigation, or other writing of the superintendent.

7. The authority of this section shall remain in effect, whether such a licensee, individual, or person subject to this chapter acts or claims to act under any licensing or registration law of this state, or claims to act without such authority.

8. A licensee, individual, or person subject to investigation or examination under this section shall not knowingly withhold, abstract, remove, mutilate, destroy, or secrete any books, records, computer records, or other information.

2009 Acts, ch 61, §17, 25

535D.17 Prohibited acts and practices.

It is a violation of this chapter for a person or individual subject to this chapter to engage in any of the following activities:

1. Directly or indirectly employ any scheme, device, or artifice to defraud or mislead borrowers or lenders or to defraud any person.
2. Engage in any unfair or deceptive practice toward any person.
3. Obtain property by fraud or misrepresentation.
4. Solicit or enter into a contract with a borrower that provides in substance that the person or individual subject to this chapter may earn a fee or commission through *best efforts* to obtain a loan even though no loan is actually obtained for the borrower.
5. Solicit, advertise, or enter into a contract for specific interest rates, points, or other financing terms unless the terms are actually available at the time of soliciting, advertising, or contracting.
6. Conduct any business covered by this chapter without holding a valid license as required under this chapter, or assist or aid and abet any person in the conduct of business under this chapter without a valid license as required under this chapter.
7. Fail to make disclosures as required by this chapter or any other applicable state or federal law including regulations thereunder.
8. Fail to comply with this chapter or rules or regulations promulgated under this chapter, or fail to comply with any other state or federal law, including the rules and regulations thereunder, applicable to any business authorized or conducted under this chapter.
9. Make, in any manner, any false or deceptive statement or representation.
10. Negligently make any false statement or knowingly and willfully make any omission of material fact in connection with any information or reports filed with a governmental agency or the nationwide mortgage licensing system and registry or in connection with any investigation conducted by the superintendent or another governmental agency.
11. Make any payment, threat, or promise, directly or indirectly, to any person for the purposes of influencing the independent judgment of the person in connection with a residential mortgage loan, or make any payment, threat, or promise, directly or indirectly, to any appraiser of a property, for the purposes of influencing the independent judgment of the appraiser with respect to the value of the property.
12. Collect, charge, attempt to collect or charge, or use or propose any agreement purporting to collect or charge any fee prohibited by this chapter.
13. Cause or require a borrower to obtain property insurance coverage in an amount that exceeds the replacement cost of the improvements as established by the property insurer.
14. Fail to truthfully account for moneys belonging to a party to a residential mortgage loan transaction.

2009 Acts, ch 61, §18, 25
Referred to in §535B.7A

535D.18 Report to nationwide mortgage licensing system and registry.

The superintendent shall regularly report violations of this chapter, as well as enforcement actions and other relevant information, to the nationwide mortgage licensing system and registry, subject to the confidentiality provisions of section 535D.15.

2009 Acts, ch 61, §19, 25

535D.19 Unique identifier shown.

The unique identifier of any person originating a residential mortgage loan shall be clearly shown on all residential mortgage loan application forms, solicitations, or advertisements, including business cards or internet sites, and any other documents as established by rule, regulation, or order of the superintendent.

2009 Acts, ch 61, §20, 25; 2013 Acts, ch 90, §257

535D.20 Operating without a license — penalty.

A person who, without first obtaining a license under this chapter, engages in the business or occupation of, or advertises or holds the person out as, or claims to be, or temporarily

acts as, a mortgage loan originator in this state is guilty of a class "D" felony and may be prosecuted by the attorney general or a county attorney.

2009 Acts, ch 61, §21, 25

535D.21 Administrative authority.

The superintendent shall have broad administrative authority to administer, interpret, and enforce this chapter and to promulgate rules implementing this chapter.

2009 Acts, ch 61, §22, 25

535D.22 Compliance with federal law.

If the United States department of housing and urban development determines in writing that any provision of this chapter or its application to any person or circumstance is invalid under Tit. V of the federal Housing and Economic Recovery Act of 2008, Pub. L. No. 110-289, the superintendent is authorized to adopt rules which waive or modify, in whole or in part, requirements of this chapter as necessary to achieve a determination by the United States department of housing and urban development that this state is in compliance with the federal law.

2009 Acts, ch 61, §23, 25

535D.23 Reports of condition required — exceptions.

Each mortgage loan originator licensee shall submit reports of condition to the nationwide mortgage licensing system and registry unless the mortgage loan originator's activity is included in a report submitted by the mortgage loan originator's employer in accordance with section 535B.11, subsection 3, section 535B.18, or section 536A.14, subsection 2. The reports shall be in such form and shall contain such information as the nationwide mortgage licensing system and registry may require.

2011 Acts, ch 102, §9

CHAPTER 536

REGULATED LOANS

Referred to in §216.10, 322.21, 524.211, 524.212, 524.606, 533.117, 533A.2, 535B.2, 535C.2, 535D.3, 535D.14, 536A.5, 536C.3, 537.2301, 537.2403, 537.6105, 537.6201, 546.3, 669.14, 714H.4

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536.1 Title — license required.

1. This chapter may be referred to as the *"Iowa Regulated Loan Act"*.

2. With respect to a loan other than a consumer loan, a person shall not engage in the business of making loans of money, credit, goods, or things in action in the amount or of the value of the threshold amount or less and charge, contract for, or receive on the loan a greater rate of interest or consideration for the loan than the lender would be permitted by law to charge if the lender were not a licensee under this chapter except as authorized by this chapter and without first obtaining a license from the superintendent of banking.

3. With respect to a consumer loan, a person required by section 537.2301 to have a license shall not engage in the business of making loans of money, credit, goods or things in action in the amount or value of the threshold amount or less and charge, contract for, or receive on the loan a greater rate of interest or consideration for the loan than the lender would be permitted by law to charge if the lender were not a licensee under this chapter, except as authorized by this chapter and without first obtaining a license from the superintendent.

4. A person who enters into less than ten supervised loans per year in this state and who neither has an office physically located in this state nor engages in face-to-face solicitation in this state may contract for and receive the rate of interest permitted in this chapter for licensees under this chapter.

5. For the purposes of this section:

a. "Consumer loan" means the same as defined in section 537.1301.

b. "Threshold amount" means the same as defined in section 537.1301.

[C24, 27, 31, §9410; C35, §9438-f1; C39, §**9438.01;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §536.1]

85 Acts, ch 158, §2; 2014 Acts, ch 1037, §8; 2015 Acts, ch 30, §171

Referred to in §536.10, 536.13, 536.19

536.2 Application — fees.

1. An application for a license shall be in the form prescribed by the superintendent, and shall contain all of the following:

a. The name and the address, both of the residence and place of business, of the applicant.

If the applicant is not a natural person, the application shall include the name and address of every member, director, officer, manager, and trustee of the applicant.

b. The county and municipality with street and number, if any, of the place where the business of making loans under the provisions of this chapter is to be conducted.

c. Other relevant information as the superintendent may require.

2. The applicant at the time of making the application shall pay to the superintendent the sum of one hundred dollars as a fee for investigating the application and the additional sum of two hundred fifty dollars as an annual license fee.

3. Every applicant shall also prove, in form satisfactory to the superintendent, that the applicant has available for the operation of such business at the place of business specified in the application, liquid assets of at least five thousand dollars, or that the applicant has at least the said amount actually in use in the conduct of such business at such place of business.

[C24, 27, 31, §9411, 9412; C35, §9438-f2; C39, §**9438.02;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §536.2]

89 Acts, ch 257, §27; 2006 Acts, ch 1042, §33

Referred to in §536.4, 536.8, 536.22

536.3 Bond.

An applicant for a license shall file with the superintendent a bond furnished by a surety company authorized to do business in this state. Until such time as the superintendent through the administrative rule process determines a bond amount that reflects the dollar value of loans originated, the bond shall be in the amount of twenty-five thousand dollars. The bond shall be continuous in nature until canceled by the surety with not less than thirty days' notice in writing to the licensee and to the superintendent indicating the surety's intention to cancel the bond on a specific date. The bond shall be for the use of the state and any persons who may have causes of action against the applicant. The bond shall be conditioned upon the applicant's faithfully conforming to and abiding by this chapter and any rules adopted under this chapter and shall require that the surety pay to the state and to any persons all moneys that become due or owing to the state and to the persons from the applicant by virtue of this chapter.

[C24, 27, 31, §9413, 9414; C35, §9438-f3; C39, §**9438.03;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §536.3]

2008 Acts, ch 1160, §25; 2009 Acts, ch 61, §40, 47

Referred to in §536.6

536.4 Grant or refusal of license.

1. Upon the filing of such application, the approval of such bond and the payment of such fees, the superintendent shall make a thorough and complete investigation of the facts as the superintendent may deem necessary or proper.

2. If the superintendent shall determine from such application and from such investigation that the applicant can have a reasonable expectancy of a successful lending business at the location of the office for which application is made, and that there is a real need and necessity in that community for additional lending facilities to adequately serve the local people, and that said applicant is one who will command the respect of and confidence from the people in that community; that the financial responsibility, experience, character, and general fitness of the applicant, and of the members thereof if the applicant be a partnership or association, and of the officers and directors thereof if the applicant be a corporation, are such as to warrant the belief that the business will be operated lawfully, honestly, fairly, and efficiently within the purposes of this chapter, and if the superintendent shall find that the applicant has available or actually in use the assets described in section 536.2, the superintendent shall thereupon issue and deliver a license to the applicant to make loans in accordance with the provisions of this chapter at the place of business specified in the said application; if the superintendent shall not so find the superintendent shall not issue such license and the superintendent shall notify the applicant of the denial and return to the applicant the bond and the sum paid by the applicant as a license fee, retaining the investigation fee to cover the costs of investigating the application. The superintendent shall approve or deny every application for a license

hereunder within sixty days from the filing of the application and the approved bond and the payment of the said fees.

3. If the application is denied, the superintendent shall within twenty days thereafter file with the banking division a written transcript of the evidence and decision and findings with respect thereto containing the reasons supporting the denial, and forthwith serve upon the applicant a copy thereof.

[C24, 27, 31, §9415; C35, §9438-f4; C39, §**9438.04;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §536.4]

2005 Acts, ch 3, §90; 2008 Acts, ch 1032, §106

536.5 License — form — posting.

Such license shall state the address of the place where the business of making such loans is to be conducted and shall state fully the name of the licensee, and if the licensee is a partnership or association, the names of the members thereof, and if a corporation, the date and place of its incorporation. Such license shall be kept conspicuously posted in such place of business and shall not be transferable or assignable.

[C24, 27, 31, §9411, 9418; C35, §9438-f5; C39, §**9438.05;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §536.5]

2008 Acts, ch 1032, §106

536.6 Additional bond — available assets.

1. If the superintendent finds at any time that the bond is insecure or exhausted or otherwise of doubtful validity or collectibility, an additional bond to be approved by the superintendent, with one or more sureties and of the character specified in section 536.3, in a sum not to exceed that amount determined pursuant to section 536.3, shall be filed by the licensee within ten days after written demand upon the licensee by the superintendent.

2. Every licensee shall have available at all times for each licensed place of business at least five thousand dollars in assets, either in liquid form or actually in use in the conduct of such business.

[C24, 27, 31, §9437; C35, §9438-f6; C39, §**9438.06;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §536.6]

2008 Acts, ch 1160, §26; 2009 Acts, ch 61, §41, 47

536.7 Separate license — change of name or place of business.

1. Only one place of business where loans are made shall be maintained under a license. However, the superintendent may issue more than one license to the same licensee upon compliance, for each such additional license, with all the provisions of this chapter governing an original issuance of a license.

2. A licensee shall notify the superintendent and submit a fee of twenty-five dollars per license to the superintendent thirty days in advance of the effective date of any of the following:

a. A change in the name of the licensee.

b. A change in the address of the location where the business is conducted.

[C24, 27, 31, §9416, 9419; C35, §9438-f7; C39, §**9438.07;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §536.7]

2006 Acts, ch 1042, §34

536.7A Change in control — approval.

The prior written approval of the superintendent is required whenever a change in control of the licensee is proposed. For purposes of this section, *"control"* means control as defined in section 524.103. The superintendent may require information deemed necessary to determine whether a new application is required. When requesting approval, the person shall submit a fee of one hundred dollars to the superintendent.

2006 Acts, ch 1042, §35

536.8 Annual fee — payment.

Every licensee shall annually, on or before December 1, submit a renewal application on forms prescribed by the superintendent and pay to the superintendent the sum as provided in section 536.2 as an annual license fee for the next succeeding calendar year. The superintendent may assess a late fee of ten dollars per day, per license for renewal applications received after December 1.

[C35, §9438-f8; C39, §**9438.08;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §536.8]

2006 Acts, ch 1042, §36

536.9 Disciplinary action.

1. The superintendent may, after notice and hearing pursuant to chapter 17A, take disciplinary action against a licensee if the superintendent finds any of the following:

a. The licensee has violated a provision of this chapter or a rule adopted under this chapter or any other state or federal law, rule, or regulation applicable to the conduct of its business.

b. A fact or condition exists which would have warranted the superintendent to refuse to originally issue the license.

c. The licensee has failed to pay the annual license fee or to maintain in effect the bond or bonds required under the provisions of this chapter.

d. The licensee is insolvent.

e. The licensee has violated an order of the superintendent.

2. The superintendent may impose one or more of the following disciplinary actions against a licensee:

a. Revoke a license.

b. Suspend a license until further order of the superintendent or for a specified period of time.

c. Impose a period of probation under specified conditions.

d. Impose civil penalties in an amount not to exceed five thousand dollars for each violation.

e. Issue a citation and warning respecting licensee behavior.

f. Order the licensee to pay restitution.

3. The superintendent may order an emergency suspension of a licensee's license pursuant to section 17A.18A. A written order containing the facts or conduct which warrants the emergency action shall be timely sent to the licensee by restricted certified mail. Upon issuance of the suspension order, the licensee must also be notified of the right to an evidentiary hearing. A suspension proceeding shall be promptly instituted and determined.

4. Except as provided in this section, a license shall not be revoked or suspended except after notice and a hearing thereon in accordance with chapter 17A.

5. A licensee may surrender a license by delivering to the superintendent written notice of surrender, but a surrender does not affect the licensee's civil or criminal liability for acts committed before the surrender.

6. A revocation, suspension, or surrender of a license does not impair or affect the obligation of a preexisting lawful contract between the licensee and any person, including a borrower.

[C24, 27, 31, §9436; C35, §9438-f9; C39, §**9438.09;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §536.9]

2008 Acts, ch 1160, §27

536.10 Examination of business — fee.

1. For the purpose of discovering violations of this chapter or securing information lawfully required by the superintendent, the superintendent may at any time, either personally or by designee, investigate the loans and business and examine the books, accounts, records, and files of every licensee and of every person engaged in the business described in section 536.1, whether such person shall act or claim to act as principal or agent, or under or without the authority of this chapter.

a. The superintendent and the superintendent's designee shall have and be given free

access to the place of business, books, accounts, papers, records, files, safes, and vaults of all persons examined.

b. The superintendent and the designee shall have authority to require the attendance of and to examine under oath all individuals whose testimony the superintendent may require relative to the loans or the business.

2. The superintendent shall make an examination of the affairs, place of business, and records of each licensed place of business at least once each year.

3. A licensee subject to examination, supervision, and regulation by the superintendent shall pay to the superintendent an examination fee based on the actual cost of the operation of the regulated loan bureau of the banking division of the department of commerce and the proportionate share of administrative expenses in the operation of the banking division attributable to the regulated loan bureau as determined by the superintendent. The fee shall apply equally to all licenses and shall not be changed more frequently than annually. A fee change shall be effective on January 1 of the year following the year in which the change is approved.

4. Upon completion of each examination required or allowed by this chapter, the examiner shall deliver one copy of the bill for the examination to the licensee and two copies to the superintendent. Failure to pay the fee to the superintendent within thirty days after the date of the close of the examination shall subject the licensee to an additional fee of five percent of the amount of the fee for each day the payment is delinquent.

5. Except as otherwise provided by this chapter, all papers, documents, examination reports, and other writing relating to the supervision of licensees are not public records and are not subject to disclosure under chapter 22. The superintendent may disclose information to representatives of other state or federal regulatory authorities. The superintendent may release summary complaint information so long as the information does not specifically identify the complainant. The superintendent may prepare and circulate reports reflecting financial information and examination results for all licensees on an aggregate basis, including other information considered pertinent to the purpose of each report for general statistical information. The superintendent may prepare and circulate reports provided by law. The superintendent may release the reports and correspondence in the course of an enforcement proceeding or a hearing held by the superintendent. The superintendent may also provide this information to the attorney general for purposes of enforcing this chapter or the consumer fraud Act, section 714.16.

[C24, 27, 31, §9433; C35, §9438-f10; C39, §**9438.10;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §536.10]

85 Acts, ch 158, §3; 2006 Acts, ch 1042, §37

Referred to in §536.16, 537.2305

536.11 Records — annual report by licensee.

1. The licensee shall keep such books, accounts, and records as the superintendent may require in order to determine whether such licensee is complying with the provisions of this chapter and with the rules and regulations lawfully made by the superintendent hereunder. Every licensee shall preserve for at least two years after making the last entry on any loan recorded therein all books, accounts, and records, including cards used in the card system, if any.

2. Each licensee shall annually on or before the fifteenth day of April file a report with the superintendent giving such relevant information as the superintendent reasonably may require concerning the business and operations during the preceding calendar year of the licensed places of business conducted by such licensee within the state. Such report shall be made under oath and shall be in the form prescribed by the superintendent who shall make and publish annually an analysis and recapitulation of such reports.

3. Each licensee making residential mortgage loans shall submit to the nationwide mortgage licensing system and registry reports of condition, which shall be in such form and shall contain such information as the nationwide mortgage licensing system and registry

may require. For purposes of this subsection, *"nationwide mortgage licensing system and registry"* and *"residential mortgage loan"* mean the same as defined in section 535D.3.

[C24, 27, 31, §9434; C35, §9438-f11; C39, §**9438.11;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §536.11]

2008 Acts, ch 1160, §28; 2009 Acts, ch 61, §42, 47

536.12 Restrictions on practices.

1. No licensee shall conduct the business of making loans under the provisions of this chapter within any office, room, suite or place of business in which any other business is solicited or engaged in, or in association or conjunction therewith, except as may be authorized in writing by the superintendent upon the superintendent's finding that the character of such other business is such that the granting of such authority would not facilitate evasions of this chapter or of the rules lawfully made by the superintendent hereunder.

2. No licensee shall make any loan provided for by this chapter under any other name or at any other place of business than that named in the license.

3. No licensee shall take any instrument in which blanks are left to be filled in after execution.

4. No licensee shall agree to obtain or arrange a residential mortgage for a potential borrower from a third person, unless the licensee also has a mortgage broker license and complies with all of the provisions of chapter 535B.

[C24, 27, 31, §9426, 9432; C35, §9438-f12; C39, §**9438.12;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §536.12]

2008 Acts, ch 1160, §29

Referred to in §536.19

536.13 Loan classifications, interest rates, and charges — report, penalty, and consumer credit code applicability.

1. The superintendent may investigate the conditions and find the facts with reference to the business of making regulated loans, as described in section 536.1, and after making the investigation, report in writing any findings to the next regular session of the general assembly, and upon the basis of the facts:

a. Classify regulated loans by a rule according to a system of differentiation which will reasonably distinguish the classes of loans for the purposes of this chapter.

b. Determine and fix by a rule the maximum rate of interest or charges upon each class of regulated loans which will induce efficiently managed commercial capital to enter the business in sufficient amounts to make available adequate credit facilities to individuals. The maximum rate of interest or charge shall be stated by the superintendent as an annual percentage rate calculated according to the actuarial method and applied to the unpaid balances of the amount financed.

2. Except as provided in subsection 7, the superintendent may redetermine and refix by rule, in accordance with subsection 1, any maximum rate of interest or charges previously fixed by it, but the changed maximum rates shall not affect preexisting loan contracts lawfully entered into between a licensee and a borrower. All rules which the superintendent may make respecting rates of interest or charges shall state the effective date of the rules, which shall not be earlier than thirty days after notice to each licensee by mailing the notice to each licensed place of business.

3. Before fixing any classification of regulated loans or any maximum rate of interest or charges, or changing a classification or rate under authority of this section, the superintendent shall give reasonable notice of the superintendent's intention to consider doing so to all licensees and a reasonable opportunity to be heard and to introduce evidence with respect to the change or classification.

4. Beginning July 4, 1965, and until such time as a different rate is fixed by the superintendent, the maximum rate of interest or charges upon the class or classes of regulated loans is as follows:

a. Three percent per month on any part of the unpaid principal balance of the loan not exceeding one hundred fifty dollars.

b. Two percent per month on any part of the loan in excess of one hundred fifty dollars, but not exceeding three hundred dollars.

c. One and one-half percent per month on any part of the unpaid principal balance of the loan in excess of three hundred dollars, but not exceeding seven hundred dollars.

d. One percent per month on any part of the unpaid principal balance of the loan in excess of seven hundred dollars.

5. A licensee under this chapter may lend any sum of money not exceeding the threshold amount as defined in section 537.1301 in amount and may charge, contract for, and receive on the loan interest or charges at a rate not exceeding the maximum rate of interest or charges determined and fixed by the superintendent under authority of this section or pursuant to subsection 7 for those amounts in excess of ten thousand dollars.

6. If any interest or charge on a loan regulated by this chapter in excess of those permitted by this chapter is charged, contracted for, or received, the contract of loan is void as to interest and charges and the licensee has no right to collect or receive any interest or charges. In addition, the licensee shall forfeit the right to collect the lesser of two thousand dollars of principal of the loan or the total amount of the principal of the loan.

7. *a.* The superintendent may establish the maximum rate of interest or charges as permitted under this chapter for those loans with an unpaid principal balance of ten thousand dollars or less. For those loans with an unpaid principal balance of over ten thousand dollars, the maximum rate of interest or charges which a licensee may charge shall be the greater of the rate permitted by chapter 535 or the rate authorized for supervised financial organizations by chapter 537.

b. The Iowa consumer credit code, chapter 537, applies to a consumer loan in which the licensee participates or engages, and a violation of the Iowa consumer credit code, chapter 537, is a violation of this chapter.

c. Chapter 537, article 2, parts 3, 5, and 6, chapter 537, article 3, and sections 537.3203, 537.3206, 537.3209, 537.3304, 537.3305, and 537.3306 apply to any credit transaction, as defined in section 537.1301, in which a licensee participates or engages, and any violation of those parts or sections is a violation of this chapter. For the purpose of applying the Iowa consumer credit code, chapter 537, to those credit transactions, *"consumer loan"* includes a loan for a business purpose.

d. Except as provided in this subsection, the provisions of the Iowa consumer credit code, chapter 537, apply to loans regulated by this chapter and supersede conflicting provisions of this chapter. Section 537.2402, subsection 1, does not apply to loans regulated by this chapter.

[C24, 27, 31, §9420 – 9423; C35, §9438-f13; C39, §**9438.13;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §536.13]

85 Acts, ch 158, §4; 86 Acts, ch 1237, §34; 2003 Acts, ch 44, §114; 2004 Acts, ch 1141, §34; 2005 Acts, ch 3, §117, 118; 2006 Acts, ch 1042, §38; 2007 Acts, ch 22, §97; 2010 Acts, ch 1028, §12; 2013 Acts, ch 30, §133; 2014 Acts, ch 1037, §9

Referred to in §536.19

536.14 Rights of borrower — payments.

Every licensee, in addition to complying with requirements of the Iowa consumer credit code, chapter 537, respecting consumer loans, shall:

1. Permit payment to be made in advance in any amount on any contract of loan at any time, but the licensee may apply such payment first to all interest or charges up to the date of such payment.

2. Upon repayment of the loan in full, mark indelibly every obligation and security other than a mortgage signed by the borrower with the word "paid" or "canceled", and release any security interest which no longer secures a loan to the licensee, restore any collateral, return any note and any assignment given to the licensee by the borrower.

3. Display prominently in each licensed place of business an accurate schedule, to be approved by the superintendent, of the charges currently to be made upon all loans.

[C24, 27, 31, §9425; C35, §9438-f14; C39, §**9438.14;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §536.14]

2003 Acts, ch 44, §114

Referred to in §536.19

Security interest, see §554.1201, subsection 2, paragraph ai

536.15 Limitation on principal amount.

A licensee shall not directly or indirectly charge, contract for, or receive any interest or consideration greater than the lender would be permitted by law to charge if the lender were not a licensee upon the loan, use, or forbearance of money, goods, or things in action, or upon the loan, use, or sale of credit, of the amount or value of more than the threshold amount. This section also applies to a licensee who permits a person, as borrower or as endorser, guarantor, or surety for a borrower, or otherwise, to owe directly or contingently or both to the licensee at any time the sum of more than the threshold amount for principal. For the purposes of this section, *"threshold amount"* means the same as defined in section 537.1301.

[C24, 27, 31, §9424; C35, §9438-f15; C39, §**9438.15;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §536.15]

85 Acts, ch 158, §5; 2014 Acts, ch 1037, §10

536.16 Nonresident licensees — face-to-face solicitation.

Notwithstanding other provisions of this chapter to the contrary, a person who neither has an office physically located in this state nor engages in face-to-face solicitation in this state, if authorized by another state to make loans in that state at a rate of finance charge in excess of the rate provided in chapter 535, shall not be subject to section 536.10 to the extent it requires the superintendent to make an examination of the affairs, place of business, and records of the person on a periodic basis.

[C75, 77, 79, 81, §536.16]

89 Acts, ch 257, §28; 2006 Acts, ch 1042, §39; 2008 Acts, ch 1160, §30, 31

536.17 and 536.18 Reserved.

536.19 Violations.

Any person, partnership, association, or corporation and the several members, officers, directors, agents, and employees thereof, who shall violate or participate in the violation of any of the provisions of section 536.1, 536.12, 536.13 or 536.14, which are not also violations of chapter 537, article 5, part 3, of the Iowa consumer credit code, shall be guilty of a serious misdemeanor. Violations of the Iowa consumer credit code, chapter 537, shall be subject to the penalties provided therein.

[C24, 27, 31, §9435; C35, §9438-f19; C39, §**9438.19;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §536.19]

2003 Acts, ch 44, §114; 2008 Acts, ch 1032, §106; 2011 Acts, ch 25, §67

536.20 Nonapplicability of statute.

This chapter shall not apply to any person doing business under and as permitted by any law of this state or of the United States relating to banks, trust companies, building and loan associations, credit unions or licensed pawnbrokers, nor shall it apply to any domestic corporation entitled to the benefits of chapter 536A.

[C35, §9438-f20; C39, §**9438.20;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §536.20]

536.21 Rules.

The superintendent is hereby authorized and empowered to make such reasonable and relevant rules as may be necessary for the execution and the enforcement of the provisions of this chapter, in addition hereto and not inconsistent herewith. All rules shall be filed and entered by the superintendent in the banking division of the department of commerce in an

indexed, permanent book or record, with the effective date thereof suitably indicated, and such book or record shall be a public document.

[C35, §9438-f21; C39, §**9438.21;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §536.21]

536.22 Assistants.

The superintendent of banking is hereby authorized to employ such competent help as the superintendent deems necessary to carry out and perform the provisions of this chapter, and is hereby authorized and empowered to pay such persons so employed from the license fees, examination fees, and investigation fees referred to in section 536.2.

[C35, §9438-f22; C39, §**9438.22;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §536.22]

536.23 Judicial review.

Judicial review of the actions of the superintendent may be sought in accordance with the terms of the Iowa administrative procedure Act, chapter 17A.

[C35, §9438-f23; C39, §**9438.23;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §536.23]

2003 Acts, ch 44, §114; 2004 Acts, ch 1141, §34; 2006 Acts, ch 1042, §40

536.24 List of licensees by banking superintendent.

The superintendent of banking shall, in listing the names of licensees under this chapter, indicate if the licensee is one of a chain of two or more such licensees, the name of the owner and the address of the principal place of business of each owner, a summary of individual reports of each such licensed office indicating its location, the name of licensee, capital, surplus, reserves, loans receivable, cash and due from banks, real estate, borrowed money, net worth, total assets, total liabilities and such other pertinent and related information as may be necessary or desirable to give a correct and full picture of the total assets and total liabilities of each such licensee.

[C62, 66, 71, 73, 75, 77, 79, 81, §536.24]

536.25 Statement of indebtedness of borrower. Repealed by 2006 Acts, ch 1042, §42.

536.26 Insured loans.

1. A licensee shall not, directly or indirectly, sell or offer for sale any life or accident and health insurance in connection with a loan made under this chapter except as and to the extent authorized by this section. Life, accident and health insurance, or any of them, may be written by a licensed insurance producer upon or in connection with any loan for a term not extending beyond the final maturity date of the loan contract, but only upon one obligor on any one loan contract.

2. The amount of life insurance shall at no time exceed the unpaid balance of principal and interest combined which are scheduled to be outstanding under the terms of the loan contract or the actual amount unpaid on the loan contract, whichever is greater.

3. Accident and health insurance shall provide benefits not in excess of the unpaid balance of principal and interest combined which are scheduled to be outstanding under the terms of the loan contract and the amount of each periodic benefit payment shall not exceed the total amount payable divided by the number of installments and shall provide that if the insured obligor is disabled, as defined in the policy, for a period of more than fourteen days, benefits shall commence as of the first day of disability.

4. The premium, which shall be the only charge for the insurance, shall not exceed that approved by the commissioner of insurance of the state of Iowa as filed in the office of such commissioner. Such charge, computed at the time the loan is made for the full term of the loan contract on the total amount required to pay principal and interest.

5. If a borrower procures insurance by or through a licensee, the licensee shall cause to be delivered to the borrower a copy of the policy within fifteen days from the date such insurance is procured. No licensee shall decline new or existing insurance which meets the standards set out herein nor prevent any obligor from obtaining such insurance coverage from other sources.

6. If the loan contract is prepaid in full by cash, a new loan, or otherwise, except by

the insurance, any life, accident, and health insurance procured by or through a licensee shall be canceled and the unearned premium shall be refunded. The amount of the refund shall represent at least as great a proportion of the insurance premium or identifiable charge as the sum of the consecutive monthly balances of principal and interest of the loan contract originally scheduled to be outstanding after the installment date nearest the date of prepayment bears to the sum of all such monthly balances of the loan contract originally scheduled to be outstanding.

[C66, 71, 73, 75, 77, 79, 81, §536.26]

85 Acts, ch 158, §7; 2001 Acts, ch 16, §33, 37; 2016 Acts, ch 1011, §106

536.27 Insurance related to property of borrower.

A licensee may sell the borrower insurance against loss of or damage to property owned by the borrower or loss from liability arising out of the ownership or use of property owned by the borrower. When the transaction is a consumer credit transaction as defined in section 537.1301 the sale of property insurance is subject to the requirements of sections 537.2501 and 537.2510 and the rules adopted under those sections by the administrator of the Iowa consumer credit code, chapter 537.

85 Acts, ch 158, §9; 2003 Acts, ch 44, §114

536.28 Definitions.

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

1. *"Administrator"* means the person designated in section 537.6103.
2. *"Consumer loan"* means a loan as defined in section 537.1301.
3. *"Licensee"* means a person licensed under this chapter.
4. *"Superintendent"* means the state superintendent of banking.

[C75, 77, 79, 81, §536.28]

85 Acts, ch 158, §8; 2004 Acts, ch 1141, §34; 2005 Acts, ch 3, §117, 118; 2006 Acts, ch 1042, §41

536.29 Enforcement of Iowa consumer credit code.

1. The superintendent shall enforce the Iowa consumer credit code, chapter 537, with respect to licensees, as provided in sections 537.2303, 537.2305 and 537.6105.
2. The superintendent shall cooperate with the administrator, and shall assist the administrator whenever necessary to provide for the discharge of the duties of the administrator.
3. Notwithstanding other provisions of this chapter to the contrary, the superintendent shall authorize to be furnished to the administrator, access to or copies of records in the possession of the superintendent or other persons which relate to a person licensed under this chapter, when necessary to enable the administrator to enforce chapter 537.
4. The superintendent shall make an annual report in writing to the administrator. A copy of the report shall be furnished at cost by the superintendent to each licensee or other person upon request. The annual report shall contain:

a. A summary of license applications approved or denied by the superintendent since the last report.

b. A summary of the assets, liabilities and capital structure of all licensees, and volume of consumer installment of credit outstanding per licensee, as of December 31 of the year for which the report is made.

c. An estimate of the disbursements of agency funds for consumer credit protection during the calendar year ending the preceding December 31.

d. Information which the superintendent may deem appropriate and advisable to disclose.

e. Information which the administrator may require to be included.

[C75, 77, 79, 81, §536.29]

2003 Acts, ch 44, §114

536.30 Powers and duties of the superintendent — nationwide system.

In addition to any other duties imposed upon the superintendent by law, the superintendent may require applicants and licensees to be licensed through the nationwide mortgage licensing system and registry as defined in section 535D.3. In order to carry out this requirement, the superintendent may participate in the nationwide mortgage licensing system and registry. For this purpose, the superintendent may establish by rule or order new requirements as necessary, including but not limited to requirements that applicants, including officers and directors and those who have control of the applicant, submit to fingerprinting and criminal history checks, and pay fees therefor.

2009 Acts, ch 61, §43, 47

CHAPTER 536A

INDUSTRIAL LOANS

Referred to in §216.10, 322.21, 524.211, 524.212, 524.606, 524.821, 527.2, 533.301, 533A.2, 533D.16, 535.2, 535A.2, 535B.2, 535C.2, 535D.3, 535D.14, 536.20, 536C.3, 537.2301, 537.2403, 537.6105, 537.6201, 546.3, 669.14, 714H.4

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536A.1 Title.

This chapter may be referred to as the *"Iowa Industrial Loan Law"*.

[C66, 71, 73, 75, 77, 79, 81, §536A.1]

536A.2 Definitions.

The following words and terms when used in this chapter shall have the following meanings unless the context clearly requires a different meaning:

1. *"Administrator"* means the person designated in section 537.6103.
2. *"Affiliate"* means the same as defined in 12 U.S.C. §1841(k).
3. *"Commercial activities"* means activities in which an industrial loan company is not specifically authorized to engage under the provisions of this chapter.
4. *"Control"* means the same as provided in 12 U.S.C. §1841(a)(2).
5. *"Corporation"* shall mean any corporation for pecuniary profit organized under the laws of the state of Iowa.
6. *"Industrial loan company"* shall mean a corporation operating under the provisions of this chapter and engaged in the business of loaning money to be repaid in one payment or in weekly, monthly or other periodic installments and the charging, receiving or requiring of

interest, discount, fees, compensation or charges of whatever nature or kind for the use of such money and for the services to be rendered to the borrower in connection with the loan. The term *"industrial loan company"* shall not include those businesses specifically exempted in section 536A.5.

7. *"License"* shall mean a permit or authorization issued or required under the provisions of this chapter to make loans in accordance with this chapter at a single location or place of business.

8. *"Licensee"* means a person licensed under this chapter.

9. *"Superintendent"* means the superintendent of banking within the banking division of the department of commerce.

[C66, 71, 73, 75, 77, 79, 81, §536A.2]

86 Acts, ch 1245, §757; 94 Acts, ch 1023, §68; 2006 Acts, ch 1015, §12

Referred to in §714H.4

536A.3 License.

With respect to a loan other than a consumer loan, a person shall not engage in the business of operating an industrial loan company in this state without first having obtained a license from the superintendent. With respect to a consumer loan, a person required by section 537.2301 to have a license is not authorized to engage in the business of operating an industrial loan company without first obtaining a license from the superintendent. A person that enters into less than ten supervised loans per year in this state and that neither has an office physically located in this state nor engages in face-to-face solicitation in this state may contract for and receive the rate of interest permitted in this chapter for licensees in this chapter. A *"consumer loan"* means the same as defined in section 537.1301.

[C66, 71, 73, 75, 77, 79, 81, §536A.3]

86 Acts, ch 1245, §758

Referred to in §536A.27

536A.4 Limitations.

A license shall not be issued to any individual, partnership, nonprofit organization, or unincorporated association. A license shall not be issued to an applicant that engages in commercial activities directly or through an affiliate. Not more than one place of business where loans are made shall be maintained under the same license but the superintendent may issue more than one license to the same licensee upon compliance, for each such additional license, with all the provisions of this chapter governing an original issuance of a license.

[C66, 71, 73, 75, 77, 79, 81, §536A.4]

2006 Acts, ch 1015, §13

536A.5 Exemptions.

This chapter does not apply to any of the following:

1. Businesses organized or operating as permitted under the authority of a law of this state or the United States relating to banks, trust companies, building and loan associations, savings and loan associations, insurance companies, regulated loan companies organized under chapter 536, or credit unions.

2. Persons that make loans only on notes secured by first mortgages on real estate.

3. Licensed real estate brokers or salespersons.

4. A person engaged exclusively in the business of purchasing commodity financing or commercial paper.

5. A pawnbroker.

6. Loans made to a domestic or foreign corporation.

[C66, 71, 73, 75, 77, 79, 81, §536A.5]

85 Acts, ch 158, §10; 2006 Acts, ch 1015, §14

Referred to in §536A.2

536A.6 Administration by superintendent.

The superintendent shall supervise the operation of industrial loan companies in this state in accordance with this chapter.

[C66, 71, 73, 75, 77, 79, 81, §536A.6]

86 Acts, ch 1245, §759

536A.7 Application for license.

1. The application for a license to engage in the business of operating an industrial loan company shall be in the form as may be prescribed by the superintendent. The application shall give all of the following information:

a. The name of the corporation.

b. The location where the business is to be conducted, including the street address of the place of business.

c. The names and addresses of the officers and directors of the corporation.

d. Other relevant information as the superintendent shall require.

2. At the time of making the application, the applicant shall pay to the superintendent the sum of one hundred dollars to cover the cost of the investigation of the applicant. The applicant shall also pay to the superintendent the sum of two hundred fifty dollars as an annual license fee for the period ending December 31 following the application.

[C66, 71, 73, 75, 77, 79, 81, §536A.7]

89 Acts, ch 257, §29; 2006 Acts, ch 1042, §43

Referred to in §536A.9, 536A.11

536A.7A Bonds.

1. An applicant for a license shall file with the superintendent a bond furnished by a surety company authorized to do business in this state. Until such time as the superintendent pursuant to administrative rule determines a bond amount that reflects the dollar value of the loans originated, the bond shall be in the amount of twenty-five thousand dollars. The bond shall be continuous in nature until canceled by the surety with not less than thirty days' notice in writing to the applicant and to the superintendent indicating the surety's intention to cancel the bond on a specific date. The bond shall be for the use of the state and any persons who may have causes of action against the applicant. The bond shall be conditioned upon the applicant's faithfully conforming to and abiding by this chapter and any rules adopted under this chapter and shall require that the surety pay to the state and to any persons all moneys that become due or owing to the state and to the persons from the applicant by virtue of this chapter.

2. In lieu of filing a bond, the applicant may pledge an alternative form of collateral acceptable to the superintendent, if the alternative collateral provides protection to the state and any aggrieved person that is equivalent to that provided by a bond.

2008 Acts, ch 1160, §32; 2009 Acts, ch 61, §44, 47

536A.8 Capital stock requirement.

The paid-in capital stock of any corporation engaged in the business of operating an industrial loan company shall not be less than twenty-five thousand dollars when the corporation is transacting business in any city having less than twenty-five thousand inhabitants according to the last preceding decennial census. The paid-in capital stock of any corporation engaged in the business of operating an industrial loan company in any city having a population of more than twenty-five thousand inhabitants according to the last preceding decennial census shall not be less than fifty thousand dollars. The paid-in capital stock of any corporation engaged in the business of operating an industrial loan company outside the limits of any incorporated city shall not be less than fifty thousand dollars. Every corporation engaged in the industrial loan business in the state of Iowa shall have a surplus of not less than ten percent of its paid-in capital stock.

[C66, 71, 73, 75, 77, 79, 81, §536A.8]

Referred to in §536A.10, 536A.30

536A.9 Investigation of application.

Upon the filing of an application for a license to engage in the business of operating an industrial loan company, and upon payment of the investigation fee and license fee as required by section 536A.7, the superintendent shall cause an investigation to be made of the facts set forth in the application. If as the result of the preliminary investigation the superintendent deems it proper, the superintendent may hold a hearing at a time and place designated by the superintendent for the purpose of completing the superintendent's investigation.

[C66, 71, 73, 75, 77, 79, 81, §536A.9]

536A.10 Issuance of license.

1. The superintendent shall approve the application and issue to the applicant a license to engage in the industrial loan business in accordance with the provisions of this chapter, if the superintendent shall find:

a. That the financial responsibility, experience, character and general fitness of the applicant and of the officers thereof are such as to command the confidence of the community, and to warrant the belief that the business will be operated honestly, fairly and efficiently within the purpose of this chapter;

b. That a reasonable necessity exists for a new industrial loan company in the community to be served;

c. That the applicant has available for the operation of the business at the specified location paid-in capital and surplus as required by section 536A.8; and

d. That the applicant is a corporation organized for pecuniary profit under the laws of the state of Iowa.

2. The superintendent shall approve or deny an application for a license within one hundred twenty days from the date of the filing of such application.

[C66, 71, 73, 75, 77, 79, 81, §536A.10]

2012 Acts, ch 1023, §139; 2012 Acts, ch 1138, §74

Referred to in §536A.30

536A.11 Denial of license.

1. If the superintendent shall not approve the application, the superintendent shall prepare a written denial of the application with a written finding of facts which shall be sent by certified mail to the applicant. Within fifteen days after mailing of notice of the denial of its application, the applicant may file with the superintendent a written demand for a hearing on the application. Upon such demand being made, the superintendent must within thirty days hold a formal hearing at the superintendent's office in Des Moines, Iowa, notice of the time of which hearing shall be given by the superintendent to the applicant by mail within fifteen days after the filing of the written demand by the applicant. Notice of the time and place of hearing shall also be given by the superintendent to all corporations holding licenses to engage in the industrial loan business in the county where the applicant proposes to establish its business and notice of said time and place of hearing shall be published pursuant to section 618.14.

2. At the formal hearing after the original denial of the license by the superintendent, the applicant shall be entitled to present evidence in support of the application. The superintendent shall then grant or deny the application for a license within thirty days from the date of the formal hearing and give notice to the applicant by a decision and finding of facts in writing. If the application for a license is disapproved and a license is denied, the superintendent shall refund the annual license fee which was required to be deposited by section 536A.7 providing the cost of investigation does not exceed the investigation fee. If the cost of investigation exceeds the investigation fee, the excess cost shall be deducted from the license fee before any refund is made.

3. Judicial review of actions of the superintendent may be sought in accordance with the terms of the Iowa administrative procedure Act, chapter 17A.

[C66, 71, 73, 75, 77, 79, 81, §536A.11]

2003 Acts, ch 44, §114; 2018 Acts, ch 1041, §127

Code editor directive applied

536A.12 Continuing license — annual fee — change of name or location — change of control.

1. Each license remains in full force and effect until surrendered, revoked, or suspended, or until there is a change of control.

2. A licensee, on or before December 1, shall pay to the superintendent the sum of two hundred fifty dollars as an annual license fee for the succeeding calendar year. The licensee shall submit the annual license fee with a renewal application in the form prescribed by the superintendent. The superintendent may assess a late fee of ten dollars per day per license for applications received after December 1.

3. When a licensee changes its name or place of business from one location to another in the same city, the licensee shall notify the superintendent thirty days in advance of the effective date of the change. A licensee shall pay a fee of twenty-five dollars per license to the superintendent with the notification of change.

4. *a.* A person who proposes to purchase or otherwise acquire, directly or indirectly, any of the outstanding shares of an industrial loan company which would result in a change of control of the industrial loan company, shall first apply in writing to the superintendent for a certificate of approval for the proposed change of control.

b. At the time of making the application, the applicant shall pay to the superintendent one hundred dollars to cover the cost of the investigation of the applicant.

c. The superintendent shall grant the certificate if the superintendent is satisfied of both of the following:

(1) The person who proposes to obtain control of the industrial loan company is qualified by character, experience, and financial responsibility to control and operate the industrial loan company in a sound and legal manner.

(2) The interests of the thrift certificate holders, creditors, and shareholders of the industrial loan company, and of the public generally, will not be jeopardized by the proposed change of control.

d. If a board member of the industrial loan company has reason to believe any of the requirements of this subsection have not been met, the board member shall promptly report the facts in writing to the superintendent.

e. If there is any doubt as to whether a change in the ownership of the outstanding shares is sufficient to result in control of the industrial loan company, or to effect a change in the control of the industrial loan company, the doubt shall be resolved in favor of reporting the facts to the superintendent.

5. *a.* For purposes of this section, a change of control does not occur when a majority shareholder of an industrial loan company transfers the shareholder's shares of the industrial loan company to a revocable trust, so long as the transferor retains the power to revoke the trust and take possession of the shares.

b. Notwithstanding the provisions of paragraph *"a"*, a change of control is deemed to occur two years after the death of the majority shareholder, whether the shareholder's shares of the industrial loan company are held in a revocable trust or otherwise.

[C66, 71, 73, 75, 77, 79, 81, §536A.12]

87 Acts, ch 11, §1, 2; 96 Acts, ch 1159, §1; 2002 Acts, ch 1119, §184; 2006 Acts, ch 1015, §15; 2006 Acts, ch 1042, §44

536A.13 Books and records.

Each industrial loan company shall keep such books, accounts and records as will enable the superintendent to determine whether or not the licensee is complying with the provisions of this chapter. Industrial loan companies shall not be required to preserve or keep their

records or files for a longer period than eleven years next after the first day of January of the year following the time of the making or filing of such records or files.

[C66, 71, 73, 75, 77, 79, 81, §536A.13]

536A.14 Reports.

1. *a.* Each licensee shall annually on or before the fifteenth day of April file with the superintendent a report in writing showing the results of the operation of its industrial loan business for the previous calendar year, which reports shall contain:

(1) A balance sheet showing all assets and liabilities as of the thirty-first day of December next preceding.

(2) An operating statement showing income, expenses, and net profit for the previous calendar year.

(3) Such other relevant information as the superintendent shall reasonably require.

b. The report shall be verified under oath by the president and secretary of the corporation. The superintendent shall make and publish annually an analysis and recapitulation of such reports.

2. Each licensee making residential mortgage loans shall submit to the nationwide mortgage licensing system and registry reports of condition, which shall be in such form and shall contain such information as the nationwide mortgage licensing system and registry may require. For purposes of this subsection, *"nationwide mortgage licensing system and registry"* and *"residential mortgage loan"* mean the same as defined in section 535D.3.

[C66, 71, 73, 75, 77, 79, 81, §536A.14]

2008 Acts, ch 1160, §33; 2009 Acts, ch 61, §45, 47

Referred to in §535D.23

536A.15 Examination of licensees.

1. The superintendent or the superintendent's designee shall, at least once each year without previous notice, examine the books, accounts, and records of each licensee engaged in the industrial loan business as defined by this chapter. A licensee issuing senior debt to the general public shall be audited at the expense of the licensee by a certified public accountant licensed to practice in the state of Iowa. A licensee not issuing senior debt to the general public may provide an audited statement of the licensee's parent corporation which includes the Iowa licensee. After receiving such an audit or audited statement, the superintendent may make further examination of the licensee as the superintendent deems necessary. A record of each examination shall be kept in the superintendent's office.

2. Except as otherwise provided by this chapter, all papers, documents, examination reports, and other writing relating to the supervision of licensees are not public records and are not subject to disclosure under chapter 22. The superintendent may disclose information to representatives of other state or federal regulatory authorities. The superintendent may release summary complaint information so long as the information does not specifically identify the complainant. The superintendent may prepare and circulate reports reflecting financial information and examination results for all licensees on an aggregate basis, including other information considered pertinent to the purpose of each report for general statistical information. The superintendent may prepare and circulate reports provided by law. The superintendent may release the reports and correspondence in the course of an enforcement proceeding or a hearing held by the superintendent. The superintendent may also provide this information to the attorney general for purposes of enforcing this chapter or the consumer fraud Act, section 714.16.

3. Any evidence of criminal acts committed by officers, directors, or employees of an industrial loan company shall be reported by the superintendent to the proper authorities.

4. The licensee shall be charged and shall pay the actual costs of the examination as determined by the superintendent based on the actual cost of the operation of the finance bureau of the banking division of the department of commerce including the proportionate share of administrative expenses in the operation of the banking division attributable to the finance bureau as determined by the superintendent incurred in the discharge of the duties imposed upon the superintendent by this chapter. Failure to pay the examination fee within

thirty days of receipt of demand from the superintendent shall subject the licensee to a late fee of five percent of the amount of the examination fee for each day the payment is delinquent.

[C66, 71, 73, 75, 77, 79, 81, §536A.15]

87 Acts, ch 11, §3; 2006 Acts, ch 1042, §45

Referred to in §536A.30, 537.2305

536A.16 Cease and desist orders.

If the superintendent has reasonable cause to believe that a licensee is violating this chapter or rules adopted pursuant to this chapter, the superintendent may, after ten days' advance written notice, in addition to all actions provided for in this chapter, and without prejudice, enter an order requiring the licensee to cease, desist, and refrain from the violation. After receipt of the advance written notice, the licensee, within five days from the receipt of the notice, may file with the superintendent a written demand for a hearing. Hearings shall promptly be held in the office of the superintendent and a cease and desist order shall not be issued until after the hearing. The licensee shall be entitled to present evidence and the testimony of witnesses at the hearing.

[C66, 71, 73, 75, 77, 79, 81, §536A.16; 82 Acts, ch 1253, §37]

91 Acts, ch 63, §1

536A.17 Injunctions.

The superintendent by counsel of the attorney general may commence an action in the district court, in the name of the state of Iowa as plaintiff on the relation of the superintendent to restrain and enjoin any licensee from violating this chapter or rules adopted pursuant to this chapter, or to restrain and enjoin any person, partnership, firm, or corporation from engaging in the business of operating an industrial loan company without obtaining a license as required by this chapter.

[C66, 71, 73, 75, 77, 79, 81, §536A.17; 82 Acts, ch 1253, §38]

91 Acts, ch 63, §2; 2008 Acts, ch 1032, §106

536A.18 Disciplinary action.

1. The superintendent may, after notice and hearing pursuant to chapter 17A, take disciplinary action against a licensee if the superintendent finds any of the following:

a. That the licensee has failed to pay the annual license fee required by this chapter or to maintain in effect the bond or bonds required under this chapter.

b. That the licensee has violated any of the provisions of this chapter or a rule adopted under this chapter or any other state or federal law, rule, or regulation applicable to the conduct of its business.

c. That the licensee has refused to submit to the examination required by this chapter.

d. That the licensee has neglected or refused for a period of more than thirty days to pay a final judgment rendered against it in the courts of this state.

e. That the licensee has become insolvent.

f. A fact or condition exists which would have warranted the superintendent to refuse to originally issue the license.

g. The licensee has violated an order of the superintendent.

2. The superintendent may impose one or more of the following disciplinary actions against a licensee:

a. Revoke a license.

b. Suspend a license until further order of the superintendent or for a specified period of time.

c. Impose a period of probation under specified conditions.

d. Impose civil penalties in an amount not to exceed five thousand dollars for each violation.

e. Issue a citation and warning respecting licensee behavior.

f. Order the licensee to pay restitution.

3. The superintendent may order an emergency suspension of a licensee's license pursuant to section 17A.18A. A written order containing the facts or conduct which warrants

the emergency action shall be timely sent to the licensee by restricted certified mail. Upon issuance of the suspension order, the licensee must also be notified of the right to an evidentiary hearing. A suspension proceeding shall be promptly instituted and determined.

4. Except as provided in this section, a license shall not be revoked or suspended except after notice and a hearing thereon in accordance with chapter 17A.

5. A licensee may surrender a license by delivering to the superintendent written notice of surrender, but a surrender does not affect the licensee's civil or criminal liability for acts committed before the surrender.

6. A suspension, revocation, relinquishment, or expiration of a license shall not invalidate, impair, or affect the legality of obligations of any preexisting contracts, or prevent the enforcement or collection thereof.

7. Judicial review of the actions of the superintendent may be sought in accordance with the terms of the Iowa administrative procedure Act, chapter 17A.

[C66, 71, 73, 75, 77, 79, 81, §536A.18]

2003 Acts, ch 44, §114; 2008 Acts, ch 1160, §34

536A.19 Receivership — liquidation.

1. If the superintendent revokes the license of any industrial loan company, the superintendent shall promptly report the revocation to the attorney general, who may apply to the district court of the county in which the licensee had conducted its business for the appointment of a receiver to take possession of the assets of the corporation for the purpose of liquidating its affairs. The court shall appoint the superintendent as receiver unless the superintendent has tendered the appointment to the federal deposit insurance corporation, in which case the court shall appoint the federal deposit insurance corporation as receiver. The affairs of the industrial loan company, after such appointment, shall be under the direction of the court. The attorney general shall represent the superintendent in all proceedings connected with the receivership.

2. When an insured industrial loan company has ceased to carry on its business, the superintendent may tender the appointment as receiver of the insured industrial loan company to the federal deposit insurance corporation. If the federal deposit insurance corporation accepts the appointment as receiver, the rights of depositors and other creditors of the insured industrial loan company shall be determined in accordance with the laws of this state.

3. The federal deposit insurance corporation as receiver shall possess all of the powers, rights, and privileges of the superintendent in connection with the liquidation.

4. If the federal deposit insurance corporation pays or makes available for payment the insured deposit liabilities of an insured industrial loan company, the federal deposit insurance corporation, whether or not it has become receiver, shall be subrogated to all rights of the owners of such deposits against the insured industrial loan company in the same manner and to the same extent as subrogation of the federal deposit insurance corporation is provided for in applicable federal law with respect to a national bank.

[C66, 71, 73, 75, 77, 79, 81, §536A.19]

96 Acts, ch 1159, §2

536A.20 Real estate loans.

1. A licensed industrial loan company may make permanent loans, construction loans, or combined construction and permanent loans, secured by liens on real property, as authorized by rules adopted by the superintendent under chapter 17A. These rules shall contain provisions as necessary to insure the safety and soundness of these loans, and to insure full and fair disclosure to borrowers of the effects of provisions in agreements for these loans, including provisions permitting change or adjustment of any terms of a loan, provisions permitting, requiring, or prohibiting repayment of a loan on a basis other than of equal periodic installments of interest plus principal over a fixed term, provisions imposing penalties for the borrower's noncompliance with requirements of a loan agreement, or provisions allowing or requiring a borrower to choose from alternative courses of action at any time during the effectiveness of a loan agreement.

2. A licensed industrial loan company may require and establish escrow accounts in connection with subsection 3.

3. *a.* A licensed industrial loan company may act as an escrow agent with respect to real property that is mortgaged to the licensed industrial loan company, and may receive funds and make disbursements from escrowed funds in that capacity. The licensed industrial loan company shall be deemed to be acting in a fiduciary capacity with respect to these funds. A licensed industrial loan company receiving funds in escrow pursuant to an escrow agreement executed on or after July 1, 1982 and before July 1, 1983 or on or after July 1, 1984 in connection with a loan defined in section 535.8, subsection 1, shall pay interest to the borrower on those funds, calculated on a daily basis, at the lowest rate the company pays to holders of thrift certificates issued by the company. A licensed industrial loan company which maintains such an escrow account, whether or not the mortgage has been assigned to a third person, shall deliver to the mortgagor a written summary of all transactions made with respect to the loan and escrow accounts during each calendar year. However, the mortgagor and mortgagee may, by mutual agreement, select a fiscal year reporting period other than the calendar year.

b. The summary shall be delivered or mailed not later than thirty days following the year to which the disclosure relates. The summary shall contain all of the following information:

(1) The name and address of the mortgagee.

(2) The name and address of the mortgagor.

(3) A summary of escrow account activity during the year as follows:

(a) The balance of the escrow account at the beginning of the year.

(b) The aggregate amount of deposits to the escrow account during the year.

(c) The aggregate amount of withdrawals from the escrow account for each of the following categories:

(i) Payments against loan principal.

(ii) Payments against interest.

(iii) Payments against real estate taxes.

(iv) Payments for real property insurance premiums.

(v) All other withdrawals.

(d) The balance of the escrow account at the end of the year.

(4) A summary of loan principal for the year as follows:

(a) The amount of principal outstanding at the beginning of the year.

(b) The aggregate amount of payments against principal during the year.

(c) The amount of principal outstanding at the end of the year.

4. Section 524.905, subsection 4, applies to the licensed industrial loan company in the same manner as if the licensed industrial loan company is a bank within the meaning of that provision.

[82 Acts, ch 1253, §36, 43]

83 Acts, ch 124, §21 – 23; 84 Acts, ch 1205, §1; 2012 Acts, ch 1023, §157

Referred to in §535B.11

536A.21 Other business in same office.

A licensee engaged in the business of operating an industrial loan company under the provisions of this chapter may not conduct its business within any office, room, suite, place of business, or premises in which commercial activities are conducted, unless the place where its business is conducted by the industrial loan company is physically separated from the location where commercial activities are conducted and has a separate entrance. The prohibition of this section shall not apply to the conduct of business if, prior to January 1, 2006, the superintendent has determined in writing that the character of the other business is such that its operation by the licensee would not facilitate evasions of the provisions of this chapter or any other provision of the Code relating to the making of loans.

[C66, 71, 73, 75, 77, 79, 81, §536A.21]

2006 Acts, ch 1015, §16

536A.22 Thrift certificates.

1. Licensed industrial loan companies shall not sell senior debt to the general public in the form of thrift certificates, installment thrift certificates, certificates of indebtedness, promissory notes, or similar evidences of indebtedness.

2. *a.* Licensees selling debt instruments on January 1, 1996, may continue to do so until there is a change of control of the licensee which occurs on or after January 1, 1996. If there is a change of control of a licensee on or after January 1, 1996, and the licensee has sold senior debt instruments that remain outstanding at the time of the change of control, such outstanding senior debt instruments that do not have a stated maturity date shall be redeemed within six months of the date of the change of control. Such outstanding senior debt instruments with stated maturity dates shall be redeemed on their stated maturity dates.

b. The total amount of such thrift certificates, installment thrift certificates, certificates of indebtedness, promissory notes, or similar evidences of indebtedness outstanding and in the hands of the general public shall not at any time exceed ten times the total amount of capital, surplus, undivided profits, and subordinated debt that gives priority to such securities of the issuing industrial loan company. The sale of such securities is subject to the provisions of chapter 502 and rules adopted by the superintendent of banking pursuant to chapter 17A, except that the sale of thrift certificates or installment thrift certificates which are redeemable by the holder either upon demand or within a period not in excess of five years are exempt from sections 502.301 and 502.504.

[C66, 71, 73, 75, 77, 79, 81, §536A.22; 82 Acts, ch 1253, §39]

91 Acts, ch 63, §3; 93 Acts, ch 96, §1; 96 Acts, ch 1159, §3; 2004 Acts, ch 1161, §67, 68; 2006 Acts, ch 1015, §17; 2007 Acts, ch 170, §6

536A.23 Powers of industrial loan companies.

1. No industrial loan company licensed under the provisions of this chapter shall have the power and authority to:

a. (1) Charge, receive, or collect interest at a rate exceeding ten cents on the hundred by the year, except that the interest may be computed when the note is made on the full amount of the cash advanced on the loan from the date of the note to the date of the final installment thereof, and the interest so computed may be included in the note, notwithstanding any agreement to pay the entire amount in installments; or the interest may be computed on the amount of the note and discounted or collected in advance when the loan is made, notwithstanding any agreement to pay the entire amount in installments. If the note is repayable in other than equal monthly installments, the interest may be an amount computed on the basis of the effective rates permitted as provided above; provided, however, there shall be no compounding of interest and when an interest rate as authorized herein is advertised, or negotiated for with a prospective borrower, with intent that it be computed by either of the two methods authorized herein, they being the "add on" method or the "discount" method, in such case such rate shall be further described as to the method of computation to be used, but interest computed by either method shall be stated to the borrower as provided in section 537.3210.

(2) If a borrower elects to repay a loan secured by a mortgage or deed of trust upon real property which is a single-family or two-family dwelling or agricultural land at a date earlier than is required by the terms of the loan, the licensee shall be governed by section 535.9.

(3) The limitation on interest rate which is contained in this paragraph "*a*" shall not apply to any loan in which the borrower is a corporation or investment trust or any other person who is referred to in section 535.2, subsection 2.

b. Charge, receive, or collect in advance, a service charge in excess of one dollar for each fifty dollars of the amount of the note, not to exceed a total of one hundred twenty dollars.

c. Require any borrower to purchase insurance from the lender as a condition for obtaining a loan. However, an industrial loan company may collect from the borrower, at the option of the borrower, and transmit the premiums charged for insuring real or personal property used by the borrower as security for a loan and provided that such insurance is obtained from a licensed insurance producer for an insurance company authorized to do business in Iowa; and the premiums charged for insuring the life of one party on the

loan in an amount not to exceed the total amount of the note or contract, including cash advance, interest and service charge, provided that no licensee shall require that the contract of life insurance be outstanding for more than the unpaid balance of the indebtedness and provided that such insurance is obtained from a licensed insurance producer for an insurance company authorized to do business in Iowa; and an industrial loan company may receive and transmit the premiums charged for accident and health insurance on the borrower, provided such insurance bears a reasonable relationship to the existing hazards or risk of loss, and the aggregate benefits of which shall not exceed the approximate amount of the contractual payments on the loan outstanding at the time of loss, and provided that such insurance is obtained from a licensed producer for an insurance company authorized to do business in Iowa. However, all life insurance rates in connection with industrial loans shall be subject to the rules and regulations of the insurance commissioner of the state of Iowa.

d. Engage in commercial activities or have an affiliate that engages in commercial activities. This paragraph shall not apply to an industrial loan company with an affiliate that is engaged in commercial activities prior to January 1, 2006, if control of the industrial loan company is not thereafter transferred to an entity that engages in commercial activities directly or through an affiliate.

e. Obtain or arrange a residential mortgage loan for a potential borrower from a third person, unless the industrial loan company also has a mortgage broker license and complies with all provisions of chapter 535B.

2. Industrial loan companies licensed under the provisions of this chapter may purchase notes, contracts, mortgages, accounts, receivables, leases and securities of a type and kind authorized by the superintendent.

3. In addition to the other charges authorized by this chapter, industrial loan companies licensed under this chapter may collect an appraisal fee on a loan secured by a mortgage or deed of trust upon real property, if the appraisal fee is bona fide, reasonable in amount, and not for purposes of circumvention or evasion of this chapter.

[C66, 71, 73, 75, 77, 79, S79, C81, §536A.23; 82 Acts, ch 1153, §8, 18(1)]

84 Acts, ch 1205, §2; 89 Acts, ch 295, §1; 2001 Acts, ch 16, §34, 37; 2006 Acts, ch 1015, §18; 2008 Acts, ch 1160, §35

536A.24 Electronic transactions.

A licensee may engage in any transaction otherwise permitted by this chapter and applicable law, by means of either the direct transmission of electronic impulses or other indicia of a transaction for delayed transmission to the licensee. Subject to the provisions of chapter 527, a licensee may utilize, establish or operate, alone or with one or more other licensees, banks incorporated under the provisions of chapter 524 or federal law, credit unions incorporated under the provisions of chapter 533 or federal law, savings and loan associations incorporated under the provisions of federal law, or third parties, the satellite terminals permitted under chapter 527, by means of which the licensee may transmit to or receive from any customer electronic impulses constituting transactions pursuant to this section. However, such utilization, establishment or operation is lawful only when in compliance with chapter 527. Nothing in this section authorizes a licensee or other person to engage in transactions not otherwise permitted by applicable law, nor does anything in this section repeal, replace or in any other way affect any applicable law or rule regarding the maintenance of or access to financial information maintained by a licensee.

[C81, §536A.24]

2012 Acts, ch 1017, §137

536A.25 Restrictions.

1. *a.* An industrial loan company licensed under this chapter that sells debt instruments to the general public in the form of thrift certificates, installment thrift certificates, certificates of indebtedness, promissory notes, or similar evidences of indebtedness shall not make a loan of money or property to or guarantee the obligations of its directors or officers; or loan to any borrower, other than a subsidiary or affiliated corporation, more than twenty percent of its total capital, surplus, and undivided profits.

b. A licensee shall not make a loan under any other name or at any other place of business than that named in the license.

2. *a.* An industrial loan company licensed under this chapter that sells debt instruments to the general public in the form of thrift certificates, installment thrift certificates, certificates of indebtedness, promissory notes, or similar evidences of indebtedness, shall not loan to a borrower, including a subsidiary or an affiliated corporation, more than twenty percent of the industrial loan company's total of capital, surplus, and undivided profits. The aggregate of all loans to subsidiaries and affiliated corporations of the industrial loan company shall not exceed ten percent of the industrial loan company's total assets.

b. A debt instrument sold by an industrial loan company which is not insured by the federal deposit insurance corporation, shall contain on its face a notice in bold print that the debt instrument is not insured or guaranteed by the federal deposit insurance corporation.

3. Investments by an industrial loan company licensed under this chapter that sells debt instruments to the general public in the form of thrift certificates, installment thrift certificates, certificates of indebtedness, promissory notes, or similar evidences of indebtedness are subject to the provisions of section 524.901 as applied to state banks.

[C66, 71, 73, 75, 77, 79, 81, §536A.25]

91 Acts, ch 63, §4; 2006 Acts, ch 1042, §46; 2012 Acts, ch 1023, §157

536A.26 Prepayment.

In addition to the requirements of the Iowa consumer credit code, chapter 537, respecting consumer loans, and notwithstanding the provisions of any note or contract to the contrary, a borrower may, at any time, prepay all or any part of the unpaid balance to become payable under any note or installment contract.

[C66, 71, 73, 75, 77, 79, 81, §536A.26]

2003 Acts, ch 44, §114

536A.27 Penalty.

If any officer, director, or agent of any corporation engaged in the business of operating an industrial loan company shall violate any of the provisions of this chapter which are not also violations of the Iowa consumer credit code, chapter 537; or if any person individually or as a partner, or officer, director, or agent of any corporation shall engage in the business of operating an industrial loan company without obtaining the license required by section 536A.3, when that person is not required by section 537.2301 to have a license, the person shall be guilty of a serious misdemeanor. Violations of the Iowa consumer credit code, chapter 537, shall be subject to the penalties provided therein.

[C66, 71, 73, 75, 77, 79, 81, §536A.27]

2003 Acts, ch 44, §114

536A.28 Rules.

The superintendent is hereby authorized and empowered to make such reasonable and relevant rules, not inconsistent herewith, as may be necessary for the enforcement of the provisions of this chapter.

[C66, 71, 73, 75, 77, 79, 81, §536A.28]

536A.29 Enforcement of Iowa consumer credit code.

1. The superintendent shall enforce the Iowa consumer credit code, chapter 537, with respect to licensees, as provided in sections 537.2303, 537.2305 and 537.6105.

2. The superintendent shall cooperate with the administrator, and shall assist the administrator whenever necessary to provide for the discharge of the duties of the administrator.

3. Notwithstanding other provisions of this chapter to the contrary, the superintendent shall authorize to be furnished to the administrator, access to or copies of records in the possession of the superintendent or other persons which relate to a licensee when necessary to enable the administrator to enforce chapter 537.

4. The superintendent shall make an annual report in writing to the administrator. A copy

of the report shall be furnished at cost by the superintendent to each licensee or other person upon request. The annual report shall contain:

a. A summary of license applications approved or denied by the superintendent since the last report.

b. A summary of the assets, liabilities and capital structure of all licensees, and volume of consumer installment credit outstanding per licensee, as of December 31 of the year for which the report is made.

c. An estimate of the disbursements of agency funds for consumer credit protection during the calendar year ending the preceding December 31.

d. Information which the superintendent may deem appropriate and advisable to disclose.

e. Information which the administrator may require to be included.

[C75, 77, 79, 81, §536A.29]

2003 Acts, ch 44, §114

536A.30 Nonresident licensees — face-to-face solicitation.

Notwithstanding other provisions of this chapter to the contrary, a person that neither has an office physically located in this state nor engages in face-to-face solicitation in this state, if authorized by another state to make loans in that state at a rate of finance charge in excess of the rate provided in chapter 535, shall not be subject to the following provisions of this chapter:

1. Section 536A.8.

2. Section 536A.10, subsection 1, paragraphs *"b"*, *"c"*, and *"d"*.

3. Section 536A.15, to the extent it requires the superintendent to make an examination and audit of the books, accounts and records of the licensee on a periodic basis.

[C75, 77, 79, 81, §536A.30]

89 Acts, ch 257, §30; 2002 Acts, ch 1119, §185; 2006 Acts, ch 1042, §47; 2012 Acts, ch 1023, §156

536A.31 Applicability of Iowa consumer credit code.

1. The provisions of the Iowa consumer credit code, chapter 537, shall apply to a consumer loan in which the licensee participates or engages, and any violation of the said code shall be a violation of this chapter.

2. Chapter 537, article 2, parts 3, 5, and 6, chapter 537, article 3, and sections 537.3203, 537.3206, 537.3209, 537.3210, 537.3304, 537.3305, and 537.3306 shall apply to any credit transaction, as defined in section 537.1301, in which a licensee participates or engages, and any violation of those parts or sections shall be violations of this chapter. For the purpose of applying the provisions of the Iowa consumer credit code, chapter 537, to those credit transactions, *"consumer loan"* shall include a loan for a business purpose.

3. Except as provided in this subsection, the provisions of the Iowa consumer credit code, chapter 537, apply to loans regulated by this chapter and supersede conflicting provisions of this chapter. Section 537.2402, subsection 1, does not apply to loans regulated by this chapter.

[C75, 77, 79, 81, §536A.31]

84 Acts, ch 1205, §3; 2003 Acts, ch 44, §114; 2010 Acts, ch 1028, §13; 2013 Acts, ch 30, §134

536A.32 Powers and duties of the superintendent — nationwide system.

In addition to any other duties imposed upon the superintendent by law, the superintendent may require applicants and licensees to be licensed through the nationwide mortgage licensing system and registry as defined in section 535D.3. In order to carry out this requirement, the superintendent may participate in the nationwide mortgage licensing system and registry. For this purpose, the superintendent may establish by rule or order new requirements as necessary, including but not limited to requirements that applicants, including officers and directors and those who have control of the applicant, submit to fingerprinting and criminal history checks, and pay fees therefor.

2009 Acts, ch 61, §46, 47

536A.33 and 536A.34 Repealed by 2007 Acts, ch 170, §8.

CHAPTER 536B

RESERVED

CHAPTER 536C

LENDER CREDIT CARDS

Referred to in §524.211, 669.14

536C.1	Title.	536C.8	Investigations.
536C.2	Definitions.	536C.9	Cease and desist orders.
536C.3	Exemptions.	536C.10	Injunctions.
536C.4	Notification.	536C.11	Waiver unenforceable.
536C.5	Fees.	536C.12	Penalty.
536C.6	Applicability of Iowa consumer credit code.	536C.13	Rules.
536C.7	Books and records.	536C.14	Enforcement.

536C.1 Title.

This chapter shall be known and may be cited as the *"Lender Credit Card Act"*.

91 Acts, ch 216, §15

536C.2 Definitions.

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

1. *"Administrator"* means the superintendent of banking or the superintendent of credit unions. However, the powers of administration and enforcement of this chapter are to be exercised pursuant to section 536C.14.
2. *"Agreement"* means agreement as defined in section 537.1301, subsection 4.
3. *"Cardholder"* means cardholder as defined in section 537.1301, subsection 8.
4. *"Consumer credit transaction"* means consumer credit transaction as defined in section 537.1301, subsection 12.
5. *"Credit card"* means a card or device issued by a financial institution under an arrangement pursuant to which a card issuer gives a cardholder the privilege of purchasing or leasing property, or purchasing services, obtaining loans, or otherwise obtaining credit from at least one hundred persons not related to the card issuer.
6. *"Financial institution"* means a bank incorporated under the provisions of any state or federal law, a savings and loan association incorporated under the provisions of any state or federal law, a credit union organized under the provisions of any state or federal law, and any affiliate of such bank, savings and loan association, or credit union.
7. *"Person"* means any individual, firm, corporation, partnership, joint venture, or association, and any other organization or group, however organized.

91 Acts, ch 216, §16; 2012 Acts, ch 1017, §138

Referred to in §715C.1

536C.3 Exemptions.

This chapter does not apply to a bank chartered under chapter 524 or a bank chartered under federal law which has its principal place of business located in this state, a savings and loan association chartered under federal law which has its principal place of business located in this state, a credit union chartered under chapter 533 or a credit union chartered under federal law which has its principal place of business located in this state, regulated loan

companies licensed under chapter 536, or industrial loan companies licensed under chapter 536A.

91 Acts, ch 216, §17; 2012 Acts, ch 1017, §139
Referred to in §536C.14

536C.4 Notification.

1. A person shall file a registration statement annually with the administrator before conducting the business of issuing credit cards in this state, and annually thereafter on or before January 31 of each year. The registration statement shall be in writing on a form prescribed by the administrator, and contain the name and address of the registrant, the name and address of a designated agent upon whom service of process may be made in this state, and any other information the administrator deems relevant.

2. At the time of filing a registration statement the person shall provide the administrator with a copy of the credit agreement and billing statement being used by the card issuer.

3. If information in a filing statement becomes inaccurate after filing, the person shall notify the administrator in writing of the changes within sixty days of such change.

91 Acts, ch 216, §18
Referred to in §536C.12

536C.5 Fees.

A person required to file a registration statement pursuant to this chapter shall pay to the administrator an annual fee of fifty dollars. The fee shall be paid at the time the person files the registration statement.

91 Acts, ch 216, §19

536C.6 Applicability of Iowa consumer credit code.

1. The terms and conditions of a credit card agreement shall conform to the provisions of chapter 537, the Iowa consumer credit code.

2. A provision of the Iowa consumer credit code, chapter 537, applicable to credit cards regulated by this chapter supersedes a conflicting provision of this chapter.

3. A person who is in full compliance with the provisions of this chapter is considered a supervised financial organization under the Iowa consumer credit code, chapter 537, for purposes of contracting for finance charges authorized for credit card issuers under section 537.2402.

91 Acts, ch 216, §20; 2003 Acts, ch 44, §114

536C.7 Books and records.

A person who issues credit cards shall keep such books, accounts, and records as will enable the administrator to determine whether or not the person is complying with the provisions of this chapter and chapter 537. The person shall not be required to preserve or keep their records or files for a longer period than three years following the date of the final payment.

91 Acts, ch 216, §21

536C.8 Investigations.

1. The administrator may investigate at any time the business of a credit card issuer subject to the provisions of this chapter. The administrator may examine the books, records, accounts, and files pertaining to the business of issuing credit cards subject to the provisions of this chapter.

2. The administrator may accept a copy of an examination conducted by a state or federal regulator in lieu of an investigation or examination by the administrator.

3. If an investigation or examination is performed by the administrator under this section, the credit card issuer shall pay to the administrator a fee based on the actual cost of such investigation or examination as determined by the administrator.

4. Upon completion of an investigation or examination by the administrator, the examiner shall render a billing in triplicate, with one copy to be delivered to the credit card issuer and two copies to be delivered to the administrator. Failure to pay the fee to the administrator

within thirty days after the billing for the investigation or examination is delivered shall subject the credit card issuer to an additional fee of five percent of the amount of the original fee for each day the payment is delinquent.

91 Acts, ch 216, §22

536C.9 Cease and desist orders.

1. If the administrator has reasonable cause to believe a person who issues credit cards is violating any provision of this chapter, or rules adopted pursuant to this chapter, the administrator may enter a written order requiring the person to cease, desist, and refrain from an act constituting a violation. A copy of the order shall be sent to the person by certified mail. The person may file with the administrator a written notice of appeal within fifteen days of receipt of the order. The person may also request that the order be stayed pending resolution of the appeal. The appellant shall be entitled to prompt consideration of the request to stay the order.

2. Within thirty days after receipt of a notice of appeal the administrator shall hold a hearing to consider the appeal. The appellant shall be informed regarding the time and place of the hearing not later than ten days prior to the hearing. The administrator's decision shall be provided, in writing, to the appellant within thirty days of the completion of the hearing.

91 Acts, ch 216, §23

536C.10 Injunctions.

The administrator may commence an action in the district court to restrain and enjoin any person from violating this chapter, or to restrain and enjoin any person from engaging in the business of issuing credit cards without filing a registration statement as required by this chapter.

91 Acts, ch 216, §24

536C.11 Waiver unenforceable.

A waiver of the provisions of this chapter or chapter 537 is not valid.

91 Acts, ch 216, §25

536C.12 Penalty.

If an officer, director, or agent of a corporation engaged in the business of issuing credit cards violates any of the provisions of this chapter which are not also violations of the Iowa consumer credit code, chapter 537, or if a person individually or as a partner, or officer, director, or agent of a corporation engages in the business of issuing credit cards without filing the registration statement required by section 536C.4, the person is guilty of a serious misdemeanor. Violations of this chapter which are also violations of the Iowa consumer credit code, chapter 537, shall be subject to the penalties provided in the Iowa consumer credit code, chapter 537.

91 Acts, ch 216, §26; 2003 Acts, ch 44, §114

536C.13 Rules.

The administrator may adopt such rules pursuant to chapter 17A as may be necessary for the enforcement and administration of this chapter.

91 Acts, ch 216, §27

536C.14 Enforcement.

1. The superintendent of banking shall enforce the provisions of this chapter with respect to banks not exempt from the provisions of this chapter under section 536C.3.

2. The superintendent of credit unions shall enforce the provisions of this chapter with respect to credit unions not exempt from the provisions of this chapter under section 536C.3.

91 Acts, ch 216, §28; 2012 Acts, ch 1017, §140

Referred to in §536C.2

CHAPTER 537

CONSUMER CREDIT CODE

Referred to in §261.37, 322.3, 322.6, 322.14, 322.33, 322C.3, 476.95, 516E.5, 523A.602, 524.103, 524.227, 524.913, 533.102, 533.116, 533.315, 535.2, 535.10, 535.11, 536.13, 536.14, 536.19, 536.27, 536.29, 536A.26, 536A.27, 536A.29, 536A.31, 536C.6, 536C.7, 536C.11, 536C.12, 552.17, 554.9201, 602.8102(74), 669.14

The general assembly of the state of Iowa hereby declares and states that it does not want any of the provisions of Public Law No. 96 – 221 (94 Stat. 132), section 501, subsection (a), paragraph (1), to apply with respect to loans, mortgages, credit sales, and advances made in this state; and that it does not want any of the provisions of Public Law No. 96 – 221 (94 Stat. 132), Part B (section 511, subsections (a) and (b)), to apply with respect to loans made in this state; and that it does not want any of the provisions of any of the amendments contained in Public Law No. 96 – 221 (94 Stat. 132), sections 521, 522 and 523 to apply with respect to loans made in this state; and that it does not want any of the provisions of Public Law No. 96 – 221 (94 Stat. 132), section 524 to apply with respect to loans made in this state.

It is the intent of the general assembly of the state of Iowa in enacting this section to exercise all authority granted by Congress and to satisfy all requirements imposed by Congress in Public Law No. 96 – 221 (94 Stat. 132), section 501, subsection (b), paragraph (2), and section 512, and section 524, subsection (i), paragraph (3), and section 525, for the purpose of rendering the provisions of Public Law No. 96 – 221 (94 Stat. 132), Title V, inapplicable in this state;

80 Acts, ch 1156, §32

Court action required for termination of installment contracts during military service; §29A.102, 29A.105

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GENERAL PROVISIONS AND DEFINITIONS

PART 1
SHORT TITLE, CONSTRUCTION, GENERAL PROVISIONS

537.1101 Short title.

Articles 1 to 7 of this chapter shall be known and may be cited as the *"Iowa Consumer Credit Code"*.

[C75, 77, 79, 81, §537.1101]

537.1102 Purposes — rules of construction.

1. This chapter shall be liberally construed and applied to promote its underlying purposes and policies.

2. The underlying purposes and policies of this chapter are to:

a. Simplify, clarify and modernize the law governing retail installment sales and other consumer credit.

b. Provide rate ceilings for certain creditors in order to assure an adequate supply of credit to consumers.

c. Further consumer understanding of the terms of credit transactions and foster competition among suppliers of consumer credit so that consumers may obtain credit at reasonable cost.

d. Protect consumers against unfair practices by some suppliers, solicitors or collectors of consumer credit, having due regard for the interests of legitimate and scrupulous creditors.

e. Permit and encourage the development of fair and economically sound consumer credit practices.

f. Conform the regulation of disclosure in consumer credit transactions to the Truth in Lending Act.

g. Make the law, including administrative rules, more uniform among the various jurisdictions.

3. A reference to a requirement imposed by this chapter includes reference to a related rule of the administrator adopted pursuant to this chapter.

[C75, 77, 79, 81, §537.1102]

537.1103 Law applicable.

Unless displaced by the particular provisions of this chapter, the uniform commercial code as provided in chapter 554 and the principles of law and equity, including the law relative to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy or other validating or invalidating cause supplement its provisions.

[C75, 77, 79, 81, §537.1103]

2005 Acts, ch 3, §91

537.1104 Construction.

This chapter being a general Act intended as a unified coverage of its subject matter, no part of it shall be deemed to be impliedly repealed by subsequent legislation if such construction can reasonably be avoided.

[C75, 77, 79, 81, §537.1104]

537.1105 and 537.1106 Reserved.

537.1107 Waiver — agreement — settlement.

1. Except in settlement of a bona fide dispute, a consumer may not waive or agree to forego rights or benefits under this Act.

2. A claim by a consumer against a creditor relating to an excess charge, any other civil violation of this chapter, or a civil penalty, or a claim by a creditor against a consumer for default or breach of a civil duty imposed by this chapter, may be settled by agreement if the claim is disputed in good faith.

3. A claim against a consumer, whether or not disputed, may be settled for less value than the amount claimed.

4. A settlement in which the consumer waives or agrees to forego rights or benefits under this chapter is invalid if the court as a matter of law finds the settlement to have been unconscionable at the time it was made. The competence of the consumer, any deception or coercion practiced upon the consumer, the nature and extent of the legal advice received by the consumer, and the value of the consideration may be considered, among other factors, with respect to the issue of unconscionability.

[C75, 77, 79, 81, §537.1107]

Referred to in §537.3403, 537.3404, 537.3405, 537.5110

537.1108 Effect on organizations.

1. This chapter prescribes maximum charges for certain creditors, except lessors and those excluded in section 537.1202, extending credit in consumer credit transactions.

2. This chapter does not displace limitations on powers of credit unions, savings associations, or other thrift institutions whether organized for the profit of shareholders or as mutual organizations.

3. This chapter does not displace:

a. Limitations on powers of supervised financial organizations with respect to the amount of a loan to a single borrower, the ratio of a loan to the value of collateral, the duration of a loan secured by an interest in land, or other similar restrictions designed to protect deposits.

b. Limitations on powers an organization is authorized to exercise under the laws of this state or the United States.

[C75, 77, 79, 81, §537.1108]

2012 Acts, ch 1017, §141

537.1109 Reserved.

537.1110 Obligation of good faith.

Every contract or duty within this chapter imposes an obligation of good faith in its performance or enforcement.

[C75, 77, 79, 81, §537.1110]

PART 2

SCOPE AND JURISDICTION

537.1201 Territorial application.

1. This chapter applies to:

a. A transaction, or acts, practices, or conduct with respect to a transaction, if the transaction is entered into in this state, except that a transaction involving other than open-end credit or acts, practices, or conduct with respect to such a transaction shall not subject any person to damages or penalty under article 5 of this chapter, or administrative enforcement under article 6, part 1.

(1) If the buyer, lessee or debtor was physically located outside of this state, at the time the buyer, lessee or debtor signed the writing evidencing the transaction or made, in face-to-face solicitation, a written or oral offer to enter into the transaction,

(2) If the transaction or acts, practices, or conduct with respect to the transaction were

not in violation of law in the state in which the buyer, lessee, or debtor was physically located, and

(3) If, with respect to charges and agreements, the person does not collect or enforce that transaction except to the extent permitted by this chapter.

b. A transaction, or acts, practices, or conduct with respect to a transaction, if it is modified in this state, without regard to where the transaction is entered into, except that acts, practices, conduct, disclosures, charges, or provisions of agreements not in violation of law in the state where they occurred or were entered into, shall not subject any person to damages or penalty under article 5 or administrative enforcement under article 6, part 1, if, with respect to acts, practices, conduct, or disclosures, they occurred outside this state and before a modification in this state, and if, with respect to charges and agreements, they are not collected or enforced by that person except to the extent permitted by this chapter. A person shall not be required to obtain a license under section 537.2301 solely because the person modifies a transaction in this state.

c. Acts, practices, or conduct in this state in the solicitation, inducement, negotiation, collection, or enforcement of a transaction, without regard to where it is entered into or modified; including but not limited to acts, practices, or conduct in violation of sections 537.3209, 537.3210, 537.3311, 537.3501, article 5, parts 1 and 3, and article 7.

2. For the purposes of this section, a transaction is entered into or modified in this state if any of the following apply:

a. In a transaction involving other than open-end credit:

(1) If the buyer, lessee, or debtor is a resident of this state at the time the person extending credit solicits the transaction or modification, whether personally, by mail or by telephone, unless the parties have agreed that the law of the residence of the buyer, lessee, or debtor applies, in which case that law applies.

(2) If the buyer, lessee, or debtor is a resident of this state at the time the person extending credit receives either a signed writing evidencing the transaction or modification, or a written or oral offer of the buyer, lessee, or debtor to enter into or modify the transaction.

(3) If the transaction otherwise has significant contacts with this state, unless the buyer, lessee, or debtor is not a resident of this state at the times designated in subsection 2, paragraph *"a"*, subparagraphs (1) and (2), and the parties have agreed that the law of the buyer's, lessee's, or debtor's residence applies. A person shall not be required to obtain a license under section 537.2301 solely because this chapter applies to a transaction pursuant to this subparagraph.

b. In an open-end credit transaction:

(1) If the buyer, lessee, or debtor is a resident of this state either at the time the buyer, lessee, or debtor forwards or otherwise gives to the person extending credit a written or oral communication of the intention to establish the open-end transaction, or at the time the person extending credit forwards or otherwise gives to the buyer, lessee, or debtor a written or oral communication giving notice to the buyer, lessee, or debtor of the right to enter into open-end transactions with such person, unless the parties have agreed that the law of the residence of the buyer, lessee, or debtor applies in which case that law shall apply.

(2) If the transaction otherwise has significant contacts with this state, unless the buyer, lessee, or debtor is not a resident of this state at the times designated in subsection 2, paragraph *"a"*, subparagraph (1), and the parties have agreed that the law of the buyer's, lessee's, or debtor's residence applies. A person shall not be required to obtain a license under section 537.2301 solely because this chapter applies to a transaction pursuant to this subparagraph.

c. In any credit transaction, if the parties have agreed that the law of the residence of the buyer, lessee, or debtor applies and the buyer, lessee, or debtor is a resident of this state at any time designated, with respect to a transaction other than open-end, in subsection 2, paragraph *"a"*, subparagraphs (1) and (2) or, with respect to an open-end credit transaction, in subsection 2, paragraph *"b"*, subparagraph (1).

3. For the purposes of this section, "*modification*" shall include, but not be limited to, any alteration in the maturity, schedule of payments, amount financed, rate of finance charge or other term of a transaction.

4. For the purposes of this chapter, the residence of a buyer, lessee, or debtor is the address given by that person as the person's residence in a writing signed by the person in connection with a transaction until the person notifies the person extending credit of a different address as the person's residence, and it is then the different address.

5. Except as provided in subsection 1, paragraph *"c"*, and subsection 6, a transaction entered into or modified in another jurisdiction is valid and enforceable in this state according to its terms to the extent that it is valid and enforceable under the laws of the other jurisdiction.

6. A provision of an agreement made by a buyer, lessee, or debtor is invalid:

a. Which provides, if the buyer, lessee, or debtor is a resident of this state at the times designated in subsection 2, paragraph *"a"*, subparagraphs (1) and (2) and subsection 2, paragraph *"b"*, subparagraph (1):

(1) That the law of another jurisdiction shall apply, except as provided in subsection 2, paragraph *"a"*, subparagraph (1) and in subsection 2, paragraph *"b"*, subparagraph (1).

(2) That the buyer, lessee, or debtor consents to be subject to the process of another jurisdiction.

(3) That the buyer, lessee, or debtor appoints an agent to receive service of process.

(4) That venue is fixed at a particular place.

(5) That the consumer consents to the jurisdiction of a court that does not otherwise have jurisdiction.

b. If a provision would negate subsection 1, paragraph *"b"*.

7. The following provisions of this chapter specify the applicable law governing certain cases:

a. Section 537.6102 specifies the applicability of article 6, part 1.

b. Section 537.6201 specifies the applicability of article 6, part 2.

[C75, 77, 79, 81, §537.1201]

2018 Acts, ch 1041, §127

Referred to in §537.1303, 537.5111, 537.5113, 537.6102, 537.6201, 537.6202, 654.2D

Code editor directive applied

537.1202 Exclusions.

This chapter does not apply to:

1. Extensions of credit to government or governmental agencies or instrumentalities.

2. Except as otherwise provided in article 4, the sale of insurance if the insured is not obligated to pay installments of the premium and the insurance may terminate or be canceled after nonpayment of an installment of the premium.

3. Transactions under public utility or common carrier tariffs if a subdivision or agency of this state or of the United States regulates the charges for the services involved, the charges for delayed payment, and any discount allowed for early payment.

4. Transactions in securities or commodities accounts with a broker-dealer registered with the securities and exchange commission.

5. Pawnbrokers who are licensed and whose rates and charges are regulated under or pursuant to ordinances of cities or statutes of this state, except with respect to the provisions on compliance with the Truth in Lending Act in section 537.3201, civil liability for violation of disclosure provisions in section 537.5203, criminal penalties for disclosure violations in section 537.5302, and powers and functions of the administrator with respect to disclosure violations.

[C75, 77, 79, 81, §537.1202]

Referred to in §537.1108

537.1203 Jurisdiction — service of process.

1. The district court of this state may exercise jurisdiction over any person with respect to any conduct in this state governed by this chapter or with respect to any claim arising from a transaction subject to this chapter. In addition to any other method provided by rule or by statute, personal jurisdiction over a person may be acquired in a civil action or proceeding instituted in the district court by the service of process in the manner provided by this section.

2. If a person is not a resident of this state or is a corporation not authorized to do business in this state and engages in any conduct in this state governed by this chapter, or engages in a

transaction subject to this chapter, the person may designate an agent upon whom service of process or original notice may be made in this state. The agent shall be a resident of state or a corporation authorized to do business in this state. The designation shall be in a writing and filed with the secretary of state. If no designation is made and filed or if process or original notice cannot be served in this state upon the designated agent, process or original notice may be served upon the secretary of state, in the manner provided in section 617.3 for service upon nonresident persons and foreign corporations which have made contracts with residents of Iowa, and the provisions of that section relating to the service of process or original notice apply.

[C75, 77, 79, 81, §537.1203]

PART 3

DEFINITIONS

537.1301 General definitions.

As used in this chapter, unless otherwise required by the context:

1. *"Actuarial method"* means the method of allocating payments made on a debt between the amount financed and the finance charge, pursuant to which a payment is applied first to the accumulated finance charge and any remainder is subtracted from, or any deficiency is added to, the unpaid balance of the amount financed. The administrator may adopt rules not inconsistent with the Truth in Lending Act further defining the term and prescribing its application.

2. *"Administrator"* means the administrator designated in section 537.6103.

3. *"Affiliate"* as used in reference to a state bank means the same as defined in section 524.1101. *"Affiliate"* as used in reference to a national banking association means the same as defined in section 524.1101, except that the term "national banking association" shall be substituted for the term "state bank". *"Affiliate"* as used in reference to a federally chartered or out-of-state chartered savings and loan association shall mean the same as defined in 12 C.F.R. §561.4.

4. *"Agreement"* means the oral or written bargain of the parties in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance.

5. *"Amount financed"* means:

a. In the case of a sale, the cash price of the goods, services, or interest in land, plus the amount actually paid or to be paid by the seller pursuant to an agreement with the buyer to discharge a security interest in, a lien on, or a debt with respect to property traded in, less the amount of any down payment whether made in cash or in property traded in, plus additional charges if permitted under paragraph *"c"*.

b. In the case of a loan, the net amount paid to, receivable by, or paid or payable for the account of the debtor, plus the amount of any discount excluded from the finance charge under subsection 21, paragraph *"b"*, subparagraph (3), plus additional charges if permitted under paragraph *"c"* of this subsection.

c. In the case of a sale or loan, additional charges permitted under section 537.2501, to the extent that payment is deferred, that the charge is not otherwise included, in the amount permitted respectively in paragraph *"a"* or *"b"*, and that the charge is authorized by and disclosed to the consumer as required by law.

6. *"Billing cycle"* means the time interval between periodic billing statement dates.

7. *"Card issuer"* means a person who issues a credit card.

8. *"Cardholder"* means a person to whom a credit card is issued or who has agreed with the card issuer to pay obligations arising from the issuance or use of the card to or by another person.

9. *"Cash price"* of goods, services, or an interest in land means, except in the case of a consumer rental purchase agreement, the price at which they are sold by the seller to cash buyers in the ordinary course of business, and may include the cash price of accessories

or services related to the sale, such as delivery, installation, alterations, modifications, and improvements, and taxes to the extent imposed on a cash sale of the goods, services, or interest in land.

10. *Conspicuous.* A term or clause is conspicuous when it is so written that a reasonable person against whom it is to operate ought to have noticed it. Whether or not a term or clause is conspicuous is for decision by the court.

11. "*Consumer*" means the buyer, lessee, or debtor to whom credit is granted in a consumer credit transaction.

12. "*Consumer credit transaction*" means a consumer credit sale or consumer loan, or a refinancing or consolidation thereof, or a consumer lease, or a consumer rental purchase agreement.

13. *Consumer credit sale.*

a. Except as provided in paragraph "*b*", a consumer credit sale is a sale of goods, services, or an interest in land in which all of the following are applicable:

(1) Credit is granted either pursuant to a seller credit card or by a seller who regularly engages as a seller in credit transactions of the same kind.

(2) The buyer is a person other than an organization.

(3) The goods, services or interest in land are purchased primarily for a personal, family or household purpose.

(4) Either the debt is payable in installments or a finance charge is made.

(5) With respect to a sale of goods or services, the amount financed does not exceed the threshold amount.

b. A "*consumer credit sale*" does not include:

(1) A sale in which the seller allows the buyer to purchase goods or services pursuant to a lender credit card.

(2) A sale of an interest in land if the finance charge does not exceed twelve percent per year calculated on the actuarial method on the assumption that the debt will be paid according to the agreed terms and will not be paid before the end of the agreed term.

(3) A consumer rental purchase agreement as defined in section 537.3604.

14. *Consumer lease.*

a. Except as provided in paragraph "*b*", a consumer lease is a lease of goods in which all of the following are applicable:

(1) The lessor is regularly engaged in the business of leasing.

(2) The lessee is a person other than an organization.

(3) The lessee takes under the lease primarily for a personal, family, or household purpose.

(4) The amount payable under the lease does not exceed the threshold amount.

(5) The lease is for a term exceeding four months.

b. A consumer lease does not include a consumer rental purchase agreement as defined in section 537.3604.

15. *Consumer loan.*

a. Except as provided in paragraph "*b*", a "*consumer loan*" is a loan in which all of the following are applicable:

(1) The person is regularly engaged in the business of making loans.

(2) The debtor is a person other than an organization.

(3) The debt is incurred primarily for a personal, family or household purpose.

(4) Either the debt is payable in installments or a finance charge is made.

(5) The amount financed does not exceed the threshold amount.

b. A "*consumer loan*" does not include:

(1) A sale or lease in which the seller or lessor allows the buyer or lessee to purchase or lease pursuant to a seller credit card.

(2) A debt which is secured by a first lien on real property.

(3) A loan financed by the Iowa finance authority and secured by a lien on land.

(4) A consumer rental purchase agreement as defined in section 537.3604.

c. In determining which loans are consumer loans under this subsection the rules of construction stated in this paragraph shall be applied:

(1) A debt is incurred primarily for the purpose to which a majority of the loan proceeds are applied or are designated by the debtor to be applied.

(2) Loan proceeds used to refinance or pay a prior loan owed by the same borrower are incurred for the same purposes and in the same proportion as the principal of the loan refinanced or paid.

(3) Loan proceeds used to pay a prior loan by a different borrower are incurred for the new borrower's purposes in agreeing to pay the prior loan.

(4) The assumption of a loan by a different borrower is treated as if the new borrower had obtained a new loan and had used all of the proceeds to pay the loan assumed.

(5) The provisions of this paragraph shall not be construed to modify or limit the provisions of section 535.8, subsection 4, paragraph *"c"* or *"e"*.

16. *"Credit"* means the right granted by a person extending credit to a person to defer payment of debt, to incur debt and defer its payment, or to purchase property or services and defer payment therefor.

17. *"Credit card"* means a card or device issued under an arrangement pursuant to which a card issuer gives a cardholder the privilege of purchasing or leasing property or purchasing services, obtaining loans, or otherwise obtaining credit from the card issuer or other persons. A transaction is *"pursuant to a credit card"* if credit is obtained according to the terms of the arrangement by transmitting information contained on the card or device orally, in writing, by mechanical or automated methods, or in any other manner. A transaction is not *"pursuant to a credit card"* if the card or device is used solely to identify the cardholder and credit is not obtained according to the terms of the arrangement.

18. *"Creditor"* means the person who grants credit in a consumer credit transaction or, except as otherwise provided, an assignee of a creditor's right to payment, but use of the term does not in itself impose on an assignee any obligation of the assignee's assignor. In the case of credit granted pursuant to a credit card, the *"creditor"* is the card issuer and not another person honoring the credit card.

19. *"Credit union service organization"* means an organization, corporation, or association whose membership or ownership is primarily confined or restricted to credit unions or organizations of credit unions and whose purpose is primarily designed to provide services to credit unions, organizations of credit unions, or credit union members.

20. *"Earnings"* means compensation paid or payable to an individual or for the individual's account for personal services rendered or to be rendered by the individual, whether denominated as wages, salary, commission, bonus, or otherwise, and includes periodic payments pursuant to a pension, retirement or disability program.

21. *"Finance charge"*.

a. Except as otherwise provided in paragraph *"b"*, *"finance charge"* means the sum of all charges payable directly or indirectly by the consumer and imposed directly or indirectly by the creditor as an incident to or as a condition of the extension of credit, including any of the following types of charges which are applicable:

(1) Interest or any amount payable under a point, discount or other system of charges, however denominated, except that with respect to a consumer credit sale of goods or services a cash discount of five percent or less of the stated price of goods or services which is offered to the consumer for payment by cash, check or the like either immediately or within a period of time, is not part of the finance charge for the purpose of determining maximum charges pursuant to section 537.2401. A cash discount permitted by this subparagraph is not part of the finance charge for the purpose of determining compliance with section 537.3201 if it is properly disclosed as required by the Truth in Lending Act as amended to and including July 1, 1982 and regulations issued pursuant to that Act prior to July 1, 1982.

(2) Time price differential, credit service, service, carrying or other charge, however denominated.

(3) Premium or other charge for any guarantee or insurance protecting the creditor against the consumer's default or other credit loss.

(4) Charges incurred for investigating the collateral or credit-worthiness of the consumer or for commissions or brokerage for obtaining the credit, irrespective of the person to whom

the charges are paid or payable, unless the creditor had no notice of the charges when the credit was granted.

b. *"Finance charge"* does not include:

(1) Charges as a result of default or delinquency if made for actual unanticipated late payment, delinquency, default, or other like occurrence unless the parties agree that these charges are finance charges. A charge is not made for actual unanticipated late payment, delinquency, default or other like occurrence if imposed on an account which is or may be debited from time to time for purchases or other debts and, under its terms, payment in full or at a specified amount is required when billed, and in the ordinary course of business the consumer is permitted to continue to have purchases or other debts debited to the account after the imposition of the charge.

(2) Additional charges as defined in section 537.2501, or deferral charges as defined in section 537.2503.

(3) A discount, if a creditor purchases or satisfies obligations of a cardholder pursuant to a credit card and the purchase or satisfaction is made at less than the face amount of the obligation.

(4) Lease payments for a consumer rental purchase agreement, or charges specifically authorized by this chapter for consumer rental purchase agreements.

(5) An initial charge imposed by a financial institution for returning an item presented against nonsufficient funds or for paying an item that overdraws an account. For the purposes of this subparagraph, *"item"* includes any form of authorization or order for withdrawal of funds from an account such as a check, automated teller machine card, debit card, automated clearinghouse or other means.

22. *"Financial institution"* means and includes any bank incorporated under the provisions of any state or federal law, any savings and loan association or savings bank incorporated under the provisions of state or federal law, or any credit union organized under the provisions of any state or federal law.

23. *"Gift certificate"* means a merchandise certificate conspicuously designated as a gift certificate, and purchased by a buyer for use by a person other than the buyer.

24. *a.* *"Goods"* includes, but is not limited to:

(1) "Goods" as described in section 554.2105, subsection 1.

(2) Goods not in existence at the time the transaction is entered into.

(3) Things in action.

(4) Investment securities.

(5) Mobile homes regardless of whether they are affixed to the land.

(6) Gift certificates.

b. *"Goods"* excludes money, chattel paper, documents of title, instruments and merchandise certificates other than gift certificates.

25. *"Insurance premium loan"* means a consumer loan that is made for the sole purpose of financing the payment by or on behalf of an insured of the premium on one or more policies or contracts issued by or on behalf of an insurer, is secured by an assignment by the insured to the lender of the unearned premium on the policy or contract, and contains an authorization to cancel the policy or contract financed.

26. *"Lender"* means a person who makes a loan or, except as otherwise provided in this chapter, a person who takes an assignment of a lender's right to payment, but use of the term does not in itself impose on an assignee any obligation of the lender.

27. *"Lender credit card"* means a credit card issued by a lender.

28. *a.* *"Loan"* means any of the following, except as provided in paragraph *"b"*:

(1) The creation of debt by the lender's payment of or agreement to pay money to the debtor or to a third person for the account of the debtor.

(2) The creation of debt by a credit to an account with the lender upon which the debtor is entitled to draw immediately.

(3) The creation of debt pursuant to a lender credit card in any manner, including a cash advance or the card issuer's honoring a draft or similar order for the payment of money drawn or accepted by the debtor, paying or agreeing to pay the debtor's obligation, or purchasing or otherwise acquiring the debtor's obligation from the obligee or the obligee's assignees.

(4) The creation of debt by a cash advance to a debtor pursuant to a seller credit card.

(5) The forbearance of debt arising from a loan.

b. "*Loan*" does not include:

(1) A card issuer's payment or agreement to pay money to a third person for the account of a debtor if the debt of the debtor arises from a sale or lease and results from use of a seller credit card.

(2) The forbearance of debt arising from a sale or lease.

29. *"Merchandise certificate"* means a writing not redeemable in cash and usable in its face amount in lieu of cash in exchange for goods or services. Sale of a merchandise certificate on credit is a credit sale beginning at the time the certificate is redeemed.

30. *"Mortgage lender"* means a domestic or foreign corporation authorized in this state to make loans secured by mortgages or deeds of trust.

31. *"Official fees"* means:

a. Fees and charges prescribed by law which actually are or will be paid to public officials for determining the existence of or for perfecting, releasing, terminating, or satisfying a security interest related to a consumer credit transaction.

b. Premiums payable for insurance in lieu of perfecting a security interest otherwise required by the creditor in connection with the transaction, if the premium does not exceed the fees and charges described in paragraph *"a"* which would otherwise be payable.

32. *"Open-end credit"* means an arrangement, other than a consumer rental purchase agreement, pursuant to which all of the following are applicable:

a. A creditor may permit a consumer, from time to time, to purchase or lease on credit from the creditor or pursuant to a credit card, or to obtain loans from the creditor or pursuant to a credit card.

b. The amounts financed and the finance and other appropriate charges are debited to an account.

c. The finance charge, if made, is computed on the account periodically.

d. Either the consumer has the privilege of paying in full or in installments, or the transaction is a consumer credit transaction solely because a delinquency charge or the like is treated as a finance charge pursuant to subsection 21, paragraph *"b"*, subparagraph (1) of this section or the creditor otherwise periodically imposes charges computed on the account for delaying payment of it and permits the consumer to continue to purchase or lease on credit.

33. *"Organization"* means a corporation, government or governmental subdivision or agency, trust, estate, cooperative, or association.

34. *"Payable in installments"* means that payment is required or permitted by agreement to be made in more than four periodic payments, excluding a down payment. If any periodic payment other than the down payment under an agreement requiring or permitting two or more periodic payments is more than twice the amount of any other periodic payment excluding the down payment, a transaction is "payable in installments".

35. *"Person"* means:

a. A natural person, partnership, or an individual.

b. An organization.

36. *a. "Person related to"* with respect to a natural person or an individual means any of the following:

(1) The spouse of the individual.

(2) A brother, brother-in-law, sister, or sister-in-law of the individual.

(3) An ancestor or lineal descendant of the individual or the individual's spouse.

(4) Any other relative, by blood or marriage, of the individual or the individual's spouse, if the relative shares the same home with the individual.

b. "Person related to" with respect to an organization means:

(1) A person directly or indirectly controlling, controlled by or under common control with the organization.

(2) An officer or director of the organization or a person performing similar functions with respect to the organization or to a person related to the organization.

(3) The spouse of a person related to the organization.

(4) A relative by blood or marriage of a person related to the organization who shares the same home with the person.

37. A "*precomputed consumer credit transaction*" is a consumer credit transaction, other than a consumer lease or a consumer rental purchase agreement, in which the debt is a sum comprising the amount financed and the amount of the finance charge computed in advance. A disclosure required by the Truth in Lending Act does not in itself make a finance charge or transaction precomputed.

38. *"Presumed"* or "*presumption*" means that the trier of fact must find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its nonexistence.

39. *"Sale of goods"* includes, but is not limited to, any agreement in the form of a bailment or lease of goods if the bailee or lessee pays or agrees to pay as compensation for use a sum substantially equivalent to or in excess of the aggregate value of the goods involved and it is agreed that the bailee or lessee will become, or for no other or a nominal consideration has the option to become, the owner of the goods upon full compliance with the terms of the agreement. *"Sale of goods"* does not include a consumer rental purchase agreement.

40. *"Sale of an interest in land"* includes, but is not limited to, a lease in which the lessee has an option to purchase the interest, by which all or a substantial part of the rental or other payments previously made by the lessee are applied to the purchase price.

41. *"Sale of services"* means furnishing or agreeing to furnish services for a consideration and includes making arrangements to have services furnished by another.

42. *"Seller"* means a person who makes a sale or, except as otherwise provided in this chapter, a person who takes an assignment of the seller's right to payment, but use of the term does not in itself impose on an assignee any obligation of the seller.

43. *"Seller credit card"* means either of the following:

a. A credit card issued primarily for the purpose of giving the cardholder the privilege of using the credit card to purchase or lease property or services from the card issuer, persons related to the card issuer, persons licensed or franchised to do business under the card issuer's business or trade name or designation, or from any of these persons and from other persons as well.

b. A credit card issued by a person other than a supervised lender primarily for the purpose of giving the cardholder the privilege of using the credit card to purchase or lease property or services from at least one hundred persons not related to the card issuer.

44. *"Services"* includes, but is not limited to:

a. Work, labor, and other personal services.

b. Privileges or benefits with respect to transportation, hotel and restaurant accommodations, education, entertainment, recreation, physical culture, hospital accommodations, funerals, cemetery accommodations, and the like.

c. Insurance.

45. "*Supervised financial organization*" means a person, other than an insurance company or other organization primarily engaged in an insurance business, which is organized, chartered, or holding an authorization certificate pursuant to chapter 524 or 533, or pursuant to the laws of any other state or of the United States which authorizes the person to make loans and to receive deposits, including a savings, share, certificate or deposit account, and which is subject to supervision by an official or agency of this state, such other state, or of the United States.

46. "*Supervised loan*" means a consumer loan, including a loan made pursuant to open-end credit, in which the rate of the finance charge, calculated according to the actuarial method, exceeds the rate of finance charge permitted in chapter 535.

a. With respect to a consumer loan made pursuant to open-end credit, the finance charge shall be deemed not to exceed the rate permitted in chapter 535 if the finance charge contracted for and received does not exceed a charge for each monthly billing cycle which is one-twelfth of that rate multiplied by the average daily balance of the open-end account in the billing cycle for which the charge is made. The average daily balance of the open-end account is the sum of the amount unpaid each day during that cycle divided by the number of days in the cycle. The amount unpaid on a day is determined by adding to the balance, if

any, unpaid as of the beginning of that day all purchases and other debits and deducting all payments and other credits made or received as of that day.

b. If the billing cycle is not monthly, the finance charge shall be deemed not to exceed that rate per year if the finance charge contracted for and received does not exceed a percentage which bears the same relation to that rate as the number of days in the billing cycle bears to three hundred sixty-five.

c. A billing cycle is monthly if the closing date of the cycle is the same date each month or does not vary by more than four days from the regular date.

47. *"Threshold amount"* means the threshold amount, as determined by 12 C.F.R. §1026.3(b), in effect during the period the consumer credit transaction was entered into.

[C58, 62, 66, 71, 73, §322.2(12) – (15), C75, 77, 79, S79, C81, §537.1301; 81 Acts, ch 76, §8, ch 177, §3, 4; 82 Acts, ch 1153, §9 – 13, 18(1), ch 1253, §42]

83 Acts, ch 101, §114; 83 Acts, ch 124, §24, 25; 87 Acts, ch 80, §26 – 34; 97 Acts, ch 187, §1; 2003 Acts, ch 44, §92; 2005 Acts, ch 44, §1; 2012 Acts, ch 1017, §142, 143; 2012 Acts, ch 1023, §157; 2014 Acts, ch 1037, §11 – 17, 22; 2014 Acts, ch 1141, §26; 2015 Acts, ch 30, §172

Referred to in §16.45, 99F.9, 103A.58, 137C.25A, 321.486, 321A.3, 322.19, 322.33, 322C.12, 524.913, 533.315, 535.2, 535.8, 535.10, 535.11, 535.17, 536.1, 536.13, 536.15, 536.27, 536.28, 536A.3, 536A.31, 536C.2, 537.1303, 537.2510, 537.3603, 552.1, 552.17, 554.13103, 602.8103, 642.22, 805.14

Subsection 21, paragraph b, subparagraph (5) applies to charges assessed by a financial institution on or after July 1, 2014; 2014 Acts, ch 1037, §22

537.1302 Definition — Truth in Lending Act.

As used in this chapter, *"Truth in Lending Act"* means Tit. 1 of the Consumer Credit Protection Act, in subch. 1 of 15 U.S.C. ch. 41, as amended, and includes regulations issued pursuant to that Act.

[C75, 77, 79, 81, §537.1302; 82 Acts, ch 1153, §14]

89 Acts, ch 68, §1; 95 Acts, ch 31, §1; 95 Acts, ch 209, §27; 98 Acts, ch 1031, §1; 2008 Acts, ch 1025, §1; 2010 Acts, ch 1007, §1; 2010 Acts, ch 1061, §180; 2013 Acts, ch 84, §1

Referred to in §322.19, 524.913, 533.315, 535.11, 537.5203

537.1303 Other defined terms.

Other defined terms in this chapter and the sections in which they appear are:

1. *"Closing costs"*. Section 537.2501, subsection 1, paragraph *"e"*.
2. *"Computational period"*. Section 537.2510, subsection 4, paragraph *"a"*.
3. *"Debt"*. Section 537.7102, subsection 3.
4. *"Debt collection"*. Section 537.7102, subsection 4.
5. *"Debt collector"*. Section 537.7102, subsection 5.
6. *"Disposable earnings"*. Section 537.5105, subsection 1, paragraph *"a"*.
7. *"Garnishment"*. Section 537.5105, subsection 1, paragraph *"b"*.
8. *"Interval"*. Section 537.2510, subsection 4, paragraph *"b"*.
9. *"Location"*. Section 537.2310, subsection 1.
10. *"Pursuant to a credit card"*. Section 537.1301, subsection 17.
11. *"Residence"*. Section 537.1201, subsection 4.

[C75, 77, 79, 81, §537.1303]

2003 Acts, ch 108, §99

ARTICLE 2
FINANCE CHARGES AND RELATED PROVISIONS

Referred to in §537.1101, 537.3304

PART 1
GENERAL PROVISIONS

537.2101 Short title.

This article shall be known and may be cited as the *"Iowa Consumer Credit Code — Finance Charges and Related Provisions"*.

[C75, 77, 79, 81, §537.2101]

537.2102 Scope.

Part 2 applies to consumer credit sales. Parts 3 and 4 apply to consumer loans. Part 5 applies to other charges and modifications with respect to consumer credit transactions. Part 6 applies to other credit transactions.

[C75, 77, 79, 81, §537.2102]

PART 2
CONSUMER CREDIT SALES: MAXIMUM FINANCE CHARGES

Referred to in §103A.58, 322C.12, 537.2102, 537.2501

537.2201 Finance charge for consumer credit sales not pursuant to open-end credit.

1. With respect to a consumer credit sale, other than a sale pursuant to open-end credit, a creditor may contract for and receive a finance charge not exceeding the maximum charge permitted by the law of this state or the United States for similar creditors. In addition, with respect to a consumer credit sale of goods or services, other than a sale pursuant to open-end credit or a sale of a motor vehicle, a creditor may contract for and receive a finance charge not exceeding that permitted in subsections 2 to 6. With respect to a consumer credit sale of a motor vehicle, a creditor may contract for and receive a finance charge as provided in section 322.19, and a finance charge in excess of that provided in section 322.19, is an excess charge in violation of this chapter.

2. The finance charge, calculated according to the actuarial method, may not exceed twenty-one percent per year on the unpaid balances of the amount financed.

3. This section does not limit or restrict the manner of calculating the finance charge whether by way of add-on, discount, or otherwise, so long as the rate of the finance charge does not exceed that permitted by this section. If the sale is a precomputed consumer credit transaction, the finance charge may be calculated on the assumption that all scheduled payments will be made when due, and the effect of prepayment is governed by the provisions on rebate upon prepayment contained in section 537.2510.

4. For the purposes of this section, the term of a sale agreement commences with the date the credit is granted or, if goods are delivered or services performed ten days or more after that date, with the date of commencement of delivery or performance. Any month may be counted as one-twelfth of a year, but a day is counted as one-three hundred sixty-fifth of a year. Subject to classifications and differentiations the seller may reasonably establish, a part of a month in excess of fifteen days may be treated as a full month if periods of fifteen days or less are disregarded and that procedure is not consistently used to obtain a greater yield than would otherwise be permitted. The administrator may adopt rules not inconsistent with the Truth in Lending Act with respect to treating as regular other minor irregularities in amount or time.

5. Subject to classifications and differentiations the seller may reasonably establish, the

seller may make the same finance charge on all amounts financed within a specified range. A finance charge so made does not violate subsection 2 if both of the following are applicable:

a. When applied to the median amount within each range, it does not exceed the maximum rate permitted by subsection 1.

b. When applied to the lowest amount within each range, it does not produce a rate of finance charge exceeding the rate calculated according to paragraph *"a"* by more than eight percent of the rate calculated according to paragraph *"a"* of this subsection.

6. Regardless of subsection 2, the seller may contract for and receive a minimum finance charge of not more than five dollars when the amount financed does not exceed seventy-five dollars, or seven dollars and fifty cents when the amount financed exceeds seventy-five dollars.

[C75, 77, 79, 81, §537.2201; 82 Acts, ch 1153, §15, 18(1)]
2018 Acts, ch 1041, §127
Referred to in §535.11, 537.2504, 537.2505
Code editor directive applied

537.2202 Finance charge for consumer credit sales pursuant to open-end credit.

1. With respect to a consumer credit sale made pursuant to open-end credit, a creditor may contract for and receive a finance charge without limitation as to amount or rate as permitted in this section.

2. For each billing cycle, a charge may be made which is a percentage of an amount not exceeding the greatest of the following:

a. The average daily balance of the open-end account in the billing cycle for which the charge is made, which is the sum of the amount unpaid each day during that cycle, divided by the number of days in that cycle. The amount unpaid on a day is determined by adding to the balance, if any, unpaid as of the beginning of that day all purchases and other debits and deducting all payments and other credits made or received as of that day.

b. The balance of the open-end account at the beginning of the first day of the billing cycle, after deducting all payments and credits made in the cycle except credits attributable to purchases charged to the account during the cycle.

c. The median amount within a specified range including the balance of the open-end account not exceeding that permitted by paragraph *"a"* or *"b"*. A charge may be made pursuant to this paragraph only if the creditor, subject to classifications and differentiations the creditor may reasonably establish, makes the same charge on all balances within the specified range and if the percentage when applied to the median amount within the range does not produce a charge exceeding the charge resulting from applying that percentage to the lowest amount within the range by more than eight percent of the charge on the median amount.

[C75, 77, 79, 81, §537.2202]
84 Acts, ch 1237, §1; 97 Acts, ch 187, §2, 3; 98 Acts, ch 1100, §73; 2018 Acts, ch 1041, §127
Referred to in §535.11, 537.2506
Code editor directive applied

PART 3

CONSUMER LOANS: SUPERVISED LOANS

Referred to in §536.13, 536A.31, 537.2102

537.2301 Authority to make supervised loans.

1. As used in this part, *"licensing authority"* means the agency designated in chapter 524, 533, 536, or 536A to issue licenses or otherwise authorize the conduct of business pursuant to the respective chapter or this chapter, and *"licensee"* includes any person subject to regulation by a licensing authority. *"License"* includes the authorization, of whatever form, to engage in the conduct regulated under those chapters.

2. A person who is not authorized to make supervised loans as provided herein shall not engage in the business of making supervised loans or undertaking direct collection of payments from or enforcement of rights against consumers arising from supervised loans, but

the person may collect and enforce for three months without a license if the person promptly applies for a license and the person's application has not been denied.

3. A supervised loan made by a person in violation of subsection 2 shall be void and the consumer is not obligated to pay either the amount financed or the finance charge. If the consumer has paid any part of the amount financed or the finance charge, the consumer has a right to recover the payment from the person in violation of subsection 2 or from an assignee of that person's rights who undertakes direct collection of payments or enforcement of rights arising from the debt. With respect to violations arising from loans made pursuant to open-end credit, no action pursuant to this subsection may be brought more than two years after the violation occurred. With respect to violations arising from other loans, no action pursuant to this subsection may be brought more than one year after the due date of the last scheduled payment of the agreement pursuant to which the charge was paid.

4. The following persons are authorized to make supervised loans:

a. A person who is a supervised financial organization.

b. A person who has obtained a license pursuant to either chapter 536 or 536A.

c. A person who enters into less than ten supervised loans per year in this state and has neither an office physically located in this state nor engages in face-to-face solicitation in this state.

5. This section shall not affect dollar amount, purpose, or rate of finance charge restrictions imposed by any statute of this state or of the United States with respect to which a person is authorized to make loans at a rate of finance charge in excess of that permitted by chapter 535 or pursuant to which a person is licensed.

[C75, 77, 79, 81, §537.2301]

2012 Acts, ch 1017, §144; 2017 Acts, ch 138, §12

Referred to in §536.1, 536A.3, 536A.27, 537.1201, 537.2310, 537.5201, 537.5301

537.2302 Reserved.

537.2303 Revocation or suspension of license.

1. The licensing authority may issue to a person subject to regulation by that authority an order to show cause why the person's license with respect to one or more specific places of business should not be suspended for a period not in excess of six months, or revoked. The order shall set the place for a hearing and set a time for the hearing that is not less than ten days from the date of the order. After the hearing, if the licensing authority finds that the licensee has intentionally violated this chapter, or any rule or order made pursuant to law, including an order of discontinuance, or if facts or conditions exist which would clearly have justified the licensing authority in refusing to grant a license for that place or those places of business had these facts or conditions been known to exist at the time the application for the license was made, the licensing authority shall revoke or suspend the license or, if there are mitigating circumstances, may accept an assurance of discontinuance as provided in section 537.6109, and allow retention of the license.

2. No revocation or suspension of a license is lawful unless prior to institution of proceedings by the licensing authority notice is given to the licensee of the facts or conduct which warrant the intended action, and the licensee is given an opportunity to show compliance with all lawful requirements for retention of the license.

3. If the licensing authority finds that probable cause for revocation of a license exists and that enforcement of the law requires immediate suspension of the license pending investigation, the licensing authority may, after a hearing upon five days' written notice, enter an order suspending the license for not more than thirty days.

4. Whenever the licensing authority revokes or suspends a license, the licensing authority shall enter an order to that effect and forthwith notify the licensee of the revocation or suspension. Within five days after the entry of the order the licensing authority shall deliver to the licensee a copy of the order and the findings supporting the order.

5. Any person holding a license to make supervised loans may relinquish the license by notifying the licensing authority in writing of its relinquishment, but this relinquishment does not affect the licensee's liability for acts previously committed.

6. No revocation, suspension or relinquishment of a license impairs or affects the obligation of any preexisting lawful contract between the licensee and any consumer.

7. The licensing authority may reinstate a license, terminate a suspension or grant a new license to a person whose license has been revoked or suspended if no fact or condition then exists which clearly would justify the licensing authority in refusing to grant a license.

[C75, 77, 79, 81, §537.2303]

Referred to in §524.227, 533.116, 536.29, 536A.29, 537.2304, 537.6105

537.2304 Records — annual reports.

1. Every licensee shall maintain records in conformity with generally accepted accounting principles and practices in a manner that will enable the licensing authority to determine whether the licensee is complying with the provisions of law. The recordkeeping system of a licensee is sufficient if the licensee makes the required information reasonably available. The records need not be kept in the place of business where supervised loans are made, if the licensing authority is given free access to the records wherever located.

2. On or before April 15 each year every licensee shall file with the licensing authority a composite annual report in the form prescribed by that authority relating to all supervised loans made by the licensee. The licensing authority shall consult with comparable officials in other states for the purpose of making the kinds of information required in annual reports uniform among the states. Information contained in annual reports shall be confidential and may be published only in composite form. The licensing authority shall assess against a licensee who fails to file the prescribed report on or before April 15 a penalty of ten dollars for each day the report is overdue, up to a maximum of thirty days. When an annual report is overdue for more than thirty days, the licensing authority may institute proceedings under section 537.2303 for revocation of the licenses held by the licensee.

[C75, 77, 79, 81, §537.2304]

537.2305 Examinations and investigations.

1. For the purpose of discovering violations of this chapter or securing information lawfully required, the licensing authority shall examine periodically at intervals the licensing authority deems appropriate, but not less frequently than is required for other examinations of the licensee by section 524.217, 533.113, 536.10, or 536A.15, whichever is applicable, the loans, business, and records of every licensee, except a licensee which has no office physically located in this state and engages in no face-to-face solicitation in this state. In addition, the licensing authority may at any time investigate the loans, business, and records of any lender. For these purposes the licensing authority shall be given free and reasonable access to the offices, places of business, and records of the lender.

2. If the lender's records are located outside this state, the lender at the lender's option shall make them available to the licensing authority at a convenient location within this state, or pay the reasonable and necessary expenses for the licensing authority or the licensing authority's representative to examine them at the place where they are maintained. The licensing authority may designate representatives, including comparable officials of the state in which the records are located, to inspect them on the licensing authority's behalf.

3. For the purposes of this section, the licensing authority may administer oaths or affirmations, and upon the licensing authority's own motion or upon request of any party may subpoena witnesses, compel their attendance, adduce evidence, and require the production of any matter which is relevant to the investigation, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of relevant facts, or any other matter reasonably calculated to lead to the discovery of admissible evidence.

4. Upon failure without lawful excuse to obey a subpoena or to give testimony and upon reasonable notice to all persons affected thereby, the licensing authority may apply to the district court for an order compelling compliance.

[C75, 77, 79, 81, §537.2305]

2007 Acts, ch 174, §95; 2012 Acts, ch 1017, §145

Referred to in §524.227, 533.116, 536.29, 536A.29, 537.6105

537.2306 Reserved.

537.2307 Restrictions on interest in land as security.

With respect to a supervised loan in which the rate of finance charge is in excess of fifteen percent computed according to the actuarial method, and the amount financed is two thousand dollars or less, a lender may not contract for a security interest in real property used as a residence for the consumer or the consumer's dependents. A security interest taken in violation of this section is void.

[C75, 77, 79, 81, §537.2307]

Referred to in §535.10, 537.5201

537.2308 Regular schedule of payments — maximum loan term.

Supervised loans, not made pursuant to open-end credit and in which the amount financed is one thousand dollars or less, shall be scheduled to be payable in substantially equal installments at substantially equal periodic intervals except to the extent that the schedule of payments is adjusted to the seasonal or irregular income of the debtor, and over a period of not more than thirty-seven months if the amount financed is more than three hundred dollars, or over a period of not more than twenty-five months if the amount financed is three hundred dollars or less. However, a lender may make a loan not pursuant to open-end credit that is repayable in a single payment if the amount financed does not exceed one thousand dollars and if the finance charge does not exceed the rate permitted by section 537.2401, subsection 1, to be charged by a supervised financial organization.

[C75, 77, 79, 81, §537.2308; 81 Acts, ch 179, §1]

2018 Acts, ch 1041, §127

Referred to in §537.5201

Code editor directive applied

537.2309 No other business for purpose of evasion.

A lender may not carry on other business for the purpose of evasion or violation of this chapter at a location where the lender makes supervised loans.

[C75, 77, 79, 81, §537.2309]

537.2310 Conduct of business other than making loans.

1. Except as provided in subsection 2, a licensee authorized to make supervised loans pursuant to section 537.2301 may not engage in the business of selling or leasing tangible goods at a location where supervised loans are made. In this section, "*location*" means the entire space in which supervised loans are made and the location must be separated from any space where goods are sold or leased by walls which may be broken only by a passageway to which the public is not admitted.

2. This section does not apply to:

a. Occasional sales of property used in the ordinary course of business of the licensee.

b. Sales of items of collateral of which the licensee has taken possession.

c. Sales of items by a licensee who is also authorized by law to operate as a pawnbroker.

d. Sales of property or items by the licensee which are not for the profit of the licensee and which are sold for a price not exceeding fifty dollars.

[C75, 77, 79, 81, §537.2310; 82 Acts, ch 1253, §41]

Referred to in §537.1303

PART 4

CONSUMER LOANS: MAXIMUM FINANCE CHARGES

Referred to in §537.2102, 537.2501, 537.5301

537.2401 Finance charge for consumer loans not pursuant to open-end credit.

1. Except as provided with respect to a finance charge for loans pursuant to open-end credit under section 537.2402 and loans secured by a certificate of title of a motor vehicle

under section 537.2403, a lender may contract for and receive a finance charge not exceeding the maximum charge permitted by the laws of this state or of the United States for similar lenders, and, in addition, with respect to a consumer loan, a supervised financial organization or a mortgage lender may contract for and receive a finance charge, calculated according to the actuarial method, not exceeding twenty-one percent per year on the unpaid balance of the amount financed. Except as provided in section 537.2403, this subsection does not prohibit a lender from contracting for and receiving a finance charge exceeding twenty-one percent per year on the unpaid balance of the amount financed on consumer loans if authorized by other provisions of the law.

2. This section does not limit or restrict the manner of calculating the finance charge, whether by way of add-on, discount, or otherwise, so long as the rate of the finance charge does not exceed that permitted by this section or the laws of this state or of the United States. The finance charge permitted by this section or the laws of this state or of the United States may be calculated by determining the single annual percentage rate as required to be disclosed to the consumer pursuant to section 537.3201 which, when applied according to the actuarial method to the unpaid balances of the amount financed, will yield the finance charge for that transaction which would result from applying any graduated rates permitted by this section or the laws of this state or of the United States to the transaction on the assumption that all scheduled payments will be made when due. If the loan is a precomputed consumer credit transaction, the finance charge may be calculated on the assumption that all scheduled payments will be made when due, and the effect of prepayment is governed by section 537.2510.

3. Except as provided in subsection 5, the term of a loan for the purposes of this section commences on the date the loan is made. Any month may be counted as one-twelfth of a year but a day is counted as one-three hundred sixty-fifth of a year. Subject to classifications and differentiations the lender may reasonably establish, a part of a month in excess of fifteen days may be treated as a full month if periods of fifteen days or less are disregarded and that procedure is not consistently used to obtain a greater yield than would otherwise be permitted. The administrator may adopt rules not inconsistent with the Truth in Lending Act with respect to treating as regular other minor irregularities in amount or time.

4. Subject to classifications and differentiations the lender may reasonably establish, the lender may make the same finance charge on all amounts financed within a specified range. A finance charge so made does not violate subsection 1, if both of the following are applicable:

a. When applied to the median amount within each range, it does not exceed the maximum permitted by that subsection.

b. When applied to the lowest amount within each range, it does not produce a rate of finance charge exceeding the rate calculated according to paragraph *"a"* by more than eight percent of the rate calculated according to paragraph *"a"*.

5. With respect to an insurance premium loan, the term of the loan commences on the earliest inception date of a policy or contract of insurance for which the premium is financed.

[C75, 77, 79, 81, §537.2401; 82 Acts, ch 1153, §16, 18(1)]

83 Acts, ch 124, §26; 2007 Acts, ch 26, §1

Referred to in §533.316, 537.1301, 537.2308, 537.2504, 537.2505

537.2402 Finance charge for consumer loans pursuant to open-end credit.

1. If authorized to make supervised loans, a creditor may contract for and receive a finance charge without limitation as to amount or rate with respect to a loan pursuant to open-end credit as permitted in this section except as provided in section 537.2403.

2. For each billing cycle, a charge may be made which is a percentage of an amount not exceeding the greatest of the following:

a. The average daily balance of the open-end account in the billing cycle for which the charge is made, which is the sum of the amount unpaid each day during that cycle, divided by the number of days in that cycle. The amount unpaid on a day is determined by adding to the balance, if any, unpaid as of the beginning of that day all purchases and other debits and deducting all payments and other credits made or received as of that day.

b. The balance of the open-end account at the beginning of the first day of the billing

cycle, after deducting all payments and credits made in the cycle except credits attributable to purchases charged to the account during the cycle.

c. The median amount within a specified range including the balance of the open-end account not exceeding that permitted by paragraph *"a"* or *"b"*. A charge may be made pursuant to this paragraph only if the organization, subject to classifications and differentiations it may reasonably establish, makes the same charge on all balances within the specified range and if the percentage when applied to the median amount within the range does not produce a charge exceeding the charge resulting from applying that percentage to the lowest amount within the range by more than eight percent of the charge on the median amount.

[C75, 77, 79, 81, §537.2402]

84 Acts, ch 1237, §2; 89 Acts, ch 295, §2; 97 Acts, ch 187, §4, 5; 98 Acts, ch 1100, §74; 2007 Acts, ch 26, §2

Referred to in §533.316, 535.10, 536.13, 536A.31, 536C.6, 537.2401, 537.2506

537.2403 Finance charge for consumer loans secured by a motor vehicle.

1. A lender shall not contract for or receive a finance charge exceeding twenty-one percent per year on the unpaid balance of the amount financed for a loan of money secured by a certificate of title to a motor vehicle used for personal, family, or household purpose except as authorized under chapter 536 or 536A. A consumer who is charged a finance charge in excess of the limitation in this section may seek any remedies available pursuant to this chapter for an excess charge.

2. It shall be a violation of this section and an unlawful practice under section 714.16 to attempt to avoid application of this section by structuring a loan of money secured by a certificate of title to a motor vehicle as a sale, sale and repurchase, sale and lease, pawn, rental purchase, lease, or other type of transaction with the intent to avoid application of this section or any other applicable provision of this chapter.

2007 Acts, ch 26, §3

Referred to in §537.2401, 537.2402

PART 5

CONSUMER CREDIT TRANSACTIONS: OTHER CHARGES AND MODIFICATIONS

Referred to in §322.33, 536.13, 536A.31, 537.2102

537.2501 Additional charges.

1. In addition to the finance charge permitted by parts 2 and 4, a creditor may contract for and receive the following additional charges:

a. Official fees and taxes.

b. Charges for insurance as described in subsection 2.

c. Amounts actually paid or to be paid by the creditor for registration, certificate of title or license fees.

d. Annual charges, payable in advance, for the privilege of using a credit card which entitles the cardholder to purchase or lease goods or services from at least one hundred persons not related to the card issuer, under an arrangement pursuant to which the debts resulting from the purchases or leases are payable to the card issuer.

e. With respect to a debt secured by an interest in land, the following "closing costs," provided they are bona fide, reasonable in amount, and not for the purpose of circumvention or evasion of this chapter:

(1) Fees or premiums for title examination, abstract of title, title insurance, or similar purposes including surveys.

(2) Fees for preparation of a deed, settlement statement, or other documents, if not paid to the creditor or a person related to the creditor.

(3) Escrows for future payments of taxes, including assessments for improvements, insurance and water, sewer and land rents.

(4) Fees for notarizing deeds and other documents, if not paid to the creditor or a person related to the creditor.

(5) Fees or charges listed in section 535.8, subsection 4, paragraphs *"a"* and *"b"*.

f. (1) With respect to open-end credit pursuant to a credit card issued by the creditor which entitles the cardholder to purchase or lease goods or services from at least one hundred persons not related to the card issuer, the parties may contract for an over-limit charge in accordance with 12 C.F.R. §1026.52(b) if the balance of the account exceeds the credit limit established pursuant to the agreement. The over-limit charge under this paragraph shall not be assessed again in a subsequent billing cycle unless in a subsequent billing cycle the account balance has been reduced below the credit limit.

(2) If the differential treatment of this subsection based on the number of persons honoring a credit card is found to be unconstitutional, the parties may contract for the over-limit charge as described in this paragraph in any consumer credit transaction pursuant to open-end credit, and the other conditions relating to the over-limit charge shall remain in effect.

g. A surcharge as provided for in section 554.3512 for a dishonored check, draft, or order that was accepted as payment for a consumer credit transaction payment. The surcharge shall not be assessed against the maker if the reason for the dishonor of the instrument is that the maker has stopped payment pursuant to section 554.4403.

h. Charges for other benefits, including insurance, conferred on the consumer, if the benefits are of value to the consumer and if the charges are reasonable in relation to the benefits, are of a type which is not for credit, and are authorized as permissible additional charges by rule adopted by the administrator.

i. A reasonable annual account maintenance fee, payable in advance, for the privilege of maintaining a demand deposit account with a line of credit that may be accessed by the account holder writing a check.

j. For a consumer loan where the amount financed does not exceed three thousand dollars and the term of the loan does not exceed twelve months, a bank, credit union incorporated pursuant to state or federal law, or a federally chartered or out-of-state chartered savings bank or savings and loan association may charge an additional application fee not to exceed the lesser of ten percent of the amount financed or thirty dollars. If the loan is not approved, the application fee shall not exceed the lesser of ten percent of the amount applied for by the applicant or thirty dollars. The fee permitted pursuant to this paragraph shall not be charged in connection with a loan used for the purchase of a motor vehicle, or for a loan where the borrower's dwelling is used as security.

k. Credit reporting charges.

2. An additional charge may be made for insurance written in connection with the transaction, as follows:

a. With respect to insurance against loss of or damage to property, or against liability arising out of the ownership or use of property, if the creditor furnishes a clear, conspicuous and specific statement in writing to the consumer setting forth the cost of the insurance if obtained from or through the creditor and stating that the consumer may choose the person through whom the insurance is to be obtained.

b. With respect to consumer credit insurance providing life, accident, health, or unemployment coverage, if the insurance coverage is not required by the creditor, and this fact is clearly and conspicuously disclosed in writing to the consumer, and if, in order to obtain the insurance in connection with the extension of credit, the consumer gives specific dated and separately signed affirmative written indication of the consumer's desire to do so after written disclosure to the consumer of the cost. However, credit unemployment insurance shall be permitted under this paragraph if all of the following conditions have been met:

(1) The insurance provides coverage beginning with the first day of unemployment. However, the policy may include a waiting period before the consumer may file a claim.

(2) The insurance shall be sold separately and shall be separately priced from any other insurance offered or sold at the same time. The credit unemployment insurance need not be

sold separately or separately priced from other insurance offered if it is included as part of an insurance offering by a credit card issuer to its credit cardholders.

(3) The premium rates have been affirmatively approved by the insurance division of the department of commerce. In approving or establishing the rates, the division shall review the insurance company's actuarial data to assure that the rates are fair and reasonable. The insurance commissioner shall either hire or contract with a qualified actuary to review the data. The insurance division shall obtain reimbursement from the insurance company for the cost of the actuarial review prior to approving the rates. In addition, the rates shall be made in accordance with the following provisions:

(a) Rates shall not be excessive, inadequate or unfairly discriminatory.

(b) Due consideration shall be given to all relevant factors within and outside this state but rates shall be deemed to be reasonable under this section if they reasonably may be expected to produce a ratio of fifty percent by dividing claims incurred by premiums earned.

3. With respect to open-end credit obtained pursuant to a credit card issued by the creditor which entitles the cardholder to purchase or lease goods or services from at least one hundred persons not related to the card issuer, the creditor may contract for and receive any charge lawfully contained in a prior agreement between the consumer and a prior creditor from whom the creditor currently issuing the credit card acquired the credit card account, if the account was acquired in an arm's-length for-value sale from a nonrelated or nonaffiliated creditor. The creditor may charge any charge on new open-end credit accounts lawfully permitted in a prior agreement between a consumer and a prior creditor from whom the creditor currently issuing the credit card acquired the credit card accounts.

[C24, 27, 31, §9422; C35, §9438-f13; C39, §**9438.13;** C46, 50, 54, 58, 62, §536.13(6); C66, 71, 73, §536.13(6), 536A.23(6); C75, 77, 79, 81, §537.2501]

86 Acts, ch 1151, §1; 89 Acts, ch 68, §2, 3; 89 Acts, ch 296, §75; 95 Acts, ch 137, §1; 96 Acts, ch 1114, §1, 2; 99 Acts, ch 116, §1; 2007 Acts, ch 118, §2; 2012 Acts, ch 1017, §146; 2012 Acts, ch 1023, §157; 2014 Acts, ch 1037, §18; 2017 Acts, ch 138, §13 – 15

Referred to in §535.10, 536.27, 537.1301, 537.1303, 537.2503, 537.2504, 537.3611

537.2502 Delinquency charges.

1. With respect to a consumer credit transaction not pursuant to an open-end credit arrangement and other than a consumer lease or consumer rental purchase agreement, the parties may contract for a delinquency charge on any installment not paid in full within ten days after its due date, as originally scheduled or as deferred, in an amount as follows:

a. For a precomputed transaction, an amount not exceeding the greater of either of the following:

(1) Five percent of the unpaid amount of the installment, or a maximum of thirty dollars.

(2) The deferral charge that would be permitted to defer the unpaid amount of the installment for the period that it is delinquent.

b. For an interest-bearing transaction, an amount not exceeding five percent of the unpaid amount of the installment, or a maximum of thirty dollars.

2. A delinquency charge under subsection 1 may be collected only once on an installment however long it remains in default. No delinquency charge may be collected with respect to a deferred installment unless the installment is not paid in full within ten days after its deferred due date. A delinquency charge may be collected at the time it accrues or at any time afterward.

3. A delinquency charge shall not be collected under subsection 1, paragraph *"a"*, on an installment that is paid in full within ten days after its scheduled or deferred installment due date even though an earlier maturing installment or a delinquency or deferral charge on an earlier installment may not have been paid in full. For purposes of this subsection, payments associated with a precomputed transaction are applied first to current installments and then to delinquent installments.

4. With respect to open-end credit, the parties may contract for a delinquency charge on any payment not paid in full when due, as originally scheduled or as deferred, in an amount up to thirty dollars.

5. A delinquency charge under subsection 4 may be collected only once on a payment

however long it remains in default. A delinquency charge shall not be collected with respect to a deferred payment unless the payment is not paid in full on or before its deferred due date. A delinquency charge may be collected at the time it accrues or at any time afterward.

6. A delinquency charge shall not be collected under subsection 4 on a payment associated with a precomputed transaction that is paid in full on or before its scheduled or deferred due date even though an earlier maturing payment or a delinquency or deferred charge on an earlier payment has not been paid in full. For purposes of this subsection, payments are applied first to amounts due for the current billing cycle and then to delinquent payments.

[C66, 71, 73, §536.13(7), 536A.23(3); C75, 77, 79, 81, §537.2502]

89 Acts, ch 68, §4; 93 Acts, ch 124, §1; 95 Acts, ch 113, §1; 96 Acts, ch 1114, §3 – 5; 97 Acts, ch 187, §6, 7; 99 Acts, ch 15, §3; 2003 Acts, 1st Ex, ch 1, §125, 133

[2003 Acts, 1st Ex, ch 1, §125, 133, amendments to subsections 3 and 6 rescinded pursuant to *Rants v. Vilsack*, 684 N.W.2d 193]

2004 Acts, 1st Ex, ch 1001, §22, 23; 2017 Acts, ch 138, §16 – 18

Referred to in §535.10, 537.2510

537.2503 Deferral charges.

1. *a.* Before or after default in payment of a scheduled installment of a precomputed consumer credit transaction, the parties to the transaction may agree in writing to a deferral of all or part of one or more unpaid installments and the creditor may make at the time of deferral and receive at that time or at any time thereafter a deferral charge which is not in excess of one and one-half percent per month for the period of time for which it is deferred, but not to exceed the rate of finance charge which was required to be disclosed in the transaction to the consumer pursuant to section 537.3201 applied to each amount deferred for the period for which it is deferred. In computing a deferral charge for one or more months, any month may be counted as one-twelfth of a year and in computing a deferral charge for part of a month, a day shall be counted as one three hundred sixty-fifth of a year.

b. With respect to an interest-bearing consumer credit transaction not pursuant to an open-end credit arrangement and other than a consumer lease or consumer rental purchase agreement, the parties to the transaction may agree in writing to a deferral of all or part of one or more unpaid installments in addition to any interest accrued pursuant to the terms of the consumer credit transaction. The creditor may make at the time of deferral and receive at that time or at any time thereafter a deferral charge which shall not exceed thirty dollars per deferred installment.

2. In addition to the deferral charge permitted by this section, a creditor may make and receive appropriate additional charges as permitted under section 537.2501, and the amount of these charges which is not paid may be added to the amount deferred for the purpose of computing the deferral charge according to subsection 1.

3. The parties may agree in writing at the time of a precomputed consumer credit transaction that if an installment is not paid within ten days after its due date, the creditor may unilaterally grant a deferral and make charges as provided in this section. No deferral charge may be made for a period after the date that the creditor elects to accelerate the maturity of the transaction.

4. A delinquency charge made by the creditor on an installment may not be retained if a deferral charge is made pursuant to this section with respect to the period of delinquency.

[C66, 71, 73, §536.13(7), 537A.23(4); C75, 77, 79, 81, §537.2503]

2017 Acts, ch 139, §1

Referred to in §322.20, 537.1301

537.2504 Finance charge on refinancing.

With respect to a consumer credit transaction in which the rate of finance charge required to be disclosed in the transaction pursuant to section 537.3201 does not exceed eighteen percent per year, other than a consumer lease or a consumer rental purchase agreement, the creditor may, by agreement with the consumer, refinance the unpaid balance and may contract for and receive a finance charge based on the amount financed resulting from the refinancing at a rate not exceeding that permitted by the provisions on finance charge for consumer credit

sales other than open-end credit in section 537.2201 if a consumer credit sale is refinanced, the provisions on finance charge for a consumer loan other than a supervised loan in section 537.2401, subsection 1, or the provisions on finance charge for a supervised loan not pursuant to open-end credit in section 537.2401, subsection 2, as applicable, if a consumer loan is refinanced. With respect to a consumer credit transaction in which the rate of finance charge required to be disclosed in the transaction to the consumer pursuant to section 537.3201 exceeds eighteen percent per year, other than a consumer lease or a consumer rental purchase agreement, the creditor may by agreement with the consumer, refinance the unpaid balance and may contract for and receive a finance charge based on the amount financed resulting from the refinancing at a rate of finance charge not to exceed that which was required to be disclosed in the original transaction to the consumer pursuant to section 537.3201. For the purpose of determining the finance charge permitted, the amount financed resulting from the refinancing consists of:

1. If the transaction was not precomputed, the total of the unpaid balance of the amount financed and the accrued charges, including finance charges, on the date of the refinancing, or, if the transaction was precomputed, the amount determined by deducting the unearned portion of the finance charge and any other unearned charges, including charges for insurance or deferral charges, from the unpaid balance on the date of refinancing. For the purposes of this section, the unearned portion of the finance charge and deferral charge, if any, shall be determined as provided in section 537.2510, subsection 2, but without allowing any minimum charge.

2. Appropriate additional charges as permitted under section 537.2501, payment of which is deferred.

[C75, 77, 79, 81, §537.2504]

87 Acts, ch 80, §35; 2018 Acts, ch 1041, §127

Referred to in §537.2505, 537.2508, 537.3308

Code editor directive applied

537.2505 Finance charge on consolidation.

1. In this section, *"consumer credit transaction"* does not include a consumer lease or a consumer rental purchase agreement.

2. If a consumer owes an unpaid balance to a creditor with respect to a consumer credit transaction and becomes obligated on another consumer credit transaction with the same creditor, the parties may agree to a consolidation resulting in a single schedule of payments. If the previous consumer credit transaction was not precomputed, the parties may agree to add the unpaid amount of the amount financed and accrued charges including finance charges on the date of consolidation to the amount financed with respect to the subsequent consumer credit transaction. If the previous consumer credit transaction was precomputed, the parties may agree to refinance the unpaid balance pursuant to section 537.2504, and to consolidate the amount financed resulting from the refinancing by adding it to the amount financed with respect to the subsequent consumer credit transaction. In either case the creditor may contract for and receive a finance charge as provided in subsection 3, based on the aggregate amount financed resulting from the consolidation.

3. If all debts consolidated arise exclusively from consumer loans, the creditor may contract for and receive the finance charge permitted by the provisions on finance charge for consumer loans pursuant to section 537.2401. If the debts consolidated include a debt arising from a consumer credit sale, including a transaction pursuant to a lender credit card, the amount of the finance charge is governed by the provisions on finance charge for consumer credit sales in section 537.2201.

4. If a consumer owes an unpaid balance to a creditor with respect to a consumer credit transaction arising out of a consumer credit sale, and becomes obligated on another consumer credit transaction arising out of another consumer credit sale by the same seller, the parties may agree to a consolidation resulting in a single schedule of payments either pursuant to subsection 2 or by adding together the unpaid balances with respect to the two sales.

[C75, 77, 79, 81, §537.2505]

87 Acts, ch 80, §36

Referred to in §537.3302

537.2506 Advances to perform covenants of consumer.

1. If the agreement with respect to a consumer credit transaction other than a consumer lease or a consumer rental purchase agreement contains covenants by the consumer to perform certain duties pertaining to insuring or preserving collateral and the creditor pursuant to the agreement pays for performance of the duties on behalf of the consumer, the creditor may add the amounts paid to the debt. Within a reasonable time after advancing any sums, the creditor shall state to the consumer in writing the amount of the sums advanced, any charges with respect to this amount, and any revised payment schedule and, if the duties of the consumer performed by the creditor pertain to insurance, a brief description of the insurance paid for by the creditor including the type and amount of coverages. No further information need be given.

2. A finance charge may be made for sums advanced pursuant to subsection 1 at a rate not exceeding the rate of finance charge required to be stated to the consumer pursuant to law in the disclosure statement required by this chapter and the Truth in Lending Act, except that with respect to open-end credit the amount of the advance may be added to the unpaid balance of the debt and the creditor may make a finance charge not exceeding that permitted by section 537.2202 or 537.2402, as applicable.

[C75, 77, 79, 81, §537.2506]

87 Acts, ch 80, §37; 2018 Acts, ch 1041, §127

Code editor directive applied

537.2507 Attorney fees.

With respect to a consumer credit transaction, the agreement may not provide for the payment by the consumer of attorney fees. However, in a consumer credit transaction with an amount financed exceeding twenty-five thousand dollars secured by an interest in land, the agreement may provide for the payment by the consumer of reasonable attorney fees. A provision in violation of this section is unenforceable.

[C75, 77, 79, 81, §537.2507]

2014 Acts, ch 1037, §19

Referred to in §537.5201

537.2508 Conversion to open-end credit.

The parties may agree at or within ten days prior to the time of conversion to add the unpaid balance of a consumer credit transaction, other than a consumer lease or a consumer rental purchase agreement, not made pursuant to open-end credit to the consumer's open-end credit account with the creditor. The unpaid balance so added is an amount equal to the amount financed determined according to the provisions on finance charge on refinancing under section 537.2504.

[C75, 77, 79, 81, §537.2508]

87 Acts, ch 80, §38; 2018 Acts, ch 1041, §127

Code editor directive applied

537.2509 Right to prepay.

Subject to the provisions on prepayment and minimum charge under section 537.2510, the consumer may prepay in full the unpaid balance of a consumer credit transaction, other than a consumer lease or a consumer rental purchase agreement, at any time.

[C58, 62, 66, 71, 73, §322.3(6, *e*); C75, 77, 79, 81, §537.2509]

87 Acts, ch 80, §39

537.2510 Rebate upon prepayment.

1. Except as provided in this section, upon prepayment in full of a precomputed consumer credit transaction, the creditor shall rebate to the consumer an amount not less than the amount of rebate provided in subsection 2, paragraph *"a"*, or redetermine the earned finance charge as provided in subsection 2, paragraph *"b"*, and rebate any other unearned charges including charges for insurance. If the rebate otherwise required is less than one dollar, no rebate need be made.

2. The amount of rebate and the redetermined earned finance charge shall be as follows:

a. (1) The amount of rebate shall be determined by applying the rate of finance charge which was required to be disclosed in the transaction pursuant to section 537.3201, according to the actuarial method,

(a) If no deferral charges have been made in a transaction, to the unpaid balances and time remaining as originally scheduled for the period following prepayment.

(b) If a deferral charge has been made, to the unpaid balances and time remaining as deferred for the period following prepayment.

(2) The time remaining for the period following prepayment shall be either the full days following the prepayment; or both the full days, counting the date of prepayment, between the prepayment date and the end of the computational period in which the prepayment occurs, and the full computational periods following the date of prepayment to the scheduled due date of the final installment of the transaction.

b. The redetermined earned finance charge shall be determined by applying, according to the actuarial method, the rate of finance charge which was required to be disclosed in the transaction pursuant to section 537.3201 to the actual unpaid balances of the amount financed for the actual time the unpaid balances were outstanding as of the date of prepayment. Any delinquency or deferral charges collected before the date of prepayment shall be applied to reduce the amount financed as of the date collected.

3. Upon prepayment, but not otherwise, of a consumer credit transaction whether or not precomputed, other than a consumer lease, a consumer rental purchase agreement, or a transaction pursuant to open-end credit:

a. If the prepayment is in full, the creditor may collect or retain a minimum charge not exceeding five dollars in a transaction which had an amount financed of seventy-five dollars or less, or not exceeding seven dollars and fifty cents in a transaction which had an amount financed of more than seventy-five dollars, if the minimum charge was contracted for, and the finance charge earned at the time of prepayment is less than the minimum charge contracted for.

b. If the prepayment is in part, the creditor may not collect or retain a minimum charge.

4. For the purposes of this section, the following defined terms apply:

a. *"Computational period"* means the interval between scheduled due dates of installments under the transaction if the intervals are substantially equal or, if the intervals are not substantially equal, one month if the smallest interval between the scheduled due dates of installments under the transaction is one month or more, and otherwise one week.

b. The *"interval"* between specified dates means the interval between them including one or the other but not both of them. If the interval between the date of a transaction and the due date of the first scheduled installment does not exceed one month by more than fifteen days when the computational period is one month, or eleven days when the computational period is one week, the interval may be considered by the creditor as one computational period.

5. This section does not preclude the collection or retention by the creditor of delinquency charges under section 537.2502.

6. If the maturity is accelerated for any reason and judgment is obtained, the consumer is entitled to the same rebate as if payment had been made on the date maturity is accelerated.

7. Upon prepayment in full of a precomputed consumer credit transaction by the proceeds of consumer credit insurance, the consumer or the consumer's estate is entitled to the same rebate as though the consumer had prepaid the agreement on the date the proceeds of the insurance are paid to the creditor, but no later than ten business days after satisfactory proof of loss is furnished to the creditor.

8. This section does not apply to a financial institution as defined in section 537.1301.

[C66, 71, 73, §536.13(7), 536A.26; C75, 77, 79, 81, §537.2510]

87 Acts, ch 80, §40; 2012 Acts, ch 1023, §157; 2017 Acts, ch 138, §19

Referred to in §535.10, 536.27, 537.1303, 537.2201, 537.2401, 537.2504, 537.2509, 537.3203

PART 6

OTHER CREDIT TRANSACTIONS

Referred to in §322.33, 536.13, 536A.31, 537.2102

537.2601 Charges for other credit transactions.

1. With respect to a credit transaction other than a consumer credit transaction, the parties may contract for the payment by the debtor of any finance or other charge as permitted by law.

2. With respect to a credit transaction which would be a consumer credit transaction if a finance charge were made, a charge for delinquency may not exceed amounts allowed for finance charges for consumer credit sales pursuant to open-end credit.

[C75, 77, 79, 81, §537.2601]

2003 Acts, 1st Ex, ch 1, §126, 133

[2003 Acts, 1st Ex, ch 1, §126, 133, amendment to subsection 1 rescinded pursuant to *Rants v. Vilsack*, 684 N.W.2d 193]

2004 Acts, 1st Ex, ch 1001, §22, 23; 2018 Acts, ch 1041, §127

Referred to in §537.5201

Code editor directive applied

ARTICLE 3

REGULATION OF AGREEMENTS AND PRACTICES

Referred to in §322.33, 536.13, 536A.31, 537.1101

PART 1

GENERAL PROVISIONS

537.3101 Short title.

This article shall be known and may be cited as the *"Iowa Consumer Credit Code — Regulation of Agreements and Practices"*.

[C75, 77, 79, 81, §537.3101]

537.3102 Scope.

Part 2 applies to disclosure with respect to consumer credit transactions, other than consumer rental purchase agreements, and the provision in section 537.3201 applies to a sale of an interest in land or a loan secured by an interest in land, without regard to the rate of finance charge, if the sale or loan is otherwise a consumer credit sale or consumer loan. Parts 3 and 4 apply, respectively, to disclosure, limitations on agreements and practices, and limitations on consumer's liability with respect to certain consumer credit transactions. Part 5 applies to home solicitation sales. Part 6 applies to consumer rental purchase agreements.

[C75, 77, 79, 81, §537.3102]

87 Acts, ch 80, §41; 2001 Acts, ch 24, §58

PART 2

DISCLOSURE

Referred to in §537.3102

537.3201 Compliance with Truth in Lending Act.

A person upon whom the Truth in Lending Act imposes duties or obligations shall make or give to the consumer the disclosures, information and notices required of the person by that Act and in all respects shall comply with that Act. To the extent the Truth in Lending Act does not impose duties or obligations upon a person in a credit transaction, other than a

consumer lease, which is a consumer credit transaction under this chapter, the person shall make or give to the consumer disclosures, information and notices in accordance with the Truth in Lending Act, with respect to the credit transaction.

[C75, 77, 79, 81, §537.3201]

Referred to in §537.1202, 537.1301, 537.2401, 537.2503, 537.2504, 537.2510, 537.3102, 537.3212

537.3202 Consumer leases.

1. With respect to a consumer lease the lessor shall give to the consumer the following information:

a. Brief description or identification of the goods.

b. Amount of any payment required at the inception of the lease.

c. Amount paid or payable for official fees, registration, certificate of title, or license fees or taxes.

d. Amount of other charges not included in the periodic payments and a brief description of the charges.

e. Brief description of insurance to be provided or paid for by the lessor, including the types and amounts of the coverages.

f. Except with respect to a consumer lease made pursuant to a lender credit card, the number of periodic payments, the amount of each payment, the due date of the first payment, the due dates of subsequent payments or interval between payments, and the total amount payable by the consumer.

g. Statement of the conditions under which the consumer may terminate the lease prior to the end of the term.

h. Statement of the liabilities the lease imposes upon the consumer at the end of the term.

2. The disclosures required by this section are subject to the following:

a. They shall be made clearly and conspicuously in writing, a copy of which shall be delivered to the lessee.

b. They may be supplemented by additional information or explanations supplied by the lessor but none shall be stated, utilized or placed so as to mislead or confuse the lessee or contradict, obscure or detract attention from the information required to be disclosed by this section.

c. They need be made only to the extent applicable.

d. They shall be made on the assumption that all scheduled payments will be made when due and will comply with this section, although the assumption may be rendered inaccurate by an act, occurrence or agreement subsequent to the required disclosure.

e. They shall be made before the lease transaction is consummated but may be made in the lease to be signed by the lessee.

[C75, 77, 79, 81, §537.3202]

Referred to in §537.5201

537.3203 Notice to consumer.

The creditor shall give to the consumer a copy of any writing evidencing a consumer credit transaction, other than one pursuant to open-end credit, if the writing requires or provides for signature of the consumer. The writing evidencing the consumer's obligation to pay under a consumer credit transaction, other than one pursuant to open-end credit, shall contain a clear and conspicuous notice to the consumer that the consumer should not sign it before reading it, that the consumer is entitled to a copy of it, and, except in the case of a consumer lease, that the consumer is entitled to prepay the unpaid balance at any time with such penalty and minimum charges as the agreement and section 537.2510 may permit, and may be entitled to receive a refund of unearned charges in accordance with law. The following notices if clear and conspicuous comply with this section:

1. In all transactions to which this section applies:

NOTICE TO CONSUMER:

[1] Do not sign this paper before you read it.

[2] You are entitled to a copy of this paper.

[3] You may prepay the unpaid balance at any time without penalty and may be entitled to receive a refund of unearned charges in accordance with law.

2. In addition, in a transaction in which a minimum charge will be collected or retained, the notice to consumer shall state:

[4] If you prepay the unpaid balance, you may have to pay a minimum charge not greater than seven dollars and fifty cents.

[C58, 62, 66, 71, 73, §322.3(6, b); C75, 77, 79, 81, §537.3203]
2011 Acts, ch 25, §68; 2018 Acts, ch 1041, §127
Referred to in §322.33, 536.13, 536A.31, 537.5201
Code editor directive applied

537.3204 Notice of assignment.

A consumer is authorized to pay the original creditor until the consumer receives notification of assignment of rights to payment pursuant to a consumer credit transaction and that payment is to be made to the assignee. A notification which does not reasonably identify the rights assigned is ineffective. If requested by the consumer, the assignee must seasonably furnish reasonable proof that the assignment has been made and unless the assignee does so the consumer may pay the original creditor.

[C75, 77, 79, 81, §537.3204]

537.3205 Change in terms of open-end credit accounts.

1. Whether or not a change is authorized by prior agreement, a creditor may make a change in the terms of an open-end credit account applying to any balance incurred after the effective date of the change only if the creditor delivers or mails to the consumer a written disclosure of the change at least sixty days before the effective date of the change.

2. Unless authorized by this chapter or unless agreed to by the consumer, a creditor shall not change the terms of an open-end credit account, with respect to a balance incurred before the effective date of the change, which results in an increase of the rate of the finance charge or other charge or an increase in the amount of a periodic payment due, or which otherwise adversely affects the interests of the consumer with respect to the balance. The use by the consumer of an open-end account after the effective date of the change constitutes the agreement of the consumer if the consumer is notified as provided in subsection 1 that the use will constitute the agreement of the consumer.

3. Notwithstanding subsection 2, a creditor may make a change in the terms of an open-end credit account with respect to a balance incurred before the effective date of the change if the creditor gives a written disclosure as provided in subsection 1 and if the credit card account is part of a portfolio of credit card accounts acquired in a bulk acquisition of the portfolio.

4. A disclosure provided for in subsection 1 is mailed to the consumer when mailed to the consumer at the consumer's address used by the creditor for mailing the consumer periodic billing statements.

5. If a creditor attempts to make a change in the terms of an open-end credit account without complying with this section, any additional cost or charge to the consumer resulting from the change is an excess charge and is subject to the remedies available to the consumer under section 537.5201 and to the administrator under section 537.6113.

6. Notwithstanding subsections 1 through 5, a creditor is not required to deliver or mail to the consumer a written disclosure of a change in the terms of an open-end credit account if the change involves a decrease in the rate of the finance charge, a decrease in a delinquency charge, or a decrease in an over-limit charge.

[C75, 77, 79, 81, §537.3205]
84 Acts, ch 1237, §3; 91 Acts, ch 118, §2, 3; 96 Acts, ch 1057, §1

537.3206 Receipt — statements of account — evidence of payment — credits.

1. The creditor shall deliver or mail to the consumer, without request, a written receipt

for each payment by coin or currency on an obligation pursuant to a consumer credit transaction. A periodic statement for a computational period showing a payment received by mail complies with this subsection.

2. Upon written request of a consumer, the person to whom an obligation is owed pursuant to a consumer credit agreement shall provide a written statement of the dates and amounts of payments made within the twelve months preceding the month in which the request is received and the total amount unpaid as of the end of the period covered by the statement. The statement shall be provided without charge once during each year of the term of the obligation. If additional statements are requested the creditor may charge not in excess of three dollars for each additional statement.

3. After a consumer has fulfilled all obligations with respect to a consumer credit transaction, other than one pursuant to open-end credit, the person to whom the obligation was owed shall, upon request of the consumer, deliver or mail to the consumer written evidence acknowledging payment in full of all obligations with respect to the transaction.

4. *a.* A creditor shall credit a payment to the consumer's account as of the date of receipt, except when a delay in crediting does not result in a finance or other charge, including a late charge, or except as provided in paragraph *"b"*. For purposes of this subsection, a delay in posting does not violate this subsection so long as the payment is credited as of the date of receipt.

b. If a creditor specifies requirements for the consumer to follow in making payments on the contract, payment coupon book, payment coupon or statement, or periodic statement, but accepts a payment that does not conform to the requirements, the creditor shall credit the payment within two days of receipt of such payment.

c. If a creditor fails to credit a payment as required by this subsection in time to avoid the imposition of a finance or other charge, including a delinquency charge, the creditor shall adjust the consumer's account so that the charges imposed are credited to the consumer's account during the next payment period.

[C75, 77, 79, 81, §537.3206]

99 Acts, ch 15, §4; 2018 Acts, ch 1041, §127

Referred to in §322.33, 535.14, 536.13, 536A.31, 537.5201

Code editor directive applied

537.3207 Form of insurance premium loan agreement.

An agreement pursuant to which an insurance premium loan is made shall contain the names of the insurance producer negotiating each policy or contract and of the insurer issuing each policy or contract, the number and inception date of, and premium for, each policy or contract, the date on which the term of the loan begins, and a clear and conspicuous notice that each policy or contract may be canceled if payment is not made in accordance with the agreement. If a policy or contract has not been issued when the agreement is signed, the agreement may provide that the insurance producer may insert the appropriate information in the agreement and, if they do so, shall furnish the information promptly in writing to the insured.

[C75, 77, 79, 81, §537.3207]

2001 Acts, ch 16, §35, 37

Referred to in §537.5201

537.3208 Notice to cosigners and similar parties.

1. No natural person, other than the spouse of the consumer, is obligated as a cosigner, comaker, guarantor, endorser, surety, or similar party with respect to a consumer credit transaction, unless before or contemporaneously with signing any separate agreement of obligation or any writing setting forth the terms of the debtor's agreement, the person receives a separate written notice that contains a completed identification of the debt the person may have to pay and reasonably informs the person of the person's obligation with respect to it.

2. A clear and conspicuous notice in substantially the following form complies with this section:

NOTICE

You agree to pay the debt identified below although you may not personally receive any property, services, or money. You may be sued for payment although the person who receives the property, services, or money is able to pay. This notice is not the contract that obligates you to pay the debt. Read the contract for the exact terms of your obligation.

IDENTIFICATION OF DEBT
YOU MAY HAVE TO PAY

.....
(name of debtor)
.....
(name of creditor)
.....
(date)
.....
(kind of debt)
I have received a copy of this notice.
.....
(Date)
.....
(Signed)

3. The notice required by this section need not be given to a seller, lessor, or lender who is obligated to an assignee of the seller's, lessor's, or lender's rights.

4. A person entitled to notice under this section shall also be given a copy of any writing setting forth the terms of the debtor's agreement and of any separate agreement of obligation signed by the person entitled to the notice.

[C75, 77, 79, 81, §537.3208]
Referred to in §537.5201

537.3209 Advertising.

1. A seller, lessor, or lender shall not advertise, print, display, publish, distribute, utter or broadcast, or cause to be advertised, printed, displayed, published, distributed, uttered or broadcast in any manner, any false, misleading, or deceptive statement or representation with regard to the rates, terms or conditions of credit with respect to a consumer credit transaction.

2. Advertising that complies with the Truth in Lending Act does not violate this section.

3. This section does not apply to the owner or personnel, as such, of any medium in which an advertisement appears or through which it is disseminated.

[C24, 27, 31, §9432; C35, §9438-f12; C39, §**9438.12;** C46, 50, 54, 58, 62, §536.12; C66, 71, 73, §536.12, 536A.20; C75, 77, 79, 81, §537.3209]
Referred to in §322.33, 536.13, 536A.31, 537.1201

537.3210 Prohibited statements relating to rates.

A creditor shall not state the rate of a finance charge to a consumer, in response to any inquiry, or in any advertisement, in the form of an add-on or discount rate, or in any form other than the rate calculated according to the actuarial method as a percent per year on the unpaid balances of the amount financed, or the annual percentage rate required to be disclosed under the Truth in Lending Act.

[C75, 77, 79, 81, §537.3210]
Referred to in §536A.23, 536A.31, 537.1201, 537.5201

537.3211 Notice of consumer paper.

Every note which is a negotiable instrument as provided in section 554.3104 taken in a consumer credit transaction, if the writing requires or provides for a signature of the consumer, shall conspicuously show on its face the following:

This is a consumer credit transaction.

[C75, 77, 79, 81, §537.3211]
94 Acts, ch 1167, §3, 122
Referred to in §537.5201

537.3212 Notice of methods of financing and rates.

1. With respect to a consumer who has an open-end credit account with a creditor, and with respect to a creditor which offers to some or all of its customers consumer credit sales of goods or services both pursuant to open-end credit and not pursuant to open-end credit, that creditor shall give written notice to that consumer of those alternative methods at the times provided in subsection 3. The notice shall be as provided in subsection 2.

2. The notice required by this section shall conspicuously state the highest finance charge charged by that creditor to any consumer within the last calendar year for each type of credit sale. Such finance charge shall be stated as an annual percentage rate in such form as is required pursuant to section 537.3201 for each type of credit sale described in subsection 1, and the terms of repayment for each type of credit sale.

3. This section is complied with if notice is given at the following times:

a. With respect to an existing open-end credit account holder, in a writing contained as a part of, or mailed with a periodic statement mailed to the account holders and no less than once every six months.

b. With respect to a consumer not holding an existing open-end credit account, if the written notice is presented to the person at the time of the consumer credit transaction, and thereafter as provided in paragraph "*a*".

[C75, 77, 79, 81, §537.3212]
2018 Acts, ch 1041, §127
Referred to in §535.11
This section not applicable under §535.11(6)
Code editor directive applied

PART 3

LIMITATIONS ON AGREEMENTS AND PRACTICES

Referred to in §537.3102

537.3301 Security in consumer credit transactions.

1. With respect to a consumer credit sale, a seller may take a security interest in the property sold. In addition, a seller may take a security interest in goods upon which services are performed or in which goods sold are installed or to which they are annexed, or in land to which the goods are affixed or which is maintained, repaired or improved as a result of the sale of the goods or services, if in the case of a security interest in land the amount financed is one thousand dollars or more, or in the case of a security interest in goods if either the amount financed is three hundred dollars or more, or if the goods are household goods, or motor vehicles used by a consumer, the consumer's dependents, or the family with which the consumer resides, as transportation to and from a place of employment, one hundred dollars or more. Except as provided with respect to cross-collateral under section 537.3302, a seller may not otherwise take a security interest in property to secure the debt arising from a consumer credit sale.

2. With respect to a consumer lease, a lessor may not take a security interest in property to secure the debt arising from the lease. This subsection does not apply to a security deposit for a consumer lease or a consumer rental purchase agreement.

3. With respect to a supervised loan, a lender may not take a security interest, other than a purchase money security interest, in the clothing, one dining table and set of chairs, one refrigerator, one heating stove, one cooking stove, one radio, beds and bedding, one couch, two living room chairs, cooking utensils, or kitchenware used by the consumer, the consumer's dependents, or the family with whom the consumer resides.

4. A security interest taken in violation of this section is void.

[C75, 77, 79, 81, §537.3301]

87 Acts, ch 80, §42

Referred to in §537.3302, 537.5201

537.3302 Cross-collateral.

1. In addition to contracting for a security interest pursuant to the provisions on security in consumer credit transactions under section 537.3301, a seller in a consumer credit sale may secure the debt arising from the sale by contracting for a security interest in other property if as a result of a prior sale the seller has an existing security interest in the other property. The seller may also contract for a security interest in the property sold in the subsequent sale as security for the previous debt.

2. If the seller contracts for a security interest in other property pursuant to this section, the rate of finance charge thereafter on the aggregate unpaid balances so secured may not exceed that permitted if the balances so secured were consolidated pursuant to the provisions on finance charge on consolidation under section 537.2505. The seller has a reasonable time after so contracting to make any adjustments required by this section.

[C75, 77, 79, 81, §537.3302]

Referred to in §537.3301

537.3303 Debt secured by cross-collateral.

1. If debts arising from two or more consumer credit sales, other than sales pursuant to open-end credit, are secured by cross-collateral or consolidated into one debt payable on a single schedule of payments, and the debt is secured by security interests taken with respect to one or more of the sales, payments received by the seller after the taking of the cross-collateral or the consolidation are deemed, for the purpose of determining the amount of the debt secured by the various security interests, to have been first applied to the payment of the debts arising from the sales first made. To the extent debts are paid according to this section, security interests in items of property terminate as the debt originally incurred with respect to each item is paid.

2. Payments received by the seller upon an open-end credit account are deemed, for the purpose of determining the amount of the debt secured by the various security interests, to have been applied first to the payment of finance charges in the order of their entry to the account and then to the payment of debts in the order in which the entries to the account showing the debts were made.

3. If the debts consolidated arose from two or more sales made on the same day, payments received by the seller are deemed, for the purpose of determining the amount of the debt secured by the various security interests, to have been applied first to the payment of the smallest debt.

[C75, 77, 79, 81, §537.3303]

2018 Acts, ch 1041, §127

Code editor directive applied

537.3304 Use of multiple agreements.

1. With respect to a sale or loan other than a supervised loan, a creditor may not use multiple agreements in what is in substance a single transaction, with intent to obtain a higher finance charge than would otherwise be permitted by the provisions of article 2 of this chapter.

2. With respect to a supervised loan, a lender may not use multiple agreements with intent to obtain a higher finance charge than would otherwise be permitted. For the purposes of this subsection, multiple agreements are used if a lender allows any person, or husband and wife, to become obligated in any way under more than one loan agreement with the lender or with a person related to the lender.

3. The excess amount of finance charge obtained in violation of this section is an excess

charge for the purposes of the provisions on rights of parties in section 537.5201 and the provisions on civil actions by the administrator in section 537.6113.

[C35, §9438-f13; C39, §**9438.13;** C46, 50, 54, 58, 62, §536.13(6); C66, 71, 73, §536.13(6), 536A.24; C75, 77, 79, 81, §537.3304]

Referred to in §322.33, 536.13, 536A.31

537.3305 No assignment of earnings.

1. A creditor may not take an assignment of earnings of the consumer for payment or as security for payment of a debt arising out of a consumer credit transaction. An assignment of earnings in violation of this section is unenforceable by the assignee of the earnings and revocable by the consumer. This section does not prohibit a consumer from authorizing deductions in favor of a creditor if the authorization is revocable, the consumer is given a complete copy of the writing evidencing the authorization at the time the consumer signs it, and the writing contains on its face a conspicuous notice of the consumer's right to revoke the authorization.

2. A sale of unpaid earnings made in consideration of the payment of money to or for the account of the seller of the earnings is deemed to be a loan to the seller secured by an assignment of earnings.

[C24, 27, 31, §9427, 9428; C35, §9438-f17; C39, §**9438.17;** C46, 50, 54, 58, 62, 66, 71, 73, §536.17; C75, 77, 79, 81, §537.3305]

Referred to in §322.33, 536.13, 536A.31, 537.5201

537.3306 Authorization to confess judgment prohibited.

Unless executed after default on a claim arising out of a consumer credit transaction, authorization for a judgment by confession on that claim pursuant to chapter 676 is void. Any other authorization by a consumer for any person to confess judgment on the claim, whenever executed, is void.

[C24, 27, 31, §9426; C35, §9438-f12; C39, §**9438.12;** C46, 50, 54, 58, 62, 66, 71, 73, §536.12; C75, 77, 79, 81, §537.3306]

Referred to in §322.33, 536.13, 536A.31, 537.5201

537.3307 Certain negotiable instruments prohibited.

With respect to a consumer credit sale or consumer lease, the creditor may not take a negotiable instrument other than a check or credit union share draft dated not later than ten days after its issuance as evidence of the obligation of the consumer.

[C75, 77, 79, 81, §537.3307]

Referred to in §537.3404, 537.5201

537.3308 Balloon payments.

1. Except as provided in subsection 2, if any scheduled payment of a consumer credit transaction is more than twice as large as the average of earlier scheduled payments, the consumer has the right to refinance the amount of that payment at the time it is due without penalty, as provided in section 537.2504. The terms of the refinancing shall be no less favorable to the consumer than the terms of the original transaction.

2. This section does not apply to any of the following:

a. A consumer lease.

b. A transaction pursuant to open-end credit.

c. A transaction to the extent that the payment schedule is adjusted to the seasonal or irregular income or scheduled payments of obligations of the consumer.

d. A transaction of a class defined by rule of the administrator as not requiring for the protection of the consumer a right to refinance as provided in this section.

e. A consumer loan in which the amount financed exceeds five thousand dollars and is secured by an interest in land.

f. A consumer rental purchase agreement.

g. A consumer loan secured by a certificate of title in a motor vehicle.

[C75, 77, 79, 81, §537.3308; 82 Acts, ch 1153, §17]

87 Acts, ch 80, §43; 2001 Acts, ch 21, §1; 2018 Acts, ch 1041, §127

Code editor directive applied

537.3309 Referral sales and leases.

A practice unlawful under section 714.16, subsection 2, paragraph *"b"*, if done in connection with a consumer credit sale or consumer lease, is a violation of this chapter for which the consumer has a cause of action under section 537.5201, subsection 1. The administrator has all powers granted under article 6, part 1, to enforce the provisions of section 714.16, subsection 2, paragraph *"b"*. If a consumer is induced by a violation of section 714.16, subsection 2, paragraph *"b"* to enter into a consumer credit sale or consumer lease, the agreement is unenforceable by the seller or lessor and the consumer, at the consumer's option, in addition to other remedies, may rescind the agreement or retain the goods delivered and the benefit of any services performed, without any obligation to pay for them.

[C75, 77, 79, 81, §537.3309]

Referred to in §537.5201

537.3310 Limitations on executory transactions.

1. In a consumer credit transaction, other than a consumer rental purchase agreement, if performance by a creditor is by delivery of goods, services, or both, in four or more installments, either on demand of the consumer or by prearranged scheduled performance, the consumer may cancel the obligation with respect to that part which has not been performed on the date of cancellation.

2. If the consumer exercises the right to cancel or, in any event, if the creditor attempts to exercise a right to accelerate, the creditor is entitled to recover only that part of the cash price and charges attributable to the part of the creditor's obligation which has been performed.

3. Cancellation under this section shall be effective when the consumer mails or delivers a written notice of cancellation.

4. Notwithstanding an agreement to the contrary, a creditor may not exercise a right to accelerate beyond the amount set forth in subsection 2.

5. Subsections 1 through 4 do not apply to a membership camping contract which is subject to the requirements of chapter 557B.

[C75, 77, 79, 81, §537.3310]

87 Acts, ch 80, §44; 87 Acts, ch 181, §4

Referred to in §537.5201, 557B.14

537.3311 Discrimination prohibited.

A creditor shall not refuse to enter into a consumer credit transaction or impose finance charges or other terms or conditions more onerous than those regularly extended by that creditor to consumers of similar economic backgrounds due to any of the following:

1. The age, color, creed, national origin, political affiliation, race, religion, sex, marital status, or disability of the consumer.

2. The consumer receives public assistance, social security benefits, pension benefits, or the like.

3. The exercise by the consumer of rights pursuant to this chapter or the federal Consumer Credit Protection Act, 15 U.S.C. §1601 et seq.

[C75, 77, 79, 81, §537.3311]

2003 Acts, ch 54, §1

Referred to in §537.1201, 537.5201

See also §216.10

PART 4

LIMITATIONS ON CONSUMER'S LIABILITY

Referred to in §537.3102

537.3401 Restriction on liability in consumer lease.

The obligation of a lessee upon expiration of a consumer lease may not exceed twice the average payment allocable to a monthly period under the lease. This limitation does not apply to charges for damages to the leased property or for other default.

[C75, 77, 79, 81, §537.3401]

537.3402 Limitation on default charges.

Except for reasonable expenses incurred in realizing on a security interest, the agreement with respect to a consumer credit transaction other than a consumer lease may not provide for any charges as a result of default by the consumer other than those authorized by this chapter. A provision in violation of this section is unenforceable.

[C75, 77, 79, 81, §537.3402]

Referred to in §322.20, 537.5201

537.3403 Card issuer subject to claims and defenses.

1. This section neither limits the liability of nor imposes liability on a card issuer as a manufacturer, supplier, seller, or lessor of property or services sold or leased pursuant to the credit card. This section may subject a card issuer to claims and defenses of a cardholder against a seller or lessor arising from sales or leases made pursuant to the credit card.

2. A card issuer is subject to claims and defenses of a cardholder against the seller or lessor arising from the sale or lease of property or services by a seller or lessor licensed, franchised, or permitted by the card issuer or a person related to the card issuer to do business under the trade name or designation of the card issuer or a person related to the card issuer, to the extent of the original amount owing to the card issuer with respect to the sale or lease of the property or services as to which the claim or defense arose.

3. Except as otherwise provided in subsection 2, a card issuer, including a lender credit card issuer, is subject to all claims and defenses of a cardholder against the seller or lessor arising from the sale or lease of property or services pursuant to the credit card only if all of the following apply:

a. The original amount owing to the card issuer with respect to the sale or lease of the property or services as to which the claim or defense arose exceeds fifty dollars.

b. The residence of the cardholder and the place where the sale or lease occurred are in the same state or within one hundred miles of each other.

c. The cardholder has made a good faith attempt to obtain satisfaction from the seller or lessor with respect to the claim or defense.

4. Except as otherwise provided in subsection 2, a card issuer, including a lender credit card issuer, is subject to claims and defenses only to the extent of the amount owing to the card issuer with respect to the sale or lease of the property or services as to which the claim or defense arose at the time the card issuer has notice of the claim or defense. Notice of the claim or defense may be given prior to the attempt to obtain satisfaction specified in subsection 3. Written notice is effective when mailed or delivered.

5. For the purpose of determining the amount owing to the card issuer with respect to the sale or lease upon an open-end credit account, payments received for the account are deemed to have been first applied to the payment of finance charges in the order of their entry to the account and then to the payment of debts in the order in which the entries of the debts are made to the account.

6. Except as provided in section 537.1107, an agreement may not contain a provision to limit or waive the claims or defenses of a cardholder under this section. A provision in violation of this subsection is unenforceable.

[C75, 77, 79, 81, §537.3403]

2018 Acts, ch 1041, §127

Referred to in §537.5201

Code editor directive applied

537.3404 Assignee subject to claims and defenses.

1. With respect to a consumer credit sale or consumer lease, an assignee of the rights of the seller or lessor is subject to all claims and defenses of the consumer against the seller or lessor arising from the sale or lease of property or services, notwithstanding that the assignee is a holder in due course of a negotiable instrument issued in violation of the provisions prohibiting certain negotiable instruments in section 537.3307; unless the consumer has agreed in writing not to assert against an assignee a claim or defense arising out of such sale, and the consumer's contract has been assigned to an assignee not related to the seller who acquired the consumer's contract in good faith and for value and who

gives the consumer notice of the assignment as provided in this subsection and who within thirty days after the mailing of the notice receives no written notice of the facts giving rise to the consumer's claim or defense. Such agreement not to assert a claim or defense is not valid if the assignee receives such written notice from the consumer within such thirty-day period. The notice of assignment shall be in writing and addressed to the consumer at the consumer's address as stated in the contract, identify the contract, describe the property purchased by the consumer, state the names of the seller and consumer, the name and address of the assignee, the amount payable by the consumer and the number, amounts and due dates of the installments, and contain a conspicuous notice to the consumer that the consumer has thirty days from the date of the mailing of the notice to the consumer within which to notify the assignee in writing of any claims or defenses the consumer may have against the seller and that if written notification of any such claims or defenses is not received by the assignee within such thirty-day period, the assignee will have the right to enforce the contract free of any claims or defenses the consumer may have against the seller. An assignee does not acquire a consumer's contract in good faith within the meaning of this subsection if the assignee has knowledge or, from the assignee's course of dealing with the seller or the assignee's records, notice of substantial complaints by other consumers of the seller's failure or refusal to perform the seller's contracts with them and of the seller's failure to remedy the seller's defaults within a reasonable time after the assignee notifies the seller of the complaints.

2. A claim or defense of a consumer specified in subsection 1 may be asserted against the assignee under this section only if the consumer has made a good faith attempt to obtain satisfaction from the seller or lessor with respect to the claim or defense, and only to the extent of the amount owing to the assignee with respect to the sale or lease of the property or services as to which the claim or defense arose, at the time the assignee has notice of the claim or defense. Notice of the claim or defense may be given prior to the attempt specified in this subsection. Written notice is effective when mailed or delivered.

3. For the purpose of determining the amount owing to the assignee with respect to the sale or lease:

a. Payments received by the assignee after the consolidation of two or more consumer credit sales, other than pursuant to open-end credit, are deemed to have been first applied to the payment of the sales first made, and if the sales consolidated arose from sales made on the same day, payments are deemed to have been first applied to the smaller or smallest sale or sales.

b. Payments received upon an open-end credit account are deemed to have been first applied to the payment of finance charges in the order of their entry to the account and then to the payment of debts in the order in which the entries of the debts are made to the account.

4. Except as provided in section 537.1107, an agreement may not contain a provision to limit or waive the claims or defenses of a consumer under this section. A provision in violation of this subsection is unenforceable.

[C75, 77, 79, 81, §537.3404]
2018 Acts, ch 1041, §127
Referred to in §537.5201
Code editor directive applied

537.3405 Lender subject to defenses arising from sales and leases.

1. A lender, other than the issuer of a lender credit card, who, with respect to a particular transaction, makes a consumer loan for the purpose of enabling a consumer to buy or lease from a particular seller or lessor property or services, is subject to all claims and defenses of the consumer against the seller or lessor arising from that sale or lease of the property or services if any of the following are applicable:

a. The lender knows that the seller or lessor arranged for a commission, brokerage, or referral fee, for the extension of credit by the lender.

b. The lender is a person related to the seller or lessor, unless the relationship is remote or is not a factor in the transaction.

c. The seller or lessor guarantees the loan or otherwise assumes the risk of loss by the lender upon the loan.

d. The lender directly supplies the seller or lessor with the contract document used by the consumer to evidence the loan, and the seller or lessor has knowledge of the credit terms and participates in the preparation of the document.

e. The loan is conditioned upon the consumer's purchase or lease of the property or services from the particular seller or lessor, but the lender's payment of proceeds of the loan to the seller or lessor does not in itself establish that the loan was so conditioned.

f. The lender otherwise knowingly participates with the seller in the sale. The fact that the lender takes a security interest in property sold in that sale, or makes the proceeds of the loan payable to the seller does not in itself constitute knowing participation in the sale.

2. A claim or defense of a consumer specified in subsection 1 may be asserted against the lender under this section only if the consumer has made a good faith attempt to obtain satisfaction from the seller or lessor with respect to the claim or defense and only to the extent of the amount owing to the lender with respect to the sale or lease of the property or services as to which the claim or defense arose at the time the lender has notice of the claim or defense. Notice of the claim or defense may be given prior to the attempt specified in this subsection. Written notice is effective when mailed or delivered.

3. For the purpose of determining the amount owing to the lender with respect to the sale or lease:

a. Payments received by the lender after the consolidation of two or more consumer loans, other than pursuant to open-end credit, are deemed to have been first applied to the payment of the loans first made, and if the loans consolidated arose from loans made on the same day, payments are deemed to have been first applied to the smaller or smallest loan or loans.

b. Payments received upon an open-end credit account are deemed to have been first applied to the payment of finance charges in the order of their entry to the account and then to the payment of debts in the order in which the entries of the debts are made to the account.

4. Except as provided in section 537.1107, an agreement may not contain a provision to limit or waive the claims or defenses of a consumer under this section. A provision in violation of this section is unenforceable.

[C75, 77, 79, 81, §537.3405]

2018 Acts, ch 1041, §127

Referred to in §537.3501, 537.5201

Code editor directive applied

PART 5

HOME SOLICITATION SALES

Referred to in §537.3102

537.3501 Door-to-door sales.

In a consumer credit sale or a sale in which the goods or services are paid for in whole or in part by a lender credit card or a consumer loan in which the lender is subject to defenses arising from the sale under section 537.3405, a consumer has, in addition to all the rights and remedies provided by chapter 555A, a cause of action under section 537.5201, subsection 1, and the administrator has all powers granted under article 6, part 1, to enforce the provisions of chapter 555A.

[C75, 77, 79, 81, §537.3501]

Referred to in §537.1201, 537.5201

PART 6

CONSUMER RENTAL PURCHASE AGREEMENTS

Referred to in §537.3102

537.3601 Short title.

This part of article 3 may be known and may be cited as the *"Consumer Rental Purchase Agreement Act"*.

87 Acts, ch 80, §1

537.3602 Purposes — rules of construction.

1. This part shall be liberally construed and applied to promote its underlying purposes and policies.

2. The underlying purposes and policies of this part are to:

a. Define, simplify, and clarify the law governing consumer rental purchase agreements.

b. Provide certain disclosures to consumers who enter into consumer rental purchase agreements, and further consumer understanding of the terms of consumer rental purchase agreements.

c. Protect consumers against unfair practices.

d. Permit and encourage the development of fair and economically sound rental purchase practices.

e. Make the law on consumer rental purchase agreements, including administrative rules, more uniform among the various uniform consumer credit code jurisdictions.

3. A reference to a requirement imposed by this part includes a reference to a related rule of the administrator adopted pursuant to this chapter.

87 Acts, ch 80, §2

537.3603 Exclusions.

This part does not apply to, and an agreement which complies with this part is not governed by, the provisions regarding:

1. A consumer credit sale as defined in section 537.1301, subsection 13.

2. A consumer lease as defined in section 537.1301, subsection 14.

3. A consumer loan as defined in section 537.1301, subsection 15.

4. A lease or agreement which constitutes a *"credit sale"* as defined in 12 C.F.R. §226.2(a16), and the Truth in Lending Act, 15 U.S.C. §1602(g), or an agreement which constitutes a *"sale of goods"* under section 537.1301, subsection 39.

5. A lease which constitutes a consumer lease as defined in 12 C.F.R. §213.2(a6).

6. A lease or agreement which constitutes a security interest as defined in section 554.1201, subsection 2.

87 Acts, ch 80, §3; 88 Acts, ch 1134, §97; 2007 Acts, ch 41, §41

537.3604 General definitions.

As used in this part, unless otherwise required by the context:

1. *"Administrator"* means the administrator as designated in section 537.6103.

2. *"Advertisement"* means a commercial message in any medium, including signs, window displays, and price tags, that promotes, directly or indirectly, a consumer rental purchase agreement.

3. *"Cash price"* means the price at which the lessor in the ordinary course of business would offer to sell the personal property to the lessee for cash on the date of the consumer rental purchase agreement.

4. *"Consummation"* means the time at which the lessee enters into a consumer rental purchase agreement.

5. *"Lessee"* means a natural person who rents personal property under a consumer rental purchase agreement for personal, family, or household use.

6. *"Lessor"* means a person who, in the ordinary course of business, regularly leases, offers to lease, or arranges for the leasing of property under a consumer rental purchase agreement.

7. *"Personal property"* means any property that is not real property under the laws of this state when it is made available for a consumer rental purchase agreement. For the purposes of this part, *"personal property"* does not include a motor vehicle, a manufactured home, or a manufactured or mobile home as defined in section 321.1.

8. *"Consumer rental purchase agreement"* means an agreement for the use of personal property in which all of the following are applicable:

a. The lessor is regularly engaged in the rental purchase business.

b. The agreement is for an initial period of four months or less, whether or not there is any obligation beyond the initial period, that is automatically renewable with each payment and that permits the lessee to become the owner of the property.

c. The lessee is a person other than an organization.

d. The lessee takes under the consumer rental purchase agreement primarily for a personal, family, or household purpose.

e. The amount payable under the consumer rental purchase agreement does not exceed the threshold amount.

87 Acts, ch 80, §4; 2008 Acts, ch 1025, §2; 2014 Acts, ch 1037, §20
Referred to in §423.31, 535.17, 537.1301

537.3605 Disclosures.

In a consumer rental purchase agreement, the lessor shall disclose the following items, as applicable:

1. The total of scheduled payments accompanied by an explanation that this term means the *"total dollar amount of lease payments you will have to make to acquire ownership"*.

2. By item, the total number, amounts, and timing of all lease payments and other charges including taxes or official fees paid to or through the lessor which are necessary to acquire ownership of the property.

3. Any initial or advance payment such as a delivery charge, security deposit, or trade-in allowance.

4. A statement that the lessee will not own the property until the lessee has made the total of payments necessary to acquire ownership of the property.

5. A statement that the total of payments does not include additional charges such as late payment charges, and a separate listing and explanation of these charges as applicable.

6. If applicable, a statement that the lessee is responsible for the fair market value of the property if and as of the time it is lost, stolen, damaged, or destroyed.

7. A description of the goods or merchandise including model numbers as applicable and a statement indicating whether the property is new or used. It is not a violation of this subsection to indicate that the property is used if it is actually new.

8. A statement that at any time after the first periodic payment is made, the lessee may acquire ownership of the property by exercising the option to purchase the property, and at what price, or by what formula or method the purchase price will be determined. It is not a violation of this subsection for the lessor and the lessee to agree in writing to allow the lessee to acquire ownership of the property for less than the amounts referred to in this subsection.

9. The cash price of the merchandise.

87 Acts, ch 80, §5; 89 Acts, ch 128, §1
Referred to in §537.3606, 537.3608, 537.3610, 537.3612, 537.3616

537.3606 Form requirements.

1. The disclosure information required by section 537.3605 and this section shall be disclosed in a consumer rental purchase agreement, and shall meet the following requirements:

a. Be made clearly and conspicuously with items appearing in logical order and segregated as appropriate for readability and clarity.

b. Be made in writing.

c. Except as provided in subsection 2 or in rules adopted by the administrator, need not be contained in a single writing or made in the order set forth in section 537.3605.

d. May be supplemented by additional information or explanations supplied by the

lessor, but none shall be stated, used or placed so as to mislead or confuse the lessee, or to contradict, obscure, or detract attention from the information required by section 537.3605, and so long as the additional information or explanations do not have the effect of circumventing, evading, or unduly complicating the information required to be disclosed by section 537.3605.

2. The lessor shall disclose all information required by section 537.3605 before the consumer rental purchase agreement is consummated. These disclosures shall be made on the face of the writing evidencing the consumer rental purchase agreement.

3. Before any payment is due, the lessor shall furnish the lessee with an exact copy of each consumer rental purchase agreement, which shall be signed by the lessee and which shall evidence the lessee's agreement. If there is more than one lessee in a consumer rental purchase agreement, delivery of a copy of the consumer rental purchase agreement to one of the lessees constitutes compliance with this part; however, a lessee not signing the agreement is not liable under it.

4. The administrator may adopt by rule requirements for the order, acknowledgment by initialing, and conspicuousness of the disclosures set forth in section 537.3605. These rules may allow these disclosures to be made in accordance with model forms prepared by the administrator.

5. The terms of the consumer rental purchase agreement, except as otherwise provided in this part, shall be set forth in not less than eight point standard type, or such similar type as prescribed in rules adopted by the administrator.

6. Every consumer rental purchase agreement shall contain immediately above or adjacent to the place for the signature of the lessee, a clear, conspicuous, printed or typewritten notice in substantially the following language:

NOTICE TO LESSEE — READ BEFORE SIGNING

[a] Do not sign this before you read the entire agreement including any writing on the reverse side, even if otherwise advised.

[b] Do not sign this if it contains any blank spaces.

[c] You are entitled to an exact copy of any agreement you sign.

[d] You have the right to exercise any early buy-out option as provided in this agreement. Exercise of this option may result in a reduction of your total cost to acquire ownership under this agreement.

[e] If you elect to make weekly rather than monthly payments and exercise your purchase option, you may pay more for the leased property.

7. The notice described in subsection 6 shall be in boldface, ten point type.

87 Acts, ch 80, §6
Referred to in §537.3612

537.3607 Receipts.

The lessor shall furnish the lessee, without request, an itemized written receipt for each payment in cash, or any other time the method of payment itself does not provide evidence of payment.

87 Acts, ch 80, §7

537.3608 Acquiring ownership.

1. A lessor shall not offer a consumer rental purchase agreement in which fifty percent of all lease payments necessary to acquire ownership of the leased property exceeds the cash price of the leased property. When fifty percent of all lease payments made by a lessee equals the cash price of the property disclosed to the lessee pursuant to section 537.3605, subsection 9, the lessee shall acquire ownership of the leased property and the agreement shall terminate.

2. At any time after tendering an initial lease payment, a lessee may acquire ownership of the property that is the subject of the consumer rental purchase agreement by tendering

an amount equal to the amount by which the cash price of the leased property exceeds fifty percent of all lease payments made by the lessee.

3. It is not a violation of this section for the lessor and the lessee to agree in writing to allow the lessee to acquire ownership of the property for less than the amounts referred to in this section.

87 Acts, ch 80, §8; 89 Acts, ch 128, §2
Referred to in §537.3610

537.3609 Renegotiation.

1. A renegotiation occurs when an existing consumer rental purchase agreement is satisfied and replaced by a new consumer rental purchase agreement undertaken by the same lessor and lessee. A renegotiation is a new lease requiring new disclosures.

2. However, the following events are not renegotiations:

a. The addition or return of property in a multi-item agreement or the substitution of the leased property, if in either case the lease payment is not changed by more than twenty-five percent.

b. A deferral or extension of one or more lease payments, or portions of a lease payment.

c. A reduction in charges in the agreement.

d. A lease or agreement involved in a court proceeding.

87 Acts, ch 80, §9

537.3610 Balloon payments prohibited.

A lessee shall not be required, as a condition to acquiring ownership, to make a payment that is more than twice the amount of a regular rental payment, or to pay lease payments totaling more than the cost to acquire ownership as disclosed pursuant to section 537.3605. This section does not apply to payments made pursuant to section 537.3608, 537.3612, or 537.3619.

87 Acts, ch 80, §10

537.3611 Prohibited charges.

A lessor shall not make a charge for any of the following:

1. Any insurance whether in connection with the transaction or otherwise, except that a charge may be made for property insurance on the leased property if the charge is clearly disclosed as optional and all other requirements of section 537.2501, subsection 2, paragraph "*a*", are met.

2. A penalty for early termination of a consumer rental purchase agreement or for the return of an item at any point, except for those charges authorized by sections 537.3612 and 537.3613.

3. Payment by a cosigner of the consumer rental purchase agreement of any fees or charges which could not be imposed upon the lessee as part of the consumer rental purchase agreement.

87 Acts, ch 80, §11

537.3612 Additional charges.

1. In a consumer rental purchase agreement, the lessor may contract for and receive an initial nonrefundable administrative fee not to exceed ten dollars. If a security deposit is required by the lessor, the amount and conditions under which it is returned must be disclosed with the disclosures required by sections 537.3605 and 537.3606.

2. In a consumer rental purchase agreement, the lessor may contract for and receive a delivery charge not to exceed ten dollars or, in the case of a consumer rental purchase agreement covering more than five items, a delivery charge not to exceed twenty-five dollars. A delivery charge may be assessed only if the lessor actually delivers the items to the lessee's dwelling and the delivery charge is disclosed with the disclosures required by sections 537.3605 and 537.3606. The delivery charge may be assessed in lieu of and not in addition to the initial administrative charge in subsection 1 of this section.

3. In a consumer rental purchase agreement, a lessor may contract for and receive a

charge for picking up payments from the lessee if the lessor is required or requested to visit the lessee's dwelling to pick up a payment. In a consumer rental purchase agreement with payment or renewal dates which are more frequent than monthly, this charge shall not be assessed more than three times in any three-month period. In consumer rental purchase agreements with payments or renewal options which are at least monthly, this charge shall not be assessed more than three times in any six-month period. A charge assessed pursuant to this subsection shall not exceed seven dollars. This charge is in lieu of any delinquency charge assessed for the applicable payment period.

4. *a.* In a consumer rental purchase agreement, the parties may contract for late charges or delinquency fees as follows:

(1) For consumer rental purchase agreements with monthly renewal dates, a late charge not exceeding five dollars may be assessed on any payment not made within five business days after either payment is due or the return of the property is required.

(2) For consumer rental purchase agreements with weekly or biweekly renewal dates, a late charge not exceeding three dollars may be assessed on any payments not made within three business days after either payment is due or the return of the property is required.

b. A late charge on a consumer rental purchase agreement may be collected only once on any accrued payment, no matter how long it remains unpaid. A late charge may be collected at the time it accrues or at any time thereafter. A late charge shall not be assessed against a payment that is timely made, even though an earlier late charge has not been paid in full.

87 Acts, ch 80, §12; 2012 Acts, ch 1023, §157
Referred to in §537.3610, 537.3611, 537.3616

537.3613 Reinstatement fees.

A reinstatement fee as provided for in section 537.3616 shall not equal more than the outstanding balance of any missed payments and delinquency charges on those missed payments plus an additional reinstatement fee that shall not exceed five dollars.

87 Acts, ch 80, §13
Referred to in §537.3611

537.3614 Taxes and official fees.

1. If the amount is separately disclosed in the agreement, the lessor may require the lessee to pay all applicable state and county sales, use, and personal property taxes levied as a result of the execution of the consumer rental purchase agreement, provided that the lessor pays the full amount of these taxes to the appropriate authorities.

2. If the amount is separately disclosed in the agreement, the lessor may contract for and receive from the lessee an amount equal to all official fees required to be paid under the consumer rental purchase agreement provided that the lessor pays the full amount of these fees to the appropriate authorities.

87 Acts, ch 80, §14

537.3615 Advertising.

1. An advertisement for a consumer rental purchase agreement shall not state or imply that a specific item is available at specific amounts or terms unless the lessor usually and customarily offers or will offer that item at those amounts or terms.

2. If an advertisement for a consumer rental purchase agreement refers to or states the amount of any payment, or the right to acquire ownership, for a specific item, the advertisement must also clearly and conspicuously state the following terms as applicable:

a. That the transaction advertised is a consumer rental purchase agreement.

b. The total of payments necessary to acquire ownership.

c. That the lessee will not own the property until the total amount necessary to acquire ownership is paid in full or by prepayment as provided for by law.

3. Notwithstanding the requirements of subsection 1, if the advertisement is published by way of radio announcement or on a roadside billboard, the lessor need only make the disclosures required by subsection 2, paragraphs "*a*" and "*c*".

4. With respect to any matters specifically governed by the advertising provisions of the

federal Consumer Credit Protection Act, compliance with that Act satisfies the requirements of this section.

5. This section does not apply to the owner or personnel, as such, of any medium in which an advertisement appears or through which it is disseminated.

87 Acts, ch 80, §15

537.3616 Lessee's reinstatement rights.

1. A lessee who fails to make timely rental payments has the right to reinstate the original consumer rental purchase agreement without losing any rights or options previously acquired under the consumer rental purchase agreement if both of the following apply:

a. Subsequent to having failed to make a timely rental payment, the lessee has surrendered the property to the lessor, if and when requested by the lessor.

b. Not more than sixty days has passed since the lessee has returned the property.

2. As a condition precedent to reinstatement of a consumer rental purchase agreement, a lessor may charge the outstanding balance of any accrued payments and delinquency charges, a reinstatement fee, and the delivery charges allowable by section 537.3612, subsection 2, if redelivery of the item is necessary.

3. If reinstatement occurs pursuant to this section, the lessor shall provide the lessee with the same item, if available, leased by the lessee prior to reinstatement. If the same item is not available, a substitute item of comparable worth, quality, and condition may be used. If a substitute item is provided, the lessor shall provide the lessee with all the information required by section 537.3605.

87 Acts, ch 80, §16
Referred to in §537.3613, 537.3619

537.3617 Unconscionability.

Unconscionability in consumer rental purchase agreements is governed by section 537.5108.

87 Acts, ch 80, §17

537.3618 Default.

An agreement of the parties to a consumer rental purchase agreement with respect to default on the part of the lessee is enforceable only to the extent that one of the following apply:

1. The lessee both fails to renew an agreement and also fails to return the rented property or make arrangements for its return as provided by the agreement.

2. The prospect of payment, performance, or return of the property is materially impaired due to a breach of the consumer rental purchase agreement; the burden of establishing the prospect of material impairment is on the lessor.

87 Acts, ch 80, §18
Referred to in §537.5110, 537.5111

537.3619 Cure of default.

1. In a consumer rental purchase agreement, after a lessee has been in default for three business days and has not voluntarily surrendered possession of the rented property, a lessor may give the lessee the notice provided in subsection 3 when the consumer has the right to cure a default. A lessor gives the notice to the lessee under this section when the lessor delivers notice to the lessee or mails the notice to the last known address of the lessee.

2. For the purpose of this section, there is no right to cure and no limitation on the lessor's rights with respect to a default that occurs within twelve months after an earlier default as to which a lessor has given a proper notice of the lessee's right to cure.

3. The notice of right to cure must be in writing and conspicuously state all of the following:

a. The name, address, and telephone number of the lessor to whom payment is to be made.

b. A brief identification of the transaction.

c. The lessee's right to cure the default.

d. The amount of payment and date by which payment must be made to cure the default. A notice in substantially the following form complies with this subsection:

THE NAME, ADDRESS, & TELEPHONE
NUMBER OF THE LESSOR
ACCOUNT NUMBER, IF ANY
BRIEF IDENTIFICATION OF TRANSACTION

( ) is the last date for payment, ( ) is the amount now due. You have failed to renew your rental purchase agreement(s). If you pay the amount now due (above) by the last date for payment (above), you may continue with the agreement as though you had renewed on time. If you do not pay by that date, we may exercise our rights under the law. If you are late again during the next twelve months of your agreement, in either returning the property or renewing your agreement, we may exercise our rights without sending you another notice like this one. If you have questions, you may write or telephone the lessor promptly.

4. With respect to a consumer rental purchase agreement, except as provided in subsection 5, after a default consisting of the lessee's failure to renew and failure to return the property, a lessor, because of that default, may not instigate court action to recover the rented property until five business days after the notice of the lessee's right to cure is given. In the case of an agreement with weekly or biweekly renewal dates, such action shall not be taken until three business days after the notice of the lessee's right to cure is given.

5. With respect to defaults on the same consumer rental purchase agreement and subject to subsection 4, after a lessor has once given a proper notice of the lessee's right to cure, this section does not give the consumer a right to cure or impose any additional limitations beyond those otherwise imposed by this part on the lessor's right to proceed against the lessee or the lessor's right to recover the property.

6. Until expiration of the minimum applicable periods contained in subsection 4 after notice is given, the lessee may cure all defaults consisting of failure to renew and failure to return the property by tendering the amount of all unpaid sums due at the time of the tender plus any unpaid delinquency charges or other charges authorized by section 537.3616.

7. This section and the provisions on limitations of agreements do not prohibit a lessee from voluntarily surrendering possession of the rented property, and the lessor from enforcing any past due obligation which the lessee may have at any time after default. However, in an enforcement proceeding, the lessor shall affirmatively plead and prove either that the notice to cure is not required or that the lessor has given the required notice, but the failure to so plead does not invalidate any action taken by the lessor that is lawful and if the lessor has rightfully repossessed any property the repossession is not conversion.

8. A repossession of rented property in violation of this section is void.

87 Acts, ch 80, §19
Referred to in §537.3610

537.3620 Willful and intentional violations.

A person who willfully and intentionally violates a provision of this part is guilty of a serious misdemeanor.

87 Acts, ch 80, §20
Referred to in §537.3622

537.3621 Damages.

In case of a violation of a provision of this part with respect to a consumer rental purchase agreement, or a violation of the Iowa debt collection practices Act, article 7 of this chapter, where a debt arises in connection with a consumer rental purchase agreement, the lessee in the agreement may recover from the person committing the violation, or may set off or counterclaim in an action by that person, actual damages, with a minimum recovery of

three hundred dollars or twenty-five percent of the total cost to acquire ownership under the consumer rental purchase agreement, whichever is greater; attorney fees; and court costs.

87 Acts, ch 80, §21; 89 Acts, ch 128, §3

Referred to in §537.3622

537.3622 Effect of correction.

Notwithstanding sections 537.3620 and 537.3621, a failure to comply with a provision of this part which is due to a bona fide error may be corrected within thirty days after the date of execution of the consumer rental purchase agreement by the lessee. If so corrected, neither the lessor nor any holder is subject to penalty under this section if, where appropriate, a new written agreement and disclosures are provided to the lessee and any excess charges are refunded to the lessee.

87 Acts, ch 80, §22

537.3623 Statute of limitations.

An action shall not be brought under this part more than two years after the occurrence of the alleged violation.

87 Acts, ch 80, §23

537.3624 Enforcement.

1. The provisions of this part are subject to the powers and functions of the administrator as provided in article 6 of this chapter and to the debt collection practices as provided in article 7 of this chapter. However, section 537.6113, subsection 2, does not apply to violations of this part.

2. If a court finds in an action brought by the administrator pursuant to section 537.6113 that it is proven that a lessor has intentionally acted in bad faith in its performance under this part, the lessor is subject to a civil penalty of not less than one hundred dollars nor more than one thousand dollars for each violation. However, no more than one penalty may be imposed in any one action against a lessor for repeated violations of the same provision. A civil penalty pursuant to this subsection shall not be imposed for a violation of this part occurring more than two years before the action is brought, or for making unconscionable agreements or engaging in a course of fraudulent or unconscionable conduct.

87 Acts, ch 80, §24

ARTICLE 4

INSURANCE

Referred to in §537.1101, 537.1202

537.4101 Scope — excess charges.

1. This article applies to insurance provided in relation to a consumer credit transaction.

2. A charge for insurance in excess of the rates promulgated by the commissioner of insurance, or otherwise made in violation of the law, including this chapter, or the rules promulgated by the commissioner of insurance, is an excess charge for purposes of determining rights of parties under section 537.5201, and authority of the administrator to bring civil action under section 537.6113.

[C75, 77, 79, 81, §537.4101]

ARTICLE 5
REMEDIES AND PENALTIES

Referred to in §537.1101, 537.1201

PART 1
LIMITATIONS ON CREDITORS' REMEDIES

Referred to in §537.1201

537.5101 Short title.

This article shall be known and may be cited as the *"Iowa Consumer Credit Code — Remedies and Penalties"*.

[C75, 77, 79, 81, §537.5101]

537.5102 Scope.

This part applies to actions or other proceedings to enforce rights arising from consumer credit transactions, to extortionate or unlawful extensions of credit, and to unconscionability.

[C75, 77, 79, 81, §537.5102]

537.5103 Creditor's obligations on repossession — restriction on deficiency judgments.

1. This section applies to a consumer credit sale of goods or services and a consumer loan. A consumer is not liable for a deficiency unless the creditor has disposed of repossessed or surrendered goods in good faith and in a commercially reasonable manner.

2. If the seller repossesses or voluntarily accepts surrender either of goods which were the subject of the sale and in which the seller has a security interest, or of goods which were not the subject of the sale but in which the seller has a security interest to secure a debt arising from a sale of goods or services or a combined sale of goods and services, the seller's duty to dispose of the collateral is governed by the provisions on disposition of collateral in chapter 554, article 9, part 6.

3. If a lender takes possession or voluntarily accepts surrender of goods in which the lender has a security interest to secure a debt arising from a consumer loan, the lender's duty to dispose of the collateral is governed by the provisions on disposition of collateral in chapter 554, article 9, part 6.

[C75, 77, 79, 81, §537.5103]

2000 Acts, ch 1149, §171, 187

537.5104 No garnishment before judgment.

Prior to entry of judgment in an action against the consumer arising from a consumer credit transaction, the creditor may not attach unpaid earnings of the consumer, or earnings deposited in a financial institution by the consumer, by garnishment, attachment, or proceedings under chapter 630.

[C75, 77, 79, 81, §537.5104]

537.5105 Limitation on garnishment.

1. For the purposes of this part:

a. "Disposable earnings" means that part of the earnings of an individual remaining after the deduction from those earnings of amounts required by law to be withheld or assigned.

b. "Garnishment" means any legal or equitable procedure through which the earnings of an individual are required to be withheld for payment of a debt.

2. *a.* In addition to the provisions of section 642.21, the maximum part of the aggregate disposable earnings of an individual for any workweek which is subjected to garnishment to enforce payment of a judgment arising from a consumer credit transaction may not exceed the lesser of twenty-five percent of the individual's disposable earnings for that week, or the amount by which the individual's disposable earnings for that week exceed forty times the

federal minimum hourly wage prescribed by the Fair Labor Standards Act of 1938, 29 U.S.C. §206(a)(1), in effect at the time the earnings are payable.

b. In the case of earnings for a pay period other than a week, the administrator shall prescribe by rule a multiple of the federal minimum hourly wage equivalent in effect to that set forth for a pay period of a week.

3. No court may make, execute, or enforce an order or process in violation of this section.

4. At any time after the entry of a judgment in favor of a creditor in an action against a consumer for debt arising from a consumer credit transaction, the consumer may file with the court a verified application for an order exempting from garnishment pursuant to that judgment for an appropriate period of time a greater portion or all of the consumer's aggregate disposable earnings for a workweek or other applicable pay period than is provided for in subsection 2. The application shall designate the portion of the consumer's earnings which are not exempt from garnishment under this section and other law, shall specify the period of time for which the additional exemption is sought, shall describe the judgment with respect to which the application is made, and shall state that the designated portion in addition to earnings that are exempt by law is necessary for the maintenance of the consumer or a family supported wholly or partly by the earnings. Upon the filing of a sufficient application under this subsection, the court may issue any temporary order staying enforcement of the judgment by garnishment that may be necessary under the circumstances, shall set a hearing on the application not less than five nor more than ten days from the date of the filing of the application, and shall cause notice of the application and the hearing date to be served on the judgment creditor or the judgment creditor's attorney of record. At the hearing, if it appears to the court that all or any portion of the earnings sought to be additionally exempted are necessary for the maintenance of the consumer or a family supported wholly or partly by the earnings of the consumer for all or any part of the time requested in the application, the court shall issue an order granting the application to that extent, otherwise it shall deny the application. The order is subject to modification or vacation upon the further application of any party to it upon a showing of changed circumstances after a hearing upon notice to all interested parties.

[C75, 77, 79, 81, §537.5105]

2010 Acts, ch 1061, §70

Referred to in §537.1303, 627.6, 642.2

537.5106 Garnishment.

The administrator has all powers granted under article 6, part 1, to enforce the provisions of section 642.21, in relation to a garnishment arising from a consumer credit transaction.

[C75, 77, 79, 81, §537.5106]

537.5107 Extortionate or unlawful extensions of credit.

If it is the understanding of the creditor and the debtor at the time an extension of credit is made that delay in making repayment or failure to make repayment could result in the use of violence or other criminal means to cause harm to the person, reputation or property of any person, the repayment of the extension of credit is unenforceable through civil judicial processes against the consumer.

[C75, 77, 79, 81, §537.5107]

537.5108 Unconscionability — inducement by unconscionable conduct — unconscionable debt collection.

1. With respect to a transaction that is, gives rise to, or leads the debtor to believe it will give rise to a consumer credit transaction, in an action other than a class action, if the court as a matter of law finds the agreement or transaction to have been unconscionable at the time it was made, or to have been induced by unconscionable conduct, the court may refuse to enforce the agreement, or if the court finds any term or part of the agreement or transaction to have been unconscionable at the time it was made, the court may refuse to enforce the agreement, or may enforce the remainder of the agreement without the unconscionable term

or part, or may so limit the application of any unconscionable term or part as to avoid any unconscionable result.

2. With respect to a consumer credit transaction, or a transaction which would have been a consumer credit transaction if a finance charge was made or the obligation was payable in installments, if the court as a matter of law finds in an action other than a class action, that a person has engaged in, is engaging in, or is likely to engage in unconscionable conduct in collecting a debt arising from that transaction, the court may grant an injunction and award the consumer any actual damages the consumer sustained.

3. If it is claimed or appears to the court that the agreement or transaction or any term or part of it may be unconscionable, or that a person has engaged in, is engaging in, or is likely to engage in unconscionable conduct in collecting a debt, the parties shall be afforded a reasonable opportunity to present evidence as to the setting, purpose, and effect of the agreement or transaction or term or part thereof, or of the conduct, to aid the court in making the determination.

4. In applying subsection 1, consideration shall be given to each of the following factors, among others, as applicable:

a. Belief by the seller, lessor, or lender at the time a transaction is entered into that there is no reasonable probability of payment in full of the obligation by the consumer or debtor. However, the rental renewals necessary to acquire ownership in a consumer rental purchase agreement shall not be construed to be the obligation contemplated in this subsection if the consumer may terminate the agreement without penalty at any time. As used in this paragraph, "*obligation*" means the initial periodic lease payments and any other additional advance payments required at the consummation of the transaction.

b. In the case of a consumer credit sale, consumer lease, or consumer rental purchase agreement, knowledge by the seller or lessor at the time of the sale or lease of the inability of the consumer to receive substantial benefits from the property or services sold or leased.

c. In the case of a consumer credit sale, consumer lease, or consumer rental purchase agreement, gross disparity between the price of the property or services sold or leased and the value of the property or services measured by the price at which similar property or services are readily obtainable in consumer credit transactions by like consumers.

d. The fact that the creditor contracted for or received separate charges for insurance with respect to a consumer credit sale or consumer loan with the effect of making the sale or loan, considered as a whole, unconscionable.

e. The fact that the seller, lessor or lender has knowingly taken advantage of the inability of the consumer or debtor reasonably to protect the consumer's or debtor's interests by reason of physical or mental infirmities, ignorance, illiteracy or inability to understand the language of the agreement, or similar factors.

f. The fact that the seller, lessor or lender has engaged in conduct with knowledge or reason to know that like conduct has been restrained or enjoined by a court in a civil action by the administrator against any person pursuant to the provisions on injunctions against fraudulent or unconscionable agreements or conduct in section 537.6111.

5. In applying subsection 2, violations of section 537.7103 shall be considered, among other factors, as applicable.

6. If in an action in which unconscionability is claimed the court finds unconscionability pursuant to subsection 1 or 2, the court shall award reasonable fees to the attorney for the consumer or debtor. If the court does not find unconscionability and the consumer or debtor claiming unconscionability has brought or maintained an action the consumer or debtor knew to be groundless, the court shall award reasonable fees to the attorney for the party against whom the claim is made. Reasonable attorney's fees shall be determined by the value of the time reasonably expended by the attorney on the unconscionability issue and not by the amount of the recovery on behalf of the prevailing party.

7. The remedies of this section are in addition to remedies otherwise available for the same conduct under law other than this chapter, but no double recovery of actual damages may be had.

8. For the purpose of this section, a charge or practice expressly permitted by this chapter is not in itself unconscionable.

[C75, 77, 79, 81, §537.5108]
87 Acts, ch 80, §45 – 47
Referred to in §537.3617, 537.6111

537.5109 Default.

"Default" with respect to a consumer credit transaction and for the purposes of this article, means either of the following, if without justification under any law:

1. Failure to make a payment within ten days of the time required by agreement, or in a consumer rental purchase agreement, failure to renew an agreement and failure to return the rented property or make arrangements for its return as provided by the agreement.

2. Failure to observe any other covenant of the transaction, breach of which materially impairs the condition, value or protection of or the creditor's right in any collateral securing the transaction, or materially impairs the consumer's prospect to pay amounts due under the transaction. The burden of establishing material impairment is on the creditor.

[C75, 77, 79, 81, §537.5109]
87 Acts, ch 80, §48

537.5110 Cure of default.

1. Notwithstanding any term or agreement to the contrary, the obligation of a consumer in a consumer credit transaction is enforceable by a creditor only after compliance with this section, except that in a consumer rental purchase agreement, default is governed by section 537.3618.

2. *a.* A creditor who believes in good faith that a consumer is in default may give the consumer written notice of the alleged default, and, if the consumer has a right to cure the default, shall give the consumer the notice of right to cure provided in section 537.5111 before commencing any legal action in any court on an obligation of the consumer and before repossessing collateral. However, this subsection and subsection 4 do not require a creditor to give notice of right to cure prior to the filing of a petition by a creditor seeking to enforce the consumer's obligation in which attachment under chapter 639 is sought upon any of the grounds specified in section 639.3, subsections 3 to 12.

b. When property is attached without the giving of notice of right to cure as permitted by this subsection, the creditor immediately shall give notice of the attachment to the consumer in the same manner as prescribed by the rules of civil procedure for service of an original notice. The notice shall advise the consumer that the attachment may be discharged by the filing of a bond as provided in sections 639.42 and 639.45, or by the filing of a motion with the court to discharge the attachment pursuant to section 639.63. The notice required by this paragraph is in lieu of the notice requirements of sections 639.31 and 639.33.

c. When a motion is filed to discharge an attachment made without the giving of a prior notice of right to cure, the court shall hear the motion within three days of the filing of the motion to discharge. If the court finds that the attachment should not have been issued or should not have been levied on all or any part of the property held, the attachment shall be discharged in whole or in part and property wrongfully attached shall be returned to the consumer.

d. If the court finds that there was no probable cause to believe the grounds upon which the attachment was issued, the consumer may be awarded damages plus reasonable attorney's fees to be determined by the court.

3. A consumer has a right to cure the default unless, in other than an insurance premium loan transaction, the creditor has given the consumer a proper notice of right to cure with respect to a prior default which occurred within three hundred sixty-five days of the present default, or the consumer has voluntarily surrendered possession of goods that are collateral and the creditor has accepted them in full satisfaction of any debt owing on the transaction in default.

4. If the consumer has a right to cure a default:

a. A creditor shall not accelerate the maturity of the unpaid balance of the obligation,

demand or take possession of collateral, otherwise than by accepting a voluntary surrender of it, or otherwise attempt to enforce the obligation until twenty days after a proper notice of right to cure is given.

b. With respect to an insurance premium loan, a creditor shall not give notice of cancellation as provided in subsection 6 until thirteen days after a proper notice of right to cure is given.

c. Until the expiration of the minimum applicable period after the notice is given, the consumer may cure the default by tendering either the amount of all unpaid installments due at the time of the tender, without acceleration, plus any unpaid delinquency or deferral charges, or the amount stated in the notice of right to cure, whichever is less, or by tendering any performance necessary to cure any default other than nonpayment of amounts due, which is described in the notice of right to cure. The act of curing a default restores to the consumer the consumer's rights under the agreement as though no default had occurred, except as provided in subsection 3. However, where the obligation in default is a credit card account that has been closed, the act of curing a default does not restore to the consumer the consumer's rights under the agreement as though no default had occurred.

5. This section and the provisions on waiver, agreements to forego rights, and settlement of claims under section 537.1107 do not prohibit a consumer from voluntarily surrendering possession of goods which are collateral and do not prohibit the creditor from thereafter enforcing the creditor's security interest in the goods at any time after default.

6. If a default on an insurance premium loan is not cured, the lender may give notice of cancellation of each insurance policy or contract to be canceled. If given, the notice of cancellation shall be in writing and given to the insurer that issued the policy or contract and to the insured. The insurer, within two business days after receipt of the notice of cancellation together with a copy of the insurance premium loan agreement if not previously given to the insurer, shall give any notice of cancellation required by the policy or contract or by law and, within ten business days after the effective date of the cancellation, pay to the lender any premium unearned on the policy or contracts as of that effective date. Within ten business days after receipt of the unearned premium, the lender shall pay to the consumer indebted upon the insurance premium loan any excess of the unearned premium received over the amount owing by the consumer upon the insurance premium loan.

7. If a creditor in a consumer credit transaction commences an action for money judgment prior to giving the customer notice of right to cure as required by this section and fails to follow the procedures set out in this section, the court shall dismiss the action without prejudice. If the action was commenced as a small claim under chapter 631, the creditor shall not be found to be in violation of this section for purposes of section 537.5201 and the penalties provided in that section shall not apply if the creditor proves by a preponderance of the evidence that the creditor did not at the time of the violation have either knowledge or reason to know of the requirements of this section, and for this purpose the court shall consider all relevant evidence, including but not limited to the education or experience of the creditor with respect to the collection of debts arising from consumer credit transactions and any representation of the creditor by legal counsel and any legal advice rendered to the creditor with respect to the collection of debts arising from consumer credit transactions.

[C75, 77, 79, 81, §537.5110; 82 Acts, ch 1025, §1, 2]

87 Acts, ch 80, §49; 2012 Acts, ch 1023, §157; 2013 Acts, ch 140, §93

Referred to in §537.5201

537.5111 Notice of right to cure.

1. The notice of right to cure shall be in writing and shall conspicuously state the name, address, and telephone number of the creditor to which payment is to be made, a brief identification of the credit transaction and of the consumer's right to cure the default, a statement of the nature of the right to cure the default, a statement of the nature of the alleged default, a statement of the total payment, including an itemization of any delinquency or deferral charges, or other performance necessary to cure the alleged default, and the exact date by which the amount must be paid or performance tendered.

2. Except as provided in subsection 4, a notice in substantially the following form complies with this section:

.....
(name, address, and telephone number of creditor)
.....
(account number, if any)
.....
(brief identification of credit transaction)

You are now in default on this credit transaction. You have a right to correct this default until ..... (date). If you do so, you may continue with the contract as though you did not default. Your default consists of

.....
(describe default alleged)
Correction of the default: Before ....., (date)
.....
(describe the acts necessary for cure)

If you do not correct your default by the date stated above, we may exercise rights against you under the law.

If you default again in the next year, we may exercise our rights without sending you another notice like this one. If you have questions, write or telephone promptly.

.....
(the creditor)

3. A creditor gives notice to the consumer under this part when the creditor delivers the notice to the consumer or mails the notice to the consumer at the consumer's residence as defined in section 537.1201, subsection 4.

4. If the consumer credit transaction is an insurance premium loan, the notice shall conform to the requirements of subsection 2, and a notice in substantially the form specified in that subsection complies with this subsection except for the following:

a. In lieu of a brief identification of the credit transaction, the notice shall identify the transaction as an insurance premium loan and each insurance policy or contract that may be canceled.

b. In lieu of the statement in the form of notice specified in subsection 2 that the creditor may exercise the creditor's rights under the law, the statement that each policy or contract, identified in the notice may be canceled.

c. The last paragraph of the form of notice specified in subsection 2 shall be omitted.

5. If the consumer credit transaction is a credit card account that has been closed, the notice shall conform to the requirements of subsection 2, and a notice in substantially the form specified in that subsection complies with this subsection except that the statement relating to continuation of the contract upon correction of the default as though the consumer did not default shall not be contained in the notice.

6. This section does not apply to a consumer rental purchase agreement, which is governed by section 537.3618.

[C75, 77, 79, 81, §537.5111]
87 Acts, ch 80, §50; 2013 Acts, ch 140, §94
Referred to in §537.5110, 537.5201

537.5112 Reserved.

537.5113 Venue.

An action by a creditor against a consumer arising from a consumer credit transaction shall be brought in the county of the consumer's residence as defined in section 537.1201, subsection 4, unless an action is brought to enforce an interest in land securing the consumer's obligation, in which case the action shall be brought in the county in which

the land or a part of it is located. If the county of the consumer's residence has changed, the consumer upon motion may have the action removed to the county of the consumer's current residence. If the residence of the consumer is not within this state, the action may be brought in the county in which the sale, lease or loan was made. If the initial papers offered for filing in the action on their face show noncompliance with this section, they shall not be accepted by the clerk of the court.

[C75, 77, 79, 81, §537.5113]

Referred to in §602.8102(74)

537.5114 Complaint — proof.

1. In an action brought by a creditor against a consumer arising from a consumer credit transaction, the complaint shall allege the facts of the consumer's default, the amount to which the creditor is entitled, and an indication of how that amount was determined.

2. No default judgment shall be entered in the action in favor of the creditor unless the complaint is verified by the creditor, or unless sworn testimony, by affidavit or otherwise, is adduced showing that the creditor is entitled to the relief demanded.

[C75, 77, 79, 81, §537.5114]

537.5115 Reserved.

PART 2

CONSUMERS' REMEDIES

537.5201 Effect of violations on rights of parties.

1. *a.* The consumer, other than a lessee in a consumer rental purchase agreement, has a cause of action to recover actual damages and in addition a right in an action other than a class action to recover from the person violating this chapter a penalty in an amount determined by the court, but not less than one hundred dollars nor more than one thousand dollars, if a person has violated the provisions of this chapter relating to:

(1) Authority to make supervised loans under section 537.2301.

(2) Restrictions on interests in land as security under section 537.2307.

(3) Limitations on the schedule of payments or loan terms for supervised loans under section 537.2308.

(4) Attorney fees under section 537.2507.

(5) Charges for other credit transactions under section 537.2601.

(6) Disclosure with respect to consumer leases under section 537.3202.

(7) Notice to consumers under section 537.3203.

(8) Receipts, statements of account and evidences of payment under section 537.3206.

(9) Form of insurance premium loan agreement under section 537.3207.

(10) Notice to cosigners and similar parties under section 537.3208.

(11) Restrictions on rates stated to the consumer under section 537.3210.

(12) Security in consumer credit transactions under section 537.3301.

(13) Prohibition against assignments of earnings under section 537.3305.

(14) Authorizations to confess judgment under section 537.3306.

(15) Certain negotiable instruments prohibited under section 537.3307.

(16) Referral sales and leases under section 537.3309.

(17) Limitations on executory transactions under section 537.3310.

(18) Prohibition against discrimination under section 537.3311.

(19) Limitations on default charges under section 537.3402.

(20) Card issuer subject to claims and defenses under section 537.3403.

(21) Assignees subject to claims and defenses under section 537.3404.

(22) Lenders subject to claims and defenses arising from sales and leases, under section 537.3405.

(23) Door-to-door sales under section 537.3501.

(24) Assurance of discontinuance under section 537.6109.

(25) Prohibitions against unfair debt collection practices under section 537.7103.

(26) Failure to provide a proper notice of cure or right to cure under sections 537.5110 and 537.5111.

(27) Failure to provide a notice of consumer paper under section 537.3211.

b. With respect to violations arising from sales or loans made pursuant to open-end credit, no action pursuant to this subsection may be brought more than two years after the violations occurred. With respect to violations arising from other consumer credit transactions, no action pursuant to this subsection may be brought more than one year after the due date of the last scheduled payment of the agreement.

2. A consumer is not obligated to pay a charge in excess of that allowed by this chapter, and has a right of refund of any excess charge paid. A refund may not be made by reducing the consumer's obligation by the amount of the excess charge unless the creditor has notified the consumer that the consumer may request a refund and the consumer has not so requested within thirty days thereafter. If the consumer has paid an amount in excess of the lawful obligation under the agreement, the consumer may recover the excess amount either from the person who made the excess charge or from an assignee of that person's rights who undertakes direct collection of payments from or enforcement of rights against consumers arising from the debt.

3. If a creditor has contracted for or received a charge in excess of that allowed by this chapter, or if a consumer is entitled to a refund and a person liable to the consumer refuses to make a refund within a reasonable time after demand, the consumer may recover from the creditor or the person liable, in an action other than a class action, the excess charge or refund and a penalty in an amount determined by the court not less than two hundred dollars or more than two thousand dollars. With respect to excess charges arising from sales or loans made pursuant to open-end credit, no action pursuant to this subsection may be brought more than two years after the time the excess charge was made. With respect to excess charges arising from other consumer credit transactions no action pursuant to this subsection may be brought more than one year after the due date of the last scheduled payment of the agreement pursuant to which the charge was made. For purposes of this subsection, a reasonable time is presumed to be thirty days.

4. Except as otherwise provided in this chapter, no violation of this chapter impairs rights on a debt.

5. If an employer discharges an employee in violation of the provisions prohibiting discharge in section 642.21, subsection 2, paragraph "*c*", the employee may within two years bring a civil action for recovery of wages lost as a result of the violation and for an order requiring the reinstatement of the employee. Damages recoverable shall not exceed lost wages for six weeks.

6. A person is not liable for a penalty under subsection 1 or 3 if the person notifies the consumer of an error before the person receives from the consumer written notice of the error or before the consumer has brought an action under this section, and the person corrects the error within forty-five days after notifying the consumer. If the violation consists of a prohibited agreement, giving the consumer a corrected copy of the writing containing the error is sufficient notification and correction. If the violation consists of an excess charge, correction shall be made by an adjustment or refund as provided in subsection 2. The administrator, and any official or agency of this state having supervisory authority over a person, shall give prompt notice to a person of any errors discovered pursuant to an examination or investigation of the transactions, business, records and acts of the person.

7. A person may not be held liable in any action brought under this section for a violation of this chapter if the person shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid the error.

8. In an action in which it is found that a person has violated this chapter, the court shall award to the consumer the costs of the action and to the consumer's attorneys their reasonable fees. Reasonable attorney's fees shall be determined by the value of the time

reasonably expended by the attorney and not by the amount of the recovery on behalf of the consumer.

[C75, 77, 79, 81, §537.5201]

87 Acts, ch 80, §51; 2012 Acts, ch 1023, §157; 2017 Acts, ch 138, §20

Referred to in §85.27, 537.3205, 537.3304, 537.3309, 537.3501, 537.4101, 537.5110

537.5202 Damages or penalties as setoff to obligation.

Damages or penalties to which a consumer is entitled pursuant to this part may be setoff against the consumer's obligation, and may be raised as a defense to a suit on the obligation without regard to the time limitations prescribed by this part.

[C75, 77, 79, 81, §537.5202]

537.5203 Civil liability for violation of disclosure provisions.

1. Except as otherwise provided in this section, a creditor who, in violation of the provisions of the Truth in Lending Act other than its provisions concerning advertising of credit terms, fails to disclose information to a person entitled to the information under this chapter is liable to that person, in other than a class action, in an amount equal to the sum of the following:

a. Twice the amount of the finance charge in connection with the transaction, but the liability pursuant to this paragraph shall be not less than two hundred dollars or more than two thousand dollars.

b. In the case of a successful action to enforce the liability under paragraph *"a"*, the costs of the action together with reasonable attorney's fees as determined by the court.

2. A creditor has no liability under this section if within fifteen days after discovering an error, and prior to the institution of an action under this section or the receipt of written notice of the error, the creditor notifies the person concerned of the error and makes whatever adjustments in the appropriate account are necessary to assure that the person will not be required to pay a finance charge in excess of the amount or percentage rate actually disclosed. The administrator, and any official or agency of this state having supervisory authority over a creditor, shall give prompt notice to a creditor of any errors discovered pursuant to an examination or investigation of the transactions, business, records and acts of the creditor.

3. A creditor may not be held liable in any action brought under this section for a violation of this chapter if the creditor shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid the error.

4. Any action which may be brought under this section against the original creditor in any credit transaction involving a security interest in land may be maintained against any subsequent assignee of the original creditor where the assignee, its subsidiaries, or affiliates were in a continuing business relationship with the original creditor either at the time the credit was extended or at the time of the assignment, unless the assignment was involuntary, or the assignee shows by a preponderance of evidence that it did not have reasonable grounds to believe that the original creditor was engaged in violations of this chapter and that it maintained procedures reasonably adapted to apprise it of the existence of the violations.

5. An obligor or consumer has all rights under this chapter that the obligor or consumer has under the provisions of the Truth in Lending Act concerning a right of rescission as to certain transactions, and a creditor or other person has all liabilities and defenses under this section that the obligor or consumer has under the Truth in Lending Act.

6. No action pursuant to this section may be brought more than one year after the date of the occurrence of the violation.

7. In this section, creditor includes a person who in the ordinary course of business regularly extends or arranges for the extension of credit, or offers to arrange for the extension of credit, and includes the seller of an interest in land and the lender who makes a loan secured by an interest in land if, but for the rate of the finance charge made in the transaction, the sale or loan would be a consumer credit sale or consumer loan.

8. The liability of a creditor under this section is in lieu of and not in addition to the

creditor's liability under the Truth in Lending Act. An action by a person with respect to a violation may not be maintained pursuant to this section if a final judgment has been rendered for or against that person with respect to the same violation pursuant to the Truth in Lending Act, and if a final judgment has been rendered in favor of a person pursuant to this section and thereafter a final judgment with respect to the same violation is rendered in favor of the same person pursuant to the Truth in Lending Act, a creditor liable under both judgments has a cause of action against that person for appropriate relief to the extent necessary to avoid double liability with respect to the same violation.

9. The administrator shall adopt rules to keep this section in harmony with the Truth in Lending Act. These rules supersede any provisions of this section which are inconsistent with the Truth in Lending Act as adopted by section 537.1302.

[C75, 77, 79, 81, §537.5203]

2017 Acts, ch 138, §21

Referred to in §537.1202

PART 3

CRIMINAL PENALTIES

Referred to in §536.19, 537.1201

537.5301 Willful violations.

1. A person who willfully and knowingly makes charges in excess of those permitted by the provisions of article 2, part 4, applying to supervised loans, is guilty of a serious misdemeanor.

2. A person who, in violation of the provisions of this Act applying to authority to make supervised loans under section 537.2301, willfully and knowingly engages without a license in the business of making supervised loans, or of taking assignments of and undertaking direct collection of payments from and enforcement of rights against consumers arising from supervised loans, is guilty of a serious misdemeanor.

3. A person, other than a lessor in a consumer rental purchase agreement, who willfully and knowingly engages in the business of entering into consumer credit transactions, or of taking assignments of rights against consumers arising therefrom and undertaking direct collection of payments or enforcement of these rights, without complying with the provisions of this chapter concerning notification under section 537.6202 or payment of fees under section 537.6203, is guilty of a simple misdemeanor.

4. A person who willfully and knowingly violates the provisions of section 537.7103 is guilty of a serious misdemeanor. However, this subsection is not applicable to a violation of section 537.7103, subsection 7.

[C75, 77, 79, 81, §537.5301]

87 Acts, ch 80, §52; 2007 Acts, ch 128, §3

537.5302 Disclosure violations.

A person is guilty of a serious misdemeanor, if the person willfully and knowingly does any of the following:

1. Gives false or inaccurate information or fails to provide information which the person is required to disclose under the provisions of the Truth in Lending Act.

2. Uses any rate table or chart, the use of which is authorized by the provisions of the Truth in Lending Act, in a manner which consistently understates the annual percentage rate determined according to those provisions.

3. Otherwise fails to comply with any requirement of the provisions on disclosure of the Truth in Lending Act.

4. The criminal liability of a person under this section is in lieu of and not in addition to the person's criminal liability under the Truth in Lending Act. No prosecution of a person

with respect to the same violation may be maintained pursuant to both this section and the Truth in Lending Act.

[C75, 77, 79, 81, §537.5302]

Referred to in §537.1202

ARTICLE 6

ADMINISTRATION

Referred to in §537.1101, 537.3624

PART 1

POWERS AND FUNCTIONS OF ADMINISTRATOR

Referred to in §537.1201, 537.3309, 537.3501, 537.5106

537.6101 Short title.

This article shall be known and may be cited as the "*Iowa Consumer Credit Code — Administration*".

[C75, 77, 79, 81, §537.6101]

537.6102 Applicability.

This part applies to persons who:

1. Participate in transactions, acts, practices or conduct to which this chapter applies pursuant to section 537.1201.

2. Participate in this state in transactions, acts, practices or conduct to which this chapter would apply pursuant to section 537.1201, but for the residence of the consumer.

3. Enter into or modify a sale of an interest in land or a loan secured by an interest in land, if, but for the rate of the finance charge, the sale, loan or modification would involve a consumer credit sale or consumer loan, but applies only for the purpose of authorizing the administrator to enforce the provisions on compliance with the Truth in Lending Act.

[C75, 77, 79, 81, §537.6102]

Referred to in §537.1201

537.6103 Administrator.

Except as expressly provided in sections 537.6106 and 537.6108, *"administrator"* means the attorney general or the attorney general's designee.

[C75, 77, 79, 81, §537.6103]

Referred to in §524.103, 533.116, 536.28, 536A.2, 537.1301, 537.3604, 537.7102

537.6104 Powers of administrator — reliance on rules — duty to report.

1. The administrator, within the limitations provided by law, may:

a. Receive and act on complaints.

b. Take action designed to obtain voluntary compliance with this chapter.

c. Commence proceedings on the administrator's own initiative.

d. Counsel persons and groups on their rights and duties under this chapter.

e. Establish programs for the education of consumers with respect to credit practices and problems.

f. Make studies appropriate to effectuate the purposes and policies of this chapter and make the results available to the public.

g. Maintain offices within this state.

2. The administrator may enforce the Truth in Lending Act to the fullest extent provided by law.

3. To keep the administrator's rules in harmony with the rules of administrators in other jurisdictions which enact the uniform consumer credit code, the administrator, so far as is consistent with the purposes, policies and provisions of this chapter, shall do both of the following:

a. Before adopting, amending and repealing rules, advise and consult with administrators in other jurisdictions which enact the uniform consumer credit code.

b. In adopting, amending, and repealing rules, take into consideration the rules of administrators in other jurisdictions which enact the uniform consumer credit code.

4. Except for refund of an excess charge, no liability is imposed under this chapter for an act done or omitted in conformity with a rule or declaratory ruling of the administrator, notwithstanding that after the act or omission the rule or declaratory ruling is amended or repealed or determined by judicial or other authority to be invalid for any reason.

5. The administrator shall report annually on or before January 1 to the general assembly on the operation of the consumer credit protection bureau and the other agencies of this state charged with administering this chapter, and on the problems of persons of small means obtaining credit from persons regularly engaged in extending sales or loan credit. For the purpose of making the report, the administrator may conduct research and make appropriate studies. The report shall include, for the consumer credit protection bureau and for other state agencies enforcing this chapter, a description of the examination and investigation procedures and policies, a statement of policies followed in deciding whether to investigate or examine the offices of credit suppliers subject to this chapter, a statement of the number and percentages of offices which are periodically investigated or examined, a statement of the types of consumer credit problems of both creditors and consumers which have come to the administrator's attention through the administrator's examinations and investigations and the disposition of them under existing law, and recommendations, if any, for legislation to deal with those problems within the administrator's general jurisdiction, a statement of the extent to which the rules of the administrator pursuant to this chapter are not in harmony with the rules of administrators in other jurisdictions which enact the uniform consumer credit code and the reasons for the variations, and a general statement of the activities of the administrator's office and of others to promote the purposes of this chapter. The report shall not identify the creditors against whom action is taken.

[C75, 77, 79, 81, §537.6104]

91 Acts, ch 118, §4; 92 Acts, ch 1035, §1

537.6105 Administrative powers with respect to supervised financial organizations and supervised loan licensees.

1. With respect to supervised financial organizations subject to regulation under chapter 524 or 533, and persons licensed under chapters 536 and 536A, the powers of examination and investigation as provided in sections 537.2305 and 537.6106, and administrative enforcement as provided in sections 537.2303 and 537.6108, shall be exercised by the official or agency to whose supervision the person is subject. All other powers of the administrator under this chapter may be exercised by the administrator with respect to such persons. In all actions or other court proceedings brought to enforce this chapter, the attorney general or the attorney general's designee shall participate.

2. If the administrator receives a complaint or other information concerning noncompliance with this chapter by a person specified in subsection 1, the administrator shall inform the official or agency having supervisory authority over that person. The administrator may obtain information about any such person from the officials or agencies supervising them.

3. The administrator and any official or agency of this state having supervisory authority over a supervised financial organization or a chapter 536 or 536A licensee are authorized and directed to consult and assist one another in maintaining compliance with this chapter. They may jointly pursue investigations, prosecute suits, and take other official action against violations of this chapter, as they deem appropriate, if either of them otherwise is empowered to take the action.

[C75, 77, 79, 81, §537.6105]

2012 Acts, ch 1017, §147

Referred to in §524.227, 533.116, 536.29, 536A.29, 537.6106, 537.6108

537.6106 Investigatory powers.

1. For purposes of this section, *"administrator"* means either the attorney general or the attorney general's designee, or the official or agency charged with enforcing this chapter against the person under investigation, as provided in section 537.6105, subsection 1. If the administrator has reasonable cause to believe that a person has engaged in conduct or committed an act which is in violation of this chapter, the administrator may make an investigation to determine whether the person has engaged in the conduct or committed the act, and, to the extent necessary for this purpose, may administer oaths or affirmations, and, upon the administrator's own motion or upon request of any party, may subpoena witnesses, compel their attendance, adduce evidence, and require the production of, or testimony as to, any matter which is relevant to the investigation, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of relevant facts, or any other matter reasonably calculated to lead to the discovery of admissible evidence. In any civil action brought by the administrator as a result of such an investigation, the administrator shall be awarded the reasonable costs of making the investigation if the administrator prevails in the action.

2. If the person's records are located outside this state, the person at the person's option shall either make them available to the administrator at a convenient location within this state or pay the reasonable and necessary expenses for the administrator or the administrator's representative to examine them at the place where they are maintained. The administrator may designate representatives, including comparable officials of the state in which the records are located, to inspect them on the administrator's behalf.

3. Upon application by the administrator showing failure without lawful excuse to obey a subpoena or to give testimony and upon reasonable notice to all persons affected thereby, the district court shall grant an order compelling compliance.

4. The administrator shall not make public the name or identity of a person whose acts or conduct the administrator investigates pursuant to this section or the facts disclosed in the investigation, but this subsection does not prohibit disclosures in actions or enforcement proceedings pursuant to this chapter.

[C75, 77, 79, 81, §537.6106]
Referred to in §537.6103, 537.6105

537.6107 Reserved.

537.6108 Administrative enforcement orders.

1. For purposes of this section, *"administrator"* means either the attorney general or the attorney general's designee, or the official or agency charged with enforcing this chapter against the person under investigation, as provided in section 537.6105, subsection 1. Except as provided in subsection 6, after notice and hearing the administrator may order a person to cease and desist from engaging in violations of this chapter. A person aggrieved by an order of the administrator may obtain judicial review of the order and the administrator may obtain an order of the district court for enforcement of the cease and desist order if the person prevails in the proceeding for review, or as provided in subsection 5. The proceeding for review or enforcement is initiated by filing a petition in the district court. Copies of the petition shall be served upon all parties of record.

2. Within thirty days after service of the petition for review upon the administrator, or within any further time the court may allow, the administrator shall transmit to the court the original or a certified copy of the entire record upon which the order is based, including any transcript of testimony, which need not be printed. By stipulation of all parties to the review proceeding, the record may be shortened. After hearing, the court may reverse or modify the order if the findings of fact of the administrator are clearly erroneous in view of the reliable, probative and substantial evidence on the whole record, or grant any temporary relief or restraining order it deems just, and enter an order enforcing, modifying and enforcing as modified, or setting aside in whole or in part the order of the administrator, or remanding the case to the administrator for further proceedings.

3. An objection not urged at the hearing shall not be considered by the court unless the failure to urge the objection is excused for good cause shown. A party may move the court to remand the case to the administrator in the interest of justice for the purpose of adducing additional specified and material evidence and seeking findings thereon upon good cause shown for the failure to adduce this evidence before the administrator.

4. The jurisdiction of the court shall be exclusive and its final judgment or decree shall be subject to review by the supreme court in the same manner and form and with the same effect as in appeals from a final judgment or decree in an equitable proceeding. The administrator's copy of the testimony shall be available at reasonable times to all parties for examination without cost.

5. A proceeding for review under this section must be initiated within thirty days after a copy of the order of the administrator is received. If no proceeding is so initiated, the administrator may obtain a decree of the district court for enforcement of the cease and desist order upon a showing that the order was issued in compliance with this section, that no proceeding for review was initiated within thirty days after copy of the order was received, and that the person against whom the order was directed is subject to the jurisdiction of the court.

6. With respect to unconscionable agreements or fraudulent or unconscionable conduct by the respondent, the administrator may not issue an order pursuant to this section but may bring a civil action for an injunction under section 537.6111.

[C75, 77, 79, 81, §537.6108]
Referred to in §537.6103, 537.6105

537.6109 Assurance of discontinuance.

If it is claimed that a person has engaged in conduct which could be subject to an order by the administrator or by a court, the administrator may accept an assurance in writing that the person will not engage in the same or in similar conduct in the future. The assurance may include stipulations that the creditor will voluntarily pay the costs of investigation, or that an amount will be held in escrow as restitution to debtors aggrieved by future conduct of the creditor or as a reserve to cover costs of future investigation, or may include admissions of past specific acts by the creditor or admissions that those acts violated this chapter or other statutes. A violation of an assurance of discontinuance is a violation of this chapter.

[C75, 77, 79, 81, §537.6109]
Referred to in §537.2303, 537.5201

537.6110 Injunctions and other proceedings in equity.

The administrator may bring a civil action to restrain a person from violating this chapter and for other appropriate relief, including but not limited to the following:

1. To prevent the use or employment by a person of practices prohibited by this chapter.

2. To reform contracts to conform to this chapter and to rescind contracts into which a creditor has induced a consumer to enter by conduct violating this chapter, even though the consumers are not parties to the action. An action under this section may be joined with an action under the provisions on civil actions by the administrator under section 537.6113.

[C75, 77, 79, 81, §537.6110]
Referred to in §537.6112

537.6111 Injunctions against unconscionable agreements and fraudulent or unconscionable conduct.

1. The administrator may bring a civil action to restrain a person to whom this part applies from engaging in any of the following courses of action:

a. Making or enforcing unconscionable terms or provisions of consumer credit transactions.

b. Fraudulent or unconscionable conduct in inducing consumers to enter into consumer credit transactions.

c. Conduct of any of the types specified in paragraph *"a"* or *"b"* with respect to transactions that give rise to or that lead persons to believe they will give rise to consumer credit transactions.

d. Fraudulent or unconscionable conduct in the collection of debts arising from consumer credit transactions or from transactions which would have been consumer credit transactions if a finance charge was made or the obligation was payable in installments.

2. In an action brought pursuant to this section the court may grant relief only if it finds all of the following:

a. That the defendant has made unconscionable agreements or has engaged in or is likely to engage in a course of fraudulent or unconscionable conduct.

b. That the defendant's agreements have caused or are likely to cause, or the conduct of the defendant has caused or is likely to cause, injury to consumers or debtors.

c. That the defendant has been able to cause or will be able to cause the injury primarily because the transactions involved are credit transactions.

3. In applying subsection 1, paragraph *"a"*, *"b"*, or *"c"*, consideration shall be given to the factors specified in the provisions on unconscionability with respect to a transaction that is or gives rise to or that a person leads the debtor to believe will give rise to a consumer credit transaction, as provided in section 537.5108, subsection 3, among others.

4. In applying subsection 1, paragraph *"d"*, violations of section 537.7103 shall be considered, among other factors, as applicable.

5. In an action brought pursuant to this section, a charge or practice expressly permitted by this chapter is not in itself unconscionable.

[C75, 77, 79, 81, §537.6111]

Referred to in §537.5108, 537.6108, 537.6112

537.6112 Temporary relief.

With respect to an action brought to enjoin violations of this chapter under section 537.6110 or unconscionable agreements or fraudulent or unconscionable conduct under section 537.6111, the administrator may apply to the court for appropriate temporary relief against a defendant, pending final determination of the action. The court may grant appropriate temporary relief.

[C75, 77, 79, 81, §537.6112]

537.6113 Civil actions by administrator.

1. After demand, the administrator may bring a civil action against a person for all amounts of money, other than penalties, which a consumer or class of consumers has a right to recover explicitly granted by this chapter. The court shall order amounts recovered or recoverable under this subsection to be paid to each consumer or set off against the consumer's obligation. A consumer's action, other than a class action, takes precedence over a prior or subsequent action by the administrator with respect to the claim of that consumer. A consumer's class action takes precedence over a subsequent action by the administrator with respect to claims common to both actions but intervention by the administrator is authorized. An administrator's action on behalf of a class of consumers takes precedence over a consumer's subsequent class action with respect to claims common to both actions. Whenever an action takes precedence over another action under this subsection, the latter action may be stayed to the extent appropriate while the precedent action is pending and dismissed if the precedent action is dismissed with prejudice or results in a final judgment granting or denying the claim asserted in the precedent action. A defense available to a person in a civil action brought by a consumer is available to the person in a civil action brought under this subsection.

2. The administrator may bring a civil action against a person to recover a civil penalty of no more than ten thousand dollars for repeatedly and intentionally violating this chapter. No civil penalty pursuant to this subsection may be imposed for violations of this chapter occurring more than two years before the action is brought or for making unconscionable agreements or engaging in a course of fraudulent or unconscionable conduct.

3. The administrator may bring a civil action against a person for failure to file notification in accordance with the provisions on notification in section 537.6202, or to pay fees in accordance with the provisions on fees in section 537.6203, to recover the fees the defendant has failed to pay plus interest at the rate of seven percent per annum and the administrator's

reasonable costs in bringing the action, and a civil penalty in an amount determined by the court not exceeding the greater of three times the amount of fees the person has failed to pay or one thousand dollars.

[C75, 77, 79, 81, §537.6113]

2017 Acts, ch 138, §22

Referred to in §537.3205, 537.3304, 537.3624, 537.4101, 537.6110, 537.6115, 537.6203, 714.16

537.6114 Reserved.

537.6115 Consumer's remedies not affected.

The grant of powers to the administrator in this article does not affect remedies available to consumers under this chapter or under other principles of law or equity, except as provided in section 537.6113.

[C75, 77, 79, 81, §537.6115]

537.6116 Venue.

The administrator may bring actions or proceedings in the district court in a county in which an act on which the action or proceeding is based occurred, or in a county in which the defendant resides or transacts business.

[C75, 77, 79, 81, §537.6116]

537.6117 Administrative rules.

1. The attorney general or the attorney general's designee pursuant to chapter 17A may adopt, amend and repeal rules which the attorney general deems reasonably necessary for the enforcement of this chapter. Each rule so adopted shall be applicable to and binding upon every person subject to the provisions of this chapter.

2. An official or agency of this state charged with the enforcement of provisions of this chapter may adopt, amend or repeal rules pursuant to chapter 17A, subject to the following limitations:

a. A rule adopted pursuant to this subsection which conflicts with a rule adopted by the administrator is void.

b. An official or agency shall not adopt a rule which interprets or prescribes law or policy which has not been approved in advance of adoption by the administrator. If, in the opinion of the administrator, the proposed rule interprets the provisions of this chapter, or otherwise should be a rule of general applicability, the administrator may disapprove the proposed rule, in which case the official or agency shall not adopt that rule. The administrator may adopt that rule or a different rule relating to the same subject, or may determine that no rule relating to that subject shall be adopted.

[C75, §537.6204; C77, 79, 81, §537.6117]

PART 2

NOTIFICATION AND FEES

Referred to in §537.1201

537.6201 Applicability.

This part applies to all of the following:

1. Creditors engaged in consumer credit transactions and acts, practices or conduct involving consumer credit transactions to which this chapter applies pursuant to section 537.1201, but not to those licensed, certificated, or otherwise authorized to engage in business by chapter 524, 533, 536 or 536A.

2. Debt collectors, as defined in section 537.7102, subsection 5, to whose acts, practices, or conduct this chapter applies pursuant to section 537.1201 if the total debt collected by a debt collector in the preceding calendar year exceeds the threshold amount, or if not, if the total debt collected during the current calendar year exceeds twenty-five thousand dollars,

but this part does not apply to those licensed, certified, or otherwise authorized to engage in business under chapter 524, 533, 536, or 536A.

[C75, 77, 79, 81, §537.6201]

89 Acts, ch 68, §5; 2012 Acts, ch 1017, §148; 2014 Acts, ch 1037, §21

Referred to in §537.1201

537.6202 Notification.

1. Persons subject to this part shall file notification with the administrator within thirty days after commencing business in this state and, thereafter, on or before January 31 of each year. The notification must state all of the following:

a. Name of the person.

b. Every name in which business is transacted if different from the name of the person.

c. Address of principal office, whether or not within this state.

d. Address of all offices or retail stores, if any, in this state at which consumer credit transactions are entered into or acts, practices or conduct involving consumer credit transactions are engaged in, or in the case of a person taking assignments of obligations, any offices or places of business within this state at which business is transacted or, in the case of debt collectors, any offices in this state from or at which debt collection is engaged in.

e. If consumer credit transactions or acts, practices or conduct involving consumer credit transactions or debt collection, are engaged in otherwise than at an office or retail store in this state and this chapter applies to such transactions, acts, practices or conduct, pursuant to section 537.1201, a brief description of the manner in which they are engaged in.

f. Address of designated agent upon whom service of process may be made in this state.

g. Whether or not supervised loans are made.

2. If information in a notification becomes inaccurate after filing, no further notification is required until the following January 31.

[C75, 77, 79, 81, §537.6202]

89 Acts, ch 68, §6; 90 Acts, ch 1168, §56

Referred to in §537.5301, 537.6113

537.6203 Fees.

1. A person required to file notification shall pay to the administrator an annual fee of fifty dollars. The fee shall be paid with the filing of the first notification and on or before January 31 of each succeeding year.

2. A person required to file notification who is a seller, lessor, or lender and who is not an assignee shall pay an additional fee at the time and in the manner stated in subsection 1 of ten dollars for each one hundred thousand dollars, or part thereof exceeding ten thousand dollars, of the average unpaid balances, including unpaid scheduled periodic payments under consumer leases, of obligations arising from consumer credit transactions entered into or modified by the person in this state and held on the last day of each calendar month during the preceding calendar year and held either by the seller, lessor, or lender, or by an immediate or remote assignee who has not filed notification. The unpaid balances of assigned obligations held by an assignee who has not filed notifications are presumed to be the unpaid balances of the assigned obligations at the time of their assignment by the seller, lessor, or lender.

3. A person required to file notification who is an assignee shall pay an additional fee at the time and in the manner stated in subsection 1 of ten dollars for each one hundred thousand dollars, or part thereof exceeding ten thousand dollars, of the average unpaid balances including unpaid scheduled periodic payments payable by lessees, of obligations arising from consumer credit transactions entered into or modified in this state, taken by the person by assignment and held by the person on the last day of each calendar month during the preceding calendar year.

4. In addition to the penalties provided by section 537.6113, subsection 3, the administrator may collect a charge, established by rule, not exceeding seventy-five dollars from each person required to pay fees under this section who fails to pay the fees in full within thirty days after they are due.

5. Moneys collected under this section shall be deposited in a consumer credit

administration fund in the state treasury and shall be used for the administration of this chapter. The moneys are subject to warrant upon certification of the administrator and are appropriated for these purposes. Notwithstanding section 8.33, the moneys in the fund do not revert at the end of a fiscal period.

[C75, 77, 79, 81, §537.6203]

89 Acts, ch 68, §7; 2007 Acts, ch 22, §98; 2017 Acts, ch 138, §23

Referred to in §537.5301, 537.6113

537.6204 Reserved.

ARTICLE 7

DEBT COLLECTION PRACTICES

Referred to in §537.1101, 537.1201, 537.3621, 537.3624, 631.17

537.7101 Short title.

This article shall be known and may be cited as the *"Iowa Debt Collection Practices Act"*.

[C75, 77, 79, 81, §537.7101]

537.7102 Definitions.

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

1. *"Administrator"* means the person designated in section 537.6103.
2. *"Creditor"*, for the purposes of this article, means the person to whom a debtor is obligated, either directly or indirectly, on a debt.
3. *"Debt"* means an actual or alleged obligation arising out of a consumer credit transaction, consumer rental purchase agreement, or a transaction which would have been a consumer credit transaction either if a finance charge was made, if the obligation was not payable in installments, if a lease was for a term of four months or less, or if a lease was of an interest in land. A debt includes a check as defined in section 554.3104 given in a transaction in connection with a consumer rental purchase agreement, in a transaction which was a consumer credit sale or in a transaction which would have been a consumer credit sale if credit was granted and if a finance charge was made, or in a transaction regulated under chapter 533D.
4. *"Debt collection"* means an action, conduct or practice in soliciting debts for collection or in the collection or attempted collection of a debt.
5. *"Debt collector"* means a person engaging, directly or indirectly, in debt collection, whether for the person, the person's employer, or others, and includes a person who sells, or offers to sell, forms represented to be a collection system, device, or scheme, intended to be used to collect debts.
6. *"Debtor"*, for the purposes of this article, means the person obligated.

[C75, 77, 79, 81, §537.7102]

87 Acts, ch 137, §3; 89 Acts, ch 128, §4; 95 Acts, ch 139, §17

Referred to in §85.27, 537.1303, 537.6201, 715C.1

537.7103 Prohibited practices.

1. A debt collector shall not collect or attempt to collect a debt by means of an illegal threat, coercion or attempt to coerce. The conduct described in each of the following paragraphs is an illegal threat, coercion or attempt to coerce within the meaning of this subsection:

a. The use, or express or implicit threat of use, of force, violence or other criminal means, to cause harm to a person or to property of a person.

b. The false accusation or threat to falsely accuse a person of fraud or any other crime.

c. False accusations made to a person, including a credit reporting agency, or the threat to falsely accuse, that a debtor is willfully refusing to pay a just debt. However, a failure to reply to requests for payment and a failure to negotiate disputes in good faith are deemed willful refusal.

d. The threat to sell or assign to another an obligation of the debtor with an attending

representation or implication that the result of the sale or assignment will be to subject the debtor to harsh, vindictive or abusive collection attempts.

e. The false threat that nonpayment of a debt may result in the arrest of a person or the seizure, garnishment, attachment or sale of property or wages of that person.

f. An action or threat to take an action prohibited by this chapter or any other law.

2. A debt collector shall not oppress, harass or abuse a person in connection with the collection or attempted collection of a debt of that person or another person. The following conduct is oppressive, harassing or abusive within the meaning of this subsection:

a. The use of profane or obscene language or language that is intended to abuse the hearer or reader and which by its utterance would tend to incite an immediate breach of the peace.

b. The placement of telephone calls to the debtor without disclosure of the name of the business or company the debt collector represents.

c. Causing expense to a person in the form of long distance telephone tolls, telegram fees or other charges incurred by a medium of communication by attempting to deceive or mislead persons as to the true purpose of the notice, letter, message or communication.

d. Causing a telephone to ring or engaging a person in telephone conversation repeatedly or continuously or at unusual hours or times known to be inconvenient, with intent to annoy, harass or threaten a person.

3. A debt collector shall not disseminate information relating to a debt or debtor as follows:

a. The communication or threat to communicate or imply the fact of a debt to a person other than the debtor or a person who might reasonably be expected to be liable for the debt, except with the written permission of the debtor given after default. For the purposes of this paragraph, the use of language on envelopes indicating that the communication relates to the collection of a debt is a communication of the debt. However, this paragraph does not prohibit a debt collector from any of the following:

(1) Notifying a debtor of the fact that the debt collector may report a debt to a credit bureau or engage an agent or an attorney for the purpose of collecting the debt.

(2) Reporting a debt to a credit reporting agency or any other person reasonably believed to have a legitimate business need for the information.

(3) Engaging an agent or attorney for the purpose of collecting a debt.

(4) Attempting to locate a debtor whom the debt collector has reasonable grounds to believe has moved from the debtor's residence, where the purpose of the communication is to trace the debtor, and the content of the communication is restricted to requesting information on the debtor's location.

(5) Communicating with the debtor's employer or credit union not more than once during any three-month period when the purpose of the communication is to obtain an employer's or credit union's debt counseling services for the debtor. In the event no response is received by the debt collector from a communication to the debtor's employer or credit union the debt collector may make one inquiry as to whether the communication was received. In addition a debt collector may respond to any communications by a debtor's employer or credit union.

(6) Communicating with the debtor's employer once during any one-month period, if the purpose of the communication is to verify with an employer the fact of the debtor's employment and if the debt collector does not disclose, except as permitted in subparagraph (5), information other than the fact that a debt exists. This subparagraph does not authorize a debt collector to disclose to an employer the fact that a debt is in default.

(7) Communicating the fact of the debt not more than once in any three-month period, with the parents of a minor debtor, or with any trustee of any property of the debtor, conservator of the debtor or the debtor's property, or guardian of the debtor. In addition, a debt collector may respond to inquiry from a parent, trustee, conservator or guardian.

(8) Communicating with the debtor's spouse with the consent of the debtor, or responding to inquiry from the debtor's spouse.

b. The disclosure, publication, or communication of information relating to a person's indebtedness to another person, by publishing or posting a list of indebted persons, commonly known as "deadbeat lists", or by advertising for sale a claim to enforce payment of a debt when the advertisement names the debtor.

c. The use of a form of communication to the debtor, except a telegram, an original

notice or other court process, or an envelope displaying only the name and address of a debtor and the return address of the debt collector, intended or so designed as to display or convey information about the debt to another person other than the name, address, and phone number of the debt collector.

4. A debt collector shall not use a fraudulent, deceptive, or misleading representation or means to collect or attempt to collect a debt or to obtain information concerning debtors. The following conduct is fraudulent, deceptive, or misleading within the meaning of this subsection:

a. The use of a business, company or organization name while engaged in the collection of debts, other than the true name of the debt collector's business, company, or organization or the name of the business or company the debt collector represents.

b. The failure to disclose in the initial written communication with the debtor and, in addition, if the initial communication with the debtor is oral, in that initial oral communication, that the debt collector is attempting to collect a debt and that information obtained will be used for that purpose, and the failure to disclose in subsequent communications that the communication is from a debt collector, except that this paragraph does not apply to either of the following:

(1) A formal pleading made in connection with a legal action.

(2) Communications issued directly by a state bank as defined in section 524.103 or its affiliate, a state bank chartered under the laws of any other state or its affiliate, a national banking association or its affiliate, a trust company, a federally chartered savings and loan association or savings bank or its affiliate, an out-of-state chartered savings and loan association or savings bank or its affiliate, a financial institution chartered by the federal home loan bank board, a state or federally chartered credit union, a credit union service organization, or a company or association organized or authorized to do business under chapter 515, 518, 518A, or 520, or an officer, employee, or agent of such company or association, provided the communication does not deceptively conceal its origin or its purpose.

c. A false representation that the debt collector has information in the debt collector's possession or something of value for the debtor, which is made to solicit or discover information about the debtor.

d. The failure to clearly disclose the name and full business address of the person to whom the claim has been assigned at the time of making a demand for money.

e. An intentional misrepresentation, or a representation which tends to create a false impression of the character, extent or amount of a debt, or of its status in a legal proceeding.

f. A false representation, or a representation which tends to create a false impression, that a debt collector is vouched for, bonded by, affiliated with, or an instrumentality, agency or official of the state or an agency of federal, state or local government.

g. The use or distribution or sale of a written communication which simulates or is falsely represented to be a document authorized, issued or approved by a court, an official or other legally constituted or authorized authority, or which tends to create a false impression about its source, authorization or approval.

h. A representation that an existing obligation of the debtor may be increased by the addition of attorney's fees, investigation fees, service fees or other fees or charges, when in fact such fees or charges may not legally be added to the existing obligation.

i. A false representation, or a representation which tends to create a false impression, about the status or true nature of, or services rendered by, the debt collector or the debt collector's business.

5. A debt collector shall not engage in the following conduct to collect or attempt to collect a debt:

a. The seeking or obtaining of a written statement or acknowledgment in any form that specifies that a debtor's obligation is one chargeable upon the property of either husband or wife or both, under section 597.14, when the original obligation was not in fact so chargeable.

b. The seeking or obtaining of a written statement or acknowledgment in any form containing an affirmation of an obligation which has been discharged in bankruptcy, without clearly disclosing the nature and consequences of the affirmation and the fact that the debtor

is not legally obligated to make the affirmation. However, this subsection does not prohibit the accepting of promises to pay that are voluntarily written and offered by a bankrupt debtor.

c. The collection of or the attempt to collect from the debtor a part or all of the debt collector's fee for services rendered, unless both of the following are applicable:

(1) The fee is reasonably related to the actions taken by the debt collector.

(2) The debt collector is legally entitled to collect the fee from the debtor.

d. The collection of or the attempt to collect interest or other charge, fee or expense incidental to the principal obligation unless the interest or incidental charge, fee, or expense is expressly authorized by the agreement creating the obligation and is legally chargeable to the debtor, or is otherwise legally chargeable.

e. A communication with a debtor when the debt collector knows that the debtor is represented by an attorney and the attorney's name and address are known, or could be easily ascertained, unless the attorney fails to answer correspondence, return phone calls or discuss the obligation in question, within a reasonable time, or prior approval is obtained from the debtor's attorney or when the communication is a response in the ordinary course of business to the debtor's inquiry.

6. A debt collector shall not use or distribute, sell or prepare for use, a written communication that violates or fails to conform to United States postal laws and regulations.

7. A debt collector shall not collect or attempt to collect charges from an employee or an employee's dependents for treatment rendered the employee by any health service provider, after receiving actual notice that a contested case proceeding for determination of liability of workers' compensation benefits is pending as provided in section 85.27, subsection 6.

[C75, 77, 79, 81, §537.7103]

83 Acts, ch 101, §115; 87 Acts, ch 137, §4; 89 Acts, ch 296, §76; 97 Acts, ch 120, §1; 98 Acts, ch 1146, §1; 2005 Acts, ch 44, §2; 2007 Acts, ch 128, §4; 2012 Acts, ch 1017, §149

Referred to in §85.27, 537.5108, 537.5201, 537.5301, 537.6111

Penalties, see §537.5301

ARTICLE 8

CHECK CASHING PRACTICES

537.8101 Provision of credit card number as condition of check cashing or acceptance prohibited.

1. *Provision of credit card number or expiration date not required.* A person shall not require as a condition of acceptance of a check or share draft, or as a means of identification, that the person presenting the check provide a credit card number or expiration date, or both.

2. *Recording of credit card number or expiration date, simple misdemeanor.* Recording a credit card number or expiration date, or both, in connection with a sale of goods or services in which the purchaser pays by check or share draft, or in connection with the acceptance of a check or share draft, is a simple misdemeanor.

3. *Display without recordation permissible condition.* This section does not prohibit a person from requesting a purchaser to display a credit card as indicia of credit worthiness and financial responsibility or as additional identification, but the only information concerning a credit card which may be recorded is the type of credit card so displayed and the issuer of the credit card. This section does not require acceptance of a check or share draft whether or not a credit card is presented.

4. *Provision of credit card number or expiration date in lieu of deposit.* This section does not prohibit a person from requesting or receiving a credit card number or expiration date and recording the number or date, or both in lieu of a deposit to secure payment in event of default, loss, damage, or other occurrence.

88 Acts, ch 1059, §1, 2

CHAPTER 537A

CONTRACTS

Referred to in §669.14

537A.1	Seals abolished.	537A.5	Indemnity agreements — construction contracts.
537A.2	Consideration implied.	537A.6	In-state construction contracts — Iowa law to govern.
537A.3	Failure of consideration.	537A.7	through 537A.9 Reserved.
537A.4	Gaming contracts void — exceptions.	537A.10	Franchise agreements.

537A.1 Seals abolished.

The use of private seals in written contracts, or other instruments in writing, by individuals, firms, or corporations that have not adopted a corporate seal, is hereby abolished; but the addition of a seal to any such instrument shall not affect its character or validity in any respect.

[C51, §974; R60, §1823; C73, §2112; C97, §3068; S13, §3068; C24, 27, 31, 35, 39, §**9439;** C46, 50, 54, 58, 62, 66, 71, 73, §537.1; C75, 77, 79, 81, §537A.1]

Corporate seals, §490.302, 504.302, 558.2 et seq.

537A.2 Consideration implied.

All contracts in writing, signed by the party to be bound or by the party's authorized agent or attorney, shall import a consideration.

[C51, §975; R60, §1824; C73, §2113; C97, §3069; C24, 27, 31, 35, 39, §**9440;** C46, 50, 54, 58, 62, 66, 71, 73, §537.2; C75, 77, 79, 81, §537A.2]

537A.3 Failure of consideration.

The want or failure, in whole or in part, of the consideration of a written contract may be shown as a defense, total or partial, except as provided in the uniform commercial code, chapter 554.

[C51, §976; R60, §1825; C73, §2114; C97, §3070; C24, 27, 31, 35, 39, §**9441;** C46, 50, 54, 58, 62, 66, 71, 73, §537.3; C75, 77, 79, 81, §537A.3]

537A.4 Gaming contracts void — exceptions.

1. All promises, agreements, notes, bills, bonds, or other contracts, mortgages or other securities, when the whole or any part of the consideration thereof is for money or other valuable thing won or lost, laid, staked, or bet, at or upon any game of any kind or on any wager, are absolutely void and of no effect.

2. This section does not apply to a contract for the operation of or for the sale or rental of equipment for games of skill or games of chance, if both the contract and the games are in compliance with chapter 99B. This section does not apply to wagering under the pari-mutuel method of wagering authorized by chapter 99D. This section does not apply to the sale, purchase, or redemption of a ticket or share in the state lottery in compliance with chapter 99G. This section does not apply to wagering authorized by chapter 99F. This section does not apply to the sale, purchase, or redemption of any ticket or similar gambling device legally purchased in Indian lands within this state.

[C51, §2724; R60, §4366; C73, §4029; C97, §4965; C24, 27, 31, 35, 39, §**9442;** C46, 50, 54, 58, 62, 66, 71, 73, §537.4; C75, 77, 79, 81, §537A.4]

83 Acts, ch 187, §32; 85 Acts, ch 33, §123; 86 Acts, ch 1125, §4; 88 Acts, ch 1136, §1; 89 Acts, ch 231, §34; 92 Acts, ch 1203, §19; 2003 Acts, ch 178, §115, 121; 2003 Acts, ch 179, §142; 2008 Acts, ch 1031, §58

537A.5 Indemnity agreements — construction contracts.

1. As used in this section, *"construction contract"* means an agreement relating to the construction, alteration, improvement, development, demolition, excavation, rehabilitation, maintenance, or repair of buildings, water or sewage treatment plants, power plants, or any other improvements to real property in this state, including shafts, wells, and

structures, whether on ground, above ground, or underground, and includes agreements for architectural services, design services, engineering services, construction services, construction management services, development services, maintenance services, material purchases, equipment rental, and labor. *"Construction contract"* includes all public, private, foreign, or domestic agreements as described in this subsection other than such public agreements relating to highways, roads, and streets.

2. Except as excluded under subsection 3, a provision in a construction contract that requires one party to the construction contract to indemnify, hold harmless, or defend any other party to the construction contract, including the indemnitee's employees, consultants, agents, or others for whom the indemnitee is responsible, against liability, claims, damages, losses, or expenses, including attorney fees, to the extent caused by or resulting from the negligent act or omission of the indemnitee or of the indemnitee's employees, consultants, agents, or others for whom the indemnitee is responsible, is void and unenforceable as contrary to public policy.

3. This section does not apply to the indemnification of a surety by a principal on any surety bond, an insurer's obligation to its insureds under any insurance policy or agreement, a borrower's obligations to its lender, or any obligation of strict liability otherwise imposed by law.

2011 Acts, ch 33, §1; 2011 Acts, ch 131, §99, 158

537A.6 In-state construction contracts — Iowa law to govern.

1. As used in this section, *"in-state construction contract"* means a public, private, foreign, or domestic agreement relating to construction, alteration, repair, or maintenance of any real property in this state and includes agreements for architectural services, demolition, design services, development, engineering services, excavation, or any other improvement to real property in this state, including buildings, shafts, wells, and structures, whether on, above, or under real property in this state. *"In-state construction contract"* does not include any agreement between this state and any other state.

2. A provision of an in-state construction contract is void and unenforceable as contrary to public policy if the provision does any of the following:

a. Makes the in-state construction contract subject to the laws of another state.

b. Requires any litigation, mediation, arbitration, or other dispute resolution proceeding arising from the in-state construction contract to be conducted in another state.

3. The laws of this state shall apply to every in-state construction contract.

4. Any litigation, mediation, arbitration, or other dispute resolution proceeding arising from or relating to an in-state construction contract shall be conducted in this state.

2013 Acts, ch 87, §1, 2

537A.7 through 537A.9 Reserved.

537A.10 Franchise agreements.

1. *Definitions.* When used in this section, unless the context otherwise requires:

a. "Affiliate" means a person controlling, controlled by, or under common control with another person, every officer or director of such a person, and every person occupying a similar status or performing similar functions.

b. "Business day" means a day other than a Saturday, Sunday, or federal holiday.

c. (1) *"Franchise"* means either of the following:

(a) An oral or written agreement, either express or implied, which provides all of the following:

(i) Grants the right to distribute goods or provide services under a marketing plan prescribed or suggested in substantial part by the franchisor.

(ii) Requires payment of a franchise fee to a franchisor or its affiliate.

(iii) Allows the franchise business to be substantially associated with a trademark, service mark, trade name, logotype, advertisement, or other commercial symbol of or designating the franchisor or its affiliate.

(b) A master franchise.

(2) *"Franchise"* does not include any business that is operated under a lease or license on the premises of the lessor or licensor as long as such business is incidental to the business conducted by the lessor or licensor on such premises, including, without limitation, leased departments, licensed departments, and concessions and the leased or licensed department operates only under the trademark, trade name, service mark, or other commercial symbol designating the lessor or licensor.

(3) *"Franchise"* also does not include any contract under which a petroleum retailer or petroleum distributor is authorized or permitted to occupy leased marketing premises, which premises are to be employed in connection with the sale, consignment, or distribution of motor fuel under a trademark which is owned or controlled by a refiner which is regulated by the federal Petroleum Marketing Practices Act, 15 U.S.C. §2801 et seq. The term *"refiner"* means any person engaged in the refining of crude oil to produce motor fuel, and includes any affiliate of such person. *"Franchise"* also does not include a contract entered into by any person regulated under chapter 103A, subchapter IV, or chapter 123, 322, 322A, 322C, 322D, 322F, 522B, or 543B, or a contract establishing a franchise relationship with respect to the sale of construction equipment, lawn or garden equipment, or real estate.

d. *"Franchise fee"* means a direct or indirect payment to purchase or operate a franchise. Franchise fee does not include any of the following:

(1) Payment of a reasonable service charge to the issuer of a credit card by an establishment accepting the credit card.

(2) Payment to a trading stamp company by a person issuing trading stamps in connection with a retail sale.

(3) An agreement to purchase at a bona fide wholesale price a reasonable quantity of tangible goods for resale.

(4) The purchase or agreement to purchase, at a fair market value, any fixtures, equipment, leasehold improvements, real property, supplies, or other materials reasonably necessary to enter into or continue a business.

(5) Payments by a purchaser pursuant to a bona fide loan from a seller to the purchaser.

(6) Payment of rent which reflects payment for the economic value of leased real or personal property.

(7) The purchase or agreement to purchase promotional or demonstration supplies, materials, or equipment furnished at fair market value and not intended for resale.

e. *"Franchisee"* means a person to whom a franchise is granted. Franchisee includes the following:

(1) A subfranchisor with regard to its relationship with a franchisor.

(2) A subfranchisee with regard to its relationship with a subfranchisor.

f. *"Franchisor"* means a person who grants a franchise or master franchise, or an affiliate of such a person. Franchisor includes a subfranchisor with regard to its relationship with a franchisee, unless stated otherwise in this section.

g. *"Marketing plan"* means a plan or system concerning a material aspect of conducting business. Indicia of a marketing plan include any of the following:

(1) Price specification, special pricing systems, or discount plans.

(2) Sales or display equipment or merchandising devices.

(3) Sales techniques.

(4) Promotional or advertising materials or cooperative advertising.

(5) Training regarding the promotion, operation, or management of the business.

(6) Operational, managerial, technical, or financial guidelines or assistance.

h. *"Master franchise"* means an agreement by which a person pays a franchisor for the right to sell or negotiate the sale of franchises.

i. *"Offer"* or *"offer to sell"* means every attempt to offer or to dispose of, or solicitation of an offer to buy, a franchise or interest in a franchise for value.

j. *"Person"* means a person as defined in section 4.1, subsection 20.

k. *"Sale"* or *"sell"* means every contract or agreement of sale of, contract to sell or disposition of, a franchise or interest in a franchise for value.

l. *"Subfranchise"* means an agreement by which a person pays a franchisor for the right to sell or negotiate the sale of franchises.

m. *"Subfranchisee"* means a person who is granted a franchise from a subfranchisor.

n. *"Subfranchisor"* means a person who is granted a master franchise.

2. *Applicability.* Notwithstanding section 523H.2, this section applies to a new or existing franchise that is operated in this state and that is subject to an agreement entered into on or after July 1, 2000. For purposes of this section, the franchise is operated in this state only if the premises from which the franchise is operated are physically located in this state. For purposes of this section, a franchise including marketing rights in or to this state, is deemed to be operated in this state only if the franchisee's principal business office is physically located in this state. This section does not apply to a franchise solely because an agreement relating to the franchise provides that the agreement is subject to or governed by the laws of this state. The provisions of this section do not apply to any existing or future contracts between Iowa franchisors and franchisees who operate franchises located out-of-state.

3. *Jurisdiction and venue of disputes.*

a. A provision in a franchise agreement restricting jurisdiction to a forum outside this state is void with respect to a claim otherwise enforceable under this section.

b. A civil action or proceeding arising out of a franchise may be commenced wherever jurisdiction over the parties or subject matter exists, even if the agreement limits actions or proceedings to a designated jurisdiction.

c. Venue for a civil action commenced under this chapter shall be determined in accordance with chapter 616.

4. *Waivers void.* A condition, stipulation, or provision requiring a franchisee to waive compliance with or relieving a person of a duty or liability imposed by or a right provided by this section or a rule or order under this section is void. This subsection shall not affect the settlement of disputes, claims, or civil lawsuits arising or brought pursuant to this section.

5. *Transfer of franchise.*

a. A franchisee may transfer the franchised business and franchise to a transferee, provided that the transferee satisfies the reasonable current qualifications of the franchisor for new franchisees. For the purposes of this subsection, a reasonable current qualification for a new franchisee is a qualification based upon a legitimate business reason. If the proposed transferee does not meet the reasonable current qualifications of the franchisor, the franchisor may refuse to permit the transfer, provided that the refusal of the franchisor to consent to the transfer is not arbitrary or capricious.

b. (1) A franchisee may transfer less than a controlling interest in the franchise to an employee stock ownership plan, or employee incentive plan provided that more than fifty percent of the entire franchise is held by those who meet the franchisor's reasonable current qualifications for franchisees, and such transfer is approved by the franchisor. Approval of such transfer shall not be unreasonably withheld.

(2) If pursuant to such a transfer fifty percent or less of the entire franchise would be owned by persons who meet the franchisor's reasonable current qualifications, the franchisor may refuse to authorize the transfer, provided that enforcement of the reasonable current qualifications is not arbitrary or capricious.

(3) Participation by an employee in an employee stock ownership plan or employee incentive plan established pursuant to this subsection does not confer upon such employee any right to access trade secrets protected under the franchise agreement, which access the employee would not otherwise have if the employee did not participate in such plan.

c. A franchisor may require as a condition of a transfer any of the following:

(1) That the transferee successfully complete a training program.

(2) That a transfer fee be paid to reimburse the franchisor for the franchisor's actual expenses directly attributable to the transfer.

(3) That the franchisee pay or make provision acceptable to the franchisor to pay any amount due the franchisor or the franchisor's affiliate.

(4) That the financial terms of the transfer comply at the time of the transfer with the franchisor's current financial requirements for franchisees.

d. A franchisee shall give the franchisor no less than sixty days' written notice of a transfer which is subject to this subsection, and on request from the franchisor shall provide in writing the ownership interests of all persons holding or claiming an equitable or beneficial interest

in the franchise subsequent to the transfer or the franchisee, as appropriate. A franchisee shall not circumvent the intended effect of a contractual provision governing the transfer of the franchise or an interest in the franchise by means of a management agreement, lease, profit-sharing agreement, conditional assignment, or other similar device.

e. A transfer by a franchisee is deemed to be approved sixty days after the franchisee submits the request for consent to the transfer unless the franchisor withholds consent to the transfer as evidenced in writing, specifying the reason or reasons for withholding the consent. The written notice must be delivered to the franchisee prior to the expiration of the sixty-day period. Any such notice is privileged and is not actionable based upon a claim of defamation.

f. A franchisor shall not discriminate against a proposed transferee of a franchise on the basis of race, color, national origin, religion, sex, or disability.

g. A transfer of less than a controlling interest in the franchise to the franchisee's spouse or child or children shall be permitted if following the transfer more than fifty percent of the interest in the entire franchise is held by those who meet the franchisor's reasonable current qualifications. If following such a transfer fifty percent or less of the interest in the franchise would be owned by persons who meet the franchisor's reasonable current qualifications, the franchisor may refuse to authorize the transfer, provided that enforcement of the reasonable current qualifications is not arbitrary or capricious.

h. A franchisor shall not deny the surviving spouse or a child or children of a deceased or permanently disabled franchisee the opportunity to participate in the ownership of a franchise under a valid franchise agreement for a reasonable period, which need not exceed one year, after the death or disability of the franchisee. During such reasonable period, the surviving spouse or the child or children of the franchisee shall either meet all of the qualifications which the franchisee was subject to at the time of the death or disability of the franchisee, or sell, transfer, or assign the franchise to a person who meets the franchisor's current qualifications for a new franchisee. The rights granted pursuant to this subsection are subject to the surviving spouse or the child or children of the franchisee maintaining all standards and obligations of the franchise.

i. Incorporation of a proprietorship franchise shall be permitted upon sixty days' prior written notice to the franchisor. Such incorporation does not prohibit a franchisor from requiring a personal guaranty by the franchisee of obligations related to the franchise, and the owners of the corporation must meet the franchisor's reasonable current qualifications for franchisees.

j. A transfer within an existing ownership group of a franchise shall be permitted provided that the transferee meets the franchisor's reasonable current qualifications for franchisees, and written notice is submitted to the franchisor sixty days prior to such a transfer. If less than fifty percent of the franchise would be owned by persons who meet the franchisor's reasonable current qualifications, the franchisor may refuse to authorize the transfer, provided that enforcement of the reasonable current qualifications is not arbitrary or capricious.

6. *Encroachment.*

a. If a franchisor develops, or grants to a franchisee the right to develop, a new outlet or location which sells essentially the same goods or services under the same trademark, service mark, trade name, logotype, or other commercial symbol as an existing franchisee and the new outlet or location is in unreasonable proximity to the existing franchisee's outlet or location and has an adverse effect on the gross sales of the existing franchisee's outlet or location, the existing adversely affected franchisee has a cause of action for monetary damages in an amount calculated pursuant to paragraph "*d*", unless any of the following apply:

(1) The franchisor has first offered the new outlet or location to the existing franchisee on the same basic terms and conditions available to the other potential franchisee and such existing franchisee meets the reasonable current qualifications of the franchisor including any financial requirements, or, if the new outlet or location is to be owned by the franchisor, on the terms and conditions that would ordinarily be offered to a franchisee for a similarly situated outlet or location.

(2) The adverse impact on the existing franchisee's annual gross sales, based on a

comparison to the annual gross sales from the existing outlet or location during the twelve-month period immediately preceding the opening of the new outlet or location, is determined to have been less than six percent during the first twelve months of operation of the new outlet or location.

(3) The existing franchisee, at the time the franchisor develops, or grants to a franchisee the right to develop, a new outlet or location, is not in compliance with the franchisor's then current reasonable criteria for eligibility for a new franchise, not including any financial requirements.

(4) The existing franchisee has been granted reasonable territorial rights and the new outlet or location does not violate those territorial rights.

b. (1) The franchisor, with respect to claims made under paragraph *"a"*, shall establish both of the following:

(a) A formal procedure for hearing and acting upon claims by an existing franchisee with regard to a decision by the franchisor to develop, or grant to a franchisee the right to develop, a new outlet or location, prior to the opening of the new outlet or location.

(b) A reasonable formal procedure for mediating a dispute resulting in an award of compensation or other form of consideration to a franchisee to offset all or a portion of the franchisee's lost profits caused by the establishment of the new outlet or location. The procedure shall involve a neutral third-party mediator. The procedure shall be deemed reasonable if approved by a majority of the franchisor's franchisees in the United States.

(2) A dispute submitted to a formal procedure under subparagraph (1) does not diminish the rights of a franchisor or franchisee to bring a cause of action for a violation of this subsection if no settlement results from such procedure.

c. A franchisor shall establish and make available to its franchisees a written policy setting forth its reasonable criteria to be used by the franchisor to determine whether an existing franchisee is eligible for a franchise for an additional outlet or location.

d. (1) In establishing damages under a cause of action brought pursuant to this subsection, the franchisee has the burden of proving the amount of lost profits attributable to the compensable sales. In any action brought under this subsection, the damages payable shall be limited to no more than three years of the proven lost profits. For purposes of this paragraph, *"compensable sales"* means the annual gross sales from the existing outlet or location during the twelve-month period immediately preceding the opening of the new outlet or location less both of the following:

(a) Six percent of the annual gross sales for that twelve-month period immediately preceding the opening of the new outlet or location.

(b) The actual gross sales from the operation of the existing outlet or location for the twelve-month period immediately following the opening of the new outlet or location.

(2) Compensable sales shall exclude any amount attributable to factors other than the opening and operation of the new outlet or location.

e. Any cause of action brought under this subsection must be filed within eighteen months of the opening of the new outlet or location or within thirty days after the completion of the procedure under paragraph *"b"*, subparagraph (1), whichever is later.

7. *Termination.*

a. Except as otherwise provided by this section, a franchisor shall not terminate a franchise prior to the expiration of its term except for good cause. For purposes of this subsection, *"good cause"* is cause based upon a legitimate business reason. *"Good cause"* includes the failure of the franchisee to comply with any material lawful requirement of the franchise agreement, provided that the termination by the franchisor is not arbitrary or capricious. The burden of proof of showing that the action of the franchisor is arbitrary or capricious shall rest with the franchisee.

b. Prior to termination of a franchise for good cause, a franchisor shall provide a franchisee with written notice stating the basis for the proposed termination. After service of written notice, the franchisee shall have a reasonable period of time to cure the default, which in no event shall be less than thirty days or more than ninety days. In the event of nonpayment of moneys due under the franchise agreement, the period to cure need not exceed thirty days.

c. Notwithstanding paragraph *"b"*, a franchisor may terminate a franchise upon written notice and without an opportunity to cure if any of the following apply:

(1) The franchisee or the business to which the franchise relates is declared bankrupt or judicially determined to be insolvent.

(2) All or a substantial part of the assets of the franchise or the business to which the franchisee relates are assigned to or for the benefit of any creditor which is subject to chapter 681. An assignment for the benefit of any creditor pursuant to this subparagraph does not include the granting of a security interest in the normal course of business.

(3) The franchisee voluntarily abandons the franchise by failing to operate the business for five consecutive business days during which the franchisee is required to operate the business under the terms of the franchise, or any shorter period after which it is not unreasonable under the facts and circumstances for the franchisor to conclude that the franchisee does not intend to continue to operate the franchise, unless the failure to operate is due to circumstances beyond the control of the franchisee.

(4) The franchisor and franchisee agree in writing to terminate the franchise.

(5) The franchisee knowingly makes any material misrepresentations or knowingly omits to state any material facts relating to the acquisition or ownership or operation of the franchise business.

(6) The franchisee repeatedly fails to comply with one or more material provisions of the franchise agreement, when the enforcement of such material provisions is not arbitrary or capricious, whether or not the franchisee complies after receiving notice of the failure to comply.

(7) The franchised business or business premises of the franchisee are lawfully seized, taken over, or foreclosed by a government authority or official.

(8) The franchisee is convicted of a felony or any other criminal misconduct which materially and adversely affects the operation, maintenance, or goodwill of the franchise in the relevant market.

(9) The franchisee operates the franchised business in a manner that imminently endangers the public health and safety.

8. *Nonrenewal of a franchise.*

a. A franchisor shall not refuse to renew a franchise unless both of the following apply:

(1) The franchisee has been notified of the franchisor's intent not to renew at least six months prior to the expiration date or any extension of the franchise agreement.

(2) Any of the following circumstances exist:

(a) Good cause exists, provided that the refusal of the franchisor to renew is not arbitrary or capricious. For purposes of this subsection, *"good cause"* means cause based on a legitimate business reason.

(b) The franchisor and franchisee agree not to renew the franchise.

(c) The franchisor completely withdraws from directly or indirectly distributing its products or services in the geographic market served by the franchisee, provided that upon expiration of the franchise, the franchisor agrees not to seek to enforce any covenant of the nonrenewed franchisee not to compete with the franchisor or franchisees of the franchisor.

b. As a condition of renewal of the franchise, a franchise agreement may require that the franchisee meet the then current requirements for franchises and that the franchisee execute a new agreement incorporating the then current terms and fees for new franchises.

9. *Sources of goods or services.*

a. A franchisor shall not require that a franchisee purchase goods, supplies, inventories, or services exclusively from the franchisor or from a source or sources of supply specifically designated by the franchisor where such goods, supplies, inventories, or services of comparable quality are available from sources other than those designated by the franchisor.

b. However, the publication by the franchisor of a list of approved suppliers of goods, supplies, inventories, or services, or the requirement that such goods, supplies, inventories, or services comply with specifications and standards prescribed by the franchisor, does not constitute designation of a source. Additionally, the reasonable right of a franchisor to disapprove a supplier does not constitute a designation of source. This subsection does not apply to the principal goods, supplies, inventories, or services manufactured by the

franchisor, or such goods, supplies, inventories, or services entitled to protection as a trade secret.

10. *Franchisee's right to associate.* A franchisor shall not restrict a franchisee from associating with other franchisees or from participating in a trade association, and shall not retaliate against a franchisee for engaging in these activities.

11. *Duty of good faith.*

a. A franchise imposes on the parties a duty of good faith in performance and enforcement of the franchise agreement. *"Good faith"* means honesty in fact and the observance of reasonable commercial standards of fair dealing in the trade.

b. The duty of good faith is imposed in situations including, but not limited to, where the franchisor opens a new outlet or location that has an adverse impact on an existing franchisee. A determination of whether the duty of good faith with respect to a new outlet or location has been met shall be made pursuant to the provisions, standards, and procedures in subsection 6.

12. *Exclusion.* For purposes of this section, *"franchise"* does not include a contract under which a franchise relationship is established with respect to retreaded tires and related equipment used for commercial vehicles.

13. *Private civil action.* A person who violates a provision of this section or order issued under this section is liable for damages caused by the violation, including, but not limited to, costs and reasonable attorneys' and experts' fees, and subject to other appropriate relief including injunctive and other equitable relief.

14. *Choice of law.* A condition, stipulation, or provision requiring the application of the law of another state in lieu of this section is void.

15. *Construction with other law.* This section does not limit any liability that may exist under another statute or at common law.

16. *Construction.* This section shall be liberally construed to effectuate its purposes.

17. *Severability.* If any provision or clause of this section or any application of this section to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the section which can be given effect without the invalid provision or application, and to this end the provisions of this section are declared to be severable.

2000 Acts, ch 1093, §1; 2001 Acts, ch 118, §55; 2002 Acts, ch 1119, §186; 2006 Acts, ch 1090, §22, 26; 2012 Acts, ch 1023, §157

Referred to in §523H.2A

CHAPTER 537B

MOTOR VEHICLE SERVICE TRADE PRACTICES

Referred to in §669.14, 714.16

537B.1	Title.	537B.4	Aftermarket parts.
537B.2	Definitions.	537B.5	Reserved.
537B.3	Required trade practices.	537B.6	Deceptive act or practice.

537B.1 Title.

This chapter is entitled the *"Motor Vehicle Service Trade Practices Act"*.

90 Acts, ch 1010, §1

537B.2 Definitions.

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

1. *"Consumer"* means a person contracting for, or intending to contract for, repairs or service upon a motor vehicle used primarily for farm or personal use.

2. *"Motor vehicle"* means a motor vehicle as defined in section 321.1 which is subject to

registration. However, *"motor vehicle"* does not include a motor vehicle, as defined in section 321.1, with a gross vehicle weight rating of more than twelve thousand pounds.

3. *"Supplier"* means a person offering to contract for repairs or service upon a motor vehicle. Supplier includes an employee or other representative of the supplier.

90 Acts, ch 1010, §2; 90 Acts, ch 1145, §13; 98 Acts, ch 1100, §75
Referred to in §577.3

537B.3 Required trade practices.

1. If a consumer authorizes, in writing, repairs or service upon a motor vehicle prior to the commencement of the repairs or service, a conspicuous disclosure in substantially the following language shall appear on the authorization form or on a separate form provided to the consumer at the time of the authorization.

ESTIMATE

You have the right to a written or oral estimate if the expected cost of repairs or service will be more than fifty dollars. Your bill will not be higher than the estimate by more than ten percent unless you approve a higher amount before repairs are finished. Initial your choice:

..... Written estimate.
..... Oral estimate.
..... No estimate.
..... Call me if repairs and service will be more than $.....

2. *a.* The form described in subsection 1, shall at minimum contain the following information:

(1) The date.
(2) The supplier's name.
(3) The consumer's name and telephone number.
(4) The reasonably anticipated completion date.

b. If a written estimate is requested, the supplier may write the written estimate on the authorization form or on another form. If the nature of repairs or service is unknown at the time that the estimate is given, the supplier may state an hourly labor charge for the work. If the consumer so requests, a copy of the written estimate shall be provided to the consumer prior to the commencement of any repairs or service.

3. If a consumer orally authorizes repairs or service upon a motor vehicle prior to the commencement of the repairs or service, the supplier shall inform the consumer of the right to receive a written or oral estimate. The supplier shall note the consumer's response on the form described in subsections 1 and 2. If the consumer requests an estimate, the supplier shall provide the estimate to the consumer prior to commencing the repairs or service.

90 Acts, ch 1010, §3; 2012 Acts, ch 1023, §157
Referred to in §537B.6

537B.4 Aftermarket parts.

1. As used in this section:

a. "Aftermarket crash part" means a replacement for any of the nonmechanical sheet metal or plastic parts which generally constitute the exterior of a motor vehicle, including inner and outer panels, which replacement is not manufactured or marketed by the original equipment manufacturer of the motor vehicle. Aftermarket crash part does not include replacement glass for the windows, windshield, or backlight of the motor vehicle.

b. "Motor vehicle" means a motor vehicle as defined in section 321.1 which is subject to registration.

c. "Repair facility" means a motor vehicle dealer, garage, body shop, or other person, which undertakes the repair or replacement of those parts of a motor vehicle that generally constitute the exterior of a motor vehicle for a fee.

2. A repair facility shall not use aftermarket crash parts in the repair of a customer's motor vehicle without disclosing the proposed use of such parts in the estimate of repairs given to

the customer prior to the repair of the motor vehicle. The estimate shall be in writing and shall clearly identify each part proposed to be used which is an aftermarket crash part. The following information shall appear in ten point type, or larger, on or attached to the estimate:

> This estimate has been prepared based on the use of aftermarket crash parts supplied by a source other than the manufacturer of your motor vehicle. Any warranties applicable to these replacement parts are provided by the manufacturer or distributor of these parts rather than the manufacturer of your vehicle.

3. An aftermarket crash part supplied for use in this state after January 1, 1991, shall have affixed or inscribed upon the part the logo or name of its manufacturer. A repair facility installing an aftermarket crash part on a motor vehicle shall install the part so that the manufacturer's logo or name is visible upon inspection after installation whenever practicable.

4. It is a deceptive act or practice for a repair facility or manufacturer or distributor of aftermarket crash parts to fail to comply with the requirements of this section.

90 Acts, ch 1010, §4; 90 Acts, ch 1145, §14
Referred to in §714.16

537B.5 Reserved.

537B.6 Deceptive act or practice.

It is a deceptive act or practice for a supplier to:

1. Fail to comply with the requirements of section 537B.3.

2. Make the performance of any repair or service contingent upon a consumer's waiver of any rights provided for in this chapter.

3. Fail to obtain oral or written authorization from the consumer for the anticipated cost of any additional, unforeseen, but necessary repairs or services when the cost of those repairs or services amount to more than ten percent, excluding tax, of the original estimate requested by a consumer.

4. Fail, if the anticipated cost of a repair or service is less than fifty dollars and an estimate has not been given to the consumer, to obtain oral or written authorization from the consumer for the anticipated cost of any additional unforeseen, but necessary repairs or services if the total cost of the repairs or services, if performed, will exceed fifty dollars.

5. Fail to disclose prior to the commencement of any repairs or service, that a charge will be made for disassembly, reassembly, partially completed work, or any other work not directly related to the actual performance of the repairs or service. A charge so imposed must be directly related to the actual amount of labor or parts involved in the inspection, repair, or service.

6. Charge for any repair or service which has not been authorized by the consumer.

7. Fail to disclose upon the first contact with the consumer that any charge not directly related to the actual performance of the repair or service will be imposed by the supplier whether or not repairs or services are performed.

8. Fail to disclose upon the first contact with a consumer the basis upon which a charge will be imposed for towing the motor vehicle if that service will be performed.

9. Represent that repairs or services are necessary when that is not the fact.

10. Represent that repairs have been made or services have been performed when that is not the fact.

11. Represent that a motor vehicle or any part of a motor vehicle which is being inspected or diagnosed for a repair or service is in a dangerous condition, or that the consumer's continued use of it may be harmful, when that is not the fact.

12. Materially and intentionally understate or misstate the estimated cost of the repairs or service.

13. Fail to provide the consumer with an itemized list of repairs performed or services rendered, including a list of parts or materials and a statement of whether they are used,

remanufactured or rebuilt, if not new, and their cost to the consumer, the amount charged for labor, and the identity of the individual performing the repair or service.

14. Fail to tender to the consumer any replaced parts, unless the parts are to be rebuilt or sold by the supplier, or returned to the manufacturer in connection with warranted repairs or services, and such intended reuse or return is made known to the consumer prior to commencing any repair or service. However, this subsection does not prohibit the supplier from retaining the replaced parts if the consumer so requests.

15. Fail to provide to the consumer upon the consumer's request a written, itemized receipt for any motor vehicle or part of a motor vehicle that is left with, or turned over to, the supplier for repair or service. The receipt shall include:

a. The identity of the supplier which will perform the repair or service.

b. The name and signature of the supplier or a representative who actually accepts the motor vehicle or any part of the motor vehicle.

c. A description including make and model number or other features as will reasonably identify the motor vehicle or any part of the motor vehicle to be repaired or serviced.

d. The date on which the motor vehicle or any part of the motor vehicle was left with or turned over to the supplier.

16. Fail to disclose to the consumer prior to the commencement of any repair or service, that any part of the repair or service will be performed by a person other than the supplier or the supplier's employees, if the consumer requests that information.

90 Acts, ch 1010, §5
Referred to in §577.3

CHAPTER 538

TENDER OF PAYMENT AND PERFORMANCE

Referred to in §669.14

Tender under offer to confess judgment, chapter 677

538.1	Demand required.	538.5	Tender when holder absent from state.
538.2	Tender of labor or property.	538.6	Offer in writing — effect.
538.3	Tender when contract assigned.	538.7	Nonacceptance of tender.
538.4	Effect of tender.	538.8	Receipt — objection.

538.1 Demand required.

No cause of action shall accrue upon a contract for labor or the payment or delivery of property other than money, where the time of performance is not fixed, until a demand of performance has been made upon the maker and refused, or a reasonable time for performance thereafter allowed.

[C51, §959; R60, §1806; C73, §2097; C97, §3056; C24, 27, 31, 35, 39, §**9443;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §538.1]

538.2 Tender of labor or property.

When a contract for labor, or for the payment or delivery of property other than money, does not fix a place of payment, the maker may tender the labor or property at the place where the payee resided at the time of making the contract, or at the residence of the payee at the time of performance of the contract, or where any assignee of the contract resides when it becomes due, but if the property in such case is too ponderous to be conveniently transported, or if the payee had no known place of residence within the state at the time of making the contract, or if the assignee of a written contract has no known place of residence

within the state at the time of performance, the maker may tender the property at the place where the maker resided at the time of making the contract.

[C51, §960, 961; R60, §1807, 1808; C73, §2098, 2099; C97, §3057; C24, 27, 31, 35, 39, §**9444;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §538.2]

538.3 Tender when contract assigned.

When the contract is contained in a written instrument which is assigned before due, and the maker has notice thereof, the maker shall make the tender at the residence of the holder if the holder resides in the state and no farther from the maker than the payee did at the making thereof.

[C51, §962; R60, §1809; C73, §2100; C97, §3058; C24, 27, 31, 35, 39, §**9445;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §538.3]

538.4 Effect of tender.

A tender of the property, as above provided, discharges the maker from the contract, and the property becomes vested in the payee or the payee's assignee, and the payee or assignee may maintain an action therefor as in other cases. But if the property tendered be perishable, or requires feeding, or other care, and no person is found to receive it when tendered, the person making the tender shall preserve, feed, or otherwise take care of the same, and shall have a lien thereon for the person's reasonable expenses and trouble in so doing.

[C51, §963, 964; R60, §1810, 1811; C73, §2101, 2102; C97, §3059; C24, 27, 31, 35, 39, §**9446;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §538.4]

538.5 Tender when holder absent from state.

1. When an instrument for the payment of money is due and the holder is absent from the state or the holder's identity or whereabouts are unknown and the instrument does not provide for a place of payment, the maker may tender payment at the last known residence or place of business of the last known holder, and if there be no person there authorized to receive payment and give proper credit therefor, the maker shall be deemed to have tendered payment and interest shall cease on the date of deposit if:

a. The maker deposits the amount due with the clerk of the district court in the county where the maker resided at the time of the making of the instrument, if the maker was then a resident of the state of Iowa, or if the maker was a nonresident of the state of Iowa at the time of making, with the clerk of the district court of Polk county, and

b. (1) The maker files an affidavit with the clerk of the court that the identity or address of the holder is unknown and that the maker has made diligent inquiry to ascertain it, or

(2) The maker within three days gives notice of such deposit by ordinary mail to the holder, if the holder's identity and address are known.

2. Upon presentment of the instrument by the holder to the clerk, the clerk shall pay the holder of such instrument the funds in the clerk's hands. If such deposit is in full payment of the instrument the clerk shall deliver the instrument to the maker. If such deposit is a partial payment thereof the clerk shall endorse such payment thereon and return the instrument to the holder.

[C51, §958; R60, §1805; C73, §2103; C97, §3060; C24, 27, 31, 35, 39, §**9447;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §538.5]

2012 Acts, ch 1023, §157

Referred to in §602.8102(75)

538.6 Offer in writing — effect.

An offer in writing to pay a particular sum of money, or to deliver a written instrument or specific personal property, if not accepted, is equivalent to the actual tender of the money, instrument, or property, subject, however, to the condition contained in section 538.7; but if the party to whom the tender is made desires an inspection of the instrument or property

tendered, other than money, before making the party's determination, it shall be allowed the party on request.

[C51, §967; R60, §1816; C73, §2105; C97, §3061; C24, 27, 31, 35, 39, §**9448;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §538.6]

538.7 Nonacceptance of tender.

When a tender of money or property is not accepted by the party to whom it is made, the party making it may, if that party sees fit, retain it in possession; but if afterwards the party to whom the tender was made concludes to accept it and gives notice thereof to the other party, and the subject of the tender is not delivered to the accepting party within a reasonable time, the tender shall be of no effect.

[C51, §966; R60, §1815; C73, §2104; C97, §3062; C24, 27, 31, 35, 39, §**9449;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §538.7]

Referred to in §538.6

538.8 Receipt — objection.

The person making a tender may demand a receipt in writing for the money or article tendered, as a condition precedent to the delivery thereof. The person to whom a tender is made must, at the time, make any objection which the person may have to the money, instrument, or property tendered, or the person will be deemed to have waived it.

[C51, §968, 969; R60, §1817, 1818; C73, §2106, 2107; C97, §3063; C24, 27, 31, 35, 39, §**9450;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §538.8]

CHAPTER 538A

CREDIT SERVICES ORGANIZATIONS

Referred to in §669.14

538A.1 Definitions.
538A.2 Credit services organization defined — exemptions.
538A.3 Prohibited conduct.
538A.4 Bond — surety account.
538A.5 Registration.
538A.6 Disclosure statement.
538A.7 Form in terms of contract.
538A.8 Waiver.
538A.9 Action for damages.
538A.10 Injunction.
538A.11 Statute of limitations.
538A.12 Criminal penalty.
538A.13 Burden of proving exemption.
538A.14 Remedies cumulative.

538A.1 Definitions.

In this chapter, unless the context otherwise requires:

1. *"Buyer"* means an individual who is solicited to purchase or who purchases the services of a credit services organization.

2. *"Consumer reporting agency"* has the meaning assigned by section 603(f), Fair Credit Reporting Act, 15 U.S.C. §1681a(f) as amended through January 1, 1989.

3. *"Extension of credit"* means the right to defer payment of debt or to incur debt and defer its payment offered or granted primarily for personal, family, or household purposes.

89 Acts, ch 183, §1
CS89, §533C.1
C93, §538A.1

538A.2 Credit services organization defined — exemptions.

1. A credit services organization is a person who, with respect to the extension of credit by others and in return for the payment of money or other valuable consideration, provides, or represents that the person can or will provide, any of the following services:

a. Improving a buyer's credit record, history, or rating.

b. Providing advice or assistance to a buyer with regard to paragraph *"a"*.

2. The following are exempt from this chapter:

a. A person authorized to make loans or extensions of credit under the laws of this state or the United States who is subject to regulation and supervision of this state or the United States, or a lender approved by the United States secretary of housing and urban development for participation in a mortgage insurance program under the National Housing Act, 12 U.S.C. §1701 et seq.

b. A bank or savings and loan association whose deposits or accounts are eligible for insurance by the federal deposit insurance corporation or the federal savings and loan insurance corporation, or successor deposit insurance entities, or a subsidiary of a bank or savings and loan association.

c. A credit union doing business in this state.

d. A nonprofit organization exempt from taxation under section 501(c)(3) of the Internal Revenue Code, as defined in section 422.3.

e. A person licensed as a real estate broker or salesperson, under section 543B.20, acting within the course and scope of that license.

f. A person licensed to practice as an attorney in this state acting within the course and scope of the person's practice as an attorney.

g. A broker-dealer registered with the securities and exchange commission or the commodity futures trading commission acting within the course and scope of the regulations of the commission that person is registered with.

h. A consumer reporting agency.

89 Acts, ch 183, §2
CS89, §533C.2
C93, §538A.2
93 Acts, ch 60, §23
Referred to in §538A.13

538A.3 Prohibited conduct.

A credit services organization, a salesperson, agent, or representative of a credit services organization, or an independent contractor who sells or attempts to sell the services of a credit services organization shall not:

1. Charge a buyer or receive from a buyer money or other valuable consideration before completing performance of all services the credit services organization has agreed to perform for the buyer, unless the credit services organization has obtained a bond in accordance with section 538A.4 or established and maintained a surety account at a federally insured bank or savings and loan association located in this state in the amount required by section 538A.4, subsection 5.

2. Charge a buyer or receive from a buyer money or other valuable consideration solely for referral of the buyer to a retail seller who will or may extend credit to the buyer if the credit that is or will be extended to the buyer is substantially the same as that available to the general public.

3. Make or use a false or misleading representation in the offer or sale of the services of a credit services organization.

4. Engage, directly or indirectly, in a fraudulent or deceptive act, practice, or course of business in connection with the offer or sale of the services of a credit services organization.

89 Acts, ch 183, §3
CS89, §533C.3
C93, §538A.3
Referred to in §538A.4

538A.4 Bond — surety account.

1. This section applies to a credit services organization required by section 538A.3, subsection 1, to obtain a surety bond or establish a surety account.

2. If a bond is obtained, a copy of it shall be filed with the secretary of state. If a surety account is established, notification of the depository, the trustee, and the account number shall be filed with the secretary of state.

3. If a bond is obtained, the bond shall be executed by a surety company authorized to do business in this state, and the bond shall be continuous in nature until canceled by the surety with not less than thirty days' written notice to both the credit services organization and to the secretary of state. The notice shall indicate the surety's intent to cancel the bond effective on a date at least thirty days after the date of the notice.

4. The bond or surety account required must be in favor of the state for the benefit of any person who is damaged by a violation of this chapter.

5. A person claiming against the bond or surety account for a violation of this chapter may maintain an action at law against the credit services organization and against the surety or trustee. The surety or trustee is liable only for damages awarded under section 538A.9, subsection 1, and not the punitive damages permitted under that section. The aggregate liability of the surety or trustee to all persons damaged by a credit services organization's violation of this chapter shall not exceed the amount of the surety account or bond.

6. The bond or the surety account shall be in an amount of at least ten thousand dollars.

7. A depository holding money in a surety account under this chapter shall not convey money in the account to the credit services organization that established the account or a representative of the credit services organization unless the credit services organization or representative presents a statement issued by the secretary of state indicating that section 538A.5, subsection 6, has been satisfied in relation to the account. The secretary of state may conduct investigations and require submission of information as necessary to enforce this subsection.

89 Acts, ch 183, §4
CS89, §533C.4
C93, §538A.4
Referred to in §538A.3, 538A.6

538A.5 Registration.

1. A credit services organization shall file a registration statement with the secretary of state before conducting business in this state. The registration statement must contain both of the following:

a. The name and address of the credit services organization.

b. The name and address of any person who directly or indirectly owns or controls ten percent or more of the outstanding shares of stock in the credit services organization.

2. The registration statement must also contain one of the following:

a. A full and complete disclosure of any litigation or unresolved complaint filed with a governmental authority of this state relating to the operation of the credit services organization.

b. A notarized statement that there has been no litigation or unresolved complaint filed with a governmental authority of this state relating to the operation of the credit services organization.

3. The credit services organization shall update the statement not later than the ninetieth day after the date on which a change in the information required in the statement occurs.

4. A credit services organization registering under this section shall maintain a copy of the registration statement in the files of the credit services organization. The credit services organization shall allow a buyer to inspect the registration statement on request.

5. The secretary of state may charge each credit services organization that files a registration statement with the secretary of state a reasonable fee not to exceed one hundred dollars to cover the cost of filing. The secretary of state shall not require a credit services organization to provide information other than that provided in the registration statement.

6. The bond or surety account shall be maintained until two years after the date that the credit services organization ceases to operate.

89 Acts, ch 183, §5
CS89, §533C.5
C93, §538A.5
Referred to in §538A.4

538A.6 Disclosure statement.

1. Before executing a contract or agreement with a buyer, or receiving money or other valuable consideration, a credit services organization shall provide the buyer with a statement in writing, containing all of the following:

a. A complete and detailed description of the services to be performed by the credit services organization for the buyer and the total cost of the services.

b. A statement explaining the buyer's rights to proceed against the bond or surety account required by section 538A.4.

c. The name and address of the surety company which issued the bond, or the name and address of the depository and the trustee, and the account number of the surety account.

2. The credit services organization shall maintain on file for a period of two years after the date the statement is provided, an exact copy of the statement, signed by the buyer, acknowledging receipt of the statement.

89 Acts, ch 183, §6
CS89, §533C.6
C93, §538A.6

538A.7 Form in terms of contract.

1. A contract between the buyer and a credit services organization for the purchase of the services of the credit services organization must be in writing, dated, signed by the buyer, and must include all of the following:

a. A conspicuous statement in boldface type, in immediate proximity to the space reserved for the signature of the buyer, as follows:

> You, the buyer, may cancel this contract at any time before midnight of the third day after the date of the transaction. See the attached notice of cancellation form for an explanation of this right.

b. The terms and conditions of payment, including the total of all payments to be made by the buyer, whether to the credit services organization or to another person.

c. A full and detailed description of the services to be performed by the credit services organization for the buyer, including all guarantees and all promises of full or partial refunds, and the estimated date by which the services are to be performed or estimated length of time for performing the services.

d. The address of the credit services organization's principal place of business and the name and address of its agent in the state authorized to receive service of process.

2. The contract must have attached two easily detachable copies of the notice of cancellation. The notice must be in boldface type and in the following form:

> NOTICE OF CANCELLATION
>
> You may cancel this contract, without any penalty or obligations, within three days after the date the contract is signed.
>
> If you cancel, any payment made by you under this contract will be returned within ten days after the date of receipt by the seller of your cancellation notice.
>
> To cancel this contract, mail or deliver a signed, dated copy of this cancellation notice or other written notice to: (name of seller) at (address of seller) (place of business) not later than midnight (date).
>
> (Date) .....
>
> (Purchaser's signature) .....

3. The credit services organization shall give to the buyer a copy of the completed contract and all other documents the credit services organization requires the buyer to sign at the time they are signed.

89 Acts, ch 183, §7
CS89, §533C.7
C93, §538A.7

538A.8 Waiver.

1. A credit services organization shall not attempt to cause a buyer to waive a right under this chapter.

2. A waiver by a buyer of any part of this chapter is void.

89 Acts, ch 183, §8
CS89, §533C.8
C93, §538A.8

538A.9 Action for damages.

1. A buyer injured by a violation of this chapter may bring an action for recovery of damages. The damages awarded shall not be less than the amount paid by the buyer to the credit services organization, plus reasonable attorney's fees and court costs.

2. The buyer may also be awarded punitive damages.

89 Acts, ch 183, §9
CS89, §533C.9
C93, §538A.9
Referred to in §538A.4, 538A.11

538A.10 Injunction.

The attorney general or a buyer may bring an action in a district court to enjoin a violation of this chapter.

89 Acts, ch 183, §10
CS89, §533C.10
C93, §538A.10

538A.11 Statute of limitations.

An action shall not be brought under section 538A.9 after ten years after the date of the execution of the contract for services to which the action relates.

An action shall not be brought under section 538A.12 after four years after the date of the execution of the contract for services to which the action relates.

89 Acts, ch 183, §11
CS89, §533C.11
C93, §538A.11

538A.12 Criminal penalty.

A person who violates a provision of this chapter commits a serious misdemeanor.

89 Acts, ch 183, §12
CS89, §533C.12
C93, §538A.12
Referred to in §538A.11

538A.13 Burden of proving exemption.

In an action under this chapter, the burden of proving an exemption under section 538A.2, subsection 2, is upon the person claiming the exemption.

89 Acts, ch 183, §13
CS89, §533C.13
C93, §538A.13

538A.14 Remedies cumulative.

The remedies provided by this chapter are in addition to other remedies provided by law.

89 Acts, ch 183, §14
CS89, §533C.14
C93, §538A.14

CHAPTER 539

ASSIGNMENT OF ACCOUNTS AND NONNEGOTIABLE INSTRUMENTS

Referred to in §625.22, 631.14, 669.14

Assignment of thing in action, R.C.P. 1.205

539.1	Assignment of nonnegotiable instruments.	539.4	Assignment of wages.
539.2	Assignment prohibited by instrument.	539.5	Priority.
539.3	Assignment of open account.	539.6 through 539.15	Assignor liable. Repealed by 65 Acts, ch 413, §10102.

539.1 Assignment of nonnegotiable instruments.

Bonds, due bills, and all instruments by which the maker promises to pay another, without words of negotiability, a sum of money, or by which the maker promises to pay a sum of money in property or labor, or to pay or deliver any property or labor, or acknowledges any money, labor, or property to be due, are assignable by endorsement on the instrument, or by other writing. The assignee, including a person who takes assignment for collection in the regular course of business, has a right of action on them in the assignee's own name, subject to any defense or counterclaim which the maker or debtor had against an assignor of the instrument before notice of the assignment. In case of conflict between this section and section 554.5112, 554.5113, 554.5114, 554.9404, or 554.9405, section 554.5112, 554.5113, 554.5114, 554.9404, or 554.9405 controls.

[C51, §949; R60, §1796; C73, §2084; C97, §3044; C24, 27, 31, 35, 39, §**9451;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §539.1; 82 Acts, ch 1235, §1]

94 Acts, ch 1167, §4; 96 Acts, ch 1026, §17; 2000 Acts, ch 1149, §172, 187

Related provision, R.C.P. 1.205

539.2 Assignment prohibited by instrument.

When by the terms of an instrument its assignment is prohibited, an assignment thereof shall nevertheless be valid, but the maker may make use of any defense or counterclaim against the assignee which the maker may have against any assignor thereof before notice of such assignment is given to the maker in writing. In case of conflict between this section and section 554.5112, 554.5113, 554.5114, 554.9404, or 554.9405, section 554.5112, 554.5113, 554.5114, 554.9404, or 554.9405 controls.

[C51, §951; R60, §1798; C73, §2086; C97, §3046; C24, 27, 31, 35, 39, §**9452;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §539.2]

94 Acts, ch 1167, §5, 122; 96 Acts, ch 1026, §18; 2000 Acts, ch 1149, §173, 187

Referred to in §539.3

Related provision, R.C.P. 1.205

539.3 Assignment of open account.

An open account of sums of money due on contract may be assigned. The assignee, including a person who takes assignment for collection in the regular course of business, has a right of action on the account in the assignee's own name, subject to the defenses and counterclaims allowed against the instruments mentioned in section 539.2, before notice of the assignment is given to the debtor in writing by the assignee. In case of conflict, uniform commercial code, section 554.9404 or 554.9405, controls.

[C51, §952; R60, §1799; C73, §2087; C97, §3047; S13, §3047; C24, 27, 31, 35, 39, §**9453;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §539.3; 82 Acts, ch 1235, §2]

2000 Acts, ch 1149, §174, 187

Related provision, R.C.P. 1.205

539.4 Assignment of wages.

No sale or assignment, by the head of a family, of wages, whether the same be exempt from execution or not, shall be of any validity whatever unless the same be evidenced by a written instrument, and if married, unless the husband and wife sign and acknowledge the same joint instrument before an officer authorized to take acknowledgments. Provided, however,

that no such assignment or order shall be effective or binding upon the employer unless the employer has in writing agreed to accept and pay said assignment or order. This section shall not apply to a wage assignment by an employee to an organization which represents the employee in labor relations with the employee's employer.

[S13, §3047; C24, 27, 31, 35, 39, §**9454;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §539.4]

Referred to in §91A.3, 533.326

539.5 Priority.

Assignments of wages shall have priority and precedence in the order in which notice in writing of such assignments shall be given to the employer, and not otherwise.

[S13, §3047; C24, 27, 31, 35, 39, §**9455;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §539.5]

539.6 Assignor liable.

The assignor of any of the above instruments not negotiable shall be liable to the action of the assignee without notice.

[C51, §956; R60, §1803; C73, §2088; C97, §3048; C24, 27, 31, 35, 39, §**9456;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §539.6]

539.7 through 539.15 Repealed by 65 Acts, ch 413, §10102.

CHAPTER 540

SURETIES

Referred to in §669.14

540.1	Requiring creditor to sue.	540.3	Suit by surety.
540.2	Refusal or neglect of creditor.	540.4	Executor — official bonds.

540.1 Requiring creditor to sue.

When any person bound as surety for another for the payment of money, or the performance of any other contract in writing, apprehends that the principal is about to become insolvent or remove permanently from the state without discharging the contract, the surety may, if a cause of action has accrued thereon, by writing, require the creditor to sue upon the same, or permit the surety to commence an action in such creditor's name and at the surety's cost.

[C51, §970; R60, §1819; C73, §2108; C97, §3064; C24, 27, 31, 35, 39, §**9457;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §540.1]

Order of liability, R.C.P. 1.956
Right of subrogation, §626.19

540.2 Refusal or neglect of creditor.

If the creditor refuses or neglects to bring an action for ten days after request, and does not permit the surety to do so, and to furnish the surety with a true copy of the contract or other writing therefor, and enable the surety to have the use of the original when requisite in such action, the surety shall be discharged.

[C51, §971; R60, §1820; C73, §2109; C97, §3065; C24, 27, 31, 35, 39, §**9458;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §540.2]

540.3 Suit by surety.

When the surety commences such action, the surety shall give a bond to pay such costs as may be adjudged against the creditor, and the action shall be brought against all the obligors, but those joining in the request to the creditor shall make no defense thereto, but may be heard on the assessment of the damages.

[C51, §972; R60, §1821; C73, §2110; C97, §3066; C24, 27, 31, 35, 39, §**9459;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §540.3]

540.4 Executor — official bonds.

The provisions of this chapter extend to the executor of a deceased surety and holder of the contract, but not to the official bonds of public officers, executors, or guardians.

[C51, §973; R60, §1822; C73, §2111; C97, §3067; C24, 27, 31, 35, 39, §**9460;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §540.4]

CHAPTER 540A

INSTITUTIONAL FUNDS MANAGEMENT

Referred to in §173.22A, 347.13, 669.14

Repeal of former §540A.1 – 540A.9 and enactment of §540A.101 – 540A.109 apply to institutional funds in existence on or after July 1, 2008; 2008 Acts, ch 1066, §11

540A.1 through 540A.9 Repealed by 2008 Acts, ch 1066, §10, 11; 2008 Acts, ch 1191, §138.
540A.101 Short title.
540A.102 Definitions.
540A.103 Standard of conduct — managing and investing institutional fund.
540A.104 Appropriation for expenditure or accumulation of endowment fund — rules of construction.
540A.105 Delegation of management and investment functions.
540A.106 Release or modification of restrictions on management, investment, or purpose.
540A.107 Reviewing compliance.
540A.108 Electronic signatures.
540A.109 Uniformity of application and construction.

540A.1 through 540A.9 Repealed by 2008 Acts, ch 1066, §10, 11; 2008 Acts, ch 1191, §138.

540A.101 Short title.

This chapter may be cited as the *"Uniform Prudent Management of Institutional Funds Act"*.

2008 Acts, ch 1066, §1, 11

Section applies to institutional funds in existence on or after July 1, 2008; 2008 Acts, ch 1066, §11

540A.102 Definitions.

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

1. *"Charitable purpose"* means the relief of poverty, the advancement of education or religion, the promotion of health, the promotion of a governmental purpose, or any other purpose the achievement of which is beneficial to the community.

2. *"Endowment fund"* means an institutional fund or any part of an institutional fund, not wholly expendable by the institution on a current basis under the terms of the applicable gift instrument. *"Endowment fund"* does not include assets that an institution designates as an endowment fund for its own use.

3. *"Gift instrument"* means a record or records, including an institutional solicitation, under which property is granted to, transferred to, or held by an institution as an institutional fund.

4. *"Institution"* means any of the following:

a. A person, other than an individual, organized and operated exclusively for charitable purposes.

b. A government or governmental subdivision, agency, or instrumentality, to the extent that it holds funds exclusively for a charitable purpose.

c. A trust that had both charitable and noncharitable interests, after all noncharitable interests have terminated.

5. *"Institutional fund"* means a fund held by an institution exclusively for charitable purposes. *"Institutional fund"* does not include any of the following:

a. Program-related assets.

b. A fund held for an institution by a trustee that is not an institution.

c. A fund in which a beneficiary that is not an institution has an interest, other than an interest that could arise upon violation or failure of the purposes of the fund.

6. *"Person"* means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

7. *"Program-related asset"* means an asset held by an institution primarily to accomplish a charitable purpose of the institution and not primarily for investment.

8. *"Record"* means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

2008 Acts, ch 1066, §2, 11
Section applies to institutional funds in existence on or after July 1, 2008; 2008 Acts, ch 1066, §11

540A.103 Standard of conduct — managing and investing institutional fund.

1. Subject to the intent of a donor expressed in a gift instrument, an institution shall consider the charitable purposes of the institution and the purposes of the institutional fund in managing and investing an institutional fund.

2. In addition to complying with the duty of loyalty imposed by law other than this chapter, each person responsible for managing and investing an institutional fund shall manage and invest the fund in good faith and with the care an ordinarily prudent person in a like position would exercise under similar circumstances.

3. All of the following shall apply to an institution managing and investing an institutional fund:

a. An institution may incur only costs that are appropriate and reasonable in relation to the assets, the purposes of the institution, and the skills available to the institution.

b. An institution shall make a reasonable effort to verify facts relevant to the management and investment of the fund.

4. Subject to the intent of a donor expressed in a gift instrument, an institution may pool two or more institutional funds for purposes of management and investment.

5. Except as otherwise provided by a gift instrument, all of the following rules shall apply:

a. In managing and investing an institutional fund, the following factors, if relevant, shall be considered:

(1) General economic conditions.

(2) The possible effect of inflation or deflation.

(3) The expected tax consequences, if any, of investment decisions or strategies.

(4) The role that each investment or course of action plays within the overall investment portfolio of the fund.

(5) The expected total return from income and the appreciation of investments.

(6) Other resources of the institution.

(7) The needs of the institution and the fund to make distributions and to preserve capital.

(8) An asset's special relationship or special value, if any, to the charitable purposes of the institution.

b. Management and investment decisions about an individual asset shall be made in the context of the institutional fund's portfolio of investments as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the fund and to the institution.

c. Except as otherwise provided by law, an institution may invest in any kind of property or type of investment consistent with this section.

d. An institution shall diversify the investments of an institutional fund unless the institution reasonably determines that, because of special circumstances, the purposes of the fund are better served without diversification.

e. Within a reasonable time after receiving property, an institution shall make and carry out decisions concerning the retention or disposition of the property or to rebalance a portfolio, in order to bring the institutional fund into compliance with the purposes, terms, and distribution requirements of the institution as necessary to meet other circumstances of the institution and the requirements of this chapter.

f. A person that has special skills or expertise, or is selected in reliance upon the person's representation that the person has special skills or expertise, has a duty to use those skills or that expertise in managing and investing institutional funds.

2008 Acts, ch 1066, §3, 11
Section applies to institutional funds in existence on or after July 1, 2008; 2008 Acts, ch 1066, §11

540A.104 Appropriation for expenditure or accumulation of endowment fund — rules of construction.

1. Subject to the intent of a donor expressed in the gift instrument and to subsection 4, an institution may appropriate for expenditure or accumulate so much of an endowment fund as the institution determines is prudent for the uses, benefits, purposes, and duration for which the endowment fund is established. Unless stated otherwise in the gift instrument, the assets in an endowment fund are donor-restricted assets until appropriated for expenditure by the institution. In making a determination to appropriate or accumulate, the institution shall act in good faith, with the care that an ordinarily prudent person in a like position would exercise under similar circumstances, and shall consider, if relevant, all of the following factors:

a. The duration and preservation of the endowment fund.

b. The purposes of the institution and the endowment fund.

c. General economic conditions.

d. The possible effect of inflation or deflation.

e. The expected total return from income and the appreciation of investments.

f. Other resources of the institution.

g. The investment policy of the institution.

2. In order to limit the authority to appropriate for expenditure or accumulate under subsection 1, a gift instrument must specifically state the limitation.

3. Terms in a gift instrument designating a gift as an endowment, or a direction or authorization in the gift instrument to use only "income", "interest", "dividends", or "rents, issues, or profits", or "to preserve the principal intact", or words of similar import do all of the following:

a. Create an endowment fund of permanent duration unless other language in the gift instrument limits the duration or purpose of the fund.

b. Do not otherwise limit the authority to appropriate for expenditure or accumulate under subsection 1.

4. *a.* If a gift instrument uses the terms or phrases described in subsection 3, the gift instrument may also contain language substantially similar to the following:

> A direction or authorization herein to use only "income", "interest", "dividends", or "rents, issues, or profits", or to "preserve the principal intact" or words of similar import, does not limit the expenditures from the endowment fund only to income, interest, dividends, or rents, issues, or profits. Expenditures may also come from other assets in the endowment fund. All expenditures from the endowment fund created hereunder shall be prudent in light of the uses, benefits, purposes, and duration of the endowment fund. In determining the amounts to be expended annually or to be accumulated, account shall be taken of the following factors: the duration and preservation of the endowment fund, the purposes of the endowment fund; general economic conditions; the possible effect of inflation or deflation; the expected total return from income and the appreciation of investments; other recourses available to carry out the charitable purposes of this gift; and the governing investment policies. Because these factors govern expenditures and accumulations from the endowment fund created hereunder, terms such as those in the first sentence of this subsection shall be interpreted, absent other express language to the contrary, as creating an endowment fund of permanent duration, and such

words do not limit the authority to expend or accumulate funds in accordance with the factors listed above.

b. The absence of the foregoing language or words of similar import in a gift instrument does not invalidate the gift instrument or any gift, or portion of a gift, thereunder.

2008 Acts, ch 1066, §4, 11
Section applies to institutional funds in existence on or after July 1, 2008; 2008 Acts, ch 1066, §11

540A.105 Delegation of management and investment functions.

1. Subject to any specific limitation set forth in a gift instrument or in law, an institution may delegate to an external agent the management and investment of an institutional fund to the extent that an institution could prudently delegate under the circumstances. An institution shall act in good faith, with the care that an ordinarily prudent person in a like position would exercise under similar circumstances, in doing all of the following:

a. Selecting an agent.

b. Establishing the scope and terms of the delegation, consistent with the purposes of the institution and the institutional fund.

c. Periodically reviewing the agent's actions in order to monitor the agent's performance and compliance with the scope and terms of the delegation.

2. In performing a delegated function, an agent owes a duty to the institution to exercise reasonable care to comply with the scope and terms of the delegation.

3. An institution that complies with subsection 1 is not liable for the decisions or actions of an agent to which the function was delegated.

4. By accepting delegation of a management or investment function from an institution that is subject to the laws of this state, an agent submits to the jurisdiction of the courts of this state in all proceedings arising from or related to the delegation or the performance of the delegated function.

5. An institution may delegate management and investment functions to its committees, officers, or employees as authorized by the laws of this state.

2008 Acts, ch 1066, §5, 11
Section applies to institutional funds in existence on or after July 1, 2008; 2008 Acts, ch 1066, §11

540A.106 Release or modification of restrictions on management, investment, or purpose.

1. If the donor consents in a record, an institution may release or modify, in whole or in part, a restriction contained in a gift instrument on the management, investment, or purpose of an institutional fund. A release or modification shall not allow a fund to be used for a purpose other than a charitable purpose of the institution.

2. The court, upon application of an institution, may modify a restriction contained in a gift instrument regarding the management or investment of an institutional fund if the restriction has become impracticable or if, because of circumstances not anticipated by the donor, the restriction will defeat or substantially impair the accomplishment of the purposes of the institutional fund. The institution shall notify the attorney general of the application, and the attorney general shall be given an opportunity to be heard. Any modification must be made in accordance with the donor's probable intention.

3. If a particular charitable purpose or a restriction contained in a gift instrument on the use of an institutional fund becomes unlawful, impracticable, or impossible to fulfill, the court, upon application of an institution, may modify the purpose of the fund or the restriction on the use of the fund in a manner consistent with the charitable purposes expressed in the gift instrument. The institution shall notify the attorney general of the application and the attorney general shall be given the opportunity to be heard. If the donor or the donor's designee having the right to enforce the restrictions under subsection 5 provides the institution with an address, then the institution shall also notify the donor or such designee of the application by United States mail addressed to the last address so provided and the donor or such designee shall have an opportunity to be heard.

4. If an institution determines that a restriction contained in a gift instrument on the management, investment, or purpose of an institutional fund is unlawful, impracticable, or

impossible to fulfill, the institution may release or modify the restriction, in whole or part, sixty days after notifying the attorney general, if all of the following conditions are met:

a. The institutional fund subject to the restriction has a total value of less than fifty thousand dollars.

b. More than twenty years have elapsed since the fund was established.

c. The institution uses the property in a manner consistent with the charitable purposes expressed in the gift instrument.

5. *a.* A donor whose aggregate gifts to an endowment fund exceeds one hundred thousand dollars may maintain an action in the district court of the county in which the institution's principal office is located to enforce restrictions respecting the purposes of the fund established by the donor in a gift instrument. A gift made in property shall be valued at fair market value on the date of the gift.

b. A donor may designate in a gift instrument or other record signed by the donor and delivered to the institution one or more persons, by name or by description, whether or not born at the time of such designation, to enforce the restrictions respecting the purposes of the fund during the donor's lifetime if the donor is judicially declared incompetent.

c. A donor may designate in a gift instrument or other record signed by the donor and delivered to the institution one or more persons, by name or by description, whether or not born at the time of such designation, to enforce the restrictions respecting the purposes of the fund for fifty years beginning on the date of the donor's death. If the donor prevails in any action in district court to enforce restrictions respecting the purposes of the fund in a gift instrument, the district court may order the institution to reimburse the donor's costs, including reasonable counsel fees, incurred in connection with the action, if the court finds that the institution acted in bad faith or with gross negligence.

d. The provisions in this subsection 5 may be altered by contrary provisions in a gift instrument.

6. Nothing in subsection 5 affects the authority of the attorney general to enforce any restriction in a gift instrument.

7. This section does not limit the application of the judicial power of cy pres or the right of an institution to modify a restriction on the management, investment, purpose, or use of a fund as may be permitted under the gift instrument or by law.

2008 Acts, ch 1066, §6, 11
Section applies to institutional funds in existence on or after July 1, 2008; 2008 Acts, ch 1066, §11

540A.107 Reviewing compliance.

Compliance with this chapter is determined in light of the facts and circumstances existing at the time a decision is made or action is taken and not by hindsight.

2008 Acts, ch 1066, §7, 11
Section applies to institutional funds in existence on or after July 1, 2008; 2008 Acts, ch 1066, §11

540A.108 Electronic signatures.

This chapter modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. §7001 et seq., but does not modify, limit, or supersede section 101 of that Act, 15 U.S.C. §7001(a), or authorize electronic delivery of any of the notices described in section 103 of that Act, 15 U.S.C. §7003(b).

2008 Acts, ch 1066, §8, 11
Section applies to institutional funds in existence on or after July 1, 2008; 2008 Acts, ch 1066, §11

540A.109 Uniformity of application and construction.

This chapter shall be applied and construed with consideration given to the need to promote uniformity of the law with respect to the uniform prudent management of institutional funds Act among states which enact this law.

2008 Acts, ch 1066, §9, 11
Section applies to institutional funds in existence on or after July 1, 2008; 2008 Acts, ch 1066, §11

CHAPTER 541

NEGOTIATING INSTRUMENTS ON HOLIDAY

Referred to in §669.14

541.1 through 541.201 Repealed by 65 Acts, ch 413, §10102.
541.202 Negotiating instrument on holiday.

541.1 through 541.201 Repealed by 65 Acts, ch 413, §10102.

541.202 Negotiating instrument on holiday.

Nothing in any law of this state shall in any manner whatsoever affect the validity of, or render void or voidable, the payment, certification, or acceptance of a check or other negotiable instrument or any other transaction by a bank or trust company in this state because done or performed on any legal holiday or during any time other than regular banking hours, if such payment, certification, acceptance or other transaction could have been validly done or performed on any other day; provided that nothing herein shall be construed to compel any bank or trust company in this state, which by law or custom is entitled to close for the whole or any part of any legal holiday, to keep open for the transaction of business or to perform any of the acts or transactions aforesaid on any legal holiday except at its own option.

[C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §541.202]

CHAPTER 541A

INDIVIDUAL DEVELOPMENT ACCOUNTS

Referred to in §239B.7, 422.7(28), 422.7(28)(a), 450.4, 669.14

541A.1 Definitions.
541A.2 Individual development accounts.
541A.3 Individual development accounts — state savings match and tax provisions.
541A.4 Individual development account — pilot phase. Repealed by 2006 Acts, ch 1016, §7, 8.
541A.5 Rules.
541A.6 Compliance with federal requirements.
541A.7 Individual development account state match fund.

541A.1 Definitions.

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

1. *"Account holder"* means an individual who is the owner of an individual development account.

2. *"Administrator"* means the division of community action agencies of the department of human rights.

3. *"Charitable contributor"* means a nonprofit association described in section 501(c)(3) of the Internal Revenue Code which makes a deposit to an individual development account and which is exempt from taxation under section 501(a) of the Internal Revenue Code.

4. *"Federal poverty level"* means the first poverty income guidelines published in the calendar year by the United States department of health and human services.

5. *"Financial institution"* means a financial institution approved by the administrator as an investment mechanism for individual development accounts.

6. *"Household income"* means the annual household income of an account holder or prospective account holder, as determined in accordance with rules adopted by the administrator.

7. *"Individual contributor"* means an individual who makes a deposit to an individual development account and is not the account holder or a charitable contributor.

8. *"Individual development account"* means either of the following:

a. A financial instrument that is certified to have the characteristics described in section 541A.2 by the operating organization.

b. A financial instrument that is certified by the operating organization to have the characteristics described in and funded by a federal individual development account program under which federal and state funding contributed to match account holder deposits is deposited by an operating organization in accordance with federal law and regulations, and which includes but is not limited to any of the programs implemented under the following federal laws:

(1) The federal Personal Responsibility and Work Opportunity Act of 1996, 42 U.S.C. §604(h).

(2) The federal Assets for Independence Act, Pub. L. No. 105-285, Tit. IV.

9. *"Operating organization"* means an agency selected by the administrator for involvement in operating individual development accounts directed to a specific target population.

10. *"Source of principal"* means any of the sources of a deposit to an individual development account under section 541A.2, subsection 2.

93 Acts, ch 97, §16; 94 Acts, ch 1114, §23; 2002 Acts, ch 1175, §38; 2006 Acts, ch 1016, §2, 8; 2008 Acts, ch 1178, §9, 10, 17; 2010 Acts, ch 1061, §180

541A.2 Individual development accounts.

A financial instrument known as an individual development account is established. An individual development account shall have all of the following characteristics:

1. *a.* To be eligible to open an account, a prospective account holder must have a household income that is equal to or less than two hundred percent of the federal poverty level.

b. The account shall be kept in the name of an individual account holder.

2. Deposits made to an individual development account shall be made in any of the following manners and are subject to the indicated conditions:

a. Deposits made by the account holder.

b. Deposits of individual development account moneys which are transferred from another individual account holder.

c. A deposit made on behalf of the account holder by an individual or a charitable contributor. This type of deposit may include but is not limited to moneys to match the account holder's deposits.

3. The account earns income.

4. During a calendar year, with the approval of the operating organization, an account holder may make withdrawals from the account holder's account for any of the following authorized purposes:

a. Educational costs at an accredited institution of higher education.

b. Training costs for an accredited or licensed training program.

c. Purchase of a primary residence.

d. Capitalization of a small business start-up.

e. An improvement to a primary residence which increases the tax basis of the property.

f. Emergency medical costs for the account holder or for a member of the account holder's family. However, a withdrawal for this purpose is limited to once during the life of the account and the amount of the withdrawal shall not exceed ten percent of the account balance at the time of the withdrawal.

g. A purpose authorized in accordance with rule for a refugee individual development account.

h. Purchase of an automobile.

i. Purchase of assistive technology, home or vehicle modification, or other device or physical improvement to assist an account holder or family member with a disability.

j. Other purpose authorized in accordance with rule that is intended to move the account holder or a family member toward a higher degree of self-sufficiency.

5. An adult account holder may transfer all or part of the assets in the account to any

other account holder's account. An account holder who is less than eighteen years of age is prohibited from transferring account assets to any other account holder.

6. An individual development account closed in accordance with this subsection is not subject to the limitations and benefits provided by this chapter but is subject to state tax in accordance with the provisions of section 422.7, subsection 28, and section 450.4, subsection 6. An individual development account may be closed for any of the following reasons:

a. The account's operating organization determines that the account holder has withdrawn moneys from the account for a purpose other than authorized under subsection 4.

b. The account's operating organization determines there has been no activity in the account during the preceding twelve months.

c. The account holder changes the account holder's place of primary residence to a new location outside the general geographic area served by the operating organization and an operating organization is not available in the new location.

d. The account's operating organization withdraws from involvement with the individual development account project and another operating organization is not available to operate the account.

7. Subject to obtaining any necessary federal waivers, the department of human services shall not consider moneys in an individual development account and any earnings on the moneys in determining the eligibility or need of an individual for benefits or assistance or the amount of benefits or assistance under the family investment program under chapter 239B, the promoting independence and self-sufficiency through employment job opportunities and basic skills program, or any other program administered by the department of human services.

8. In the event of an account holder's death, the account may be transferred to the ownership of a contingent beneficiary or to the individual development account of another account holder. An account holder shall name contingent beneficiaries or transferees at the time the account is established and a named beneficiary or transferee may be changed at the discretion of the account holder.

9. The total amount of sources of principal which may be in an individual development account shall be limited to thirty thousand dollars.

93 Acts, ch 97, §17; 96 Acts, ch 1106, §9, 10; 97 Acts, ch 41, §32; 2006 Acts, ch 1016, §3, 4, 8; 2008 Acts, ch 1178, §11, 12, 17; 2009 Acts, ch 70, §1, 2, 5

Referred to in §541A.1

541A.3 Individual development accounts — state savings match and tax provisions.

All of the following state savings match and tax provisions shall apply to an individual development account:

1. *a.* Payment by the state of a state savings match on amounts of up to two thousand dollars that an account holder deposits in the account holder's account.

b. Moneys transferred to an individual development account from another individual development account and a state savings match received by the account holder in accordance with this section shall not be considered an account holder deposit for purposes of determining a state savings match.

c. Payment of a state savings match either shall be made directly to the account holder or to an operating organization's central reserve account for later distribution to the account holder in the most appropriate manner as determined by the administrator.

d. Subject to the limitation in paragraph "*a*", the state savings match shall be equal to one hundred percent of the amount deposited by the account holder. However, the administrator may limit, reduce, delay, or otherwise revise state savings match payment provisions as necessary to restrict the payments to the funding available.

2. Income earned by an individual development account is not subject to state tax, in accordance with the provisions of section 422.7, subsection 28.

3. Amounts transferred between individual development accounts are not subject to state tax.

4. The administrator shall coordinate the filing of claims for a state savings match authorized under subsection 1, between account holders and operating organizations.

Claims approved by the administrator may be paid to each account holder, for an aggregate amount for distribution to the holders of the accounts in a particular financial institution, or to an operating organization's central reserve account for later distribution to the account holders depending on the efficiency for issuing the state savings match payments. Claims shall be initially filed with the administrator on or before a date established by the administrator. Claims approved by the administrator shall be paid from the individual development account state savings match fund.

93 Acts, ch 97, §18; 96 Acts, ch 1106, §11; 98 Acts, ch 1218, §78, 84; 2002 Acts, ch 1175, §39, 40; 2003 Acts, ch 145, §286; 2006 Acts, ch 1016, §5, 6, 8; 2006 Acts, ch 1185, §123; 2008 Acts, ch 1178, §13, 17; 2009 Acts, ch 70, §3, 5; 2009 Acts, ch 133, §170

Referred to in §422.7(28)(b), 541A.5, 541A.7

Individual disaster grants for unmet needs to provide the state match to certain account holders affected by natural disaster; 2009 Acts, ch 169, §4 – 6; 2009 Acts, ch 179, §175, 176, 179; 2011 Acts, ch 127, §53, 89; 2012 Acts, ch 1020, §23

541A.4 Individual development account — pilot phase. Repealed by 2006 Acts, ch 1016, §7, 8.

541A.5 Rules.

1. The commission on community action agencies created in section 216A.92A, in consultation with the department of administrative services, shall adopt administrative rules to administer this chapter.

2. *a.* The rules adopted by the commission shall include but are not limited to provision for transfer of an individual development account to a different financial institution than originally approved by the administrator, if the different financial institution has an agreement with the account's operating organization.

b. The rules for determining household income may provide categorical eligibility for prospective account holders who are enrolled in programs with income eligibility restrictions that are equal to or less than the maximum household income allowed for payment of a state match under section 541A.3.

c. Subject to the availability of funding, the commission may adopt rules implementing an individual development account program for refugees. Rules shall identify purposes authorized for withdrawals to meet the special needs of refugee families.

3. The administrator shall utilize a request for proposals process for selection of operating organizations and approval of financial institutions.

94 Acts, ch 1114, §25; 96 Acts, ch 1106, §14; 2003 Acts, ch 145, §286; 2008 Acts, ch 1178, §14, 17; 2009 Acts, ch 70, §4, 5

541A.6 Compliance with federal requirements.

The commission on community action agencies shall adopt rules for compliance with federal individual development account requirements under the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996, §103, as codified in 42 U.S.C. §604(h), under the federal Assets for Independence Act, Pub. L. No. 105-285, Tit. IV, or with any other federal individual development account program requirements for drawing federal funding. Any rules adopted under this section shall not apply the federal individual development account program requirements to an operating organization which does not utilize federal funding for the accounts with which it is connected or to an account holder who does not receive temporary assistance for needy families block grant or other federal funding.

99 Acts, ch 100, §4; 2008 Acts, ch 1178, §15, 17; 2010 Acts, ch 1061, §180

541A.7 Individual development account state match fund.

1. An individual development account state match fund is created in the state treasury under the authority of the administrator. Notwithstanding section 8.33, moneys appropriated to the fund shall not revert to any other fund. Notwithstanding section 12C.7, subsection 2, interest or earnings on moneys deposited in the fund shall be credited to the fund.

2. Moneys available in the fund for a fiscal year are appropriated to the administrator to be used to provide the state match for account holder deposits in accordance with section 541A.3.

At least eighty-five percent of the amount appropriated shall be used for state match payments and the remainder may be used for the administrative costs of the operating organization. Administrative costs include but are not limited to accounting services, curriculum costs for financial education or asset-specific training, and costs for technical assistance contractors.

2008 Acts, ch 1178, §16, 17

CHAPTER 541B

IOWA FIRST-TIME HOMEBUYER SAVINGS ACCOUNT ACT

Referred to in §669.14

541B.1	Short title.	541B.4	Account administration — account holder responsibilities.
541B.2	Definitions.	541B.5	Financial institution protections.
541B.3	First-time homebuyer savings account.	541B.6	Tax considerations.
		541B.7	Rules and forms.

541B.1 Short title.

This chapter may be cited as the *"Iowa First-Time Homebuyer Savings Account Act"*.

2017 Acts, ch 116, §3

541B.2 Definitions.

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

1. *"Account holder"* means an individual who establishes, either individually or jointly with the individual's spouse, a first-time homebuyer savings account pursuant to section 541B.3.

2. *"Department"* means the department of revenue.

3. *"Designated beneficiary"* means an individual meeting the requirements of section 541B.3, subsection 2, and designated by an account holder as beneficiary of the account holder's first-time homebuyer savings account pursuant to section 541B.3, subsection 2.

4. *a. "Eligible home costs"* means the following:

(1) The down payment for the purchase of a single-family residence in Iowa by a designated beneficiary.

(2) A cost, fee, tax, or payment incurred by, or charged or assigned to, a designated beneficiary for the purchase of a single-family residence in Iowa, and listed on the statement of receipts and disbursements for the sale, including any statement prescribed by 12 C.F.R. §1026.38, as amended.

b. "Eligible home costs" includes any United States veterans administration funding fee incurred by, or charged or assigned to, a designated beneficiary in connection with a veterans administration home loan guaranty program.

5. *"Financial institution"* means a state or federally chartered bank, savings and loan association, credit union, or trust company in this state.

6. *"First-time homebuyer"* means an individual who is a resident of Iowa and who does not own, either individually or jointly, a single-family or multifamily residence, and who has not owned or purchased, either individually or jointly, a single-family or multifamily residence for a period of three years prior to all of the following:

a. The date on which the individual is named as a designated beneficiary of a first-time homebuyer savings account.

b. The date of the qualified home purchase for which the eligible home costs are paid or reimbursed from a first-time homebuyer savings account.

7. *"First-time homebuyer savings account"* means an account that meets the requirements of sections 541B.3 and 541B.4 and that was established for the purpose of paying or reimbursing a designated beneficiary's eligible home costs in connection with a qualified home purchase.

8. *"Individual"* means a natural person.

9. *"Qualified home purchase"* means, with respect to a first-time homebuyer savings account, the purchase of a single-family residence in Iowa by the account's designated beneficiary ninety or more days after the date the account holder first opened a first-time homebuyer savings account.

10. *"Resident"* means the same as defined in section 422.4.

11. *"Single-family residence"* means a single-family residence owned and occupied by a designated beneficiary as the designated beneficiary's principal residence, including but not limited to a manufactured home, mobile home, condominium unit, or cooperative.

2017 Acts, ch 116, §4
Referred to in §422.7(41)(e), 422.9

541B.3 First-time homebuyer savings account.

1. *Establishment of account.*

a. Beginning January 1, 2018, an individual may open an interest-bearing savings account with a financial institution and designate the entire account as a first-time homebuyer savings account for the purpose of paying or reimbursing a designated beneficiary's eligible home costs in connection with a qualified home purchase. The first-time homebuyer savings account designation shall be made no later than April 30 of the year following the tax year during which the account is opened, on forms provided by the department.

b. A married couple electing to file a joint Iowa individual income tax return may establish a joint first-time homebuyer savings account. Married taxpayers electing to file separate tax returns or separately on a combined tax return for Iowa tax purposes shall not establish or maintain a joint first-time homebuyer savings account.

c. An individual may establish more than one first-time homebuyer savings account, provided each account has a different designated beneficiary.

2. *Designation of beneficiary.*

a. The account holder shall designate one individual as beneficiary of the first-time homebuyer savings account. The designation shall be made on forms provided by the department and no later than April 30 of the year following the tax year during which the account is opened. The account holder may change the designated beneficiary of the first-time homebuyer savings account at any time.

b. The account holder and designated beneficiary of a first-time homebuyer savings account may be the same individual.

c. An individual may be the designated beneficiary of more than one first-time homebuyer savings account.

d. The designated beneficiary of a first-time homebuyer savings account must be a first-time homebuyer.

2017 Acts, ch 116, §5
Referred to in §541B.2, 541B.7
For future amendment to subsection 1, paragraph b, effective on or after January 1, 2023, contingent upon meeting certain net general fund revenue criteria, see 2018 Acts, ch 1161, §131, 133, 134

541B.4 Account administration — account holder responsibilities.

1. *Account contributions.* Contributions to a first-time homebuyer savings account may be made by any person in the form of cash. There is no limitation on the amount of contributions that may be made to or retained in a first-time homebuyer savings account.

2. *Account expenses.* The account holder shall not use funds held in a first-time homebuyer savings account to pay expenses, if any, of administering the account, except that all fees and charges assessed by the financial institution may be deducted from the account by the financial institution where the account is held.

3. *Required reports.* The account holder shall submit the following information to the department:

a. An annual report for the first-time homebuyer savings account on forms furnished by the department. The report shall be included with the Iowa income tax return of the account holder.

b. A copy of the federal internal revenue service form 1099, or other similar federal

internal revenue service income reporting form, if any, issued for the first-time homebuyer savings account to the account holder by the financial institution where the account is held. The form shall be included with the Iowa income tax return of the account holder.

c. Upon a withdrawal of funds from a first-time homebuyer savings account, a transaction report on forms furnished by the department.

4. *Withdrawal of funds.* The account holder may withdraw funds from a first-time homebuyer savings account at any time.

2017 Acts, ch 116, §6
Referred to in §541B.2, 541B.7

541B.5 Financial institution protections.

Nothing in this chapter shall be construed to require a financial institution to do any of the following, or to be responsible or liable for any of the following:

1. Designate or label within the financial institution's account contracts, systems, or in any other manner, an account as a first-time homebuyer savings account.

2. Ascertain or verify the purpose of a withdrawal of funds from a first-time homebuyer savings account, or track the destination or use of the withdrawn funds.

3. Allocate funds in a first-time homebuyer savings account to a designated beneficiary or among joint account holders.

4. Report any information to the department or any other governmental agency.

5. Determine or ensure that an account satisfies the requirements to be a first-time homebuyer savings account.

6. Determine or ensure that funds withdrawn from a first-time homebuyer savings account are used for the payment or reimbursement of a designated beneficiary's eligible home costs in connection with a qualified home purchase.

7. Report or remit taxes or penalties related to the ownership or use of a first-time homebuyer savings account.

8. Include the name of a beneficiary in the title of a first-time homebuyer savings account, or document the change of any beneficiary to a first-time homebuyer savings account.

2017 Acts, ch 116, §7

541B.6 Tax considerations.

The state income tax treatment of a first-time homebuyer savings account shall be as provided in section 422.7, subsection 41, and section 422.9, subsection 2, paragraph *"k"*.

2017 Acts, ch 116, §8
For future amendment to this section, effective on or after January 1, 2023, contingent upon meeting certain net general fund revenue criteria, see 2018 Acts, ch 1161, §132 – 134

541B.7 Rules and forms.

1. The department shall adopt rules to implement and administer this chapter.

2. The department shall create and make available forms to be used in complying with this chapter, including but not limited to the following:

a. A form for designating an account as a first-time homebuyer savings account pursuant to section 541B.3, subsection 1, paragraph *"a"*.

b. A form for designating an individual as beneficiary of a first-time homebuyer savings account pursuant to section 541B.3, subsection 2, paragraph *"a"*.

c. A first-time homebuyer savings account annual report as required in section 541B.4, subsection 3, paragraph *"a"*. The report shall require, at a minimum, a list of transactions occurring on the account during the tax year, and shall identify any supporting documentation to be included with the report or maintained by the taxpayer.

d. A transaction report as required in section 541B.4, subsection 3, paragraph "c", which report shall require, at a minimum, information regarding the eligible home costs to which any withdrawn funds were applied in connection with a qualified home purchase, and information regarding the amount of funds remaining, if any, in a first-time homebuyer savings account.

2017 Acts, ch 116, §9

SUBTITLE 4

PROFESSIONAL REGULATION, COMMERCE-RELATED

Referred to in §524.802

CHAPTER 542

PUBLIC ACCOUNTANTS

Referred to in §15E.208, 80A.2, 99D.20, 99F.13, 203.16, 203C.24, 272C.1, 272C.6, 272C.9, 546.10, 669.14, 714E.1, 714H.4

542.1 Title.
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542.17 Confidential communications.
542.18 Licensees' working papers — clients' records.
542.19 Substantial equivalency.
542.20 Practice privilege.

542.1 Title.

This chapter shall be known and may be cited as the *"Iowa Accountancy Act of 2001"*.

2001 Acts, ch 55, §1, 38

542.2 Legislative intent.

It is the policy of this state, and the purpose of this chapter, to promote the reliability of information that is used for guidance in financial transactions or for accounting for or assessing the financial status or performance of commercial, noncommercial, and governmental enterprises. The reliance of the public in general and of the business community in particular on sound financial reporting imposes on persons engaged in such practice certain obligations both to their clients and to the public. These obligations, which this chapter is intended to enforce, include the obligation to maintain independence in thought and action, to strive continuously to improve one's professional skills, to observe where applicable generally accepted accounting principles and generally accepted auditing standards, to promote sound and informative financial reporting, to hold the affairs of clients in confidence, and to maintain high standards of personal conduct in all matters affecting one's fitness to practice public accountancy. The public interest requires that persons professing special competence in accountancy or offering assurance as to the reliability or fairness of presentation of such information shall have demonstrated their qualifications to do so, and that persons who have not demonstrated and maintained such qualifications not be permitted to represent themselves as having such special competence or to offer such assurance; that the conduct of persons licensed as having special competence in accountancy be regulated in all aspects of their professional work; that a public authority competent to prescribe and assess the qualifications and to regulate the conduct of licensees be established; and that the use of titles that have a capacity or tendency to deceive the public as to the status or competence of the persons using such titles be prohibited.

2001 Acts, ch 55, §2, 38

542.3 Definitions.

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

1. *a. "Attest"* or *"attest service"* means providing any of the following services:

(1) An audit or other engagement to be performed in accordance with the statements on auditing standards.

(2) A review of a financial statement to be performed in accordance with the statements on standards for accounting and review services.

(3) Any engagement to be performed in accordance with the statements on standards for attestation engagements.

(4) Any engagement to be performed in accordance with the standards of the public company accounting oversight board.

b. The standards specified in this subsection are those standards adopted by the board, by rule, by reference to the standards developed for general application by the American institute of certified public accountants, the public company accounting oversight board, or other recognized national accountancy organization.

2. *"Board"* means the Iowa accountancy examining board established under section 542.4 or its predecessor under prior law.

3. *"Certificate"* means a certificate as a certified public accountant issued under section 542.6 or 542.19, or a certificate issued under corresponding prior law.

4. *"Certified public accountant"* means a person licensed by the board who holds a certificate issued under this chapter or corresponding prior law.

5. *"Certified public accounting firm"* means a sole proprietorship, a corporation, a partnership, a limited liability company, or any other form of organization issued a permit to practice as a firm of certified public accountants under section 542.7.

6. *"Client"* means a person or entity that agrees with a licensee or licensee's employer to receive a professional service.

7. *"Commission"* means a brokerage or other participation fee. *"Commission"* does not include a contingent fee.

8. *"Compilation"* means a service performed in accordance with statements on standards for accounting and review services and presented in the form of financial statements, which provides information that is the representation of management without undertaking to express any assurance on the statements.

9. *"Contingent fee"* means a fee established for the performance of a service pursuant to an arrangement under which a fee will not be charged unless a specified finding or result is attained, or under which the amount of the fee is otherwise dependent upon the finding or result of such service. *"Contingent fee"* does not mean a fee fixed by a court or other public authority, or a fee related to any tax matter which is based upon the results of a judicial proceeding or the findings of a governmental agency.

10. *"Home office"* is the location specified by the client as the address to which an attest or compilation service is directed, which may be a subunit or subsidiary or an entity or the principal office of an entity, as the board may further define by rule.

11. *"License"* means a certificate issued under section 542.6 or 542.19, a permit issued under section 542.7, or a license issued under section 542.8; or a certificate, permit, or license issued under corresponding prior law.

12. *a. "Licensed public accountant"* means a person licensed by the board who does not hold a certificate as a certified public accountant under this chapter, and who offers to perform or performs for the public any of the following services:

(1) Records financial transactions in books of record.

(2) Makes adjustments of financial transactions in books of record.

(3) Makes trial balances from books of record.

(4) Prepares internal verification and analysis of books or accounts of original entry.

(5) Prepares financial statements, schedules, or reports.

(6) Devises and installs systems or methods of bookkeeping, internal controls of financial data, or the recording of financial data.

(7) Prepares compilations.

b. Nothing contained in this definition or elsewhere in this chapter shall be construed

to permit a licensed public accountant to give an opinion attesting to the reliability of any representation embracing financial information.

13. *"Licensed public accounting firm"* means a sole proprietorship, a corporation, a partnership, a limited liability company, or any other form of organization issued a permit to practice as a firm of licensed public accountants under section 542.8.

14. *"Licensee"* means the holder of a license.

15. *"Manager"* means a manager of a limited liability company.

16. *"Member"* means a member of a limited liability company.

17. *"NASBA"* means the national association of state boards of accountancy.

18. *"Office"* means any Iowa workplace identified or advertised to the general public as a location where public accounting services are performed.

19. *"Peer review"* means a study, appraisal, or review of one or more aspects of the professional work of a licensee or firm that performs attest or compilation services, by a licensed person or persons who are not affiliated with the licensee or firm being reviewed. *"Peer review"* does not include a peer review conducted pursuant to chapter 272C in connection with a disciplinary investigation.

20. *"Peer review records"* means a file, report, or other information relating to the professional competence of an applicant in the possession of a peer review team, or information concerning the peer review developed by a peer review team in the possession of an applicant.

21. *"Peer review team"* means a person or organization participating in the peer review function, but does not include the board.

22. *"Permit"* means a permit to practice as either a certified public accounting firm issued under section 542.7 or licensed public accounting firm under section 542.8 or under corresponding provisions of prior law.

23. *"Practice of public accounting"* means the performance or the offering to perform, by a person holding oneself out to the public as a certified public accountant or a licensed public accountant, one or more kinds of professional services involving the use of accounting, attest, or auditing skills, including the issuance of reports on financial statements, or of one or more kinds of management advisory, financial advisory, or consulting services, or the preparation of tax returns or the furnishing of advice on tax matters. However, with respect to licensed public accountants, the *"practice of public accounting"* shall not include attest or auditing services or the rendering of an opinion attesting to the reliability of any representation embracing financial information.

24. *"Practice privilege"* means an authorization to practice public accounting in Iowa or for clients with a home office in Iowa without licensure under this chapter, as provided in section 542.20.

25. *"Principal place of business"* means the primary location from which public accounting services are performed, as the board may further define by rule. A person or firm may only have one principal place of business at any one time.

26. *"Report"*, when used with reference to any attest or compilation services, means a report, opinion, or other form of a writing that states or implies assurance as to the reliability of the attested information or compiled financial statements and that includes or is accompanied by a statement or implication that the person or firm issuing the report has special knowledge or competence in accounting or auditing. Such statement or implication of special knowledge or competence may arise from use by the issuer of the report of names or titles indicating that the person or firm is an accountant or auditor, or from the language of the report itself. *"Report"* includes any form of language which disclaims an opinion when such form of language is conventionally understood to imply a positive assurance as to the reliability of the attested information or compiled financial statements referred to or special knowledge or competence on the part of the person or firm issuing the language, and any other form of language that is conventionally understood to imply such assurance or such special knowledge or competence.

27. *"State"* means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, the Commonwealth of the Northern Mariana Islands, or Guam.

28. *"Substantial equivalency"* is a determination by the board that the education,

examination, and experience requirements contained in the statutes and administrative rules of another jurisdiction are comparable to, or exceed, the education, examination, and experience requirements contained in this chapter or that an individual licensee's education, examination, and experience qualifications are comparable to or exceed the education, examination, and experience requirements contained in this chapter.

2001 Acts, ch 55, §3, 38; 2008 Acts, ch 1106, §1 – 4, 15; 2011 Acts, ch 127, §50, 89; 2015 Acts, ch 13, §2; 2017 Acts, ch 78, §1

Referred to in §542.8

542.4 Iowa accountancy examining board.

1. An Iowa accountancy examining board is created within the professional licensing and regulation bureau of the banking division of the department of commerce to administer and enforce this chapter.

a. The board shall consist of eight members, appointed by the governor and subject to senate confirmation, all of whom shall be residents of this state. Five of the eight members shall be holders of certificates issued under section 542.6, one member shall be the holder of a license issued under section 542.8, and two shall not be certified public accountants or licensed public accountants and shall represent the general public. At least three of the holders of certificates issued under section 542.6 shall also be qualified to supervise attest services as provided in section 542.7.

b. A certified or licensed member of the board shall be actively engaged in practice as a certified public accountant or as a licensed public accountant and shall have been so engaged for five years preceding appointment, the last two of which shall have been in this state.

c. Professional associations or societies composed of certified public accountants or licensed public accountants may recommend the names of potential board members to the governor. However, the governor is not bound by the recommendations. A board member is not required to be a member of any professional association or society composed of certified public accountants or licensed public accountants.

d. The term of each member of the board shall be three years, as designated by the governor, and appointments to the board are subject to the requirements of sections 69.16, 69.16A, and 69.19. Vacancies occurring during a term shall be filled by appointment by the governor for the unexpired term. Upon the expiration of the member's term of office, a member shall continue to serve until a successor shall have been appointed and taken office.

e. The public members of the board shall be allowed to participate in administrative, clerical, or ministerial functions incident to giving the examinations, but shall not determine the content or determine the correctness of the answers. The licensed public accountant member shall not determine the content of the certified public accountant examination or determine the correctness of the answers.

f. Any member of the board whose certificate under section 542.6 or license under section 542.8 is revoked or suspended shall automatically cease to be a member of the board, and the governor may, after a hearing, remove any member of the board for neglect of duty or other just cause.

g. A person who has served three successive complete terms shall not be eligible for reappointment, but appointment to fill an unexpired term shall not be considered a complete term for this purpose.

2. The board shall elect annually from among its members a chairperson and such other officers as the board may determine to be appropriate. The board shall meet at such times and places as may be fixed by the board. A majority of the board members in office shall constitute a quorum at any meeting. The board shall maintain a registry of the names and addresses of all licensees and permittees under this chapter.

3. Members of the board are entitled to receive a per diem as specified in section 7E.6 for each day spent on performance of duties as members and shall be reimbursed for all actual and necessary expenses incurred in the performance of duties as members.

4. All moneys collected by the board from fees authorized to be charged by this chapter shall be received and accounted for by the board and shall be paid monthly to the treasurer of state for deposit in the general fund of the state. Expenses of administering this chapter

shall be paid from appropriations made by the general assembly, which expenses may include but shall not be limited to the costs of conducting investigations and of taking testimony and procuring the attendance of witnesses before the board or its committees; all legal proceedings taken under this chapter for the enforcement of this chapter; and educational programs for the benefit of the public and licensees and their employees.

5. *a.* The board shall maintain the confidentiality of information relating to the following:

(1) The contents of the examination.

(2) The examination results other than final score except for information about the results of the examination given to the person examined.

b. A member of the board who willfully communicates or seeks to communicate such information in a manner which violates confidentiality requirements, and any person who willfully requests, obtains, or seeks to obtain such information, is guilty of a simple misdemeanor.

6. The administrator of the professional licensing and regulation bureau of the banking division of the department of commerce shall provide staffing assistance to the board for implementing this chapter.

7. The board may join professional organizations and associations to promote the improvement of the standards of the practice of accountancy and for the protection and welfare of the public. The board may provide social security numbers of licensees to NASBA, provided that the numbers are solely used by NASBA for inclusion in a national database of licensees, the numbers are submitted in an encrypted format or through such alternative means as will assure the confidentiality of the numbers, and NASBA maintains the confidentiality of the numbers and agrees not to disseminate the numbers to any other person or entity.

8. The board shall have the power to take all action that is necessary and proper to effectuate the purposes of this chapter, including the power to sue and be sued in its official name as an agency of this state. The board shall also have the power to issue subpoenas to compel the attendance of witnesses and the production of documents; to administer oaths; to take testimony; to cooperate with the appropriate authorities in other states in investigation and enforcement concerning violations of this chapter and comparable statutes of other states; and to receive evidence concerning all matters within the scope of this chapter. In case of disobedience of a subpoena, the board may invoke the aid of any district court in requiring the attendance and testimony of witnesses and the production of documentary evidence.

9. The board shall adopt rules pursuant to chapter 17A governing the administration and enforcement of this chapter and the conduct of licensees and permittees. Rules adopted shall include but not be limited to the following:

a. Rules governing the board's meetings and the conduct of its business.

b. Rules of procedure governing the conduct of investigations and hearings by the board.

c. Rules specifying the educational and experience qualifications required for the issuance of a certificate under section 542.6 and the continuing professional education required for renewal of a certificate under section 542.6.

d. Rules specifying the educational and experience qualifications required for the issuance of a license under section 542.8 and the continuing professional education required for renewal of a license under section 542.8.

e. Rules of professional conduct directed to control the quality and probity of services provided by a licensee, and, among other areas, pertaining to a licensee's independence, integrity, and objectivity; competence and technical standards; responsibilities to the public; and responsibilities to a client.

f. Rules relating to the propriety of opinions on financial statements by a certified public accountant who is not independent.

g. Rules relating to actions discreditable to the practice as a certified public accountant or licensed public accountant.

h. Rules relating to professional confidences between a certified public accountant or licensed public accountant and a client.

i. Rules governing technical competence and the expression of opinions on financial statements.

j. Rules governing the failure to disclose a material fact known to the certified public accountant or licensed public accountant.

k. Rules relating to a material misstatement known to the certified public accountant or licensed public accountant.

l. Rules governing negligent conduct in an examination or in making a report on an examination.

m. Rules governing failure to direct attention to any material departure from generally accepted accounting principles.

n. Rules governing the professional standards applicable to a licensee.

o. Rules governing the manner and circumstances of use of the titles "certified public accountant" and "CPA".

p. Rules governing the manner and circumstances of use of the titles "accounting practitioner" and "AP", and "licensed public accountant" and "LPA".

q. Rules regarding peer review that may be required to be performed under this chapter.

r. Rules on substantial equivalency under section 542.19.

s. Rules on practice privilege under section 542.20.

t. Such other rules as the board deems necessary or appropriate for administering this chapter, including but not limited to rules establishing fees and rules of professional conduct, pertaining to corporations or limited liability companies practicing accounting, which the board deems consistent with or required by the public welfare. The board may adopt rules governing the style, name, and title of corporations and limited liability companies and governing the affiliation of corporations and limited liability companies with other organizations.

2001 Acts, ch 55, §4, 38; 2002 Acts, ch 1050, §58; 2006 Acts, ch 1177, §35; 2008 Acts, ch 1031, §59; 2008 Acts, ch 1059, §2; 2008 Acts, ch 1106, §5, 6, 15

Referred to in §542.3
Confirmation, see §2.32

542.5 Qualifications for a certificate as a certified public accountant.

1. A certificate as a certified public accountant may be granted to a person of good moral character who makes application pursuant to section 542.6 and who satisfies the education, experience, and examination requirements of this section and rules adopted pursuant to this section.

2. An applicant for a certificate who has been convicted of forgery, embezzlement, obtaining money under false pretenses, theft, extortion, conspiracy to defraud, or other similar offense, or of any crime involving moral character or honesty, in a court of competent jurisdiction in this state, or another state, territory, or a district of the United States, or in a foreign jurisdiction, may be denied a certificate by the board on the grounds of the conviction. For purposes of this subsection, *"conviction"* means a conviction for an indictable offense and includes a guilty plea, deferred judgment from the time of entry of the deferred judgment until the time the defendant is discharged by the court without entry of judgment, or other finding of guilt by a court of competent jurisdiction.

3. An applicant for a certificate who has had a professional license of any kind revoked in this or any other jurisdiction may be denied a certificate by the board on the grounds of the revocation.

4. A person who makes a false statement of material fact on an application for a certificate, or who causes to be submitted, or has been a party to preparing or submitting a false application for a certificate, may be denied a certificate by the board on the grounds of the false statement or submission. A certificate holder found to have made such a false statement or who has caused to be submitted, or was a party to preparing or submitting any false application for a certificate, may have the holder's certificate suspended or revoked by the board on the grounds of the false statement or submission.

5. A certified public accountant shall notify the board of such accountant's conviction of an offense included in subsection 2, within thirty days of such conviction. Failure of the

certified public accountant to notify the board of the conviction within thirty days of the date of the conviction is sufficient grounds for revocation of the certificate.

6. The board, when considering the denial or revocation of a certificate pursuant to subsections 2 through 5, shall consider the nature of the offense; any aggravating or extenuating circumstances which are documented; the time lapsed since the revocation, conduct, or conviction; the rehabilitation, treatment, or restitution performed by the applicant or certificate holder; and any other factors the board deems relevant. Character references may be required, but shall not be obtained from certified public accountants. An applicant shall not be denied a certificate because of age, citizenship, race, religion, marital status, or national origin, although the application may require citizenship information.

7. An applicant shall complete at least one hundred fifty semester hours, or the trimester or quarter equivalent of one hundred fifty semester hours, of college education, and receive a baccalaureate or higher degree conferred by a college or university recognized by the board, the total educational program to include a concentration in accounting or what the board determines to be substantially equivalent.

8. An applicant must pass an examination which shall be offered at least twice per year and which shall test the applicant's knowledge of the subjects of accounting and auditing, and such other related subjects as the board may specify by rule, including but not limited to business law and taxation. The examination shall be held at a time determined by the board and may be changed from time to time. The board shall prescribe by rule the methods of applying for and conducting the examination, including methods for grading and determining a passing grade required of an applicant for a certificate. However, the board, to the extent possible, shall ensure the examination, grading of the examination, and the passing grades are uniform with those applicable in all other states. The board may make such use of all or any part of a nationally recognized uniform certified public accountant examination and advisory grading service, and may contract with third parties to perform such administrative services with respect to the examination as it deems appropriate to perform the duties of the board with respect to examination.

9. The board may admit to the examination a candidate who will complete the educational requirements for a baccalaureate degree with a concentration in accounting or what the board determines by rule to be substantially equivalent to a concentration in accounting within one hundred twenty days immediately following the date of the examination or who has completed those requirements. However, the board shall not report the results of the examination until the candidate has met the educational requirements for a baccalaureate degree and shall not issue the certificate until the candidate has fully satisfied the requirements of subsection 7.

10. Applicants who fail the examination once shall be allowed to take the examination again at a time determined by the board. Applicants who fail the examination twice shall be allowed to take the examination again at the discretion of the board. The board may by rule prescribe the terms and conditions under which a candidate who passes two or more subjects of the examination conducted in this state or by the licensing authority of another state may be reexamined in only the failed subjects and receive credit for the passed subjects. An applicant who has failed the examination may request in writing information from the board concerning the applicant's examination grade and subject areas or questions which the applicant failed to answer correctly, except that if the board administers a uniform, standardized examination, the board shall only be required to provide the examination grade and such other information concerning the applicant's examination results which are available to the board.

11. The board, by rule, may establish an examination fee to be charged each applicant by the board or by a third party administering the examination.

12. An applicant for initial issuance of a certificate must have no less than one year of experience. The experience shall include providing any type of service or advice involving the use of accounting, attest, compilation, management advisory, financial advisory, tax, or consulting skills, as verified by a licensee, meeting requirements prescribed by the board by rule. The experience is acceptable if it was gained through employment in government, industry, academia, or public practice.

13. A person holding a certificate as a certified public accountant issued by the state prior to July 1, 2002, is deemed to have met the requirements of this section.

2001 Acts, ch 55, §5, 38; 2008 Acts, ch 1031, §60
Referred to in §542.6, 542.7, 542.8, 542.10, 542.19

542.6 Issuance and renewal of certificates — maintenance of competency.

1. *a.* The board shall issue a certificate to a person who makes application on a form prescribed and furnished by the board and who demonstrates either of the following:

(1) That the person's qualifications, including where applicable the qualifications prescribed by section 542.5, satisfy the requirements of this section, or that the person holds a certificate issued under prior law.

(2) That the person holds in good standing a certificate or license to practice as a certified public accountant in another state or equivalent designation from a foreign country, and is eligible under the substantial equivalency or other provisions of section 542.19.

b. The holder of a certificate issued under this section shall only provide attest services in a certified public accounting firm that is issued a permit under section 542.7, or through a certified public accounting firm with a practice privilege under section 542.20.

2. A certificate shall be initially issued, and renewed, for a period of not more than three years, but in any event shall expire on a date specified by rule. A person who fails to renew a certificate as a certified public accountant by the expiration date shall be allowed to do so within thirty days following its expiration, but the board may assess a reasonable penalty. The board shall specify by rule the conditions under which a lapsed certificate may be reinstated, including the imposition of administrative penalties.

3. A certificate holder, for renewal of a certificate under this section, shall participate in a program of learning designed to maintain professional competency. Such program of learning must comply with rules adopted by the board. The board, by rule, may grant an exception to this requirement for a certificate holder who does not perform or offer to perform for the public one or more kinds of services involving the use of accounting or auditing skills, including issuance of reports on financial statements or the use of one or more kinds of management advisory, financial advisory, or consulting services, or the preparation of tax returns or the furnishing of advice on tax matters. A certificate holder entitled to an exception by rule of the board shall place the word "inactive" adjacent to the holder's certified public accountant title on any business card, letterhead, or other document or device, with the exception of the certificate holder's certified public accountant certificate, on which the certificate holder's certified public accountant title appears.

4. The board shall charge an application fee for initial issuance or renewal of a certificate in an amount prescribed by the board by rule.

5. An applicant for initial issuance or renewal of a certificate shall list in the application all states in which the applicant has applied for or holds a certificate, license, or permit and list any past denial, revocation, or suspension of a certificate, license, or permit. A holder of or applicant for a certificate under this section shall notify the board in writing, within thirty days after its occurrence, of any issuance, denial, revocation, or suspension of a certificate, license, or permit by another state.

6. The board, by rule, shall require as a condition for renewal of a certificate under this section, by any certificate holder who performs compilation services for the public other than through a certified public accounting firm or licensed public accounting firm, that such individual undergo, no more frequently than once every three years, a peer review conducted in such manner as the board shall by rule specify, and such review shall include verification that such individual has met the competency requirements set out in professional standards for such services. The provisions of section 542.7, subsections 10, 11, and 12, shall apply to the peer review required in this subsection.

2001 Acts, ch 55, §6, 38; 2008 Acts, ch 1106, §7, 15; 2017 Acts, ch 78, §2
Referred to in §542.3, 542.4, 542.5, 542.7, 542.8, 542.9, 542.13, 542.19, 542.20

542.7 Firm permits to practice — attest experience and peer review.

1. The board shall issue or renew a permit to practice to a certified public accounting firm

that makes application and demonstrates the qualifications set forth in this section. A person or firm holding a permit to practice issued by this state prior to July 1, 2002, is deemed to have met the requirements of this section.

a. A firm must hold a permit issued under this section if the firm has an office in this state and uses the title "CPAs", "CPA firm", "certified public accountants", or "certified public accounting firm".

b. A firm which is not subject to paragraph "*a*" may practice public accounting in this state without a permit issued under this section in conformance with section 542.20.

c. A firm that holds a permit issued under this chapter shall designate to the board the licensee or nonlicensee owner who is responsible for the proper licensure of the firm and the firm's compliance with all applicable laws and rules of this state. If such firm has one or more offices in this state, the firm shall designate to the board one or more persons who are licensed under this chapter who are responsible for the proper registration of each Iowa office of the firm and each office's compliance with all applicable laws and rules of this state.

2. A permit shall be initially issued and renewed for a period of not more than three years, but in any event shall expire on a date specified by rule. An application for a permit shall be made in such form, and in the case of an application for renewal, between such dates as the board may by rule specify.

3. *a.* An applicant for initial issuance or renewal of a permit to practice as a firm shall show that notwithstanding any other provision of law, a simple majority of the ownership of the firm, in terms of financial interests and voting rights of all partners, officers, shareholders, members, and managers, belongs to holders of a certificate issued by a state, and that such partners, officers, shareholders, members, and managers, who perform professional services in this state or for clients in this state, hold a certificate issued under section 542.6 or 542.19, or by another state if the holder has a practice privilege under section 542.20.

b. A certified public accounting firm may include a nonlicensee owner, which for purposes of this section means an owner that does not hold a valid certificate to practice public accounting in any state, provided all of the following occur:

(1) All nonlicensee owners are active participants in the firm or an affiliated entity.

(2) All nonlicensee owners comply with all applicable rules of professional conduct adopted by the board.

(3) Such firm complies with other requirements as established by the board by rule.

c. (1) Notwithstanding chapter 496C or any other provision of law to the contrary, a certified public accounting firm organized as a professional corporation under chapter 496C may have nonlicensee owners provided that the firm complies with the requirements of this section.

(2) Notwithstanding chapter 489, article 11, or any other provision of law to the contrary, a certified public accounting firm organized as a professional limited liability company under chapter 489, article 11, may have nonlicensee members provided that the professional limited liability company complies with the requirements of this section.

d. A licensee or person with a practice privilege under section 542.20 who is responsible for supervising attest or compilation services and signs or authorizes someone to sign the accountant's report on behalf of the firm shall meet the experience or competency requirements set out in nationally recognized professional standards for such services.

e. A licensee or person with a practice privilege under section 542.20 who signs or authorizes someone to sign the accountant's report on behalf of the firm shall meet the experience or competency requirements established in paragraph "*d*".

f. The board may deny the issuance or renewal of or revoke a permit, or otherwise discipline the holder of a permit issued under this section, if a nonlicensee owner's professional license has been revoked in any jurisdiction or a nonlicensee owner has been convicted of a crime described in section 542.5, subsection 2, if the board determines that such revocation or conviction is detrimental to the public interest and would be a ground for discipline if applicable to a licensee under this chapter.

4. An applicant for initial issuance or renewal of a permit to practice as a certified public accounting firm is required to register each office of the firm within this state with the board and to show that all attest and compilation services rendered in this state are under the charge

of a person holding a valid certificate issued under section 542.6 or 542.19, or by another state if the holder has a practice privilege under section 542.20.

5. The board, by rule, shall establish and charge an application fee for each application for initial issuance or renewal of a permit.

6. An applicant for initial issuance or renewal of a permit shall list in the application all states in which the applicant has applied for or holds a permit as a certified public accounting firm and list any past denial, revocation, or suspension of a permit by another state. A holder of or applicant for a permit shall notify the board in writing within thirty days after an occurrence of any of the following:

a. A change in the number or location of offices within this state.

b. A change in the identity of a person in charge of such offices.

c. The issuance, denial, revocation, or suspension of a permit by another state.

7. A firm, after receiving or renewing a permit which is not in compliance with this section as a result of a change in firm ownership or personnel, shall take corrective action to bring the firm back into compliance as quickly as possible or apply to modify or amend the permit. The board may grant a reasonable period of time for a firm to take such corrective action. Failure to comply within a reasonable period as deemed by the board shall result in the suspension or revocation of the firm's permit.

8. *a.* The board, by rule, shall require as a condition of renewal of a permit to practice as a certified public accounting firm, that an applicant undergo, no more frequently than once every three years, a peer review conducted in such manner as the board specifies. The review shall include a verification that any individual in the firm who is responsible for supervising attest and compilation services and who signs or authorizes someone to sign the accountant's report on behalf of the firm meets the competency requirements set forth in the professional standards for such services.

b. Such rules shall include reasonable provision for compliance by an applicant showing that the applicant, within the preceding three years, has undergone a peer review that is a satisfactory equivalent to the peer review required under this subsection. An applicant's completion of a peer review program endorsed or supported by the American institute of certified public accountants, or other substantially similar review as determined by the board, satisfies the requirements of this subsection.

9. An applicant for a permit to practice as a certified public accounting firm, at the time of renewal, may request in writing upon forms provided by the board, a waiver from the requirements of subsection 8. The board may grant a waiver upon a showing satisfactory to the board of any of the following:

a. The applicant does not engage in, and does not intend to engage in during the following year, financial reporting areas of practice, including but not limited to audits, compilations, and reviews. An applicant granted a waiver pursuant to this paragraph shall immediately notify the board if the applicant engages in such practice, and shall be subject to peer review.

b. Reasons of health.

c. Military service.

d. Instances of hardship.

e. Other good cause as determined by the board.

10. Peer review records are privileged and confidential, and are not subject to discovery, subpoena, or other means of legal compulsion. Peer review records are not admissible in evidence in a judicial, administrative, or arbitration proceeding. Unless the subject of a peer review timely objects in writing to the administering entity of the peer review program, the administering entity shall make available to the board within thirty days of the issuance of the peer review acceptance letter the final peer review report or such peer review records as are designated by the peer review program in which the administering entity participates. The subject of a peer review may voluntarily submit the final peer review report directly to the board. Information or documents discoverable from sources other than a peer review team do not become nondiscoverable from such other sources because they are made available to or are in the possession of a peer review team. Information or documents publicly available from the American institute of certified public accountants relating to quality or peer review are not privileged or confidential under this subsection. A person or organization participating

in the peer review process shall not testify as to the findings, recommendations, evaluations, or opinions of a peer review team in a judicial, administrative, or arbitration proceeding.

11. A person is not liable as a result of an act, omission, or decision made in connection with the person's service on a peer review team, unless the act, omission, or decision is made with actual malice. A person is not liable as a result of providing information to a peer review team, or for disclosure of privileged matters to a peer review team.

12. The costs of the peer review shall be paid by the applicant.

2001 Acts, ch 55, §7, 38; 2002 Acts, ch 1119, §112; 2003 Acts, ch 108, §100; 2008 Acts, ch 1106, §8, 15; 2015 Acts, ch 13, §3 – 7; 2017 Acts, ch 78, §3

Referred to in §542.3, 542.4, 542.6, 542.9, 542.13, 542.20

542.8 Qualifications for and issuance of a license as a licensed public accountant — renewal of license — firm registration — peer review.

1. The license of a licensed public accountant shall be granted by the board to any person who meets one of the following requirements:

a. The applicant holds a license as an accounting practitioner issued under the laws of this state in full force and effect on July 1, 2002, and has completed additional educational requirements as prescribed by the board.

b. The applicant has satisfactorily completed the examination prescribed in subsection 2 after having met one of the following:

(1) The applicant has had two or more years' actual experience in practice as an accountant as an employee of a certified public accountant, an accounting practitioner, or a licensed public accountant.

(2) The applicant submits evidence satisfactory to the board that the applicant is a graduate of a four-year college or university accredited by the north central accreditation association or other regional accreditation association having equivalent standards, with a major in accounting, or that the applicant is a graduate in accountancy from a business or correspondence school accredited by the accrediting commission for business schools or the accrediting commission of the national home study council.

(3) The applicant submits evidence of at least five years of continuous experience engaged in performing any of the services delineated in section 542.3, subsection 12, on a full-time basis.

2. An examination shall be conducted by the board as often as deemed necessary, but not less than two times per year.

3. The examination shall be designed and given in a manner as to fairly test the applicant's knowledge of accounting. The examination shall not include questions relating to the subject of auditing.

4. The board, in its discretion, may use all or any part of a standard or uniform examination and advisory grading service that is provided or furnished by a national accounting organization or society to assist the board in the performance of its duties under this chapter. The identity of the person taking the examination shall be concealed until after the examination papers have been graded.

5. If an applicant has partially passed an examination given in another state determined by the board to be substantially equivalent to the examination required by this state and meets eligibility requirements that the board finds to be substantially equivalent to those prescribed by this state, the results of the other state's examination shall be accepted as though given in this state.

6. An applicant who successfully passes all subjects in which examined shall be issued a license as a licensed public accountant by the board. The cost of the license shall be based upon the administrative costs of the board and the costs of issuing the license.

7. An applicant who fails the examination once shall be allowed to take the examination at the next scheduled time. Thereafter, the applicant shall be allowed to take the examination at the discretion of the board. An applicant who passes a portion of the examination shall have the right to be reexamined in the remaining subjects at a future examination, and if the applicant passes the remaining subjects, the applicant shall be considered to have passed the entire examination. An applicant who fails the examination may request in

writing information from the board concerning the applicant's examination grade and subject areas or questions which the applicant failed to answer correctly, except that if the board administers a uniform, standardized examination, the board shall only be required to provide the examination grade and such other information concerning the applicant's examination results which is available to the board.

8. An applicant for initial issuance of a license must have no less than one year of experience. The experience shall include providing any type of service or advice involving the use of accounting, compilation, management advisory, financial advisory, tax, or consulting skills, as verified by a licensee, meeting requirements prescribed by the board by rule. The experience is acceptable if gained through employment in government, industry, academia, or public practice.

9. *a.* The licensed public accountant license shall expire in intervals as determined by the board. The board shall notify a person licensed under this chapter of the date of expiration of the license and the amount of the fee required for its renewal. The notice shall be mailed at least one month in advance of the expiration date. A person who fails to renew a license as a licensed public accountant by the expiration date shall be allowed to do so within thirty days following its expiration, but the board may assess a reasonable penalty.

b. A licensee, for renewal of a license under this section, shall participate in a program of learning designed to maintain professional competency. Such program of learning must comply with rules adopted by the board. The board, by rule, may grant an exception to this requirement for a licensee who does not perform or offer to perform for the public one or more kinds of services involving the use of accounting or auditing skills, including issuance of reports on financial statements or the use of one or more kinds of management advisory, financial advisory, or consulting services, or the preparation of tax returns or the furnishing of advice on tax matters. A licensee entitled to an exception by rule of the board shall place the word "inactive" adjacent to the licensee's licensed public accountant title on any business card, letterhead, or other document or device, with the exception of the licensee's licensed public accountant license, on which the licensee's licensed public accountant title appears.

10. The board, in its discretion, may waive an examination and issue a license as a licensed public accountant to an applicant for one of the following:

a. The applicant holds a license as a licensed public accountant, an accounting practitioner, or similar title issued, after examination, by a state which extends by substantial equivalency privileges to a licensed public accountant of this state, and who, at the time of issuance of the registration, possessed the basic qualifications set forth in subsection 1.

b. The applicant has passed the examination required under the laws of another state and possesses the basic qualifications set forth in subsection 1 at the time the applicant applied for registration in this state.

11. A person applying for a license as a licensed public accountant shall pay a fee as determined by the board based upon the costs of issuing such licenses.

12. The board shall issue or renew a permit to practice as a licensed public accounting firm to a person that makes application and demonstrates the qualification set forth in this section or to a licensed public accounting firm originally registered in another state that provides evidence that the qualifications met in the other state are substantially equivalent to those required by this section. A firm must hold a permit issued under this section in order to use the title "LPAs" or "Licensed Public Accountants" in a firm name.

a. An applicant for initial issuance or renewal of a permit to practice as a firm under this section must show that notwithstanding any other provision of law, a simple majority of the ownership of the firm, in terms of financial interests and voting rights of all partners, officers, shareholders, members, and managers, belongs to the holders of a certificate or license issued by a state, and that such partners, officers, shareholders, members, and managers who perform professional services in this state or for clients in this state hold a certificate issued under section 542.6 or a license issued under this section, or another state if the holder has a practice privilege under section 542.20. To qualify for firm licensure at least one partner, officer, shareholder, member, or manager shall hold a license under this section.

b. A licensed public accounting firm may include a nonlicensee owner, which for purposes

of this section means an owner that does not hold a valid license or certificate to practice public accounting in any state, provided all of the following occur:

(1) Such firm designates a licensee who is responsible for the proper registration of the firm, and identifies that individual to the board.

(2) All nonlicensee owners are of good moral character and active participants in the firm or an affiliated entity.

(3) All nonlicensee owners comply with all applicable rules of professional conduct adopted by the board.

(4) Such firm complies with other requirements as established by the board by rule.

c. An individual licensee or person with a practice privilege under section 542.20 who is responsible for compilation services and signs or authorizes someone to sign the accountant's report on behalf of the firm shall meet the competency requirements set out in nationally recognized professional standards for such services.

d. An individual licensee or person with a practice privilege under section 542.20 who signs or authorizes someone to sign the accountant's report on behalf of the firm shall meet the competency requirements set out in nationally recognized professional standards for such services.

e. The board may deny the issuance or renewal of, or revoke a permit, or otherwise discipline the holder of a permit issued under this section if a nonlicensee owner's professional license has been revoked in any jurisdiction or a nonlicensee owner has been convicted of a crime described in section 542.5, subsection 2, if the board determines that such revocation or conviction is detrimental to the public interest and would be a ground for discipline if applicable to a licensee under this chapter.

13. An applicant for initial issuance or renewal of a permit to practice as a licensed public accounting firm is required to register each office of the firm within this state with the board and to show that all compilation services rendered in this state are under the charge of a person holding a valid certificate issued under section 542.6 or 542.19, or a license issued under this section, or another state if the holder has a practice privilege under section 542.20.

14. The board, by rule, shall establish and charge an application fee for each application for initial issuance or renewal of a permit.

15. An applicant for initial issuance or renewal of a permit shall list in the application all states in which the applicant has applied for or holds a permit as a certified public accountant or a licensed public accounting firm and list any past denial, revocation, or suspension of a permit by another state. A holder of or applicant for a permit shall notify the board in writing within thirty days after an occurrence of any of the following:

a. A change in the identity of a partner, officer, shareholder, member, or manager who performs professional services in this state or for clients in this state.

b. A change in the number or location of offices within this state.

c. A change in the identity of a person in charge of such offices.

d. The issuance, denial, revocation, or suspension of a permit by another state.

16. A firm, after receiving or renewing a permit which is not in compliance with this section as a result of a change in firm ownership or personnel, shall take corrective action to bring the firm back into compliance as quickly as possible or apply to modify or amend the permit. The board may grant a reasonable period of time for a firm to take such corrective action. Failure to comply within a reasonable period as deemed by the board shall result in the suspension or revocation of the firm permit.

17. The board, by rule, shall require as a condition of renewal of a permit to practice as a licensed public accounting firm, that an applicant undergo, no more frequently than once every three years, a peer review conducted in such manner as the board specifies. The review shall include verification that any individual in the firm who is responsible for supervising compilation services and who signs or authorizes someone to sign the accountant's report on a financial statement on behalf of the firm meets the competency requirements set forth in the professional standards for such services. Such rules shall include reasonable provision for compliance by an applicant showing that the applicant, within the preceding three years, has undergone a peer review that is a satisfactory equivalent to the peer review required under this subsection. An applicant's completion of a peer review program endorsed or supported

by the national society of accountants, or other substantially similar review as determined by the board, satisfies the requirements of this subsection.

18. An applicant for a permit to practice as a licensed public accounting firm, at the time of renewal, may request in writing upon forms provided by the board, a waiver from the requirements of subsection 17. The board may grant a waiver upon a showing satisfactory to the board of any of the following:

a. The applicant does not engage in, and does not intend to engage in during the following year, financial reporting areas of practice, including but not limited to compilations. An applicant granted a waiver pursuant to this paragraph shall immediately notify the board if the applicant engages in such practice, and shall be subject to peer review.

b. Reasons of health.

c. Military service.

d. Instances of hardship.

e. Other good cause as determined by the board.

19. Peer review records are privileged and confidential, and are not subject to discovery, subpoena, or other means of legal compulsion. Peer review records are not admissible in evidence in a judicial, administrative, or arbitration proceeding. Unless the subject of a peer review timely objects in writing to the administering entity of the peer review program, the administering entity shall make available to the board within thirty days of the issuance of the peer review acceptance letter the final peer review report or such peer review records as are designated by the peer review program in which the administering entity participates. The subject of a peer review may voluntarily submit the final peer review report directly to the board. Information or documents discoverable from sources other than a peer review team do not become nondiscoverable from such other sources because they are made available to or are in the possession of a peer review team. Information or documents publicly available from the national society of accountants relating to quality or peer review are not privileged or confidential under this subsection. A person or organization participating in the peer review process shall not testify as to the findings, recommendations, evaluations, or opinions of a peer review team in a judicial, administrative, or arbitration proceeding.

20. A person is not liable as a result of an act, omission, or decision made in connection with the person's service in a peer review team, unless the act, omission, or decision is made with actual malice. A person is not liable as a result of providing information to a peer review team, or for disclosure of privileged matters to a peer review team.

21. The costs of the peer review shall be paid by the applicant.

22. The board, by rule, shall require as a condition for renewal of a license under this section by any license holder who performs compilation services for the public other than through a licensed public accounting firm or a certified public accounting firm, that such individual undergo, no more frequently than once every three years, a peer review conducted in such manner as the board shall by rule specify, and such review shall include verification that such individual has met the competency requirements set out in professional standards for such services.

2001 Acts, ch 55, §8, 38; 2003 Acts, ch 108, §101; 2008 Acts, ch 1106, §9, 10, 15; 2010 Acts, ch 1055, §1; 2017 Acts, ch 78, §4, 5

Referred to in §542.3, 542.4, 542.9, 542.13, 542.20

542.9 Appointment of secretary of state as agent.

Application for a certificate under section 542.6, a license under section 542.8, a permit to practice under section 542.7, or a certificate under section 542.19 by a person or a firm not a resident of this state constitutes appointment of the secretary of state as the applicant's agent upon whom process may be served in any action or proceeding against the applicant arising out of a transaction or operation connected with or incidental to services performed by the applicant while a licensee within this state.

2001 Acts, ch 55, §9, 38

542.10 Enforcement against a holder of a certificate, permit, or license.

1. After notice and hearing pursuant to section 542.11, the board may revoke, suspend for

a period of time not to exceed two years, or refuse to renew a license; reprimand, censure, or limit the scope of practice of any licensee; impose an administrative penalty not to exceed one thousand dollars per violation against an individual licensee or ten thousand dollars per violation against a firm licensee; require remedial actions; or place any licensee on probation; all with or without terms, conditions, and in combinations of remedies, for any one or more of the following reasons:

a. Fraud or deceit in obtaining a license, which may also result in permanent revocation of the license.

b. Dishonesty, fraud, or gross negligence in the practice of public accounting.

c. Engaging in any activity prohibited under section 542.13 or 542.20 or permitting persons under the licensee's supervision to do so.

d. Violation of a rule of professional conduct adopted by the board under the authority granted by this chapter.

e. Conviction of a felony under the laws of any state or the United States.

f. Conviction of any crime, any element of which is dishonesty or fraud as provided in section 542.5, subsection 2, under the laws of any state or the United States.

g. Cancellation, revocation, suspension, or refusal to renew the authority to practice as a certified public accountant, licensed public accountant, or accounting practitioner, or the acceptance of the voluntary surrender of a license to practice as a certified public accountant, licensed public accountant, or accounting practitioner to conclude a pending disciplinary action, by any other state or foreign authority for any cause other than failure to pay appropriate fees in the other jurisdiction.

h. Suspension or revocation of the right to practice before any state or federal agency, or the public company accounting oversight board.

i. Conduct discreditable to the public accounting profession.

j. Violation of section 272C.10.

2. Multiple violations arising from the same factual circumstances or from different factual circumstances containing a common error shall be considered as a single violation for the purpose of imposition of an administrative penalty.

3. In lieu of or in addition to any remedy specifically provided in subsection 1, the board may require a licensee to satisfy a peer review or desk review process on such terms as the board may specify, satisfactorily complete a continuing education program, or such additional remedies as the board may specify by rule.

2001 Acts, ch 55, §10, 38; 2008 Acts, ch 1106, §11, 15
Referred to in §272C.3, 272C.4

542.11 Investigations and hearings.

1. The board may initiate proceedings under this chapter upon written complaint or on its own motion pursuant to other information received by the board suggesting violations of this chapter or board rules. The board may conduct an investigation as needed to determine whether probable cause exists to initiate such proceedings. In aid of such investigation, the board may issue subpoenas to compel witnesses to testify or persons to produce evidence consistent with the provisions of section 272C.6, subsection 3. The board may also review the publicly available public accounting work product of licensees on a general or random basis to determine whether reasonable grounds exist to initiate proceedings under this chapter or to conduct a more specific investigation.

2. A written notice stating the nature of the charge or charges against the accused and the time and place of the hearing before the board on the charges shall be served on the accused not less than thirty days prior to the date of hearing either personally or by mailing a copy by restricted certified mail to the last known address of the accused.

3. At any hearing, the accused may appear in person or by counsel, produce evidence and witnesses on behalf of the accused, cross-examine witnesses, and examine evidence which is produced against the accused. A firm may appear by a partner, officer, director, shareholder, member, or manager.

4. The board may issue subpoenas in any proceeding to compel witnesses to testify and to produce documentary evidence on behalf of the board and shall issue such subpoenas upon

the application of the accused, pursuant to section 17A.13, subsection 1, and section 272C.6, subsection 3.

5. Evidence supporting the board's charges may be presented at any hearing by an assistant attorney general.

6. The decision of the board shall be by a majority vote of a quorum of the board. Licensee discipline shall only be imposed upon the majority vote of the members of the board not disqualified pursuant to section 17A.17, subsection 8, or other applicable law.

7. Judicial review may be sought in accordance with chapter 17A.

2001 Acts, ch 55, §11, 38

Referred to in §272C.5, 542.10, 542.14, 542.15

542.12 Reinstatement.

1. In any case in which the board has suspended, revoked, or restricted a license, refused to renew a license, or accepted the voluntary surrender of a license to conclude a pending disciplinary investigation or action, the board may, upon written application, modify or terminate the suspension, reissue the license, or modify or remove the restriction, with or without terms and conditions.

2. The board is vested with discretionary authority to specify by rule the manner in which such applications shall be made, the times within which they shall be made, the circumstances in which a hearing will be held, and the grounds upon which such applications will be decided. The rules shall provide at a minimum that the burden is on the licensee to produce evidence that the basis for revocation, suspension, restriction, refusal to renew, or voluntarily surrender no longer exists and that it will be in the public interest for the board to grant the application on such terms and conditions as the board deems desirable.

2001 Acts, ch 55, §12, 38

542.13 Unlawful acts.

1. Only a certified public accountant may issue a report on financial statements of a person, firm, organization, or governmental unit, or offer to render or render any attest service. Only a certified public accountant or licensed public accountant may render compilation services. This restriction does not prohibit such acts by a public official or public employee in the performance of that person's duties; or prohibit the performance by any nonlicensee of other services involving the use of accounting skills, including the preparation of tax returns, management advisory services, and the preparation of financial statements without the issuance of reports on such financial statements. A nonlicensee may prepare financial statements and issue nonattest transmittals or information on such statements or transmittals which do not purport to be in compliance with the statements on standards for accounting and review services.

2. A licensee performing attest or compilation services must provide those services consistent with professional standards.

3. A person not holding a certificate shall not use or assume the title "certified public accountant" or the abbreviation "CPA" or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that such person is a certified public accountant.

4. A firm shall not provide attest services or assume or use the title "certified public accountants" or the abbreviation "CPAs" or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that such firm is a certified public accounting firm unless the firm holds a permit issued under section 542.7 and ownership of the firm satisfies the requirements of this chapter and rules adopted by the board.

5. A person shall not assume or use the title "licensed public accountant" or the abbreviation "LPA" or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that such person is a licensed public accountant unless that person holds a license issued under section 542.8.

6. A firm not holding a permit issued under section 542.8 shall not assume or use the title "licensed public accountants", the abbreviation "LPAs", or any other title, designation, words,

letters, abbreviation, sign, card, or device tending to indicate that such firm is composed of licensed public accountants.

7. A person or firm not holding a certificate, permit, or license issued under section 542.6, 542.7, 542.8, or 542.19 shall not assume or use the title "certified accountant", "chartered accountant", "enrolled accountant", "licensed accountant", "registered accountant", "accredited accountant", or any other title or designation likely to be confused with the title "certified public accountant" or "licensed public accountant", or use any of the abbreviations "CA", "LA", "RA", "AA", or similar abbreviation likely to be confused with the abbreviation "CPA" or "LPA". The title "enrolled agent" or "EA" may be used by individuals so designated by the internal revenue service. Nothing in this section shall restrict truthful advertising of a bona fide credential or title which in context is not deceptive or misleading to the public.

8. A nonlicensee shall not use language in any statement relating to the affairs of a person or entity which is conventionally used by licensees in reports on financial statements or any attest service. The board shall develop and issue language which nonlicensees may use in connection with such financial information.

9. A person or firm not holding a certificate, permit, or license issued under section 542.6, 542.7, 542.8, or 542.19 shall not assume or use any title or designation that includes the word "accountant", "auditor", or "accounting" in connection with any other language that implies that such person or firm holds such a certificate, permit, or license or has special competence as an accountant or auditor. However, this subsection does not prohibit an officer, partner, member, manager, or employee of a firm or organization from affixing that person's own signature to a statement in reference to the financial affairs of such firm or organization with wording which designates the position, title, or office that the person holds, or prohibit any act of a public official or employee in the performance of such person's duties. This subsection does not otherwise prohibit the use of the title or designation "accountant" by persons other than those holding a certificate or license under this chapter.

10. A person holding a certificate or license or firm holding a permit under this chapter shall not use a professional or firm name or designation that is misleading about the legal form of the firm, or about the persons who are partners, officers, members, managers, or shareholders of the firm, or about any other matter. However, the name of one or more former partners, members, managers, or shareholders may be included in the name of a firm or its successor.

11. This section does not apply to a person or firm holding a certification, designation, degree, or license granted in a foreign country entitling the holder to engage in the practice of public accountancy or its equivalent in such country, whose activities in this state are limited to providing professional services to a person or firm who is a resident of, government of, or business entity of the country in which the person holds such entitlement, who does not perform attest or compilation services, and who does not issue reports with respect to the information of any other person, firm, or governmental unit in this state, and who does not use in this state any title or designation other than the one under which the person practices in such country, followed by a translation of such title or designation into the English language, if it is in a different language, and by the name of such country.

12. A holder of a certificate issued under section 542.6 or 542.19 shall not perform attest services in a firm that does not hold a permit issued under section 542.7.

13. An individual licensee shall not issue a report in standard form upon a compilation of financial information through any form of business that does not hold a permit issued under section 542.7 or 542.8 unless the report discloses the name of the business through which the individual is issuing the report and the individual licensee does all of the following:

a. Signs the compilation report identifying the individual as a certified public accountant or licensed public accountant.

b. Meets competency requirements provided in applicable standards.

c. Undergoes, no less frequently than once every three years, a peer review conducted in a manner as specified by the board. The review shall include verification that such individual has met the competency requirements set out in professional standards for such services.

14. This section does not prohibit a practicing attorney from preparing or presenting

records or documents customarily prepared by an attorney in connection with the attorney's professional work in the practice of law.

15. *a.* (1) A licensee shall not for a commission recommend or refer a client to any product or service, or for a commission recommend or refer another person to any product or service to be supplied by a client, or receive a commission, when the licensee also performs for that client any of the following:

(a) An audit or review of a financial statement.

(b) A compilation of a financial statement when the licensee expects, or reasonably might expect, that a third party will use the financial statement and the licensee's compilation report does not disclose a lack of independence.

(c) An examination of prospective financial information.

(2) The prohibitions under this paragraph *"a"* apply during the period in which the licensee is engaged to perform any of the services identified in subparagraph (1), subparagraph divisions (a) through (c), and the period covered by any historical financial statements involved in such services.

b. A licensee who is not prohibited by this section from performing services for or receiving a commission and who is paid or expects to be paid a commission shall disclose that fact to any person or entity to whom the licensee recommends or refers a product or service to which the commission relates.

c. A licensee who accepts a referral fee for recommending a service of a licensee or referring a licensee to any person or entity or who pays a referral fee to obtain a client shall disclose such acceptance or payment to the client.

16. *a.* A licensee shall not do any of the following:

(1) Perform professional services for a contingent fee, or receive such fee from a client for whom the licensee or the licensee's firm performs any of the following:

(a) An audit or review of a financial statement.

(b) A compilation of a financial statement when the licensee expects, or reasonably might expect, that a third party will use the financial statement and the licensee's compilation report does not disclose a lack of independence.

(c) An examination of prospective financial information.

(2) Prepare for a client an original or amended tax return or claim for a tax refund for a contingent fee.

b. Paragraph *"a"* applies during the period in which the licensee is engaged to perform any of the listed services and the period covered by any historical financial statements involved in such listed services.

c. For purposes of this subsection, a contingent fee is a fee established for the performance of a service pursuant to an arrangement in which a fee will not be charged unless a specified finding or result is attained, or in which the amount of the fee is otherwise dependent upon the finding or result of such service. A fee shall not be considered as being a contingent fee if fixed by a court or other public authority, or, in a tax matter, if determined based on the results of a judicial proceeding or the findings of a governmental agency. A licensee's fee may vary depending on the complexity of the services rendered.

17. Nothing contained in this chapter shall be construed to authorize any person engaged in the practice as a certified public accountant or licensed public accountant or any member or employee of such firm to engage in the practice of law individually or within entities licensed under this chapter.

18. Nothing in this section shall be construed to prohibit the practice of public accounting and lawful use of titles by persons or firms exercising a practice privilege in conformance with section 542.20.

2001 Acts, ch 55, §13, 38; 2002 Acts, ch 1119, §113; 2003 Acts, ch 44, §93; 2008 Acts, ch 1106, §12, 15; 2010 Acts, ch 1055, §2; 2015 Acts, ch 13, §8

Referred to in §542.10, 542.14, 542.15

542.14 Injunction against unlawful acts, civil penalties, and consent agreements.

1. If, as a result of an investigation under section 542.11 or otherwise, the board believes that a person or firm has engaged, or is about to engage, in an act or practice which constitutes

or will constitute a violation of section 542.13 or 542.20, the board may make application to the district court for an order enjoining such act or practice. Upon a showing by the board that such person or firm has engaged, or is about to engage, in any such act or practice, an injunction, restraining order, or other order as may be appropriate shall be granted by the court.

2. In addition to a criminal penalty provided for in section 542.15, the board may issue an order to require compliance with section 542.13 or 542.20 or to revoke a practice privilege under section 542.20, and may impose a civil penalty not to exceed one thousand dollars for each offense upon a person who is not a licensee under this chapter and who engages in conduct prohibited by section 542.13 or 542.20. Each day of a continued violation constitutes a separate offense. The board may impose a penalty up to ten thousand dollars per violation against a firm that violates section 542.13 or 542.20.

3. The board, in determining the amount of a civil penalty to be imposed, may consider any of the following:

a. Whether the amount imposed will be a substantial economic deterrent to the violation.

b. The circumstances leading to the violation.

c. The severity of the violation and the risk of harm to the public.

d. The economic benefits gained by the violator as a result of noncompliance.

e. The interest of the public.

4. The board, before issuing an order under this section, shall provide the person written notice and the opportunity to request a hearing. The hearing must be requested within thirty days after receipt of the notice and shall be conducted in the same manner as provided for disciplinary proceedings involving a licensee under this chapter.

5. The board, in connection with a proceeding under this section, may issue subpoenas to compel the attendance and testimony of witnesses and the disclosure of evidence, and may request the attorney general to bring an action to enforce the subpoena.

6. A person aggrieved by the imposition of a civil penalty under this section may seek judicial review pursuant to section 17A.19.

7. If a person fails to pay a civil penalty within thirty days after entry of an order imposing the civil penalty, or if the order is stayed pending an appeal, within ten days after the court enters a final judgment in favor of the board, the board shall notify the attorney general. The attorney general may commence an action to recover the amount of the penalty, including reasonable attorney fees and costs.

8. An action to enforce an order under this section may be joined with an action for an injunction.

9. The board, in its discretion and in lieu of prosecuting a first offense under this section, may enter into a consent agreement with a violator, or with a person guilty of aiding or abetting a violator, which acknowledges the violation and the violator's agreement to refrain from any further violations.

2001 Acts, ch 55, §14, 38; 2008 Acts, ch 1106, §13, 15

Referred to in §542.16, 542.20

542.15 Criminal penalties.

1. A person who violates a provision of section 542.13 is guilty of a serious misdemeanor.

2. If the board has reason to believe that a person has committed a violation subject to subsection 1, the board may certify the facts to the attorney general of this state, or to the county attorney of the county where the person maintains a business office, who, in the attorney general's or county attorney's discretion, may initiate an appropriate criminal proceeding.

3. If, after an investigation under section 542.11 or otherwise, the board has reason to believe that a person or firm has knowingly engaged in an act or practice that constitutes a violation subject to subsection 1, the board may submit its information to the attorney general of any state, or other appropriate law enforcement official, who, in such official's discretion, may initiate an appropriate criminal proceeding.

2001 Acts, ch 55, §15, 38

Referred to in §542.14, 542.16

542.16 Single act evidence of practice.

In an action brought under section 542.14 or 542.15, evidence of the commission of a single act prohibited by this chapter is sufficient to justify a penalty, injunction, restraining order, or conviction, without evidence of a general course of conduct.

2001 Acts, ch 55, §16, 38

542.17 Confidential communications.

1. A licensee shall not voluntarily disclose information communicated to the licensee by a client relating to and in connection with services rendered to the client by the licensee, except with the permission of the client, or an heir, successor, or personal representative of the client. Such information is deemed to be confidential. However, this section shall not be construed as prohibiting the disclosure of information required to be disclosed by the standards of the public accounting profession in reporting on the examination of financial statements or in the performance of an attest service or as prohibiting disclosures in a court proceeding, in an investigation or proceeding under this chapter or chapter 272C, in an ethical investigation conducted by a private professional organization, in the course of a peer review, to another person active in the licensee's firm performing services for that client on a need-to-know basis, to persons associated with the investigative entity who need this information for the sole purpose of assuring quality control, or as otherwise required by law.

2. This section does not preclude a licensee from filing a complaint with, or responding to an inquiry made by, the board, a taxing authority or law enforcement authority of this state, or a licensing or similar authority of another state or the United States.

2001 Acts, ch 55, §17, 38; 2015 Acts, ch 13, §9; 2018 Acts, ch 1041, §127

Referred to in §542.18

Code editor directive applied

542.18 Licensees' working papers — clients' records.

1. Subject to section 542.17, all statements, records, schedules, working papers, and memoranda made by a licensee or a partner, shareholder, officer, director, member, manager, or employee of a licensee, incident to, or in the course of, rendering services to a client, except reports submitted by the licensee to the client and except for records that are part of the client's records, are the property of the licensee in the absence of an express agreement between the licensee and the client to the contrary. Such statement, record, schedule, working paper, or memorandum shall not be sold, transferred, or bequeathed, without the consent of the client or the client's personal representative or assignee, to anyone other than a surviving partner, stockholder, or member of the licensee, or any combined or merged firm or successor in interest to the licensee. This section shall not be construed as prohibiting a temporary transfer of working papers or other material necessary in the course of carrying out peer reviews or as otherwise interfering with the disclosure of information pursuant to section 542.17.

2. A licensee shall furnish to a client or former client, upon request and reasonable notice, the following:

a. A copy of the licensee's working papers, to the extent that such working papers include records that would ordinarily constitute part of the client's records and are not otherwise available to the client.

b. Accounting or other records belonging to, or obtained from or on behalf of, the client that the licensee removed from the client's premises or received for the client's account. The licensee may make and retain copies of such documents of the client when they form the basis for work done by the licensee.

3. This chapter does not require a licensee to keep any working papers beyond the period prescribed in any other applicable statute.

2001 Acts, ch 55, §18, 38

542.19 Substantial equivalency.

1. An individual whose principal place of business is not in this state shall be granted a certificate to practice as a certified public accountant in this state if the board determines that the individual holds in good standing a valid certificate or license to practice as a certified

public accountant in the state in which the individual's principal place of business is located, and that the individual satisfies one of the following conditions:

a. The other state's licensing or certification standards are substantially equivalent to those required by this chapter.

b. The applicant's individual qualifications are substantially equivalent to those required by section 542.5.

c. The applicant satisfies all of the following:

(1) The applicant passed the examination required for issuance of the applicant's certificate or license with grades that would have been passing grades at the time in this state;

(2) The applicant has at least four years of experience within the ten years immediately preceding the application which occurred after passing the examination upon which the applicant's certificate or license was based and which in the board's opinion is substantially equivalent to that required by section 542.5, subsection 12; and,

(3) If the applicant's certificate or license was issued more than four years prior to the filing of the application in this state, the applicant has fulfilled the continuing professional education requirements described in section 542.6, subsection 3.

2. An individual who holds in good standing a valid certificate or license to practice as a certified public accountant in another state and who desires to establish the holder's principal place of business in this state shall request the issuance of a certificate from the board prior to establishing such principal place of business. The board shall issue a certificate to an individual who satisfies one or more of the conditions described in subsection 1.

3. The board shall issue a certificate to a holder of a substantially equivalent foreign designation, upon satisfaction of all of the following:

a. The foreign authority which issued the designation allows a person who holds a valid certificate issued by this state to obtain such foreign authority's comparable designation.

b. The foreign designation satisfies all of the following:

(1) The designation was issued by a foreign authority that regulates the practice of public accountancy and the foreign designation has not expired or been revoked or suspended.

(2) The designation entitles the holder to issue reports on financial statements.

(3) The designation was issued upon the basis of education, examination, and experience requirements established by the foreign authority or by law.

c. The applicant satisfies all of the following:

(1) The designation was issued based on education and examination standards substantially equivalent to those in effect in this state at the time the foreign designation was granted.

(2) The applicant satisfies an experience requirement, substantially equivalent to the requirement set out in section 542.5, subsection 12, in the jurisdiction which issued the foreign designation or has completed four years of professional experience in this state; or meets equivalent requirements prescribed by the board by rule, within the ten years immediately preceding the application.

(3) The applicant has passed qualifying examinations in national standards and the laws, rules, and code of ethical conduct in effect in this state.

(4) The applicant shall list in the application all jurisdictions, foreign and domestic, in which the applicant has applied for or holds a designation to practice public accountancy. A holder of a certificate issued under this section shall notify the board in writing, within thirty days after its occurrence, of any issuance, denial, revocation, or suspension of a designation or commencement of a disciplinary or enforcement action by any jurisdiction.

4. An applicant under this section shall comply with all applicable provisions of section 542.5, subsections 1 through 6, and section 542.6.

5. The board shall adopt rules to implement this section which will expedite the application process to the extent reasonably possible.

2001 Acts, ch 55, §19, 38; 2003 Acts, ch 44, §94

Referred to in §542.3, 542.4, 542.6, 542.7, 542.8, 542.9, 542.13, 542.20

542.20 Practice privilege.

1. This section authorizes a person or firm whose principal place of business is not in this state to practice public accounting in Iowa in person, or by telephone, mail, or electronic means without licensure under this chapter or notice to the board under the conditions described in this section. Such a person or firm must hold a valid, unexpired license in good standing in the state of its principal place of business that is substantially equivalent to a comparable license issued in Iowa, and such a person or firm must be licensed to lawfully perform in its principal place of business all public accounting services offered or rendered under a practice privilege in Iowa.

2. A provision of this section or of any other section in this chapter shall not prevent the auditor of state, the department of agriculture and land stewardship, other governmental official or body, or a client from requiring that public accounting services performed in Iowa or for an Iowa client be performed by a person or firm holding a license under this chapter.

3. The practice privilege authorized by this section is temporary and shall cease if the license in the person's or firm's principal place of business expires, is no longer valid or in good standing, or otherwise no longer lawfully supports the conditions of the practice privilege described in this section.

4. The board may revoke a practice privilege, impose a civil penalty, issue an order to secure compliance with this chapter or board rules, or take such additional actions as are provided in section 542.14 if a person or firm acting or purporting to act under a practice privilege violates this chapter or board rules. In addition, or as an alternative to such action, the board may refer a complaint to the state regulatory body that issued the license to the person or firm.

a. A violation of this chapter or board rules by a person or firm acting or purporting to act under a practice privilege is a ground to deny the violator's subsequent application for licensure under this chapter.

b. A violation of this chapter or board rules by a person acting or purporting to act under a practice privilege is a ground to deny a subsequent application for initial or renewal licensure under this chapter by the violator's firm, and is a ground for discipline against such firm.

c. A violation of this chapter or board rules by a person or firm acting or purporting to act under a practice privilege is a ground for discipline against a licensee under this chapter who aided or abetted the violation.

5. A certified public accounting firm that is licensed in the state of its principal place of business and is not required to hold an Iowa firm license under section 542.7 may practice in this state without a firm license under this chapter or notice to the board if the firm's practice in this state is performed by individuals who hold a license under this chapter or who practice in conformance with subsection 6, under the following conditions:

a. The firm shall not have an office in Iowa which uses the title "CPAs", "CPA firm", "certified public accountants", or "certified public accounting firm".

b. The firm shall not make any representation tending to falsely indicate that the firm is licensed under this chapter.

c. The firm, upon a client's or prospective client's request, shall provide accurate information on the state or states of licensure, principal place of business, contact information, and manner in which licensure status can be verified.

d. The firm shall comply with all professional standards, laws, and rules that apply to licensees performing the same professional services.

e. The firm shall comply with the ownership and peer review requirements of section 542.7.

6. An individual who is licensed in the state of the individual's principal place of business may exercise the privileges of a certificate holder of this state without obtaining a certificate under this chapter or providing notice to the board, under the following conditions:

a. The individual must meet the criteria for substantial equivalency reciprocity under section 542.19, subsection 1, paragraph *"a"*, *"b"*, or *"c"*.

b. The individual shall not have an office in Iowa at which the individual uses the title "CPA". The individual may, however, perform public accounting services using the title "CPA" if performed at the office of a certified public accounting firm or licensed public accounting

firm that holds a permit to practice under section 542.7 or 542.8, or at the office of a business entity that is not required to hold a firm permit under section 542.7 or 542.8.

c. An individual who provides attest services in Iowa or for a client having a home office in Iowa must practice through a certified public accounting firm that is licensed under section 542.7, or through a certified public accounting firm that is validly licensed in the state of its principal place of business and complies with the ownership and peer review requirements of section 542.7.

d. An individual who provides compilation services in Iowa or for a client having a home office in Iowa must comply with the peer review provisions of section 542.6, subsection 6, or provide such services through a certified public accounting firm, a licensed public accounting firm, or substantially equivalent firm that is validly licensed in the firm's principal place of business and is subject to the peer review and ownership provisions of section 542.7 or 542.8.

e. The individual shall not make any representation tending to falsely indicate that the individual is licensed under this chapter.

f. The individual, upon a client's or prospective client's request, shall provide accurate information on the state or states of licensure, principal place of business, contact information, and manner in which licensure status can be verified.

g. The individual shall comply with all professional standards, laws, and rules that apply to licensees performing the same professional services.

7. As a condition of exercising the practice privilege provided in subsection 5 or 6, the person or firm does all of the following:

a. Consents to the personal and subject matter jurisdiction and regulatory authority of the board, including but not limited to the board's jurisdiction to revoke the practice privilege or otherwise take action under section 542.14 for any violation of this chapter or board rules.

b. Appoints the regulatory body of the state that issued the firm or individual license as the agent upon whom process may be served in any action or proceeding by the board against the firm or person.

c. Agrees to supply the board, upon the board's request and without subpoena, such information or records as licensees are similarly required to provide the board under this chapter regarding themselves or, in the case of a firm, regarding the individuals practicing through the firm, including but not limited to licensure status in all jurisdictions; qualifications for substantial equivalency reciprocity under section 542.19, subsection 1, paragraph *"a"*, *"b"*, or *"c"*; location of principal place of business and all other offices; criminal and disciplinary background; malpractice settlements and judgments; firm ownership and when applicable, information regarding nonlicensee owners; whether public accounting services are subject to peer review; proof of completion of peer review, when applicable; qualifications to supervise attest services, when applicable; and timely response to inquiries regarding complaints and investigations conducted under this chapter.

d. Agrees to promptly cease offering or rendering public accounting services in this state or for clients having a home office in this state if the license in the person's or firm's principal place of business expires or is otherwise no longer valid or in good standing, or if any of the conditions for exercising the practice privilege are no longer satisfied, or if the board revokes the practice privilege.

8. A licensee of this state is subject to discipline in this state based on a violation of a comparable practice privilege afforded by another state.

9. The board shall adopt rules on the manner in which this section applies to persons or firms that hold a lapsed Iowa license, have been subject to discipline in Iowa, have surrendered an Iowa license, or have otherwise held an Iowa license at one point in time that is no longer valid, active, or in good standing, and to persons or firms that have been convicted of a crime, the subject of discipline or denied licensure in any jurisdiction, or that would otherwise be subject to license denial or discipline if a license applicant or licensee in Iowa.

2008 Acts, ch 1106, §14, 15; 2012 Acts, ch 1031, §1 – 4; 2017 Acts, ch 78, §6 – 8
Referred to in §542.3, 542.4, 542.6, 542.7, 542.8, 542.10, 542.13, 542.14

CHAPTER 542A

RESERVED

CHAPTER 542B

PROFESSIONAL ENGINEERS AND LAND SURVEYORS

Referred to in §26.3, 26.14, 100C.6, 100D.11, 103.2, 103.22, 103A.10, 105.11, 272C.1, 272C.6, 306.42, 331.321, 354.2, 354.4A, 355.1, 355.3, 455B.474, 468.3, 479.29, 479B.20, 480.1, 544A.17, 544A.18, 546.10, 558A.4, 669.2, 669.14, 714H.4, 716.6

Standards for land surveying;
board to adopt rules; see chapter 355
This chapter not enacted as a part of this title;
transferred from chapter 114 in Code 1993

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542B.2 Terms defined.
542B.3 Engineering and land surveying examining board created.
542B.4 Terms of office.
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542B.6 Official seal — bylaws.
542B.7 Attorney general to assist — general powers.
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542B.9 Organization of the board — staff.
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542B.20 Foreign licensees.
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542B.22 Procedure.
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542B.30 Fees.
542B.31 Public members.
542B.32 Disclosure of confidential information.
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542B.35 Exception — real property inspection report.

542B.1 Licensed professional engineers and surveyors.

A person shall not engage in the practice of engineering or land surveying in the state unless the person is a licensed professional engineer or a licensed professional land surveyor as provided in this chapter, except as permitted by section 542B.26.

[C24, 27, 31, 35, 39, §**1854;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §114.1]
C93, §542B.1
95 Acts, ch 65, §1; 96 Acts, ch 1055, §4; 2012 Acts, ch 1009, §10

542B.2 Terms defined.

As used in the chapter, unless the context otherwise requires:

1. *"Board"* means the engineering and land surveying examining board provided by this chapter.

2. *"Design coordination"* includes the review and coordination of technical submissions prepared by others, including as appropriate and without limitation, consulting engineers, architects, landscape architects, land surveyors, and other professionals working under the direction of the engineer.

3. *"Engineer intern"* means a person who passes an examination in the fundamental engineering subjects, but does not entitle the person to claim to be a professional engineer.

4. *"Engineering documents"* includes all plans, specifications, drawings, and reports, if the preparation of such documents constitutes or requires the practice of engineering.

5. *"Engineering surveys"* includes all survey activities required to support the sound

conception, planning, design, construction, maintenance, and operation of engineered projects, but excludes the surveying of real property for the establishment of land boundaries, rights-of-way, easements, and the dependent or independent surveys or resurveys of the public land survey system.

6. *"In responsible charge"* means having direct control of and personal supervision over any land surveying work or work involving the practice of engineering. One or more persons, jointly or severally, may be in responsible charge.

7. *"Land surveying documents"* includes all plats, maps, surveys, and reports, if the preparation thereof constitutes or requires the practice of land surveying.

8. *"Land surveyor"* means a person who engages in the practice of professional land surveying. Unless the context otherwise requires, any reference in this chapter to *"land surveyor"* or *"land surveying"* means *"professional land surveyor"* or *"professional land surveying"*.

9. *a. "Practice of engineering"* means any service or creative work, the adequate performance of which requires engineering education, training, and experience in the application of special knowledge of the mathematical, physical, and engineering sciences, such as consultation, investigation, evaluation, planning, design and design coordination of engineering works and systems, planning the use of land and water, performing engineering surveys and studies, and the review of construction for the purpose of monitoring compliance with drawings and specifications, any of which embraces such services or creative work, either public or private, in connection with any utilities, structures, buildings, machines, equipment, processes, work systems, projects, and industrial or consumer products or equipment of a mechanical, electrical, hydraulic, pneumatic, or thermal nature, insofar as they involve safeguarding life, health, or property, and including such other professional services as may be necessary to the planning, progress, and completion of the services identified in this subsection.

b. A person is construed to be engaged in the practice of engineering if the person does any of the following:

(1) Practices any branch of the profession of engineering.

(2) Makes a representation by verbal claim, sign, advertisement, letterhead, card, or other manner that the person is a professional engineer.

(3) Uses any title which implies that the person is a professional engineer or that the person is certified under this chapter.

(4) The person holds the person's self out as able to perform, or who does perform, any service or work included in the practice of engineering.

10. *a. "Practice of land surveying"* includes providing professional services such as consultation, investigation, testimony, evaluation, planning, mapping, assembling, and interpreting reliable scientific measurements and information relative to the location of property lines or boundaries, and the utilization, development, and interpretation of these facts into an orderly survey, plat, or map. The practice of land surveying includes but is not limited to the following:

(1) Locating, relocating, establishing, reestablishing, setting, or resetting of permanent monumentation for any property line or boundary of any tract or parcel of land. Setting permanent monuments constitutes an improvement to real property.

(2) Making any survey for the division or subdivision of any tract or parcel of land.

(3) Determination, by the use of the principles of land surveying, of the position for any permanent survey monument or reference point, or setting, resetting, or replacing any survey monument or reference point excluding the responsibility of engineers pursuant to section 314.8.

(4) Creating and writing metes and bounds descriptions as defined in section 354.2.

(5) Geodetic surveying for determination of the size and shape of the earth both horizontally and vertically for the precise positioning of permanent land survey monuments on the earth utilizing angular and linear measurements through spatially oriented spherical geometry.

(6) Creation, preparation, or modification of electronic or computerized data, including

land information systems and geographical information systems, relative to the performance of the activities identified in subparagraphs (1) through (5).

b. This subsection does not prohibit a professional engineer from practicing any aspect of the practice of engineering. A land surveyor is not prohibited from performing engineering surveys as defined in the practice of engineering.

c. A person is construed to be engaged in or offering to be engaged in the practice of land surveying if the person does any of the following:

(1) Engages in land surveying.

(2) Makes a representation by verbal claim, sign, advertisement, letterhead, card, or other manner that the person is a land surveyor.

(3) Uses any title which implies that the person is a land surveyor or that the person is licensed under this chapter.

(4) Holds the person's self out as able to perform, or who does perform, any service or work included in the practice of land surveying.

11. *"Professional engineer"* means a person, who, by reason of the person's knowledge of mathematics, the physical sciences, and the principles of engineering, acquired by professional education or practical experience, is qualified to engage in the practice of engineering. Unless the context otherwise requires, any reference in this chapter to *"engineer"* or *"engineering"* means *"professional engineer"* or *"professional engineering"*.

[C24, 27, 31, 35, 39, §**1855;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §114.2]

84 Acts, ch 1104, §2

C93, §542B.2

94 Acts, ch 1107, §13; 95 Acts, ch 65, §2, 3; 98 Acts, ch 1037, §1; 2012 Acts, ch 1009, §11; 2012 Acts, ch 1023, §140

Referred to in §459.102

542B.3 Engineering and land surveying examining board created.

An engineering and land surveying examining board is created within the professional licensing and regulation bureau of the banking division of the department of commerce. The board consists of three members who are licensed professional engineers, two members who are licensed professional land surveyors, and two members who are not licensed professional engineers or licensed professional land surveyors and who shall represent the general public. An individual who is licensed as both a professional engineer and a professional land surveyor may serve to satisfy the board membership requirement for either a licensed professional engineer or a licensed professional land surveyor, but not both. Members shall be appointed by the governor subject to confirmation by the senate. A licensed member shall be actively engaged in the practice of engineering or land surveying and shall have been so engaged for five years preceding the appointment, the last two of which shall have been in Iowa. Insofar as practicable, licensed engineer members of the board shall be from different branches of the profession of engineering. Professional associations or societies composed of licensed engineers or licensed land surveyors may recommend the names of potential board members whose profession is representative of that association or society to the governor. However, the governor is not bound by the recommendations. A board member shall not be required to be a member of any professional association or society composed of professional engineers or professional land surveyors.

[C24, 27, 31, 35, 39, §**1856;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §114.3]

84 Acts, ch 1104, §3; 86 Acts, ch 1245, §716; 88 Acts, ch 1125, §1

C93, §542B.3

96 Acts, ch 1055, §5; 2006 Acts, ch 1177, §36; 2012 Acts, ch 1009, §12; 2018 Acts, ch 1082, §1

Confirmation, see §2.32

Section amended

542B.4 Terms of office.

Appointments shall be for three-year terms and shall commence and end as provided by section 69.19. Vacancies shall be filled for the unexpired term by appointment of the governor

and shall be subject to senate confirmation. Members shall serve no more than three terms or nine years, whichever is least.

[C24, 27, 31, 35, 39, §**1857, 1858;** C46, 50, 54, 58, 62, 66, 71, 73, §114.4, 114.5; C75, 77, 79, 81, §114.4]

C93, §542B.4

Confirmation, see §2.32

542B.5 Reserved.

542B.6 Official seal — bylaws.

The board shall adopt and have an official seal which shall be affixed to all certificates of licensure granted and may make all bylaws and rules, not inconsistent with law, necessary for the proper performance of its duty.

[C24, 27, 31, 35, 39, §**1859;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §114.6]

C93, §542B.6

96 Acts, ch 1055, §6

542B.7 Attorney general to assist — general powers.

Such board, or any committee thereof, shall be entitled to the counsel and to the services of the attorney general, and shall have power to compel the attendance of witnesses, pay witness fees and mileage, and may take testimony and proofs and may administer oaths concerning any matter within its jurisdiction.

[C24, 27, 31, 35, 39, §**1860;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §114.7]

C93, §542B.7

Administration of oaths, §63A.2

542B.8 Expenses — compensation.

Members of the board are entitled to receive all actual expenses incurred in the discharge of their duties within the limits of funds appropriated to the board. Each member of the board may also be eligible to receive compensation as provided in section 7E.6.

[C24, 27, 31, 35, 39, §**1861;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §114.8]

86 Acts, ch 1245, §717

C93, §542B.8

Compensation; see §114.8, Code 1985, and §7E.6(1)

542B.9 Organization of the board — staff.

The board shall elect annually from its members a chairperson and a vice chairperson. The administrator of the professional licensing and regulation bureau of the banking division of the department of commerce shall hire and provide staff to assist the board in implementing this chapter. The board shall hold at least one meeting at the location of the board's principal office, and meetings shall be called at other times by the administrator at the request of the chairperson or four members of the board. At any meeting of the board, a majority of members constitutes a quorum.

[C24, 27, 31, 35, 39, §**1862;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §114.9]

86 Acts, ch 1245, §718; 88 Acts, ch 1158, §19

C93, §542B.9

2006 Acts, ch 1177, §37

542B.10 Annual report. Repealed by 98 Acts, ch 1119, §11.

542B.11 Staff — duties.

The staff shall keep on file a record of all certificates of licensure granted and shall make annual revisions of the record as necessary.

[C24, 27, 31, 35, 39, §**1864;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §114.11]

84 Acts, ch 1104, §1; 85 Acts, ch 68, §1; 90 Acts, ch 1168, §15

C93, §542B.11

96 Acts, ch 1055, §5, 6; 2012 Acts, ch 1009, §13

542B.12 Disposition of fees.

The staff shall collect and account for all fees provided for by this chapter and pay the fees to the treasurer of state who shall deposit the fees in the general fund of the state.

[C24, 27, 31, 35, 39, §**1865;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §114.12]
90 Acts, ch 1168, §16; 90 Acts, ch 1261, §36
C93, §542B.12
94 Acts, ch 1107, §87

542B.13 Applications and examination fees.

Applications for licensure shall be on forms prescribed and furnished by the board, shall contain statements made under oath, showing the applicant's education and a detailed summary of the applicant's technical work, and the board shall not require that a recent photograph of the applicant be attached to the application form. An applicant is not ineligible for licensure because of age, citizenship, sex, race, religion, marital status or national origin, although the application form may require citizenship information. The board may consider the past felony record of an applicant. The board may require that an applicant submit references. Applications for examination in fundamentals in the practice of engineering and land surveying shall be accompanied by application fees determined by the board. The board shall determine the annual cost of administering the examinations and shall set the fees accordingly.

[C24, 27, 31, 35, 39, §**1866;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §114.13]
84 Acts, ch 1104, §4
C93, §542B.13
95 Acts, ch 65, §4; 96 Acts, ch 1055, §7

542B.14 General requirements for licensure — temporary permit to practice engineering.

1. Each applicant for licensure as a professional engineer or professional land surveyor shall have all of the following requirements, respectively, to wit:

a. As a professional engineer:

(1) (a) Graduation from a course in engineering of four years or more in a school or college which, in the opinion of the board, will properly prepare the applicant for the examination in fundamental engineering subjects.

(b) However, prior to July 1, 1988, in lieu of compliance with subparagraph division (a), the board may accept eight years' practical experience which, in the opinion of the board, is of satisfactory character to properly prepare the applicant for the examination in fundamental engineering subjects.

(c) Between July 1, 1988, and June 30, 1991, in lieu of compliance with subparagraph division (a), the board shall require satisfactory completion of a minimum of two years of postsecondary study in mathematics, physical sciences, engineering technology, or engineering at an institution approved by the board, and may accept six years' practical experience which, in the opinion of the board, is of satisfactory character to properly prepare the applicant for the examination in fundamental engineering subjects.

(d) For applicants who obtained an associate of science degree or a more advanced degree between July 1, 1983, and June 30, 1988, in lieu of compliance with subparagraph division (a), the board shall only require compliance with the provisions of subparagraph division (c) with regard to areas of study and practical experience. Applicants qualifying under this subparagraph division must meet the requirements of subparagraph (2), by June 30, 2001.

(2) Successfully passing an examination in fundamental engineering subjects which is designed to show the knowledge of general engineering principles. A person passing the examination in fundamental engineering subjects is entitled to a certificate as an engineer intern.

(3) In addition to any other requirement, a specific record of four years or more of practical experience in engineering work which is of a character satisfactory to the board.

(4) Successfully passing an examination designed to determine the proficiency and qualifications to engage in the practice of engineering. No applicant shall be entitled to take

this examination until the applicant shows the necessary practical experience in engineering work.

b. As a professional land surveyor:

(1) (a) Graduation from a course of two years or more in mathematics, physical sciences, mapping and surveying, or engineering in a school or college and six years of practical experience, all of which, in the opinion of the board, will properly prepare the applicant for the examination in fundamental land surveying subjects.

(b) However, prior to July 1, 1988, in lieu of compliance with subparagraph division (a), the board may accept eight years' practical experience which, in the opinion of the board, is of satisfactory character to properly prepare the applicant for the examination in fundamental land surveying subjects.

(2) Successfully passing an examination in fundamental land surveying subjects which is designed to show the knowledge of general land surveying principles.

(3) In addition to any other requirement, a specific record of four years or more of practical experience in land surveying work which is of a character satisfactory to the board.

(4) Successfully passing an examination designed to determine the proficiency and qualifications to engage in the practice of land surveying. No applicant shall be entitled to take this examination until the applicant shows the necessary practical experience in land surveying work.

2. The board may establish by rule a temporary permit and a fee to permit an engineer to practice for a period of time without applying for licensure.

[C39, §**1866.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §114.14]

84 Acts, ch 1104, §5; 87 Acts, ch 165, §1, 2

C93, §542B.14

94 Acts, ch 1107, §14; 95 Acts, ch 65, §5; 96 Acts, ch 1055, §7; 98 Acts, ch 1054, §1; 2012 Acts, ch 1009, §14, 15; 2012 Acts, ch 1023, §141; 2013 Acts, ch 5, §20, 21

542B.15 Examinations — report required.

Examinations for licensure shall be given as often as deemed necessary by the board, but no less than one time per year. The scope of the examinations and the methods of procedure shall be prescribed by the board. Any examination may be given by representatives of the board. The identity of the person taking the examination shall be concealed until after the examination has been graded. As soon as practicable after the close of each examination, a report shall be filed in the office of the secretary of the board by the board. The report shall show the action of the board upon each application and the secretary of the board shall notify each applicant of the result of the applicant's examination. Applicants who fail the examination once shall be allowed to take the examination at the next scheduled time. Thereafter, the applicant shall be allowed to take the examination at the discretion of the board. An applicant who has failed the examination may request in writing information from the board concerning the applicant's examination grade and subject areas or questions which the applicant failed to answer correctly, except that if the board administers a uniform, standardized examination, the board shall only be required to provide the examination grade and such other information concerning the applicant's examination results which are available to the board.

[C24, 27, 31, 35, 39, §**1867;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §114.15]

C93, §542B.15

96 Acts, ch 1055, §6; 2013 Acts, ch 5, §22

542B.16 Seal — certification of responsibility.

1. Each licensee, upon licensure, shall obtain a seal of a design approved by the board, bearing the licensee's name, Iowa license number, and the words "professional engineer" or "professional land surveyor" or both, as the case may be. A legible rubber stamp or other facsimile of the seal may be used and shall have the same effect as the use of the actual seal.

2. All engineering documents and land surveying documents shall be dated and shall contain all of the following:

a. The signature of the licensee in responsible charge.

b. A certification that the work was done by the licensee or under the licensee's direct personal supervision.

c. The Iowa legible seal of the licensee.

3. An agency, subdivision, or municipal corporation of this state, or an officer of the state, subdivision, or municipal corporation, shall not file for record or approve any engineering document or land surveying document which does not comply with this section.

4. A licensee shall not place the licensee's signature or seal on any engineering document or land surveying document unless the licensee was in responsible charge of the work, except that the licensee may do so if the licensee contributed to the work and the licensee in responsible charge has signed and certified the work.

5. Violation of this section by a licensee shall be deemed fraud and deceit in the licensee's practice.

[C24, 27, 31, 35, 39, §**1868;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §114.16]
C93, §542B.16
96 Acts, ch 1055, §1; 2012 Acts, ch 1009, §16

542B.17 Engineer's certificate.

The board shall issue a certificate of licensure as a professional engineer to an applicant who has passed the examination as a professional engineer and who has paid an additional fee. The certificate shall be signed by the chairperson and secretary of the board under the seal of the board. The certificate shall authorize the applicant to engage in the practice of engineering. The certificate shall not carry with it the right to practice land surveying, unless specifically so stated on the certificate, which permission shall be granted by the board without additional fee in cases where the applicant duly qualifies as a professional land surveyor as prescribed by the rules of the board.

[C24, 27, 31, 35, 39, §**1869;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §114.17]
C93, §542B.17
95 Acts, ch 65, §6; 96 Acts, ch 1055, §7; 2012 Acts, ch 1009, §17
Referred to in §459.102

542B.18 Expirations and renewals.

Certificates of licensure shall expire in intervals as determined by the board. Renewal may be effected by the payment of a fee the amount of which shall be determined by the board. The failure on the part of any licensee to renew a certificate in the month of expiration as required above shall not deprive a person of the right of renewal. A person who fails to renew a certificate by the expiration date shall be allowed to do so within thirty days following its expiration, but the board may assess a reasonable penalty. For the duration of any war in which the United States is engaged the board may, in its discretion, defer the collection of renewal fees without penalty, which have or may become due from licensed professional engineers who are employed in the war effort, and residing outside the state, or who are members of the armed forces of the United States, and may renew the engineering certificates of licensed professional engineers.

[C27, 31, 35, §1869-b1; C39, §**1869.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §114.18]
C93, §542B.18
96 Acts, ch 1055, §5, 6, 8; 2012 Acts, ch 1009, §18

542B.19 Land surveyor's certificate.

To any applicant who shall have passed the examination as a professional land surveyor and who shall have paid an additional fee as set by the board, the board shall issue a certificate of licensure signed by its chairperson and secretary under the seal of the board, which certificate shall authorize the applicant to practice land surveying as defined in this chapter and to administer oaths to assistants and to witnesses produced for examination, with reference to facts connected with land surveys being made by such professional land surveyor.

[C24, 27, 31, 35, 39, §**1870;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §114.19]
C93, §542B.19
96 Acts, ch 1055, §6; 2012 Acts, ch 1009, §19
Administration of oaths, chapter 63A

542B.20 Foreign licensees.

1. A person holding a certificate of licensure as a professional engineer or professional land surveyor issued to the person by a proper authority of a state, territory, or possession of the United States, the District of Columbia, or of any foreign country, based on requirements and qualifications, in the opinion of the board equal to or higher than the requirements of this chapter, may be licensed without further examination.

2. A temporary permit to practice engineering may be granted to a person licensed in another state, as prescribed by rule, provided that before practicing within the state the person shall have applied for licensure or for a temporary permit to practice without applying for licensure and shall have paid the fee prescribed by the board.

3. The application for licensure shall be accompanied by a fee as determined by the board. After the board determines the applicant to be qualified under this section, a certificate of licensure shall be issued upon receipt of an additional fee as determined by the board. All fees collected shall be transmitted to the treasurer of state and deposited as provided by law.

[C24, 27, 31, 35, 39, §**1871;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §114.20]
84 Acts, ch 1104, §6; 90 Acts, ch 1168, §17
C93, §542B.20
96 Acts, ch 1055, §5, 6, 9; 2012 Acts, ch 1009, §20; 2018 Acts, ch 1041, §127
Code editor directive applied

542B.21 Suspension, revocation, or reprimand.

The board shall have the power by a five-sevenths vote of the entire board to suspend for a period not exceeding two years, or to revoke the certificate of licensure of, or to reprimand any licensee who is found guilty of the following acts or offenses:

1. Fraud in procuring a certificate of licensure.
2. Professional incompetency.
3. Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of the licensee's profession or engaging in unethical conduct or practice harmful to the public. Proof of actual injury need not be established.
4. Habitual intoxication or addiction to the use of drugs.
5. Conviction of a felony under the laws of the United States, of any state or possession of the United States, or of any other country. A copy of the record of conviction or plea of guilty is conclusive evidence.
6. Revocation or suspension of licensure to engage in the practice of engineering or land surveying, or other disciplinary action by the licensing authority of another state, territory, or country. A certified copy of the record or order of suspension, revocation, or other disciplinary action is prima facie evidence of such fact.
7. Fraud in representations as to skill or ability.
8. Use of untruthful or improbable statements in advertisements.
9. Willful or repeated violations of the provisions of this Act.*

[C24, 27, 31, 35, 39, §**1872;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §114.21]
85 Acts, ch 195, §13
C93, §542B.21
95 Acts, ch 65, §7, 8; 96 Acts, ch 1055, §7, 10, 11
Referred to in §272C.3, 272C.4, 542B.22
*See 77 Acts, ch 95, §10

542B.22 Procedure.

Proceedings for any action under section 542B.21 shall be begun by filing with the board written charges against the accused. Upon the filing of charges the board may request the department of inspections and appeals to conduct an investigation into the charges. The department of inspections and appeals shall report its findings to the board, and the board shall designate a time and place for a hearing, and shall notify the accused of this action and furnish the accused a copy of all charges at least thirty days prior to the date of the hearing.

The accused has the right to appear personally or by counsel, to cross-examine witnesses, or to produce witnesses in defense.

[C24, 27, 31, 35, 39, §**1873;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §114.22]
88 Acts, ch 1158, §20
C93, §542B.22
Referred to in §272C.5, 542B.27

542B.23 Reserved.

542B.24 Injunction.

Any person who is not legally authorized to practice in this state according to the provisions of this chapter, and shall practice, or shall in connection with the person's name use any designation tending to imply or designate the person as a professional engineer or professional land surveyor, may be restrained by permanent injunction.

[C24, 27, 31, 35, 39, §**1875;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §114.24]
C93, §542B.24
2012 Acts, ch 1009, §21

542B.25 Violations.

Any person who violates such permanent injunction or presents or attempts to file as the person's own the certificate of licensure of another, or who shall give false or forged evidence of any kind to the board, or to any member thereof, in obtaining a certificate of licensure, or who shall falsely impersonate another practitioner of like or different name, or who shall use or attempt to use a revoked certificate of licensure, shall be deemed guilty of a fraudulent practice.

[C24, 27, 31, 35, §1875; C39, §**1875.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §114.25]
C93, §542B.25
96 Acts, ch 1055, §6
Fraudulent practices, see §714.8 – 714.14

542B.26 Applicability of chapter.

1. *a.* This chapter shall not apply to any full-time employee of any corporation while doing work for that corporation, except in the case of corporations offering their services to the public as professional engineers or professional land surveyors.

b. Corporations engaged in designing buildings or works for public or private interests not their own shall be deemed to be engaged in the practice of engineering within the meaning of this chapter. With respect to such corporations all principal designing or constructing engineers shall hold certificates of licensure issued under this chapter. This chapter shall not apply to corporations engaged solely in constructing buildings and works.

2. This chapter shall not apply to any professional engineer or professional land surveyor working for the United States government, nor to any professional engineer or professional land surveyor employed as an assistant to a professional engineer or professional land surveyor licensed under this chapter if such assistant is not placed in responsible charge of any work involving the practice of engineering or land surveying work, nor to the operation or maintenance of power and mechanical plants or systems.

[C24, 27, 31, 35, 39, §**1876;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §114.26]
C93, §542B.26
95 Acts, ch 65, §9; 96 Acts, ch 1055, §4, 7; 2012 Acts, ch 1009, §22
Referred to in §542B.1

542B.27 Civil penalty.

1. In addition to any other penalties provided for in this chapter, the board may by order impose a civil penalty upon a person who is not licensed under this chapter as a professional engineer or a professional land surveyor and who does any of the following:

a. Engages in or offers to engage in the practice of professional engineering or professional land surveying.

b. Uses or employs the words "professional engineer" or "professional land surveyor",

or implies authorization to provide or offer professional engineering or professional land surveying services, or otherwise uses or advertises any title, word, figure, sign, card, advertisement, or other symbol or description tending to convey the impression that the person is a professional engineer or professional land surveyor or is engaged in the practice of professional engineering or professional land surveying.

c. Presents or attempts to use the certificate of licensure or the seal of a professional engineer or professional land surveyor.

d. Gives false or forged evidence of any kind to the board or any member of the board in obtaining or attempting to obtain a certificate of licensure.

e. Falsely impersonates any licensed professional engineer or professional land surveyor.

f. Uses or attempts to use an expired, suspended, revoked, or nonexistent certificate of licensure.

g. Knowingly aids or abets an unlicensed person who engages in any activity identified in this subsection.

2. A civil penalty imposed shall not exceed one thousand dollars for each offense. Each day of a continued violation constitutes a separate offense.

3. In determining the amount of a civil penalty to be imposed, the board may consider any of the following:

a. Whether the amount imposed will be a substantial economic deterrent to the violation.

b. The circumstances leading to the violation.

c. The severity of the violation and the risk of harm to the public.

d. The economic benefits gained by the violator as a result of noncompliance.

e. The interest of the public.

4. Before issuing an order under this section, the board shall provide the person written notice and the opportunity to request a hearing on the record. The hearing must be requested within thirty days of the issuance of the notice and shall be conducted in the same manner as provided in section 542B.22.

5. The board, in connection with a proceeding under this section, may issue subpoenas to compel the attendance and testimony of witnesses and the disclosure of evidence, and may request the attorney general to bring an action to enforce the subpoena.

6. A person aggrieved by the imposition of a civil penalty under this section may seek judicial review in accordance with section 17A.19.

7. If a person fails to pay a civil penalty within thirty days after entry of an order under subsection 1, or if the order is stayed pending an appeal within ten days after the court enters a final judgment in favor of the board, the board shall notify the attorney general. The attorney general may commence an action to recover the amount of the penalty, including reasonable attorney fees and costs.

8. An action to enforce an order under this section may be joined with an action for an injunction.

96 Acts, ch 1055, §2; 96 Acts, ch 1219, §29; 97 Acts, ch 23, §65; 2012 Acts, ch 1009, §23

542B.28 and 542B.29 Reserved.

542B.30 Fees.

The board shall set the fees for application, licensure, and renewal of licensure based upon the administrative costs of sustaining the board. The fees shall include, but shall not be limited to, the costs for:

1. Per diem, expenses and travel for board members.
2. Office facilities, supplies, and equipment.
3. Legal, technical and clerical assistance.

[C75, 77, 79, 81, §114.30]
C93, §542B.30
96 Acts, ch 1055, §6

542B.31 Public members.

The public members of the board shall be allowed to participate in administrative, clerical, or ministerial functions incident to giving the examination, but shall not determine the content of the examination or determine the correctness of the answers.

[C75, 77, 79, 81, §114.31]

C93, §542B.31

542B.32 Disclosure of confidential information.

1. The board shall not disclose information relating to the following:

a. The contents of the examination.

b. The examination results other than final score except for information about the results of an examination which is given to the person who took the examination.

2. A member of the board who willfully communicates or seeks to communicate such information, and any person who willfully requests, obtains, or seeks to obtain such information, is guilty of a simple misdemeanor.

[C75, 77, 79, 81, §114.32]

C93, §542B.32

2008 Acts, ch 1059, §3

542B.33 and 542B.34 Reserved.

542B.35 Exception — real property inspection report.

1. *"Real property inspection report"* means a report stating whether, after visual examination, a parcel of real property which is being collateralized is materially impaired.

2. A real property inspection report is not a property survey or an engineering document and is exempt from the provisions of this chapter and the rules adopted under this chapter which apply to property surveys. A real property inspection report shall not be filed or recorded with the county recorder. The real property inspection report shall include all of the following:

a. A clear and prominent statement of disclosure to the buyer that the real property inspection report is not a property survey or an engineering document and should not be relied upon as such, and that property boundaries shown may be approximate only.

b. A clear and prominent statement that the report is for the use of the mortgage lender or its assigns and determination of the actual placement of boundary lines should be addressed by a property survey in accordance with the provisions of this chapter.

3. A person who completes the real property inspection report shall not claim to be a licensed professional land surveyor or a licensed professional engineer for purposes of the report.

90 Acts, ch 1060, §1

C91, §114.35

C93, §542B.35

96 Acts, ch 1055, §5; 97 Acts, ch 23, §66; 2012 Acts, ch 1009, §24; 2013 Acts, ch 30, §135

CHAPTER 542C

PUBLIC ACCOUNTANTS

Repealed by 2001 Acts, ch 55, §36, 38; see chapter 542

CHAPTERS 543 and 543A

RESERVED

CHAPTER 543B

REAL ESTATE BROKERS AND SALESPERSONS

Referred to in §93.2, 235F.1, 272C.1, 272C.6, 523H.1, 533C.103, 535B.2, 537A.10, 543C.1, 543C.6, 546.10, 557A.20, 558A.1, 562A.12, 669.14, 714E.1, 714H.4

This chapter not enacted as a part of this title;
transferred from chapter 117 in Code 1993

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SUBCHAPTER I

GENERAL PROVISIONS

543B.1 License mandatory.

A person shall not, directly or indirectly, with the intention or upon the promise of receiving any valuable consideration, offer, attempt, agree to perform, or perform any single act as a

real estate broker whether as a part of a transaction or as an entire transaction, or represent oneself as a real estate broker, broker associate, or salesperson, without first obtaining a license and otherwise complying with the requirements of this chapter.

[C31, 35, §1905-c23; C39, §**1905.20;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §117.1; 81 Acts, ch 54, §1]

C93, §543B.1

95 Acts, ch 170, §1

Referred to in §543B.43, 543B.44, 543B.49

543B.2 Individual licenses necessary.

A partnership, association, corporation, professional corporation, or professional limited liability company shall not be granted a license, unless every member or officer of the partnership, association, corporation, professional corporation, or professional limited liability company who actively participates in the brokerage business of the partnership, association, corporation, professional corporation, or professional limited liability company holds a license as a real estate broker or salesperson, and unless every employee who acts as a salesperson for the partnership, association, corporation, professional corporation, or professional limited liability company holds a license as a real estate broker or salesperson. At least one member or officer of each partnership, association, corporation, professional corporation, or professional limited liability company shall be a real estate broker.

[C31, 35, §1905-c24; C39, §**1905.21;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §117.2; 81 Acts, ch 54, §2]

C93, §543B.2

2007 Acts, ch 13, §3

Referred to in §543B.43

543B.3 Broker — definition.

As used in this chapter, *"real estate broker"* means a person acting for another for a fee, commission, or other compensation or promise, whether it be for all or part of a person's time, and who engages directly or indirectly in any of the following acts:

1. Sells, exchanges, purchases, rents, or leases real estate.
2. Lists, offers, attempts, or agrees to list real estate for sale, exchange, purchase, rent, or lease.
3. Advertises or holds oneself out as being engaged in the business of selling, exchanging, purchasing, renting, leasing, or managing real estate.
4. Negotiates, or offers, attempts, or agrees to negotiate, the sale, exchange, purchase, rental, or lease of real estate.
5. Buys, sells, offers to buy or sell, or otherwise deals in options on real estate or improvements on real estate.
6. Collects, or offers, attempts, or agrees to collect, rent for the use of real estate.
7. Assists or directs in the procuring of prospects, intended to result in the sale, exchange, purchase, rental, or leasing of real estate.
8. Assists or directs in the negotiation of any transaction intended to result in the sale, exchange, purchase, rental, or leasing of real estate.
9. Prepares offers to purchase or purchase agreements, listing contracts, agency disclosures, real property residential and agricultural rental agreements, real property commercial rental agreements of one year or less, and groundwater hazard statements, including any modifications, amendments, or addendums to these specific documents.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §117.3]

C93, §543B.3

95 Acts, ch 170, §2; 2002 Acts, ch 1031, §1

Referred to in §543B.5, 543B.6, 543B.7, 543B.43

543B.4 Real estate — definition.

As used in this chapter, *"real estate"* means real property wherever situated, and includes any and all leaseholds or any other interest or estate in land, and business opportunities which involve any interest in real property.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §117.4]
C93, §543B.4
95 Acts, ch 170, §3
Referred to in §543B.43

543B.5 Other definitions.

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

1. *"Agency"* means a relationship in which a real estate broker acts for or represents another by the other person's express authority in a transaction.
2. *"Agency agreement"* means a written agreement between a broker and a client which identifies the party the broker represents in a transaction.
3. *"Appointed agent"* means that affiliated licensee who is appointed by the designated broker of the affiliated licensee's real estate brokerage agency to act solely for a client of that brokerage agency to the exclusion of other affiliated licensees of that brokerage agency.
4. *"Branch office"* means a real estate broker's office other than a principal place of business.
5. *"Broker associate"* means a person who has a broker's license but is licensed under, and employed by or otherwise associated with, another broker as a salesperson.
6. *"Brokerage"* means the business or occupation of a real estate broker.
7. *"Brokerage agreement"* means a contract between a broker and a client which establishes the relationship between the parties as to the brokerage services to be performed and contains the provisions required in section 543B.56A.
8. *"Brokerage services"* means those activities identified in sections 543B.3 and 543B.6.
9. *"Client"* means a party to a transaction who has an agency agreement with a broker for brokerage services.
10. *"Customer"* means a consumer who is not being represented by a licensee but for whom the licensee may perform ministerial acts.
11. *"Designated broker"* means a licensee designated by a real estate brokerage agency to act for the agency in conducting real estate brokerage services.
12. *"Inactive license"* means either a broker or salesperson license certificate that is on file with the real estate commission in the commission office and during which time the licensee is precluded from engaging in any of the acts of this chapter.
13. *"Licensee"* means a broker or a salesperson licensed pursuant to this chapter.
14. *"Listing"* is an agreement between a property owner and another person in which that person holds or advertises the property to the public as being available for sale or lease.
15. *a. "Material adverse fact"* means an adverse fact that a party indicates is of such significance, or that is generally recognized by a competent licensee as being of such significance to a reasonable party, that it affects or would affect the party's decision to enter into a contract or agreement concerning a transaction, or affects or would affect the party's decision about the terms of the contract or agreement.

b. For purposes of this subsection, *"adverse fact"* means a condition or occurrence that is generally recognized by a competent licensee as resulting in any of the following:

(1) Significantly and adversely affecting the value of the property.
(2) Significantly reducing the structural integrity of improvement to real estate.
(3) Presenting a significant health risk to occupants of the property.

16. *"Negotiate"* means to act as an intermediary between the parties to a transaction, and includes any of the following acts:

a. Participating in the parties' discussion of the terms of a contract or agreement concerning a transaction.

b. Completing, when requested by a party, appropriate forms or other written record to document the party's proposal in a manner consistent with the party's intent.

c. Presenting to a party the proposals of other parties to the transaction and informing the party receiving a proposal of the advantages and disadvantages of the proposal.

17. *"Party"* means a person seeking to sell, exchange, buy, or rent an interest in real estate, a business, or a business opportunity. *"Party"* includes a person who seeks to grant or accept an option to buy, sell, or rent an interest in real estate.

18. *"Person"* means an individual, partnership, association, corporation, professional corporation, or professional limited liability company.

19. *"Regular employee"* means a person whose compensation is fixed in advance, who does not receive a commission, who works exclusively for the owner, and whose total compensation is subject to state and federal withholding.

20. *"Salesperson"* means a person who is licensed under, and employed by or otherwise associated with, a real estate broker, as a selling, renting, or listing agent or representative of the broker.

21. *"Transaction"* means the sale, exchange, purchase, or rental of, or the granting or acceptance of an option to sell, exchange, purchase, or rent an interest in real estate.

[C31, 35, §1905-c25; C39, §**1905.22;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §117.5; 81 Acts, ch 54, §3]

C93, §543B.5

95 Acts, ch 17, §1; 95 Acts, ch 170, §4; 2005 Acts, ch 40, §1; 2006 Acts, ch 1055, §1; 2007 Acts, ch 13, §4; 2013 Acts, ch 30, §136

Referred to in §543B.43

543B.6 Acts constituting dealing in real estate.

A person who, for another, in consideration of compensation, by fee, commission, salary, or otherwise, or with the intention or in the expectation or upon the promise of receiving or collecting a fee, does, offers or attempts or agrees to do, engages in or offers or attempts or agrees to engage in, either directly or indirectly, any single act or transaction contained in the definition of a real estate broker as set out in section 543B.3, whether the act be an incidental part of a transaction or the entire transaction is a real estate broker or real estate salesperson within the meaning of this chapter.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §117.6; 81 Acts, ch 54, §4]

C93, §543B.6

Referred to in §543B.5, 543B.7, 543B.43, 543B.46

543B.7 Acts excluded from provisions — prohibited acts — penalties.

The provisions of this chapter shall not apply to the sale, exchange, purchase, rental, lease, or advertising of any real estate in any of the following cases:

1. A person who, as owner, spouse of an owner, general partner of a limited partnership, lessor, or prospective purchaser who does not make repeated and successive transactions of a like character, or through another engaged by such person on a regular full-time basis, buys, sells, manages, or otherwise performs any act with reference to property owned, rented, leased, or to be acquired by such person.

2. By any person acting as attorney in fact under a duly executed and acknowledged power of attorney from the owner, to act on behalf of the owner or lessor to authorize the final consummation and execution of any contract for the sale, leasing, or exchange of real estate. The exclusion in this subsection does not apply to a person who, in the regular course of a business operated in the nature of a property management or brokerage business, makes repeated and successive transactions of a like character for compensation.

3. A licensed attorney admitted to practice in Iowa acting solely as an incident to the practice of law.

4. A person acting as a receiver, trustee in bankruptcy, administrator, executor, guardian, or while acting under court order or under authority of a deed of trust, trust agreement, or will.

5. The acts of an auctioneer who is not a licensee in conducting a public sale or auction, as provided in this subsection.

a. The auctioneer's role must be limited to establishing the time, place, and method of an

auction; advertising the auction which shall be limited to a brief description of the property for auction and the time and place for the auction; and crying the property at the auction.

(1) The auctioneer shall provide in any advertising the name and address of the real estate broker who is providing brokerage services for the transaction and the name of the real estate broker, attorney, or closing company who is responsible for closing the sale of the property.

(2) The real estate broker providing brokerage services shall be present at the time of the auction and, if found to be in violation of this subsection, shall be subject to a civil penalty of one thousand dollars.

(3) If the auctioneer closes or attempts to close the sale of the property or otherwise engages in acts defined in sections 543B.3 and 543B.6, or paragraph *"b"* of this subsection, then the requirements of this chapter do apply to the auctioneer.

b. An auctioneer who is not a licensee is expressly prohibited from engaging in the following acts:

(1) Contacting the public regarding real property beyond that which is permitted under this section with the purpose of securing or facilitating the sale of such real property.

(2) Independently showing property or hosting open houses.

(3) Making material and substantive representations regarding title, financing, or closings.

(4) Discussing or explaining a contract, lease, agreement, or other real estate document, other than the contract for conducting the auction or other acts permitted by this subsection, with a prospective buyer, owner, or tenant of the real property, with the purpose of securing or facilitating the sale of such real property.

(5) Collecting or holding deposit moneys, rent, other moneys, or anything of value received from the owner of real property or from a prospective buyer or tenant, other than fees, commissions, or other consideration paid in exchange for conducting the auction or other acts permitted by this subsection, with the purpose of securing or facilitating the sale of such real property.

(6) Providing owners of real property or prospective buyers or tenants with advice, recommendations, or suggestions regarding the sale, purchase, exchange, rental, or leasing of real property, except with regard to acts permitted under this subsection.

(7) Falsely representing in any manner, orally or in writing, that the auctioneer is a licensee.

c. If an investigation pursuant to this chapter reveals that an auctioneer has violated this subsection or has assumed to act in the capacity of a real estate broker or real estate salesperson, the real estate commission shall issue a cease and desist order, and shall impose a civil penalty of one thousand dollars for the first offense, and impose a civil penalty of up to the greater of ten thousand dollars or ten percent of the real estate sales price for each subsequent violation.

6. An isolated real estate rental transaction by an owner's representative on behalf of the owner; such transaction not being made in the course of repeated and successive transactions of a like character.

7. The sale of time-share uses as defined in section 557A.2.

8. A person acting as a resident manager when such resident manager resides in the dwelling and is engaged in the leasing of real property in connection with their employment.

9. An officer or employee of the federal government, state government, or a political subdivision of the state, in the conduct of the officer's or employee's official duties.

10. A person employed by a public or private utility who performs an act with reference to property owned, leased, or to be acquired by the utility employing that person, where such an act is performed in the regular course of, or incident to, the management of the property and the investment in the property.

11. A nonlicensed employee of a licensee who provides information to another licensee concerning the sale, exchange, purchase, rental, lease, or advertising of real estate which has been provided to the employee by the employer licensee either verbally or in writing.

[C31, 35, §1905-c26; C39, §**1905.23;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §117.7]

83 Acts, ch 43, §1; 85 Acts, ch 155, §21

C93, §543B.7

95 Acts, ch 170, §5; 96 Acts, ch 1054, §1; 99 Acts, ch 82, §1; 2001 Acts, ch 83, §1; 2004 Acts, ch 1018, §1; 2005 Acts, ch 101, §1; 2006 Acts, ch 1055, §2; 2012 Acts, ch 1045, §1; 2013 Acts, ch 90, §165

Referred to in §543B.34, 543B.43, 543C.6

543B.8 Real estate commission created — staff.

1. A real estate commission is created within the professional licensing and regulation bureau of the banking division of the department of commerce. The commission consists of five members licensed under this chapter and two members not licensed under this chapter and who shall represent the general public. Commission members shall be appointed by the governor subject to confirmation by the senate.

2. No more than one member shall be appointed from a county. A commission member shall not hold any other elective or appointive state or federal office. At least one of the licensed members shall be a licensed real estate salesperson, except that if the licensed real estate salesperson becomes a licensed real estate broker during a term of office, that person may complete the term, but is not eligible for reappointment on the commission as a licensed real estate salesperson. A licensed member shall be actively engaged in the real estate business and shall have been so engaged for five years preceding the appointment, the last two of which shall have been in Iowa. Professional associations or societies of real estate brokers or real estate salespersons may recommend the names of potential commission members to the governor. However, the governor is not bound by their recommendations. A commission member shall not be required to be a member of any professional association or society composed of real estate brokers or salespersons.

3. Appointments shall be for three-year terms and shall commence and end as provided in section 69.19. A member shall serve no more than three terms or nine years, whichever is less. Vacancies shall be filled for the unexpired term by appointment of the governor and are subject to senate confirmation.

4. A majority of the commission members constitutes a quorum.

5. The administrator of the professional licensing and regulation bureau of the banking division shall hire and provide staff to assist the commission with implementing this chapter. The administrator of the professional licensing and regulation bureau of the banking division of the department of commerce shall hire a real estate education director to assist the commission in administering education programs for the commission.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §117.8; 81 Acts, ch 54, §5]

86 Acts, ch 1245, §722; 88 Acts, ch 1274, §36; 89 Acts, ch 292, §1

C93, §543B.8

2005 Acts, ch 41, §1; 2006 Acts, ch 1177, §38; 2018 Acts, ch 1041, §106

Referred to in §543B.43, 543B.49, 558A.1

Confirmation, see §2.32

Section amended

543B.9 Rules.

The real estate commission may adopt rules to carry out and administer the provisions of this chapter. The commission may carry on a program of education of real estate practices and matters relating to real estate. The commission shall adopt rules necessary to carry out the provisions of chapter 558A relating to the disclosure of information before the transfer of real estate.

[C31, 35, §1905-c33; C39, §**1905.30;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §117.9]

C93, §543B.9

93 Acts, ch 30, §1

Referred to in §543B.43, 558A.4

543B.10 and 543B.11 Reserved.

543B.12 Expenses of members — compensation.

Members of the real estate commission are entitled to be reimbursed for their actual expenses in the performance of duties pertaining to their office within the limits of the funds appropriated to the commission. Each member of the commission may also be eligible to receive compensation as provided in section 7E.6.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §117.12]

86 Acts, ch 1245, §723

C93, §543B.12

Referred to in §543B.43

543B.13 Seal — records.

The real estate commission shall adopt a seal with such design as the commission may prescribe engraved thereon, by which it shall authenticate its proceedings. Copies of all records and papers in the office of the commission, duly certified and authenticated by the seal of said commission, shall be received in evidence in all courts equally and with like effect as the original. All records kept in the office of the commission under authority of this chapter shall be open to public inspection under such reasonable rules and regulations as shall be prescribed by the commission.

[C31, 35, §1905-c28; C39, §**1905.25;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §117.13]

C93, §543B.13

Referred to in §543B.43

543B.14 Fees and expenses.

All fees and charges collected by the real estate commission under this chapter shall be paid into the general fund of the state, except that twenty-five dollars from each real estate salesperson's license fee and each broker's license fee is appropriated to the professional licensing and regulation bureau of the banking division of the department of commerce for the purpose of hiring and compensating a real estate education director and regulatory compliance personnel. All expenses incurred by the commission under this chapter, including compensation of staff assigned to the commission, shall be paid from funds appropriated for those purposes.

[C31, 35, §1905-c29; C39, §**1905.26;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §117.14]

86 Acts, ch 1245, §724; 89 Acts, ch 292, §2; 90 Acts, ch 1168, §19; 90 Acts, ch 1261, §38; 92 Acts, ch 1070, §1

C93, §543B.14

94 Acts, ch 1107, §89; 2004 Acts, ch 1175, §29; 2013 Acts, ch 93, §1

Referred to in §543B.43, 546.10

543B.15 Qualifications.

1. Except as provided in section 543B.20 an applicant for a real estate broker's or salesperson's license must be a person whose application has not been rejected for licensure in this or any other state within twelve months prior to the date of application, and whose real estate license has not been revoked in this or any other state within two years prior to date of application.

2. To qualify for a license as a real estate broker or salesperson a person shall be eighteen years of age or over. However, an applicant is not ineligible because of citizenship, sex, race, religion, marital status, or national origin, although the application form may require citizenship information.

3. *a.* An applicant for a real estate broker's or salesperson's license who has been convicted of an offense specified in this subsection shall not be considered for licensure until the following time periods have elapsed following completion of any applicable period of incarceration, or payment of a fine or fulfillment of any other type of sentence:

(1) For an offense which is classified as a felony, an offense including or involving forgery, embezzlement, obtaining money under false pretenses, theft, arson, extortion, conspiracy to defraud, or other similar offense, or any other offense involving a criminal breach of fiduciary duty, five years.

(2) For any offense not described in subparagraph (1) involving moral turpitude, one year.

b. After expiration of the time periods specified in paragraph *"a"*, an application shall be considered by the commission pursuant to subsection 6 and may be denied on the grounds of the conviction. An applicant may request a hearing pursuant to section 543B.19 in the event of a denial.

c. For purposes of this section, *"convicted"* or *"conviction"* means a conviction for an indictable offense and includes a court's acceptance of a guilty plea, deferred judgment from the time of entry of the deferred judgment until the time the defendant is discharged by the court without entry of judgment, or other finding of guilt by a court of competent jurisdiction in this state, or in any other state, territory, or district of the United States, or in any foreign jurisdiction. A copy of the record of conviction is conclusive evidence of such conviction.

4. An applicant for a real estate broker's or salesperson's license who has had a professional license of any kind revoked or suspended or who has had any other form of discipline imposed, in this or any other jurisdiction, may be denied a license by the commission on the grounds of the revocation, suspension, or other discipline.

5. A person who makes a false statement of material fact on an application for a real estate broker's or salesperson's license, or who causes to be submitted, or has been a party to preparing or submitting any false application for such license, may be denied a license by the commission on the grounds of the false statement or submission.

6. The commission, when considering the denial of a license pursuant to this section, shall consider the nature of the offense; any aggravating or extenuating circumstances which are documented; the time lapsed since the revocation, conduct, or conviction; the rehabilitation, treatment, or restitution performed by the applicant; and any other factors the commission deems relevant. Character references may be required but shall not be obtained from licensed real estate brokers or salespersons.

7. To qualify for a license as a real estate broker, a person shall complete at least sixty contact hours of commission approved real estate education within twenty-four months prior to taking the broker examination. This education shall be in addition to the required salesperson prelicense course. The applicant shall have been a licensed real estate salesperson actively engaged in real estate for a period of at least twenty-four months preceding the date of application, or shall have had experience substantially equal to that which a licensed real estate salesperson would ordinarily receive during a period of twenty-four months, whether as a former broker or salesperson, a manager of real estate, or otherwise.

8. A qualified applicant for a license as a real estate salesperson shall complete a commission approved short course in real estate education of at least thirty hours during the twelve months prior to taking the salesperson examination.

9. An applicant for an initial real estate broker's or salesperson's license shall be subject to a national criminal history check through the federal bureau of investigation. The commission shall request the criminal history check and shall provide the applicant's fingerprints to the department of public safety for submission through the state criminal history repository to the federal bureau of investigation. The applicant shall authorize release of the results of the criminal history check to the real estate commission. The applicant shall pay the actual cost of the fingerprinting and criminal history check, if any. Unless the criminal history check was completed within the two hundred ten calendar days prior to the date the license application is received by the real estate commission, the commission shall reject and return the application to the applicant. The commission shall process the application but hold delivery of the license until the background check is complete. The results of a criminal history check conducted pursuant to this subsection shall not be considered a public record under chapter 22.

[C31, 35, §1905-c30; C39, §**1905.27;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §117.15; 81 Acts, ch 54, §6, 7]

85 Acts, ch 82, §1

C93, §543B.15

95 Acts, ch 64, §1; 2002 Acts, ch 1031, §2; 2005 Acts, ch 36, §1; 2006 Acts, ch 1055, §3; 2007 Acts, ch 187, §1, 2; 2008 Acts, ch 1099, §1, 2; 2010 Acts, ch 1068, §1 – 3; 2017 Acts, ch 71, §1

Referred to in §543B.28, 543B.29, 543B.43

543B.16 Application forms.

1. Every applicant for a license shall apply in writing upon blanks prepared or furnished by the real estate commission. The real estate commission shall not require that a recent photograph of the applicant be attached to the application. The real estate commission shall only require an applicant to disclose on the application criminal convictions for crimes classified as indictable offenses.

2. Every applicant for a license shall furnish information setting forth the applicant's present mailing address and electronic mail address.

3. Every applicant for a salesperson's license shall furnish a written statement by the designated broker whose service the applicant is about to enter recommending that the license be granted to the applicant.

[C31, 35, §1905-c31; C39, §**1905.28;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §117.16; 81 Acts, ch 54, §8]

C93, §543B.16

2015 Acts, ch 29, §114; 2017 Acts, ch 71, §2; 2018 Acts, ch 1026, §158

Referred to in §543B.43

Subsection 1 amended

543B.17 Reserved.

543B.18 Enforcement of rules.

The real estate commission is expressly vested with the power and authority to make and enforce any and all such reasonable rules connected with the application for any license as shall be deemed necessary to administer and enforce the provisions of this chapter.

[C31, 35, §1905-c33; C39, §**1905.30;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §117.18]

C93, §543B.18

Referred to in §543B.43

543B.19 License denied — hearing.

If the real estate commission, after an application in proper form has been filed with it, accompanied by the proper fee, shall deny a license to the applicant, upon the applicant's application in writing, and within a period of thirty days of such denial, the applicant shall be entitled to a hearing as provided in section 543B.35.

[C31, 35, §1905-c34; C39, §**1905.31;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §117.19]

C93, §543B.19

Referred to in §543B.15, 543B.35, 543B.43

543B.20 Examination.

Examinations for a license shall be given as often as deemed necessary by the real estate commission, but no less than one time per year. Each applicant for a license must pass an examination authorized by the commission and administered by the commission or persons designated by the commission. The examination shall be of scope and wording sufficient in the judgment of the commission to establish the competency of the applicant to act as a real estate broker or salesperson in a manner to protect the interests of the public. An examination for a real estate broker shall be of a more exacting nature than that for a real estate salesperson and require higher standards of knowledge of real estate. The identity of the persons taking the examinations shall be concealed until after the examination has been graded. A person who fails to pass either examination once may immediately apply to take the next available examination. Thereafter, the applicant may take the examination at the discretion of the commission. An applicant who has failed either examination may request in writing information from the commission concerning the applicant's examination grade and subject areas or questions which the applicant failed to answer correctly, except that if the commission administers a uniform, standardized examination, the commission is only required to provide the examination grade and other information concerning the applicant's examination results which is available to the commission.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §117.20; 81 Acts, ch 54, §9]

C93, §543B.20
2013 Acts, ch 5, §23; 2014 Acts, ch 1092, §120
Referred to in §538A.2, 543B.15, 543B.43

543B.21 Nonresident license.

A nonresident of this state may be licensed as a real estate broker or a real estate salesperson, upon complying with all requirements of law and with all the provisions and conditions of this chapter relative to resident brokers or salespersons and the filing by the applicant with the real estate commission of a certification from the state of original licensure signed by the duly qualified and authorized official or officials of that state that the applicant is there currently licensed, that no charges against the applicant are there pending, and that applicant's record in that state justifies the issuance of a license to the applicant in Iowa. The commission may waive the requirement of an examination in the case of a nonresident broker who is licensed under the laws of a state having similar requirements and where similar recognition and courtesies are extended to licensed real estate brokers and salespersons of this state.

[C31, 35, §1905-c57; C39, §**1905.54;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §117.21; 81 Acts, ch 54, §10]

C93, §543B.21
Referred to in §543B.43

543B.22 Nonresident's place of business.

A nonresident to whom a license is issued upon compliance with all the other requirements of law and provisions of this chapter, is not required to maintain a definite place of business within this state. Provided that the nonresident, if a broker, shall maintain an active place of business within the state of the nonresident's domicile, and that the privilege of submitting a certification of licensure certified to by the qualified and authorized official or officials of the state of original licensure, in lieu of the recommendations and statements otherwise required, only applies to licensed real estate brokers and real estate salespersons of those states under the laws of which similar recognition and courtesies are extended to licensed real estate brokers and real estate salespersons of this state.

[C31, 35, §1905-c57; C39, §**1905.54;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §117.22; 81 Acts, ch 54, §11]

C93, §543B.22
Referred to in §543B.31, 543B.43

543B.23 Actions against nonresidents.

Every nonresident applicant, before the issuance of a license, shall file an irrevocable consent that suits and actions may be commenced against such applicant in the proper court of any county of this state in which a cause of action may arise, by the service of any process or pleadings authorized by the laws of this state on the chairperson of the real estate commission, said consent stipulating and agreeing that such service of such process or pleadings on the commission shall be taken and held in all courts to be as valid and binding as if due service had been made upon said applicant within the state of Iowa. Said instrument containing such consent shall be authenticated by the seal thereof, if a corporation, or by the acknowledged signature of a member or officer thereof, if otherwise. All such applications, except from individuals, shall be accompanied by a duly certified copy of the resolutions of the proper officers, or managing board, authorizing the proper officer to execute the same. In case any process or pleadings mentioned in the case are served upon the commission it shall be by duplicate copies, one of which shall be filed in the office of the commission, and the other immediately forwarded by certified mail to the main office of the applicant against whom or which said process or pleadings are directed.

[C31, 35, §1905-c57; C39, §**1905.54;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §117.23]

C93, §543B.23
Referred to in §543B.43

543B.24 Custody of salesperson's license.

The license of a real estate salesperson shall be delivered or mailed to the real estate broker by whom the real estate salesperson is employed and shall be kept in the custody and control of the broker.

[C31, 35, §1905-c36; C39, §**1905.33;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §117.24; 81 Acts, ch 54, §12]

C93, §543B.24

Referred to in §543B.43

543B.25 Display of license. Repealed by 2017 Acts, ch 71, §13.

543B.26 Reserved.

543B.27 Fees.

1. The real estate commission shall set fees for examination and licensing of real estate brokers and real estate salespersons. The commission shall determine the annual cost of administering the examination and shall set the examination fee accordingly. The commission shall set the fees for the real estate broker's licenses and for real estate salesperson's licenses based upon the administrative costs of sustaining the commission. The fees shall include, but shall not be limited to, the costs for:

a. Per diem, expenses, and travel for commission members.

b. Office facilities, supplies, and equipment.

c. Staff assistance.

d. Establishing and maintaining a real estate education program.

2. Notwithstanding subsection 1, a nonresident person seeking to procure a license pursuant to this chapter shall be charged a fee equal to the greater of the following:

a. The fee as determined pursuant to subsection 1.

b. A fee equal to the fee the nonresident person would be charged by such person's state of residence if that person were a resident of this state making application for a license in that state and that state charges a nonresident a fee which is greater than that charged by that state to a resident of that state.

[C31, 35, §1905-c40; C39, §**1905.37;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §117.27; 81 Acts, ch 54, §14]

89 Acts, ch 292, §3; 90 Acts, ch 1168, §20

C93, §543B.27

95 Acts, ch 36, §1

Referred to in §543B.43

543B.28 Expiration of license.

Every license shall expire in multiyear intervals as determined by the real estate commission. A person who fails to renew a real estate broker's or real estate salesperson's license by the expiration date shall be allowed to do so within thirty days following its expiration, but the commission may assess a reasonable penalty. The commission upon the written request of the applicant on forms prescribed by the commission, and payment of the fee, shall issue a new license for each ensuing license period except as provided in section 543B.15, in the absence of any reason or condition which might warrant the revocation of a license after a hearing as provided in sections 543B.34 and 543B.35.

[C31, 35, §1905-c42; C39, §**1905.39;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §117.28; 81 Acts, ch 54, §15]

C93, §543B.28

Referred to in §543B.43, 543B.47, 543B.53

543B.29 Revocation or suspension.

1. A license to practice the profession of real estate broker and salesperson may be revoked or suspended when the licensee is guilty of any of the following acts or offenses:

a. Fraud in procuring a license.

b. Having made a false statement of material fact on an application for a real estate

broker's or salesperson's license, or having caused to be submitted, or having been a party to preparing or submitting any false application for such license.

c. Professional incompetency.

d. Knowingly making misleading, deceptive, untrue, or fraudulent representations in the practice of the profession or engaging in unethical conduct or practice harmful or detrimental to the public. Proof of actual injury need not be established.

e. Habitual intoxication or addiction to the use of drugs.

f. Conviction of an offense included in section 543B.15, subsection 3. For purposes of this section, "*conviction*" means a conviction for an indictable offense and includes the court's acceptance of a guilty plea, a deferred judgment from the time of entry of the deferred judgment until the time the defendant is discharged by the court without entry of judgment, or other finding of guilt by a court of competent jurisdiction. A copy of the record of conviction, guilty plea, deferred judgment, or other finding of guilt is conclusive evidence.

(1) A licensed real estate broker or salesperson shall notify the commission of the licensee's conviction of an offense included in section 543B.15, subsection 3, paragraph "*a*", within ten days of the conviction. Notification of a conviction for an offense which is classified as a felony shall result in the immediate suspension of a license pending the outcome of a hearing conducted pursuant to section 543B.35 to determine the nature of the disciplinary action, if any, the commission will impose on the licensee. The hearing shall be conducted within thirty days of the licensee's notification to the commission, and the commission's decision shall be provided to the licensee no later than thirty days following the hearing. The failure of the licensee to notify the commission of the conviction within ten days of the date of the conviction is sufficient grounds for revocation of the license.

(2) The commission, when considering the revocation or suspension of a license pursuant to this paragraph "*f*", shall consider the nature of the offense; any aggravating or extenuating circumstances which are documented; the time lapsed since the conduct or conviction; the rehabilitation, treatment, or restitution performed by the licensee; and any other factors the commission deems relevant. Character references may be required but shall not be obtained from licensed real estate brokers or salespersons.

g. Fraud in representations as to skill or ability.

h. Use of untruthful or improbable statements in advertisements.

i. Willful or repeated violations of the provisions of this chapter.

j. Noncompliance with insurance requirements under section 543B.47.

k. Noncompliance with the trust account requirements under section 543B.46.

l. Revocation of any professional license held by the licensee in this or any other jurisdiction.

2. The revocation of a broker's license shall automatically suspend every license granted to any person by virtue of the person's employment by the broker whose license has been revoked, pending a change of employer and the issuance of a new license. The new license shall be issued upon payment of a fee in an amount determined by the commission based upon the administrative costs involved, if granted during the same license period in which the original license was granted.

3. A real estate broker or salesperson who is an owner or lessor of property or an employee of an owner or lessor may have the broker's or salesperson's license revoked or suspended for violations of this section or section 543B.34, except section 543B.34, subsection 1, paragraphs "*d*", "*e*", "*f*", and "*i*", with respect to that property.

4. A real estate broker's or salesperson's license shall be revoked following three violations of this section or section 543B.34 within a three-year period.

[C31, 35, §1905-c43; C39, §**1905.40;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §117.29; 81 Acts, ch 54, §16, 17]

83 Acts, ch 101, §14; 90 Acts, ch 1126, §1; 92 Acts, ch 1242, §20

C93, §543B.29

95 Acts, ch 64, §2, 3; 2008 Acts, ch 1099, §3; 2010 Acts, ch 1068, §4, 5; 2010 Acts, ch 1193, §62; 2011 Acts, ch 73, §1; 2013 Acts, ch 30, §137; 2017 Acts, ch 71, §3

Referred to in §272C.3, 272C.4, 543B.43, 543B.60A

543B.30 Actions — license as prerequisite.

A person engaged in the business or acting in the capacity of a real estate broker or a real estate salesperson within this state shall not bring or maintain any action in the courts of this state for the collection of compensation for services performed as a real estate broker or salesperson without alleging and proving that the person was a duly licensed real estate broker or real estate salesperson at the time the alleged cause of action arose.

[C31, 35, §1905-c44; C39, §**1905.41;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §117.30; 81 Acts, ch 54, §18]

C93, §543B.30

Referred to in §543B.43

543B.31 Place of business — branch license.

Every real estate broker, except as provided in section 543B.22, shall maintain a place of business in this state. A real estate broker may maintain more than one place of business within the state and a broker may be the designated broker of more than one branch office within the state. If the real estate broker maintains more than one place of business within the state, a duplicate license shall be issued to such broker for each branch office maintained. A fee determined by the real estate commission shall be paid for each duplicate license.

[C31, 35, §1905-c45; C39, §**1905.42;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §117.31]

C93, §543B.31

2007 Acts, ch 13, §5; 2008 Acts, ch 1032, §106; 2017 Acts, ch 71, §4

Referred to in §543B.43

543B.32 Change of location.

Notice in writing, electronic or otherwise, shall be given to the real estate commission by each licensee of any change of principal business location, whereupon the commission shall issue a new license for the unexpired period upon the payment of a fee established by rule to cover the cost of issuing the license.

[C31, 35, §1905-c46; C39, §**1905.43;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §117.32; 81 Acts, ch 54, §19]

C93, §543B.32

2017 Acts, ch 71, §5

Referred to in §543B.43

543B.33 Salespersons — change of employment or association.

When any real estate salesperson is discharged or terminates employment or association with the real estate broker by whom the salesperson is employed, the real estate broker shall immediately deliver, mail, or electronically submit to the real estate commission a copy of the real estate salesperson's license on the reverse side of which the designated broker shall set out the date of termination. The designated broker at the time of submitting a copy of the real estate salesperson's license to the commission shall address a communication to the last known residence address of the real estate salesperson stating that a copy of the license has been delivered, mailed, or electronically submitted to the commission. A copy of the communication to the real estate salesperson shall accompany the copy of the license when submitted to the commission. It is unlawful for any real estate salesperson to perform any of the acts contemplated by this chapter either directly or indirectly under authority of a license from and after the date of receipt of a copy of the license by the commission. The commission shall, upon presentation of evidence by the salesperson that the salesperson has been employed by or is associated with another broker, issue another license for the balance of the current license period showing each change of employment or association. A fee as determined by the commission shall be charged for the issuance of the license. Not more than one license shall be issued to any real estate salesperson for the same period of time.

[C31, 35, §1905-c47; C39, §**1905.44;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §117.33; 81 Acts, ch 54, §20]

C93, §543B.33

2011 Acts, ch 73, §2; 2017 Acts, ch 71, §6

Referred to in §543B.43

543B.34 Investigations by commission — licensing sanctions — civil penalty.

1. The real estate commission may upon its own motion and shall upon the verified complaint in writing of any person, if the complaint together with evidence, documentary or otherwise, presented in connection with the complaint makes out a prima facie case, request commission staff or any other duly authorized representative or designee to investigate the actions of any real estate broker, real estate salesperson, or other person who assumes to act in such capacity within this state. The commission may assess civil penalties against any person or entity, and may suspend or revoke a license issued under this chapter at any time if the licensee has by false or fraudulent representation obtained a license, or if the licensee or other person assuming to act in the capacity of a real estate broker or real estate salesperson, except for those actions exempt pursuant to section 543B.7, is found to be guilty of any of the following:

a. Making any substantial misrepresentation.

b. Making any false promise of a character likely to influence, persuade or induce.

c. Pursuing a continued and flagrant course of misrepresentation, or making of false promises through agents or salespersons or advertising or otherwise.

d. Acting for more than one party in a transaction without the knowledge of all parties for whom the licensee acts.

e. Accepting a commission or valuable consideration as a real estate broker associate or salesperson for the performance of any of the acts specified in this chapter, from any person, except the broker associate's or salesperson's employer, who must be a licensed real estate broker. However, a broker associate or salesperson may, without violating this paragraph, accept a commission or valuable consideration from a corporation which is wholly owned, or owned with a spouse, by the broker associate or salesperson if the conditions described in paragraph "*i*" are met.

f. Representing or attempting to represent a real estate broker other than the licensee's employer, without the express knowledge and consent of the employer.

g. Failing, within a reasonable time, to account for or to remit any moneys coming into the licensee's possession which belong to others.

h. Being unworthy or incompetent to act as a real estate broker or salesperson in such manner as to safeguard the interests of the public.

i. (1) Paying a commission or other valuable consideration or any part of such commission or consideration for performing any of the acts specified in this chapter to a person who is not a licensed broker or salesperson under this chapter or who is not engaged in the real estate business in another state or foreign country, provided that the provisions of this section shall not be construed to prohibit the payment of earned commissions or consideration to any of the following:

(a) The estate or heirs of a deceased real estate licensee when such licensee had a valid real estate license in effect at the time the commission or consideration was earned.

(b) A citizen of another country acting as a referral agent if that country does not license real estate brokers or salespersons and if the Iowa licensee paying the commission or consideration obtains and maintains reasonable written evidence that the payee is a citizen of the other country, is not a resident of this country, and is in the business of brokering real estate in that other country.

(c) A corporation pursuant to subparagraph (2).

(2) A broker may pay a commission to a corporation which is wholly owned, or owned with a spouse, by a salesperson or broker associate employed by or otherwise associated with the broker, if all of the following conditions are met:

(a) The corporation does not engage in real estate transactions as a third-party agent or in any other activity requiring a license under this chapter.

(b) The employing broker is not relieved of any obligation to supervise the licensee or any other requirement of this chapter or the rules adopted pursuant to this chapter.

(c) The employed broker associate or salesperson is not relieved from any personal civil liability for any licensed activities by interposing the corporate form.

j. Failing, within a reasonable time, to provide information requested by the commission

as the result of a formal or informal complaint to the commission which would indicate a violation of this chapter.

k. Any other conduct, whether of the same or different character from that specified in this section, which demonstrates bad faith, or improper, fraudulent, or dishonest dealings which would have disqualified the licensee from securing a license under this chapter.

2. Any unlawful act or violation of any of the provisions of this chapter by any real estate broker associate or salesperson, employee, or partner or associate of a licensed real estate broker, is not cause for the revocation of the license of any real estate broker, unless the commission finds that the real estate broker had guilty knowledge of the unlawful act or violation.

3. If an investigation pursuant to this section reveals that an unlicensed person has assumed to act in the capacity of a real estate broker or real estate salesperson, the commission shall issue a cease and desist order, and shall impose a civil penalty of up to the greater of ten thousand dollars or ten percent of the real estate sale price.

[C31, 35, §1905-c48; C39, §**1905.45;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §117.34; 81 Acts, ch 54, §21]

88 Acts, ch 1158, §23; 89 Acts, ch 29, §1; 89 Acts, ch 83, §24; 92 Acts, ch 1242, §21

C93, §543B.34

95 Acts, ch 170, §6; 99 Acts, ch 22, §1; 2004 Acts, ch 1005, §1, 2; 2005 Acts, ch 179, §72; 2011 Acts, ch 73, §3; 2017 Acts, ch 71, §7 – 9

Referred to in §543B.28, 543B.29, 543B.43, 543B.61

543B.35 Hearing on charges.

The real estate commission shall, upon request of the applicant as provided in section 543B.19, or before revoking any license, set the matter down for a hearing and at least twenty days prior to the date set for the hearing it shall notify the applicant or licensee in writing, which said notice shall contain an exact statement of the charges made and the date and place of the hearing. The applicant or licensee at all such hearings shall have the opportunity to be heard in person and by counsel in reference thereto. Such written notice of hearing may be served by delivery personally to the applicant or licensee or by mailing the same by certified mail to the last known business address of such applicant or licensee. If such applicant or licensee be a salesperson, the commission shall also notify the broker employing the salesperson or into whose employ the salesperson is about to enter by mailing such notice by certified mail to the broker's last known business address. The hearing on such charges shall be at such time and place as the commission shall prescribe.

[C31, 35, §1905-c49; C39, §**1905.46;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §117.35]

C93, §543B.35

Referred to in §272C.5, 543B.19, 543B.28, 543B.29, 543B.43

543B.36 Attendance of witnesses.

In the preparation and conducting of such hearings, the real estate commission shall have power to execute and sign subpoenas to require the attendance and testimony of any witnesses and the producing of any papers or books. The commission may administer oaths, examine witnesses, and take any evidence the commission deems pertinent to the determination of the charges. Any such hearing may be held before two or more members of the commission as may be directed by the commission.

[C31, 35, §1905-c50; C39, §**1905.47;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §117.36]

C93, §543B.36

Referred to in §272C.5, 543B.43

543B.37 Fees and mileage.

Any witnesses so subpoenaed shall be entitled to the same fees and mileage as is prescribed by law in judicial proceedings in the courts of this state in civil cases.

[C31, 35, §1905-c51; C39, §**1905.48;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §117.37]

C93, §543B.37

Referred to in §543B.43

543B.38 Request for witnesses.

Any party to any hearing before the real estate commission shall have the right to the attendance of witnesses in the party's behalf at such a hearing upon making a request thereof to the commission and designating the person or persons sought to be subpoenaed.

[C31, 35, §1905-c52; C39, §**1905.49;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §117.38]
C93, §543B.38
Referred to in §543B.43

543B.39 Disobedience to subpoena.

In case of a disobedience to a subpoena the real estate commission may invoke the aid of any court of competent jurisdiction or judge thereof in requiring the attendance and testimony of witnesses and the production of papers; and such court may issue an order requiring the persons to appear before the commission and give evidence or to produce papers as the case may be; and any failure to obey such order may be punished as a contempt.

[C31, 35, §1905-c53; C39, §**1905.50;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §117.39]
C93, §543B.39
Referred to in §543B.43

543B.40 Depositions.

The testimony may be taken by deposition as in civil cases, and any person may be compelled to appear and depose in the same manner as witnesses may be compelled to appear and testify as hereinbefore provided.

[C31, 35, §1905-c54; C39, §**1905.51;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §117.40]
C93, §543B.40
Referred to in §543B.43

543B.41 Findings of fact.

If the majority of the real estate commission shall determine that any applicant is not qualified to receive a license, a license shall not be granted to such applicant, and if the commission shall determine that any licensee is guilty of a violation of any of the provisions of this chapter, the license may be suspended or revoked. The commission, upon request of the applicant or licensee, shall furnish said applicant or licensee with a definite statement of its findings of fact and its reason or reasons for refusing to grant the license or for suspension of the rights of the licensee or for the revocation of the license, as the case may be. Judicial review of action of the commission may be sought in accordance with the terms of the Iowa administrative procedure Act, chapter 17A.

[C31, 35, §1905-c56; C39, §**1905.53;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §117.41]
C93, §543B.41
2003 Acts, ch 44, §114
Referred to in §543B.43

543B.42 List of licensees.

The real estate commission shall at least annually prepare a list of the names and addresses of all licensees licensed by it under this chapter, and of all persons whose licenses have been suspended or revoked within one year; together with other information relative to the enforcement of this chapter as it deems of interest to the public. The lists shall be mailed by the commission to any person in this state upon request.

[C31, 35, §1905-c58; C39, §**1905.55;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §117.42]
86 Acts, ch 1238, §6
C93, §543B.42

543B.43 Penalties.

Any person found guilty of violating a provision of sections 543B.1 through 543B.24 and sections 543B.27 through 543B.41 in a first offense shall be guilty of a simple misdemeanor.

[C31, 35, §1905-c59; C39, §**1905.56;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §117.43]

C93, §543B.43
2013 Acts, ch 90, §166; 2018 Acts, ch 1026, §159
Referred to in §543B.49
Civil penalty for unlicensed person acting as real estate broker or salesperson; §543B.34
Civil penalty for licensees; §543B.48
Section amended

543B.44 Complaints referred to court.

The real estate commission may refer a complaint for violation of section 543B.1 before any court of competent jurisdiction, and it may take the necessary legal steps through the proper legal officers of this state to enforce the provisions hereof and collect the penalties herein provided.

[C31, 35, §1905-c60; C39, §**1905.57;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §117.44]
C93, §543B.44
Referred to in §543B.49

543B.45 Dual contracts for sale of real property.

1. A person licensed under this chapter shall not knowingly make, issue, deliver, receive, or permit the use of two or more written or oral contracts for the purpose of sale concerning the same parcel of real estate one of which is not made known to the prospective lender or loan guarantor to enable the purchaser to obtain a larger loan than the true sales price would allow or to enable the purchaser to qualify for a loan which the purchaser otherwise could not obtain.

2. Any person who shall violate the provisions of this section shall be guilty of a fraudulent practice.

[C71, 73, 75, 77, 79, 81, §117.45; 81 Acts, ch 54, §22]
C93, §543B.45
2018 Acts, ch 1041, §127
Fraudulent practices, see §714.8
Code editor directive applied

543B.46 Trust accounts.

1. Each real estate broker who is in the practice of depositing funds in a trust account shall maintain a common trust account in a federally insured depository institution for the deposit of all down payments, earnest money deposits, or other trust funds received by the broker or the broker's salespersons on behalf of the broker's principal, except that a broker acting as a salesperson shall deposit these funds in the common trust account of the broker for whom the broker acts as salesperson. The account shall be an interest-bearing account. The interest on the account shall be transferred quarterly to the treasurer of state and transferred to the Iowa finance authority for deposit in the housing trust fund established in section 16.181 unless there is a written agreement between the buyer and seller to the contrary. The broker shall not benefit from interest received on funds of others in the broker's possession. A broker who is not in the practice of depositing funds in a trust account shall not be required to maintain a common trust account pursuant to this section.

2. Each broker required to maintain a trust account pursuant to this section shall notify the real estate commission of the name of the federally insured depository institution in which a trust account is maintained and also the name of the account on forms provided therefor.

3. Each broker required to maintain a trust account pursuant to this section shall authorize the real estate commission to examine each trust account and shall obtain the certification of the federally insured depository institution attesting to each trust account and consenting to the examination and audit of each account by a duly authorized representative of the commission. The certification and consent shall be furnished on forms prescribed by the commission. This subsection does not apply to an individual farm account maintained in the name of the owner or owners for the purpose of conducting ongoing farm business whether it is conducted by the farm owner or by an agent or farm manager when the account is part of a farm management agreement between the owner and agent or manager. This subsection also does not apply to an individual property management account maintained in the name of the owner or owners for the purpose of conducting ongoing property management whether

it is conducted by the property owner or by an agent or manager when the account is part of a property management agreement between the owner and agent or manager.

4. Each broker required to maintain a trust account pursuant to this section shall only deposit trust funds as directed by the principal of a transaction constituting dealing in real estate as described in section 543B.6 in the common trust account and shall not commingle the broker's personal funds or other funds in the trust account with the exception that a broker may deposit and keep a sum not to exceed one thousand dollars in the account from the broker's personal funds, which sum shall be specifically identified and deposited to cover bank service charges relating to the trust account.

5. A broker may maintain more than one trust account provided the commission is advised of said account as specified in subsections 2 and 3 above.

6. The commission shall verify on a test basis, a random sampling of the brokers, corporations, professional corporations, professional limited liability companies, and partnerships for their trust account compliance. The commission may upon reasonable cause, or as a part of or after an investigation, request or order a special report.

7. The examination of a trust account shall be conducted by the commission or the commission's authorized representative.

8. The commission shall adopt rules to ensure implementation of this section.

[C71, 73, 75, 77, 79, 81, §117.46; 81 Acts, ch 54, §23; 82 Acts, ch 1067, §1]

85 Acts, ch 252, §1; 92 Acts, ch 1242, §22, 23

C93, §543B.46

93 Acts, ch 30, §2; 93 Acts, ch 175, §19; 95 Acts, ch 170, §7; 96 Acts, ch 1027, §1; 97 Acts, ch 23, §67; 97 Acts, ch 214, §12; 2007 Acts, ch 13, §6; 2008 Acts, ch 1097, §3; 2012 Acts, ch 1017, §150; 2013 Acts, ch 30, §138; 2014 Acts, ch 1092, §121; 2017 Acts, ch 71, §10; 2018 Acts, ch 1026, §160

Referred to in §543B.29
Subsection 4 amended

543B.47 Insurance requirement.

1. The real estate commission shall adopt rules requiring as a condition of licensure that all real estate licensees, except those who hold inactive licenses, carry errors and omissions insurance covering all activities contemplated under this chapter. The rules shall provide for administration of the insurance requirements of this section within the multiyear licensing structure required by section 543B.28. However, the rules shall require licensees to submit evidence of compliance with this section within twenty calendar days of the commission's request, which may be made on a test basis, a random basis, or upon reasonable cause to question a licensee's compliance.

2. The commission shall contract with an insurance provider for a group policy under which coverage is available to all licensees, and shall maintain coverage with the contracted provider unless the commission determines that continuing the contract is not reasonably practical. The contract shall be solicited by competitive, sealed bid.

3. The group policy shall be made available to all licensees and shall not include any right on the part of the insurance provider to cancel coverage for a licensee.

4. A licensee shall have the option of obtaining insurance independently, if the coverage contained in an independently obtained policy complies with the minimum requirements adopted by rule of the commission.

5. The commission shall determine the terms and conditions of coverage required by subsection 1, including but not limited to the minimum limits of coverage, the permissible deductible, and the permissible exceptions.

6. Failure of a license applicant or licensee to carry the errors and omissions insurance required by this section, or to timely submit proof of coverage upon commission request, shall be grounds for the denial of an application for licensure, the denial of an application to renew a license, or the suspension or revocation of a license.

90 Acts, ch 1126, §2

C91, §117.47

91 Acts, ch 97, §21

C93, §543B.47
2002 Acts, ch 1031, §3
Referred to in §543B.29

543B.48 Civil penalty amount.

Notwithstanding section 272C.3, licensee discipline may include a civil penalty not to exceed two thousand five hundred dollars per violation.

2002 Acts, ch 1031, §4
Referred to in §543B.49

543B.49 Injunctive relief.

1. In addition to the penalty and complaint provisions of sections 543B.43, 543B.44, and 543B.48, an injunction may be granted through an action in district court to prohibit a person from engaging in an activity which violates the provisions of section 543B.1. The court shall grant a permanent or temporary injunction if it appears to the court that a violation has occurred or is imminently threatened. The plaintiff is not required to show that the violation or threatened violation would greatly or irreparably injure the plaintiff. No bond shall be required of the plaintiff unless the court determines that a bond is necessary in the public interest. The action for injunctive relief may be brought by an affected person. For the purposes of this section, *"affected person"* means any person directly impacted by the actions of a person suspected of violating the provisions of section 543B.1, including but not limited to the commission created in section 543B.8, a person who has utilized the services of a person suspected of violating the provisions of section 543B.1, or a private association composed primarily of members practicing a profession for which licensure is required pursuant to this chapter.

2. If successful in obtaining injunctive relief, the affected person shall be entitled to actual costs and attorney fees. For the purposes of this section, *"actual costs"* means those costs other than attorney fees which were actually incurred in connection with the action, including but not limited to court and witness fees, investigative expenses, travel expenses, legal research expenses, and other related fees and expenses.

2004 Acts, ch 1005, §3; 2006 Acts, ch 1055, §4

543B.50 Meetings.

The real estate commission shall hold at least one meeting per year at the location of the commission's principal office and shall elect a chairperson annually. A majority of the members of the commission shall constitute a quorum.

[C75, 77, 79, 81, §117.50]
88 Acts, ch 1158, §24
C93, §543B.50

543B.51 Public members.

The public members of the real estate commission shall be allowed to participate in administrative, clerical, or ministerial functions incident to giving the examination, but shall not determine the content of the examination or determine the correctness of the answers.

[C75, 77, 79, 81, §117.51]
C93, §543B.51

543B.52 Disclosure of confidential information.

1. The commission shall not disclose information relating to the following:

a. The contents of the examination.

b. The examination results other than final score except for information about the results of an examination which is given to the person who took the examination.

2. A member of the commission who willfully communicates or seeks to communicate

such information, and any person who willfully requests, obtains, or seeks to obtain such information, is guilty of a simple misdemeanor.

[C75, 77, 79, 81, §117.52]
C93, §543B.52
2008 Acts, ch 1059, §4

543B.53 Application of chapter.

The provisions of this chapter which require successful completion of a real estate education course before being licensed as a real estate salesperson shall not apply to the issuance of new licenses pursuant to section 543B.28.

[C77, 79, 81, §117.53; 81 Acts, ch 54, §24]
C93, §543B.53
2017 Acts, ch 71, §11

543B.54 Real estate education fund. Repealed by 2013 Acts, ch 93, §3.

543B.55 Disclosure of relationship.

The real estate commission shall adopt rules requiring that each real estate broker or salesperson in a real estate transaction disclose in writing the broker's or salesperson's agency relationship with the buyer or seller in the transaction.

90 Acts, ch 1126, §3
C91, §117.55
C93, §543B.55

SUBCHAPTER II

RELATIONSHIP BETWEEN LICENSEES AND PARTIES TO TRANSACTIONS

543B.56 Duties of licensees.

1. *Duties to all parties in a transaction.* In providing brokerage services to all parties to a transaction, a licensee shall do all of the following:

a. Provide brokerage services to all parties to the transaction honestly and in good faith.

b. Diligently exercise reasonable skill and care in providing brokerage services to all parties.

c. Disclose to each party all material adverse facts that the licensee knows except for the following:

(1) Material adverse facts known by the party.

(2) Material adverse facts the party could discover through a reasonably diligent inspection, and which would be discovered by a reasonably prudent person under like or similar circumstances.

(3) Material adverse facts the disclosure of which is prohibited by law.

(4) Material adverse facts that are known to a person who conducts an inspection on behalf of the party.

d. Account for all property coming into the possession of a licensee that belongs to any party within a reasonable time of receiving the property.

2. *Duties to a client.* In addition to the licensee's duties under subsection 1, a licensee providing brokerage services to a client shall do all of the following:

a. Place the client's interests ahead of the interests of any other party, unless loyalty to a client violates the licensee's duties under subsection 1, section 543B.58, or under other applicable law.

b. Disclose to the client all information known by the licensee that is material to the transaction and that is not known by the client or could not be discovered by the client through a reasonably diligent inspection.

c. Fulfill any obligation that is within the scope of the agency agreement, except those

obligations that are inconsistent with other duties that the licensee has under this chapter or any other law.

d. Disclose to a client any financial interests the licensee or the brokerage has in any business entity to which the licensee or brokerage refers a client for any service or product related to the transaction.

3. *Prohibited conduct.* In providing brokerage services, a licensee shall not do either of the following:

a. Accept a fee or compensation related to a transaction from a person other than the licensee's client, unless the licensee has provided written notice to all parties to the transaction that a fee or compensation will be accepted by the licensee from such person.

b. Act in a transaction on the licensee's own behalf, on behalf of the licensee's immediate family or brokerage, or on behalf of an organization or business entity in which the licensee has an interest, unless the licensee has provided written disclosure of the interest to all parties to the transaction.

95 Acts, ch 17, §2; 96 Acts, ch 1054, §2
Referred to in §543B.57, 543B.58, 543B.61

543B.56A Brokerage agreements — purpose — contents.

1. The purpose of this section is to promote the protection of the public by establishing minimum standards reasonably expected by the public in reliance upon the professional work product of real estate licensees. The reliance of the public and business community on sound professional opinions and assistance imposes on real estate licensees certain obligations both to their clients and to the public. The purpose of this section is also to assist in ensuring that licensees' obligations are met including licensees' exercising sound independent business judgment, striving to continuously improve professional business skills and knowledge in the industry, promoting sound and informative real estate reporting, and exercising the highest fiduciary duties to clients and the public.

2. A brokerage agreement shall specify that the broker shall, at a minimum, do all of the following:

a. Accept delivery of and present to the client offers and counteroffers to buy, sell, rent, lease, or exchange the client's property or the property the client seeks to purchase or lease.

b. Assist the client in developing, communicating, negotiating, and presenting offers or counteroffers until a rental agreement, lease, exchange agreement, offer to buy or sell, or purchase agreement is signed and all contingencies are satisfied or waived and the transaction is completed.

c. Answer the client's questions relating to the brokerage agreements, listing agreements, offers, counteroffers, notices, and contingencies.

d. Provide prospective buyers access to listed properties.

2005 Acts, ch 40, §2; 2011 Acts, ch 73, §4
Referred to in §543B.5, 543B.61

543B.57 Confirmation and disclosure of relationship.

1. A licensee shall not represent any party or parties to a transaction or otherwise as a licensee unless that licensee makes an agency disclosure to the party or parties represented by the licensee.

2. *a.* The disclosure required in subsection 1 shall be made by the licensee at the time the licensee provides specific assistance to the client. A change in a licensee's representation that makes the initial disclosure incomplete, misleading, or inaccurate requires that a new disclosure be made immediately.

b. A written disclosure is required to be made to the client prior to an offer being made or accepted. The written disclosure shall be acknowledged by separate signatures of the party or parties represented by the licensee prior to any offer being made or accepted by any party to a transaction.

c. For purposes of this section, *"specific assistance"* means eliciting or accepting confidential information about a party's real estate needs, motivation, or financial qualifications, or eliciting or accepting information involving a proposed or preliminary

offer associated with specific real estate. *"Specific assistance"* does not mean an open house showing, preliminary conversations concerning price range, location, and property styles, or responding to general factual questions concerning properties which have been advertised for sale or lease.

3. The written agency disclosure form shall contain all of the following:

a. A statement of which party is the licensee's client or, if the licensee is providing brokerage services to more than one client as provided under section 543B.60, a statement of all persons who are the licensee's clients.

b. A statement of the licensee's duties to the licensee's client under section 543B.56, subsections 1 and 2.

c. Any additional information that the licensee determines is necessary to clarify the licensee's relationship to the licensee's client or customer.

4. This section does not prohibit a person from representing oneself.

5. The seller, in the listing agreement, may authorize the seller's licensee to disburse part of the licensee's compensation to other licensees, including a buyer's licensee solely representing the buyer. A licensee representing a buyer shall inform the listing licensee, if there is a listing licensee, either verbally or in writing, of the agency relationship before any negotiations are initiated. The obligation of either the seller or the buyer to pay compensation to a licensee is not determinative of the agency relationship.

95 Acts, ch 17, §3; 97 Acts, ch 82, §1; 2017 Acts, ch 71, §12
Referred to in §543B.60, 543B.61

543B.58 Licensees representing more than one client in a transaction.

1. A licensee shall not be the agent for both a buyer and a seller to a transaction without obtaining the written consent of both the buyer and the seller. The written consent shall state that the licensee has made a full disclosure of the type of representation the licensee will provide. The consent to multiple representation shall contain a statement of the licensee's duties under section 543B.56, subsection 1, a statement of the licensee's duties to the client under section 543B.56, subsection 2, paragraphs *"b"* and *"c"*, and a statement that the clients understand the licensee's duties and consent to the licensee's providing brokerage services to more than one client.

2. A consent to multiple representation may contain additional disclosures by the licensee or additional agreements between the licensee and the clients that do not violate any duty of a licensee under this chapter.

95 Acts, ch 17, §4
Referred to in §543B.56, 543B.61

543B.59 Appointed agents within a firm.

1. *Appointed agents.* A real estate brokerage agency entering into a brokerage agreement, through a designated broker, may notify a client in writing of those affiliated licensees within the real estate brokerage agency who will be acting as appointed agents of that client to the exclusion of all other affiliated licensees within the real estate brokerage agency.

2. *Dual agent.* A real estate brokerage agency and a designated broker are not considered to be dual agents solely because of an appointment under the provisions of this section. However, an affiliated licensee who personally represents both the seller and the buyer in a particular transaction is considered to be a disclosed dual agent and is required to comply with the provisions of this subchapter governing disclosed dual agents.

3. *Actual knowledge — information.* A client, a real estate brokerage agency, and its appointed agents are deemed to possess only actual knowledge and information at the time the appointed agents are appointed. Knowledge or information is not imparted by operation of law among the clients, the real estate brokerage agency, and its appointed agents.

4. *Appointments — roles.* The commission shall define by rule the methods of appointment and the role of the real estate brokerage agency and the designated broker. The rules must include a requirement that clients be informed as to the real estate brokerage

agency's appointed agent policy and be given written notice of that policy in advance of entering into a brokerage agreement.

95 Acts, ch 17, §5
Referred to in §543B.61

543B.60 Licensees providing services in more than one transaction.

A licensee may provide brokerage services simultaneously to more than one party in different transactions unless the licensee agrees with a client that the licensee is to provide brokerage services only to that client. If the licensee and a client agree that the licensee is to provide brokerage services only to that client, the agency agreement disclosure required under section 543B.57, subsection 1, shall contain a statement of that agreement.

95 Acts, ch 17, §6
Referred to in §543B.57, 543B.61

543B.60A Prohibited practices — business referral disclosures.

1. A licensee shall not request a referral fee after a bona fide offer to purchase is accepted.

2. A licensee shall not request a referral fee after a bona fide listing agreement has been signed.

3. A licensee shall not offer, promote, perform, provide, or otherwise participate in any marketing plan that requires a consumer to receive brokerage services, including referral services, from two or more licensees in a single real estate transaction, as a required condition for the consumer to receive either of the following:

a. Brokerage services from one or more of such licensees.

b. A rebate, prize, or other inducement from one or more such licensees.

4. For purposes of this section, *"consumer"* shall include parties or prospective parties to a real estate transaction, clients or prospective clients of a licensee, or customers or prospective customers of a licensee.

5. This section does not address relationships between a broker and the broker associates or salespersons licensed under, employed by, or otherwise associated with the broker in a real estate brokerage agency.

6. A violation of this section is deemed a violation of section 543B.29, subsection 1, paragraph *"d"*.

7. The purpose of this section is to prohibit licensee practices that interfere with contractual arrangements, place improper restrictions on consumer choice, compromise a licensee's fiduciary obligations, and create conflicts of interest.

8. An Iowa licensee is prohibited from participating in any marketing plan or arrangement prohibited by this section with a person who is licensed or otherwise authorized to engage in the real estate business in another state or foreign country. This subsection shall not be interpreted to impact or alter a referral fee structure which otherwise complies with the requirements of this section.

9. A licensee or person licensed in another state or foreign country who conducts business in this state or refers business to a licensee in this state shall disclose in writing to the consumer and to the licensee to whom they are referring business, the name of the consumer being referred, the name of the referring company, and the amount of compensation they are receiving for the referral. This subsection shall not affect or restrict business practices relating to payment methods between listing and selling brokerages, and shall be applicable strictly to properties containing at least one but not more than four dwelling units.

99 Acts, ch 22, §2; 2005 Acts, ch 179, §73; 2007 Acts, ch 153, §1, 2; 2008 Acts, ch 1099, §5

543B.61 Violations — real estate commission jurisdiction.

1. Failure of a licensee to comply with sections 543B.57 through 543B.60 is prima facie evidence of a violation under section 543B.34, subsection 1, paragraph *"d"*.

2. Failure of a licensee to act in accordance with the disclosures made pursuant to sections 543B.56 through 543B.58 is prima facie evidence of a violation under section 543B.34, subsection 1, paragraph *"d"*.

3. Nothing in this subchapter shall affect the validity of title to real property transferred

based solely on the reason that a licensee failed to conform to the provisions of this subchapter.

95 Acts, ch 17, §7

543B.62 Changes in common law duties and liabilities of licensees and parties.

1. Except as provided in subsection 2, the duties of a licensee specified in this chapter or in rules adopted pursuant to this chapter supersede any fiduciary duties of a licensee to a party to a transaction based on common law principles of agency to the extent that those common law fiduciary duties are inconsistent with the duties specified in this chapter or rules adopted pursuant to this chapter.

2. This section shall not be construed to modify a licensee's duty under common law as to negligent or fraudulent misrepresentation of material information.

3. *a.* A licensee who is providing brokerage services to a client and who retains another licensee to provide brokerage services to that client is not liable for misrepresentation made by the other licensee, unless the retaining licensee knew or should have known of the other licensee's misrepresentation or the other licensee is repeating a misrepresentation made to the other licensee by the retaining licensee.

b. A broker is responsible for supervising a salesperson or broker associate employed by or otherwise associated with the broker as a representative of the broker. The existence of an independent contractor relationship or any other special compensation arrangement between the broker and the salesperson or broker associate does not relieve the broker, salesperson, or broker associate of the duties and responsibilities established by this chapter. A salesperson or broker associate shall keep the employing broker fully informed of all activities being conducted on behalf of the broker and any other activities that might impact on the broker's responsibilities. However, the failure of the salesperson or broker associate to keep the employing broker fully informed does not relieve the broker of the duties and responsibilities established by this chapter.

95 Acts, ch 17, §8

543B.63 Licensee not considered subagent.

A licensee is not considered to be a subagent of a client of another licensee solely by reason of membership or other affiliation by the licensee in a multiple listing service or other similar information source, and an offer of subagency shall not be made through a multiple listing service or other similar information source.

95 Acts, ch 17, §9

543B.64 Chapter is not limiting.

The duties imposed upon persons under this chapter or pursuant to rules adopted by the real estate commission shall not limit or abridge any duty or responsibility to disclose created by other applicable law, or under a contract between parties.

95 Acts, ch 17, §10

CHAPTER 543C

SALES OF SUBDIVIDED LAND OUTSIDE OF IOWA

Referred to in §669.14

This chapter not enacted as a part of this title;
transferred from chapter 117A in Code 1993

543C.1 Definitions.
543C.2 Provisions governing sale or lease of subdivided lands.
543C.3 Offering statement — contents — prohibitions.
543C.4 Inspection power of commission and attorney general — unlawful practices — penalties.
543C.5 Penalties.
543C.6 Sales by brokers.
543C.7 Prosecution.
543C.8 Filing fees.

543C.1 Definitions.

As used in this chapter, unless the context otherwise indicates:

1. *"Advertisement"* means the attempt by, dissemination, solicitation, or circulation to induce directly or indirectly any person to enter into any obligation or acquire any title or interest in land offered for sale or lease, to the public in this state.

2. *"Commission"* means the real estate commission as established by chapter 543B.

3. *"Sale"* means any sale, offer for sale, or attempt to sell or lease any land, to the public in this state, for cash or on credit.

4. *"Subdivided land"* means improved or unimproved land divided or proposed to be divided for the purpose of sale or lease into five or more lots or parcels, or additions or parts of lots or parcels; however, subdivided land does not include a subdivision subject to section 306.21 or chapter 354 nor the leasing of apartments, offices, stores, or similar space within an apartment building, industrial building, or commercial building unless an undivided interest in the land is granted as a condition precedent to occupying space in the structure. Subdivided land does not include subdivisions of land located within the state of Iowa or time-share intervals as defined in section 557A.2.

5. *"Subdivider"* means any person, firm, partnership, company, corporation, or association engaging directly or through an agent in the business of selling or leasing subdivided land, or of offering such land for sale or lease, to the public in this state.

[C75, 77, 79, 81, §117A.1]
85 Acts, ch 155, §22; 90 Acts, ch 1236, §42
C93, §543C.1

543C.2 Provisions governing sale or lease of subdivided lands.

1. No subdivider shall sell or lease subdivided land, or offer such land for sale or lease, or advertise such land for sale or lease to the public within this state unless the subdivider has filed with the commission an application which shall include an offering statement. No subdivider shall engage in business in this state until the application and the offering statement have been accepted and the subdivider has been registered as a subdivider with the commission. In addition to the offering statement, the application shall contain the following:

a. The name of the owner and of the subdivider.

b. The address of the principal office of the owner and of the subdivider, wherever situated, and the addresses of the principal office and all branch offices of the owner and of the subdivider within this state.

c. The name of the person, firm, partnership, company, corporation, or association holding legal or equitable title to the land for sale or lease for the purpose of offering such land or part thereof to the general public.

d. A statement as to whether the owner or the subdivider, or if such owner or subdivider be other than an individual, the name of any partner, principal, officer, director, or branch manager thereof or any owner of more than a five percent interest in the business, has been convicted of any criminal offense in connection with any transaction involving the sale or

lease, or offer for sale or lease, of subdivided land, or has been enjoined or restrained by order of any court from selling or leasing, or offering for sale or lease, any subdivided land in any state or county, or has been enjoined or restrained by any court from continuing any practices in connection therewith.

e. The complete description of the land offered for subdivision by lots, plots, blocks, or sales, with or without streets, together with plats certified to by a duly licensed professional land surveyor accompanied by a certificate attached thereto showing the date of the completion of the survey and of the making of the plat and the name of the subdivision for the purpose of identification of the subdivided land or any part thereof.

f. Copies of plats of all of the land being filed by the subdivider which plats must have already been recorded by the proper recording office in the state in which the land is located.

g. An opinion of an attorney admitted to practice law in this state, a policy of title insurance issued by a title insurer licensed to do business in the state where the subdivided land is located, or an opinion of an attorney admitted or licensed to practice law in the state wherein the lands are situated, reciting in detail all of the liens, encumbrances, and clouds upon the title to such land, and any other defects of title, which may render the title to such land unmarketable.

h. The provisions, covenants, terms, and conditions upon which it is the intention of the owner and the subdivider to sell or lease such subdivided land, accompanied by proposed forms of contracts contemplated for execution and delivery upon the consummation of sales or leases.

i. If the subdivided land sought to be filed comes within the purview of the federal Interstate Land Sales Full Disclosure Act, codified at 15 U.S.C. §1701 et seq., the subdivider must furnish a copy of the accepted report filed with the department of housing and urban development. If the subdivision comes under the regulation of the real estate laws of the state where the land is located and that state requires a state offering statement or public report, the subdivider must also include a copy of said state report.

j. The subdivider, if a corporation, must register to do business in the state of Iowa as a foreign corporation with the secretary of state and furnish a copy of the certificate of authority to do business in the state of Iowa. If not a corporation, the subdivider must comply with the provisions of chapter 547, by filing a proper trade name with the Polk county recorder. The provisions of this paragraph shall also apply to any person, partnership, firm, company, corporation, or association, other than the subdivider, which is engaged by or through the subdivider for the purpose of advertising or selling the land involved in the filing.

k. Such other information as the commission may require, which shall be filed pursuant to the provisions of this chapter.

2. The offering statement must contain all of the following:

a. The names, addresses, and business background of the subdivider as required in subsection 1, paragraphs *"a"* to *"d"*. If such subdivider is a partnership or corporation, the names, addresses, and business background of each of the partners, officers, and principal stockholders, the nature of their fiduciary relationship and their past, present, or anticipated financial relationship to the subdivider.

b. A complete description of the land and copies of the plat in which the land is located as required in subsection 1, paragraphs *"e"* and *"f"*, and a certified financial statement by a certified public accountant of the assets and liabilities of the subdivider as of a date not more than six months prior to the date of the filing, in such detail as the board may require.

c. Information concerning public improvements, including without limitation, streets, storm sewers, street lighting, water supply, and sewage treatment and disposal facilities in existence or planned on the subdivision, and the estimated cost, date of completion, and responsibility for construction of improvements to be made which are referred to in connection with the sale or lease, or offering for sale or lease, of the subdivision or any unit or lot thereon.

d. Each of the terms and conditions under which each such unit or lot is offered for sale and such opinion or certificates as required in subsection 1, paragraphs *"g"* and *"h"*.

e. A statement as to the exact terms of any guaranties or promises of refund or exchange which are to be used by the subdivider. The guaranty or promise of refund or exchange, if

any, must be contained in the body of any contracts used by the subdivider and cannot be in any separate document. Said guaranty or promise of refund or exchange must appear in boldface type in the contract.

f. If the refund privilege, pursuant to paragraph *"e"*, is predicated in any way upon the requiring by the subdivider of an inspection by the purchaser prior to requesting a refund or exchange pursuant to the guaranty provisions, the offering statement and the sale contract itself must set out in detail all pertinent information in regard to the inspection trip and in regard to claiming a refund or exchange pursuant to the guaranty after the inspection trip.

g. A vicinity sketch of sufficient scale to show the entire tract of land, surrounding property ownership, and road access.

h. Such additional information as the commission may require as being necessary or appropriate in the public interest or for the protection of purchasers or lessees.

[C75, 77, 79, 81, §117A.2]

C93, §543C.2

2010 Acts, ch 1061, §71; 2012 Acts, ch 1009, §25; 2013 Acts, ch 90, §167; 2013 Acts, ch 140, §75

Referred to in §543C.3, 543C.4, 543C.8

543C.3 Offering statement — contents — prohibitions.

1. There may be omitted from the offering statement any of the information required under section 543C.2, subsection 1, paragraphs *"f"*, *"i"*, and *"j"*, which the commission may by a properly promulgated rule designate as being unnecessary or inappropriate for the protection of the public interest or a purchaser.

2. No offer to sell or lease subdivided land by any means of advertisement shall be made unless a copy of such advertisement has first been filed with the board. All such advertisements shall state that an offering statement has been filed with the commission and that a copy of such statement is available from the subdivider upon request.

3. Except as provided in subsection 1, no offer to sell or lease subdivided land shall be made unless such offer is accompanied by a copy of the current offering statement filed pursuant to this chapter.

4. The first page of the offering statement employed in the sale or lease, or offer for sale or lease, of subdivided land shall contain a legible statement printed in at least sixteen point bold type which shall be at least four point type larger than the body of the document that the filing of the verified statement and offering statement with the commission does not constitute approval of the sale or lease, or offer for sale or lease, by the state, commission or any officer thereof, or that the state, commission or any officer thereof, has in any way passed upon the merits of such offering.

5. No sale or lease of subdivided land shall be made unless accompanied or preceded by the delivery to the prospective purchaser of an offering statement complying with the provisions of this section.

6. No offering statement shall be changed or amended unless a copy of such change or amendment has first been filed with the commission.

7. The subdivider shall, within thirty days after the first day of July of each year, file with the commission a current offering statement setting forth all changes which have taken place during the preceding year with respect to any information required to be set forth in such offering statement. Only a current offering statement shall be used to sell or lease, or offer to sell or lease, any subdivided land.

8. A fee of one hundred dollars shall be paid, plus ten dollars for each one hundred lots, units, parcels, portions, or interest included in the current offering statement.

[C75, 77, 79, 81, §117A.3]

C93, §543C.3

2013 Acts, ch 90, §249

Referred to in §543C.8

543C.4 Inspection power of commission and attorney general — unlawful practices — penalties.

1. The commission may request the department of inspections and appeals to conduct an investigation and inspection to be made of any subdivided land proposed to be offered for sale or lease in this state pursuant to this chapter. The department of inspections and appeals shall make a report of its findings.

2. If an inspection is to be made of subdivided land situated outside of this state and offered for sale in this state, the inspection as authorized by subsection 1 shall be made by the department of inspections and appeals at the expense of the subdivider. After the application required by section 543C.2 is filed and after the filing fee required by section 543C.8 is received, the commission may decide whether an inspection pursuant to this subsection is to be made. If the commission requires an inspection, the department of inspections and appeals shall so notify the subdivider and the subdivider shall remit to the department an amount equivalent to the round trip cost of travel from this state to the location of the project, as estimated by the department and a further amount estimated to be necessary to cover the additional expenses of inspection but not to exceed fifty dollars a day for each day incurred in the inspection. The costs of any subsequent inspections deemed necessary shall be paid for by the subdivider. At the completion of an inspection trip the department shall furnish the subdivider a statement as to the costs of the inspection trip, and if the costs are less than the amount advanced by the subdivider to the department, the remaining balance shall be refunded to the subdivider.

3. It shall be unlawful for the subdivider to change the financial structure of any offering after the submission thereof to the commission without first notifying the commission in writing of such intention.

4. Where improvements are to be made in connection with the sale or lease, or offering for sale or lease, of the subdivision or any unit, parcel, or lot thereon, the owner or subdivider shall either furnish to the commission a performance bond executed by a surety company authorized to do business in the state and which has given consent to be sued in this state with sufficient surety for the benefit and protection of purchasers of units, parcels, or lots, in such amount and subject to such terms as the commission deems necessary for the protection of such purchasers with respect to construction of such improvements, or place in an escrow account in a depository acceptable to the commission, that portion of the sums paid or advanced by purchasers which the commission deems necessary for the protection of such purchasers with respect to construction of such improvements.

5. *a.* Where the land to be subdivided is subject to a mortgage, lien, or encumbrance securing or evidencing the payment of money, other than taxes levied or assessments made, or where the interest of the owner, the subdivider or an agent is held under option or contract of purchase or in trust, it shall be unlawful to sell any land in such subdivision unless a provision in such mortgage, lien, encumbrance, option, contract, or trust agreement, or a provision in an agreement supplementary thereto, enables the vendor to convey valid title to each parcel so sold or leased free of such mortgage, lien, encumbrance, option, contract, or trust agreement upon completion of all payments and the performance of all the terms and conditions required to be made and performed by the vendee under the agreement of sale.

b. Where the consideration price for a lot sold has been amortized to an extent that the balance due and owing thereunder equals an amount required to release such lot or lots from any existing mortgage, lien, encumbrance, tax, assessment, option, contract, or trust agreement, and the initial cost for said land has not been paid for by the owner or subdivider, all moneys thereafter received by the owner or subdivider shall be segregated and kept in a separate account as a trust which shall be applied toward the clearance of title of the land intended to be conveyed to the purchaser. Certified or verified copies of documents containing such provisions shall be filed with the commission prior to the sale or lease, or offer of sale or lease, or advertisement for sale or lease, of any part of the subdivision.

[C75, 77, 79, 81, §117A.4]
88 Acts, ch 1158, §25
C93, §543C.4
2012 Acts, ch 1023, §157

543C.5 Penalties.

1. Any person, firm, partnership, corporation, company, or association representing in any manner that the state, the commission or any officer thereof has recommended or acquiesced in the recommendation of the purchase of any subdivided land offered for sale or lease, in advertising or offering such subdivided land for sale or lease, shall be guilty of a serious misdemeanor.

2. Any person, officer, director, agent, or employee of a person, company, firm, partnership, association, or corporation offering to sell or lease, or selling or leasing, subdivided land prior to the filing of the offering statement and the application required by this chapter shall be guilty of a serious misdemeanor.

3. Except as provided in subsection 2, every person, officer, director, agent, or employee of a person, company, firm, partnership, corporation, or association who authorizes, directs, or aids in the publication, advertisement, distribution, or circulation of any device, scheme, or artifice for obtaining money or property by means of any false pretense, representation, or promise concerning any subdivided land offered for sale or lease, and every person, officer, director, agent, or employee of a company, firm, partnership, corporation, or association who makes or attempts to make fictitious or pretended purchases or sales of subdivided lands in this state, or in any other respect willfully violates or fails to comply with any of the provisions of this chapter, or omits or neglects to obey, observe, or comply with any order, permit, decision, demand, or requirement of the commission under the provisions of this chapter, is guilty of a serious misdemeanor.

[C75, 77, 79, 81, §117A.5]
C93, §543C.5

543C.6 Sales by brokers.

It shall be unlawful for any subdivider to sell or lease, or offer for sale or lease, any subdivided land located without this state except through a real estate broker or salesperson duly licensed in this state. The provision of section 543B.7, subsection 1, exempting regular employees of the owner of real estate from the licensing requirements of chapter 543B, shall not in any way apply to the sale of any subdivided land regulated by this chapter and subdividers covered by this chapter may not avail themselves of the provisions of section 543B.7, subsection 1, but must pursuant to this subsection sell only through licensed Iowa brokers and licensed salespersons.

[C75, 77, 79, 81, §117A.6]
C93, §543C.6

543C.7 Prosecution.

1. The attorney general shall prosecute all violations of this chapter. Prosecutions shall be instituted by the attorney general upon the written request of the commission. In all criminal proceedings the attorney general may appear before any court or any grand jury and exercise all the powers and perform all the duties in respect to such actions or proceedings which the county attorney would otherwise be authorized or required to exercise or perform. In lieu thereof the attorney general may transmit evidence, proof, and information pertaining to such offense to the county attorney of the county in which the alleged violation occurred, and such county attorney shall prosecute for such violation. In any such proceeding in which the attorney general has appeared, the county attorney shall only exercise such powers and perform such duties as are required by the attorney general. The attorney general shall, within ten days after a conviction for a violation of any provision of this chapter, file with the commission a detailed report showing the date of the conviction, name of the person convicted, and the specific nature of the charge.

2. Whenever it appears to the commission that any person, officer, director, agent, or employee of a company, firm, partnership, association, or corporation offering to sell or lease, or selling or leasing, subdivided land, has committed or is about to commit a violation of this chapter or any rule or order issued by the commission hereunder, the commission may apply to the district court of the county in which the principal office of the subdivider is located or if such subdivider has no such office in this state then to the district court of Polk county for

an order enjoining such subdivider or such officer, director, agent, or employee thereof from violating or continuing to violate this chapter or any such rule or order, and for such other equitable relief as the nature of the case and the interests of the public may require.

3. Any false statement contained in any statement filed with the commission pursuant to the requirements of this chapter, or in any affidavit attached thereto, shall constitute a violation of this chapter.

4. In any action brought under the provisions of this chapter, the attorney general is entitled to recover costs for the use of this state.

[C75, 77, 79, 81, §117A.7]
C93, §543C.7

543C.8 Filing fees.

Each initial filing made pursuant to section 543C.2 shall be accompanied by a basic filing fee of one hundred dollars, plus twenty-five dollars for every one hundred lots, units, parcels, portions, or interests included in the offering. A registration fee shall be paid with the filing of an application for registration consolidating additional lots with a prior registration and shall be set by rule which shall provide a basic fee of fifty dollars, plus an additional fee of twenty-five dollars for every one hundred lots, units, parcels, portions, or interests included in the offering. A fee shall not be charged for amendments to the property report as a result of amendments to the initial filing, unless the commission determines the amendments are made for the purpose of avoiding the payment of a fee, in which event the amendment may be treated as an application for registration consolidating additional lots with a prior registration. The filing fee to be paid with each annual current offering statement is as established by section 543C.3, subsection 8.

All fees collected under this chapter shall be deposited with the treasurer of state and credited to the general fund.

[C75, 77, 79, 81, §117A.8]
C93, §543C.8
Referred to in §543C.4

CHAPTER 543D

REAL ESTATE APPRAISALS AND APPRAISERS

Referred to in §272C.6, 543E.3, 543E.8, 543E.11, 543E.12, 543E.15, 543E.18, 543E.20, 546.3, 669.14

This chapter not enacted as a part of this title;
transferred from chapter 117B in Code 1993

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543D.1 Short title.

This chapter shall be known and may be cited as the *"Iowa Voluntary Appraisal Standards and Appraiser Certification Law"*.

89 Acts, ch 290, §1

CS89, §117B.1
C93, §543D.1

543D.2 Definitions.

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

1. *"Appraisal"* or *"real estate appraisal"* means an analysis, opinion, or conclusion relating to the nature, quality, value, or utility of specified interests in, or aspects of, identified real estate. An appraisal may be classified by subject matter into either a valuation or an analysis. A *"valuation"* is an estimate of the value of real estate or real property. An *"analysis"* is a study of real estate or real property other than estimating value.

2. *"Appraisal assignment"* means an engagement for which an appraiser is employed or retained to act, or would be perceived by third parties or the public as acting as a disinterested third party in rendering an appraisal, valuation, or analysis.

3. *"Appraisal foundation"* means the appraisal foundation incorporated as an Illinois not-for-profit corporation on November 30, 1987.

4. *"Appraisal report"* means any communication of an appraisal.

5. *"Associate real estate appraiser"* means a person who may not yet fully meet the requirements for certification but who is providing significant input into the appraisal development under the direction of a certified appraiser.

6. *"Board"* means the real estate appraiser examining board established pursuant to this chapter.

7. *"Certified appraisal or certified appraisal report"* means an appraisal or appraisal report given or signed and certified as an appraisal or appraisal report by an Iowa certified real estate appraiser.

8. A *"certified real estate appraiser"* means a person who develops and communicates real estate appraisals and who holds a current, valid certificate for appraisals of types of real estate which may include residential, commercial, or rural real estate, as may be established under this chapter.

9. *"Review appraiser"* means a person who is responsible for the administrative approval of the appraised value of real property or assures that appraisal reports conform to the requirements of law and policy, or that the value of real property estimated by appraisers represents adequate security, fair market value, or other defined value.

10. *"Specialized services"* means a hypothetical or other special valuation, or an analysis or an appraisal which does not fall within the definition of an appraisal assignment.

11. *"Superintendent"* means the superintendent of the division of banking of the department of commerce or the superintendent's designee.

89 Acts, ch 290, §2
CS89, §117B.2
C93, §543D.2
2001 Acts, ch 49, §1; 2016 Acts, ch 1124, §22, 32
Referred to in §543E.3

543D.3 Purposes.

1. The purpose of this chapter is to establish standards for real estate appraisals and a procedure for the voluntary certification of real estate appraisers and the mandatory registration of associate real estate appraisers.

2. A person who is not a certified real estate appraiser under this chapter may appraise real estate for compensation if certification is not required by this chapter or by federal or state law, rule, or policy. However, an employee of the state department of transportation whose duties include appraisals of property pursuant to chapter 6B must be a certified real estate appraiser under this chapter or a registered associate real estate appraiser acting under the direct supervision of a certified real estate appraiser.

89 Acts, ch 290, §3
CS89, §117B.3
C93, §543D.3
99 Acts, ch 171, §39, 42; 2007 Acts, ch 72, §1

543D.4 Iowa real estate appraiser board.

1. A real estate appraiser examining board is established within the banking division of the department of commerce. The board consists of seven members, two of whom shall be public members and five of whom shall be certified real estate appraisers.

2. The governor shall appoint the members of the board who are subject to confirmation by the senate. The governor may remove a member for cause.

3. A certified real estate appraiser member of the board shall be actively engaged in practice as a certified real estate appraiser and shall have been so engaged for five years preceding appointment, the last two of which shall have been in this state. The governor shall attempt to represent each class of certified appraisers in making the appointments.

4. The term of each member is three years. Vacancies occurring during a term shall be filled by appointment by the governor for the unexpired term.

5. Upon expiration of their terms, members of the board shall continue to hold office until the appointment and qualification of their successors. A person shall not serve as a member of the board for more than three terms, but appointment to fill an unexpired term shall not be considered a complete term for this purpose.

6. The public members of the board shall not engage in the practice of real estate appraising.

7. The board shall meet at least once each calendar quarter to conduct its business.

8. The members of the board shall elect a chairperson from among the members to preside at board meetings.

9. A quorum of the board is four members.

10. Members of the board are entitled to receive a per diem as specified in section 7E.6 for each day spent in performance of duties as members and shall be reimbursed for all actual and necessary expenses incurred in the performance of duties as members.

89 Acts, ch 290, §4
CS89, §117B.4
C93, §543D.4
2006 Acts, ch 1177, §40; 2013 Acts, ch 5, §24; 2016 Acts, ch 1124, §23, 32
Confirmation, see §2.32

543D.5 Powers of the board.

1. The board shall adopt rules establishing uniform appraisal standards and appraiser certification requirements and other rules necessary to administer and enforce this chapter and its responsibilities under chapter 272C, subject to the superintendent's supervision and authority under section 543D.23. The board shall consider and may incorporate any standards required or recommended by the appraisal foundation or by a federal agency with regulatory authority over appraisal standards or the certification of appraisers for federally related transactions.

2. The uniform appraisal standards shall meet all of the following requirements:

a. Require compliance with federal law and appraisal standards adopted by federal authorities as they apply to federally related transactions. This paragraph does not require that an appraiser invoke a jurisdictional exception to the uniform standards of professional appraisal practice in order to comply with federal law and appraisal standards adopted by federal authorities as they apply to federally related transactions, unless federal law requires that the exception be invoked.

b. Develop standards for the scope of practice for certified real estate appraisers.

c. Required compliance with the uniform standards of professional appraisal practice in all appraisal assignments.

3. Appraiser certification requirements shall require a demonstration that the applicant has a working knowledge of current appraisal theories, practices, and techniques which will provide a high degree of service and protection to members of the public dealt with in a professional relationship under authority of the certification. The board shall establish the examination specifications for each category of certified real estate appraiser, provide or procure appropriate examinations, establish procedures for grading examinations, receive and approve or disapprove applications for certification, and issue certificates.

4. The board shall maintain a registry of the names and certificate numbers of appraisers certified under this chapter and the names and registration numbers of associate appraisers registered under this chapter.

5. Notwithstanding any provision to the contrary, the provisions in section 546.10, subsections 6 through 12, shall apply to the board and to activities governed under this chapter.

89 Acts, ch 290, §5
CS89, §117B.5
C93, §543D.5
99 Acts, ch 171, §40, 42; 2013 Acts, ch 5, §25; 2016 Acts, ch 1124, §24, 25, 32

543D.6 Fees.

1. The board shall establish and collect fees for certification, examination, reexamination, renewal of certification, and delinquency at an amount necessary to pay the administrative costs of sustaining the board and implementing this chapter. The fees shall include, but are not limited to, amounts to cover the costs for the following items:

a. Per diem, expenses, and travel expenses for board members, peer review committee persons, or disciplinary panel members.

b. Salary, per diem, and expenses of staff.

c. Office facilities, supplies, and equipment.

2. All fees collected by the board shall be deposited into the department of commerce revolving fund created in section 546.12 and are appropriated to the superintendent on behalf of the board to be used to administer this chapter, including but not limited to purposes such as examinations, investigations, and administrative staffing. Notwithstanding section 8.33, moneys retained by the superintendent pursuant to this section are not subject to reversion to the general fund of the state. However, the appraisal management company national registry fees the board collects on behalf of the appraisal subcommittee as defined in section 543E.3 shall be transmitted to the appraisal subcommittee in accordance with federal laws and regulations.

89 Acts, ch 290, §6; 90 Acts, ch 1168, §21; 90 Acts, ch 1261, §39
CS89, §117B.6
C93, §543D.6
94 Acts, ch 1107, §90; 2016 Acts, ch 1124, §26, 32

543D.7 Certification process.

Applications for original certification, renewal certification, and examinations shall be made in writing to the board on forms approved by the board.

89 Acts, ch 290, §7
CS89, §117B.7
C93, §543D.7
2003 Acts, ch 43, §1

543D.8 Examination requirement.

An original certification as a certified real estate appraiser shall not be issued to a person who has not demonstrated through an examination that the person possesses the following knowledge and understanding:

1. Appropriate knowledge of technical terms commonly used in or related to real estate appraising, appraisal report writing, and economic concepts applicable to real estate.

2. Understanding of the principles of land economics, real estate appraisal processes, and problems likely to be encountered in gathering, interpreting, and processing data in carrying out appraisal assignments.

3. Knowledge of theories of depreciation, cost estimating, methods of capitalization, and the mathematics of real estate appraisal that are appropriate for each classification of certificate applied for.

4. Knowledge of other appropriate principles and procedures for the classifications applied for.

5. Basic understanding of Iowa real estate, property tax, and eminent domain laws.
6. Understanding of the types of misconduct for which disciplinary proceedings may be initiated against a certified real estate appraiser.

89 Acts, ch 290, §8
CS89, §117B.8
C93, §543D.8
2013 Acts, ch 5, §26

543D.9 Education and experience requirement.

The board shall determine what real estate appraisal or real estate appraisal review experience and what education shall be required to provide appropriate assurance that an applicant for certification is competent to perform the certified appraisal work which is within the scope of practice defined by the board. All experience required for initial certification shall be performed as a registered associate real estate appraiser acting under the direct supervision of a certified real estate appraiser, except as the board may provide by rule. The board shall prescribe a required minimum number of tested hours of education relating to the provisions of this chapter, the uniform appraisal standards, and other rules issued in accordance with this chapter.

89 Acts, ch 290, §9
CS89, §117B.9
C93, §543D.9
2007 Acts, ch 72, §2

543D.10 Nonresident certification.

1. An applicant for certification as a real estate appraiser who is not a resident of Iowa shall submit, with the application for certification, an irrevocable consent that service of process upon the applicant may be made by delivery of the process to the secretary of state if, in an action against the applicant in a court of this state arising out of the applicant's activities as a certified real estate appraiser, the plaintiff cannot, in the exercise of due diligence, effect personal service upon the applicant.
2. A nonresident of Iowa who has complied with subsection 1 may obtain a certificate as a certified real estate appraiser by complying with the certification requirements in this chapter.

89 Acts, ch 290, §10
CS89, §117B.10
C93, §543D.10

543D.11 Certification by reciprocity.

If, in the determination by the board, another state is deemed to have substantially equivalent certification requirements, an applicant who is certified under the laws of the other state may obtain a certificate as a certified real estate appraiser upon terms and conditions as determined by the board.

89 Acts, ch 290, §11
CS89, §117B.11
C93, §543D.11

543D.12 Basis for denial.

The board may deny the issuance of a certificate as a certified real estate appraiser to an applicant on any of the grounds listed in this chapter or in chapter 272C.

89 Acts, ch 290, §12
CS89, §117B.12
C93, §543D.12

543D.13 Principal place of business.

1. Each certified real estate appraiser shall advise the board of the address of the

appraiser's principal place of business and all other addresses at which the appraiser is currently engaged in the business of preparing real estate appraisal reports.

2. When a certified real estate appraiser changes the appraiser's principal place of business, the appraiser shall immediately give written notification of the change to the board and apply for an amended certificate.

3. Each certified real estate appraiser shall notify the board of the appraiser's current residence address. Residence addresses on file with the board are exempt from disclosure as public records.

89 Acts, ch 290, §13
CS89, §117B.13
C93, §543D.13

543D.14 Certificate.

A certificate issued under this chapter shall bear the signature or facsimile signature of the member or members of the board as designated by the board and a certificate number assigned by the board.

89 Acts, ch 290, §14
CS89, §117B.14
C93, §543D.14
2001 Acts, ch 49, §2

543D.15 Use of term.

1. The term *"certified real estate appraiser"* shall only be used to refer to individuals who hold the certificate and shall not be used in connection with or as part of the name or signature of a firm, partnership, corporation, or group, or in a manner that it may be interpreted as referring to a firm, partnership, corporation, group, other business entity, or anyone other than an individual holder of the certificate.

2. The term *"associate real estate appraiser"* shall only be used to refer to individuals who do not yet fully meet the requirements for certification but who provide significant input into the appraisal development under the direction of a certified appraiser.

3. A certificate shall not be issued under this chapter to a firm, corporation, partnership, group, or other business entity.

89 Acts, ch 290, §15
CS89, §117B.15
C93, §543D.15
Referred to in §543D.21

543D.16 Continuing education.

1. As a prerequisite to renewal of a certification, a certified real estate appraiser shall present evidence satisfactory to the board of having met continuing education requirements.

2. The basic continuing education requirement for renewal of certification shall be the completion, before June 30 of the year in which the appraiser's certificate expires, of the number of hours of instruction required by the board in courses or seminars which have received the preapproval of the board.

3. The provisions of section 272C.2, subsection 4, shall only apply to a certified real estate appraiser or an associate real estate appraiser to the extent consistent with the policies adopted by the appraisal qualifications board of the appraisal foundation.

89 Acts, ch 290, §16
CS89, §117B.16
C93, §543D.16
97 Acts, ch 80, §1; 2008 Acts, ch 1059, §5; 2013 Acts, ch 5, §27

543D.17 Disciplinary proceedings.

1. The rights of a holder of a certificate as a certified real estate appraiser may be revoked or suspended, or the holder may be otherwise disciplined in accordance with this chapter. The board may investigate the actions of a certified real estate appraiser and may revoke or

suspend the rights of a holder or otherwise discipline a holder for violation of a provision of this chapter, or chapter 272C, or of a rule adopted under this chapter or commission of any of the following acts or omissions:

a. Procurement or attempt to procure a certificate under this chapter by knowingly making a false statement, submitting false information, refusing to provide complete information in response to a question in an application for certification, or participating in any form of fraud or misrepresentation.

b. Failure to meet the minimum qualifications established by this chapter.

c. A conviction, including a conviction based upon a plea of guilty or nolo contendere, of a crime which is substantially related to the qualifications, functions, and duties of a person developing real estate appraisals and communicating real estate appraisals to others.

d. Violation of any of the standards for the development or communication of real estate appraisals as provided in this chapter.

e. Failure or refusal without good cause to exercise reasonable diligence in developing an appraisal, preparing an appraisal report, or communicating an appraisal.

f. Negligence or incompetence in developing an appraisal, in preparing an appraisal report, or in communicating an appraisal.

g. Willful disregard or violation of a provision of this chapter or a rule of the board of the administration and enforcement of this chapter.

2. In a disciplinary proceeding based upon a civil judgment a certified real estate appraiser shall be given an opportunity to present matters in mitigation and extenuation, but not to collaterally attack the civil judgment.

3. Notwithstanding the limitations of section 272C.3, subsection 2, paragraph "*e*", the board shall adopt a rule providing for civil penalties in amounts and for the reasons authorized by federal law where federal law requires the board to have the authority to impose the civil penalties in order to obtain or to retain the board's designation as a qualified state appraiser certifying agency.

89 Acts, ch 290, §17
CS89, §117B.17
C93, §543D.17
Referred to in §543D.20, 543E.3

543D.18 Standards of practice.

1. A certified real estate appraiser shall comply with the uniform appraisal standards adopted under this chapter. The reliance of the public in general and of the financial business community in particular on sound, reliable real estate appraisal practices imposes on persons engaged in the practice of real estate appraising as certified real estate appraisers or as registered associate real estate appraisers certain obligations both to their clients and to the public. These obligations include the obligation to maintain independence in thought and action, to adhere to the uniform appraisal standards adopted under this chapter, and to maintain high standards of personal conduct in all matters impacting one's fitness to practice real estate appraising. A certified real estate appraiser and a registered associate real estate appraiser acting under the direct supervision of a certified real estate appraiser shall perform all appraisal assignments in an honest, disinterested and impartial manner, with objectivity and independence, and without accommodation to the personal interests or objectives of the appraiser, the client, or any third person.

2. A certified real estate appraiser shall not accept an appraisal assignment or a fee for an appraisal assignment if the employment itself is contingent upon the appraiser reporting a predetermined estimate, analysis, or opinion or if the fee to be paid is contingent upon the opinion, conclusion, or valuation reached, or upon the consequences resulting from the appraisal assignment.

3. A certified real estate appraiser may provide specialized services to facilitate the client's or employer's objectives. Specialized services shall not be communicated as a certified appraisal or as a certified appraisal report. Regardless of the intention of the client or employer, if the appraiser would be perceived by third parties or the public as acting as a disinterested third party in rendering an unbiased analysis or opinion or conclusion,

the work is an appraisal assignment rather than an assignment for specialized services. Communication of a valuation under oath is an appraisal assignment.

4. A certified real estate appraiser who enters into an agreement to perform specialized services may be paid a fixed fee or a fee that is contingent on the results achieved by the specialized services.

5. If a certified real estate appraiser enters into an agreement to perform specialized services for a contingent fee, this fact shall be clearly stated in each written and oral report. In each written report, this fact shall be clearly stated in a prominent location in the report, each letter of transmittal, and the certification statement made by the appraiser in the report.

6. A certified real estate appraiser making a significant contribution to the valuation or analysis process in completing an appraisal assignment shall sign the final written report or acknowledge the appraiser's contribution in a verbal report.

7. A certified real estate appraiser who receives significant real property appraisal assistance in the development or reporting of an appraisal assignment shall disclose such assistance in accordance with the uniform appraisal standards adopted under this chapter.

89 Acts, ch 290, §18
CS89, §117B.18
C93, §543D.18
2007 Acts, ch 72, §3, 4
Referred to in §543D.18A, 543E.8, 543E.14, 543E.15

543D.18A Penalties for improper influence of an appraisal assignment.

1. A mortgage lender, mortgage broker or originator, real estate broker or salesperson, client, party, appraiser, or any other person with an interest in a real estate transaction or the financing of any loan secured by real estate involving an appraisal assignment shall not improperly influence or attempt to improperly influence the development, reporting, result, or review of a real estate appraisal through coercion, extortion, or bribery, or by the withholding or threatened withholding of payment for an appraisal fee, or the conditioning of the payment of an appraisal fee upon the opinion, conclusion, or valuation to be reached, or a request that the appraiser report a predetermined opinion, conclusion, or valuation, or the desired valuation of any person, or by any other act or practice that impairs or attempts to impair an appraiser's independence, objectivity, and impartiality, as required by section 543D.18, subsections 1 and 2.

2. A violation of this section is an unlawful practice under section 714.16, subsection 2, paragraph *"a"*.

3. A violation of this section is a ground for discipline against any person holding a certificate of registration under this chapter or another license issued under the laws of the state of Iowa, as license is defined in section 17A.2, subsection 6, if the practice of the profession, occupation, or business regulated by the license relates to real estate transactions or the financing of loans secured by real estate.

4. A person does not violate this section solely by asking an appraiser to consider additional, appropriate property information, or to provide further detail, substantiation, or explanation for the appraiser's value conclusion, or to correct errors in the appraisal report, or by withholding payment of an appraisal fee based on a bona fide dispute regarding the appraiser's compliance with the appraisal standards adopted by the board under this chapter. A person does not violate this section solely by retaining appraisers from panels or lists on a rotating basis, or by supplying an appraiser with information the appraiser is required to analyze under the appraisal standards adopted by the board under this chapter, such as agreements of sale, options, or listings of the property to be valued.

2007 Acts, ch 72, §5
Referred to in §543D.21, 543E.8, 543E.14, 543E.15, 543E.18

543D.19 Retention of records.

1. A certified real estate appraiser shall retain for five years, originals or true copies of all written contracts engaging the appraiser's services for real estate appraisal work and

all reports and supporting data assembled and formulated for use by the appraiser or the associate appraiser in preparing the reports.

2. An appraiser must retain all work files for a period of at least five years after preparation or at least two years after final disposition of any judicial proceeding in which testimony was given, whichever period expires last, and either maintain custody of the appraiser's work file or make appropriate work file retention, access, and retrieval arrangements with a party having custody of the work file.

3. All records required to be maintained under this chapter shall be made available by a certified real estate appraiser for inspection and copying by the board on reasonable notice to the appraiser.

89 Acts, ch 290, §19
CS89, §117B.19
C93, §543D.19
2003 Acts, ch 43, §2, 3

543D.20 Registration of associate real estate appraisers.

1. A person shall not assist a certified real estate appraiser in the development or reporting of an appraisal assignment that is required by this chapter, or by federal or state law, rule, or policy to be performed by a certified real estate appraiser, unless the person meets one or more of the following conditions:

a. The person is certified under this chapter.

b. The person is registered as an associate real estate appraiser and is acting under the direct supervision of a certified real estate appraiser.

c. The person is solely providing administrative services, such as taking photographs, preparing charts, or typing reports, and is not providing real estate appraisal assistance in developing the analysis, valuation, opinions, or conclusions associated with the appraisal assignment.

d. The person is providing professional consultation that does not constitute real property appraisal assistance, such as the assistance of a professional engineer or certified public accountant.

2. The board shall establish by rule the terms and conditions of the registration of associate real estate appraisers, including the educational and other prerequisites to registration, the fees for registration and the renewal of registration, and the continuing education requirements for renewal of registration. The board shall consider and may incorporate any guidelines recommended by the appraisal qualifications board of the appraisal foundation relating to associate real estate appraisers.

3. The board shall adopt rules governing the manner in which certified real estate appraisers shall directly supervise associate real estate appraisers, the standards of conduct for associate real estate appraisers, and the grounds for imposing discipline against an associate real estate appraiser which shall include all of the grounds provided in section 543D.17.

4. Associate real estate appraisers shall be bound by the uniform appraisal standards adopted by the board under this chapter.

5. Persons who appraise real estate where certification is not required by this chapter or by federal or state law, rule, or policy, and who are not assisting a certified real estate appraiser in the development or reporting of an appraisal assignment that is required by this chapter, or by federal or state law, rule, or policy to be performed by a certified real estate appraiser, are not required to register with the board.

2007 Acts, ch 72, §6
Referred to in §543D.21, 543E.3

543D.21 Violations — injunctions — civil penalties.

1. If, as the result of a complaint or otherwise, the board believes that a person has engaged, or is about to engage, in an act or practice that constitutes or will constitute a violation of this chapter, the board may make application to the district court for an order enjoining such act or practice. Upon a showing by the board that such person has engaged,

or is about to engage, in any such act or practice, an injunction, restraining order, or other order as may be appropriate shall be granted by the district court.

2. The board may investigate complaints or initiate complaints against persons who are not certified or registered under this chapter solely to determine whether grounds exist to make application to the district court pursuant to subsection 1 or to issue an order pursuant to subsection 3, and in connection with such complaints or investigations may issue subpoenas to compel witnesses to testify or persons to produce evidence consistent with the provisions of section 272C.6, subsection 3, as needed to determine whether probable cause exists to initiate proceedings under this section or to make application to the district court for an order enjoining violations of this chapter.

3. In addition to or as an alternative to making application to the district court for an injunction, the board may issue an order to a person who is not certified or registered under this chapter to require compliance with this chapter and may impose a civil penalty against such person for any violation of subsection 4 in an amount up to one thousand dollars for each violation. All civil penalties collected pursuant to this subsection shall be deposited in the housing trust fund created in section 16.181. An order issued pursuant to this section may prohibit a person from applying for certification or registration under this chapter.

4. The board may impose civil penalties against a person who is not certified or registered under this chapter for any of the following acts:

a. A violation of section 543D.15.

b. A violation of section 543D.18A, subsection 1.

c. A violation of section 543D.20, subsection 1.

d. Fraud, deceit, or deception, through act or omission, in connection with an application for certification or registration under this chapter.

5. The board, before issuing an order under this section, shall provide the person written notice and the opportunity to request a hearing. The hearing must be requested within thirty days after receipt of the notice and shall be conducted in the same manner as provided for disciplinary proceedings involving a licensee under this chapter.

6. A person aggrieved by the imposition of a civil penalty under this section may seek judicial review pursuant to section 17A.19.

7. If a person fails to pay a civil penalty within thirty days after entry of an order imposing the civil penalty, or if the order is stayed pending an appeal, within ten days after the court enters a final judgment in favor of the board, the board shall notify the attorney general. The attorney general may commence an action to recover the amount of the penalty, including reasonable attorney fees and costs.

8. An action to enforce an order under this section may be joined with an action for an injunction.

2007 Acts, ch 72, §7
Referred to in §543D.23

543D.22 Criminal background checks.

1. The board may require a national criminal history check through the federal bureau of investigation for applicants for certification or registration, or for persons certified or registered, under this chapter if needed for credibility, to comply with federal law or regulation, or the policies of the appraisal qualification board of the appraisal foundation. The board may alternatively require a national criminal history check through the nationwide mortgage licensing system and registry, as defined in section 535D.3, when conducting background investigations under this section, if authorized by applicable federal law or regulation.

2. The board may require applicants, certificate holders, or registrants to provide a full set of fingerprints, in a form and manner prescribed by the board. Such fingerprints, if required, shall be submitted to the federal bureau of investigation through the state criminal history repository for purposes of the national criminal history check.

3. The board may also request and obtain, notwithstanding section 692.2, subsection 5, criminal history data for applicants, certificate holders, and registrants. A request for

criminal history data shall be submitted to the department of public safety, division of criminal investigation, pursuant to section 692.2, subsection 1.

4. The board shall inform the applicant, certificate holder, or registrant of the requirement of a national criminal history check or request for criminal history data and obtain a signed waiver from the applicant, certificate holder, or registrant prior to requesting the check or data.

5. The board may, in addition to any other fees, charge and collect such amounts as may be incurred by the board, the department of public safety, or federal bureau of investigation in obtaining criminal history information. Amounts collected shall be considered repayment receipts as defined in section 8.2, subsection 8.

6. Criminal history data and other criminal history information relating to an applicant, certificate holder, or registrant obtained by the board pursuant to this section is confidential. Such information may, however, be used by the board in a certificate or registration denial or disciplinary proceeding.

2013 Acts, ch 5, §28; 2016 Acts, ch 1124, §27, 32

543D.23 Superintendent supervision and authority.

1. The superintendent shall supervise the board and manage the board's budget and retained fees. The superintendent may exercise all authority conferred upon the board under this chapter and shall have access to all records and information to which the board has access. In supervising the board, the superintendent shall independently evaluate the substantive merits of actions recommended or proposed by the board which may be anticompetitive and shall have the authority to review, approve, modify, or reject all board actions including but not limited to those taken in connection with any of the following:

a. Initial or reciprocal certification of real estate appraisers, registration of associate real estate appraisers, and temporary practice permits.

b. Disciplinary investigations and proceedings.

c. Investigations and proceedings under section 543D.21.

d. Rulemaking, including orders on petitions for rulemaking.

e. Orders on petitions for declaratory orders or waivers or variances.

2. A person aggrieved by any final action of the board taken under this chapter shall not have exhausted administrative remedies until the person has appealed the action to the superintendent and the superintendent has issued a final decision or order.

3. The superintendent shall adopt rules to implement this section.

2016 Acts, ch 1124, §28, 32

Referred to in §543D.5

CHAPTER 543E

REAL ESTATE APPRAISAL MANAGEMENT COMPANIES

Referred to in §272C.1, 546.3, 669.14

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543E.1 Short title.

This chapter shall be known and may be cited as the *"Iowa Appraisal Management Company Registration and Supervision Act"*.

2016 Acts, ch 1124, §1, 32

543E.2 Purpose and scope.

The purpose of this chapter is to protect the independence and integrity of the appraisal process when an appraisal is provided through an appraisal management company in connection with a consumer credit transaction secured by the principal dwelling of an Iowa consumer or securitization of such a transaction.

2016 Acts, ch 1124, §2, 32

543E.3 Definitions.

Unless the context otherwise requires, the definitions contained in section 543D.2 shall apply to this chapter. In addition, the following definitions shall apply for purposes of this chapter:

1. *"Administrator"* means the superintendent of the division of banking of the department of commerce or the superintendent's designee.

2. *"Appraisal management company"* means a person that oversees an appraiser panel of more than fifteen certified appraisers in this state or twenty-five or more certified or licensed appraisers nationally within a year, and that directly or indirectly performs appraisal management services for creditors or secondary mortgage market participants in connection with consumer credit transactions secured by the principal dwellings of Iowa consumers or securitizations of those transactions.

3. *"Appraisal management company national registry"* means the registry of state-registered appraisal management companies and federally regulated appraisal management companies maintained by the appraisal subcommittee.

4. *"Appraisal management services"* means any of the following:

a. Recruiting, selecting, and retaining appraisers.

b. Contracting with state certified or licensed appraisers to perform appraisal assignments.

c. Managing the process of having an appraisal performed, including providing administrative services such as receiving appraisal orders and appraisal reports, submitting completed appraisal reports to creditors and secondary mortgage market participants, collecting fees from creditors and secondary mortgage market participants for services provided, and paying appraisers for services performed.

d. Reviewing and verifying the work of appraisers.

5. *"Appraisal review"* means developing and communicating an opinion under the uniform standards of professional appraisal practice review standards regarding the quality of another appraiser's work product prepared as part of an appraisal assignment. An "*appraisal review*" does not include quality control solely to assure an appraisal report is complete, or to correct grammatical, typographical, or other similar errors.

6. *"Appraisal subcommittee"* means the appraisal subcommittee of the federal financial institutions examination council.

7. *"Appraiser"* means a person who holds a certificate as a certified real estate appraiser issued under chapter 543D.

8. *"Appraiser panel"* means a network, list, or roster of certified appraisers who are independent contractors with an appraisal management company and who have been selected and approved by the appraisal management company to perform appraisals directly for the appraisal management company or for persons that have ordered appraisals through the appraisal management company. Appraisers on an appraisal management company's appraiser panel may include both appraisers engaged to perform one or more appraisals for covered transactions or for secondary mortgage market participants in connection with covered transactions, and appraisers accepted by the appraisal management company for consideration for future appraisal assignments for such purposes, as the administrator may further provide by rule.

9. *"Associate real estate appraiser"* means a person who is registered with the Iowa real estate appraiser examining board under section 543D.20.

10. *"Consumer credit"* means credit offered or extended to a consumer primarily for personal, family, or household purposes.

11. *"Controlling person"* means any of the following:

a. An owner, officer, or director of an appraisal management company.

b. An individual employed, appointed, or authorized by an appraisal management company who has the authority to enter into a contractual relationship with other persons for the performance of appraisal management services and has the authority to enter into agreements with appraisers for the performance of appraisals.

c. An individual who possesses, directly or indirectly, the power to direct or cause the direction of the management or policies of an appraisal management company.

12. *"Covered transaction"* means any consumer credit transaction secured by the consumer's principal dwelling.

13. *"Creditor"* means a person who regularly extends consumer credit that is subject to a finance charge or is payable by written agreement in more than four installments, not including a down payment, and to whom the obligation is initially payable, either on the face of the note or contract, or by agreement when there is no note or contract. For purposes of this subsection, a person "regularly extends consumer credit" if the person extended credit, other than credit subject to the requirements of 12 C.F.R. §1026.32, more than five times in the preceding calendar year for transactions secured by a dwelling. If a person did not meet those numerical standards in the preceding calendar year, the numerical standards shall be applied to the current calendar year. A person also "regularly extends consumer credit" if, in any twelve-month period, the person originates more than one credit extension that is subject to the requirements of 12 C.F.R. §1026.32 or one or more such credit extensions through a mortgage broker.

14. *"Dwelling"* means a residential structure that contains one to four units, whether or not that structure is attached to real property. *"Dwelling"* includes an individual condominium unit, cooperative unit, mobile home, and trailer, if it is used as a residence.

15. *"Federally regulated appraisal management company"* means an appraisal management company that is owned and controlled by an insured depository institution, as defined in 12 U.S.C. §1813, and regulated by the office of the comptroller of the currency, the board of governors of the federal reserve system, or the federal deposit insurance corporation.

16. *"Federally related transaction regulations"* means regulations established by the comptroller of the currency, the board of governors of the federal reserve system, the federal deposit insurance corporation, or the national credit union administration pursuant

to sections 1112, 1113, and 1114 of Tit. XI of the federal Financial Institutions Reform, Recovery, and Enforcement Act, 12 U.S.C. §3341 – 3343.

17. *"Nonsubstantive reason"* means a reason for imposing discipline against a certified appraiser that is not described in section 543D.17 or a substantially similar provision in the jurisdiction that imposed the discipline, including but not limited to the failure to pay appropriate fees.

18. *"Person"* means as defined in section 4.1.

19. *"Principal dwelling"* means the primary residence of a consumer. For purposes of this chapter, a consumer may have only one *"principal dwelling"*. A vacation or other second home shall not be considered a *"principal dwelling"*. However, if a consumer buys or builds a new dwelling that will become the consumer's primary residence within a year or upon completion of the construction, the new residence is considered the *"principal dwelling"* for purposes of this chapter.

20. *"Secondary mortgage market participant"* means a guarantor or insurer of mortgage-backed securities, or an underwriter or issuer of mortgage-backed securities. *"Secondary mortgage market participant"* only includes an individual investor in a mortgage-backed security if that investor also serves in the capacity of a guarantor, insurer, underwriter, or issuer for the mortgage-backed security.

21. *"States"* means the fifty states of the United States, the District of Columbia, and the territories of American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the United States Virgin Islands.

22. *"Substantive reason"* means a reason for imposing discipline against a certified appraiser that is described in section 543D.17 or a substantially similar provision in the jurisdiction that imposed the discipline.

23. *"Uniform standards of professional appraisal practice"* means the uniform standards promulgated by the appraisal standards board of the appraisal foundation.

2016 Acts, ch 1124, §3, 32
Referred to in §543D.6

543E.4 Registration required.

A person shall not directly or indirectly engage in or attempt to engage in business as an appraisal management company or advertise or hold itself out as engaging in or conducting business as an appraisal management company in this state without first registering with the administrator.

2016 Acts, ch 1124, §4, 32
Referred to in §543E.18

543E.5 Exemptions.

This chapter shall not apply to any of the following:

1. A person that exclusively employs appraisers on an employer and employee basis for the performance of appraisals.

2. A government body, as defined in section 22.1, subsection 1, that performs appraisals or retains appraisers on behalf of the government body.

3. A federally regulated appraisal management company.

4. A department or division of an entity that provides appraisal management services only to that entity.

2016 Acts, ch 1124, §5, 32

543E.6 Ownership — restrictions and requirements.

1. An appraisal management company registered or applying for registration in this state shall not be directly or indirectly owned in whole or in part by a person who has had a license or certificate to act as an appraiser refused, denied, canceled, revoked, or surrendered in lieu of revocation in any state for a substantive reason. An appraisal management company may be directly or indirectly owned in whole or in part by a person who has had a license or certificate to act as an appraiser refused, denied, canceled, revoked, or surrendered in lieu of revocation in a state for a nonsubstantive reason if the license or certificate was subsequently granted or reinstated.

2. A person who directly or indirectly owns more than ten percent of an appraisal management company in this state shall be of good moral character, as prescribed by rules adopted by the administrator consistent with applicable federal law and regulations, and shall submit to a background investigation, as prescribed by rules adopted by the administrator consistent with applicable federal law and regulations.

2016 Acts, ch 1124, §6, 32
Referred to in §543E.8, 543E.20

543E.7 Designation of controlling person.

1. An appraisal management company registered or applying for registration in this state shall designate a controlling person who shall be the main contact for all communications between the administrator and the appraisal management company, and who shall be responsible for assuring the appraisal management company complies with the provisions of this chapter when performing appraisal management services in connection with real estate located in this state.

2. The designated controlling person shall not have had a license or certificate to act as an appraiser refused, denied, canceled, revoked, or surrendered in lieu of revocation in any state for a substantive reason. A designated controlling person may have had a license or certificate to act as an appraiser refused, denied, canceled, revoked, or surrendered in lieu of revocation in a state for a nonsubstantive reason if the license or certificate was subsequently granted or reinstated.

3. The designated controlling person shall be of good moral character, as prescribed by rules adopted by the administrator consistent with applicable federal law and regulations, and shall submit to a background investigation, as prescribed by rules adopted by the administrator consistent with applicable federal law and regulations.

2016 Acts, ch 1124, §7, 32
Referred to in §543E.8, 543E.20

543E.8 Registration — application requirements.

1. An application for registration as an appraisal management company shall be submitted on a form prescribed by the administrator.

2. An application shall at a minimum include the following:

a. The name, form of business entity, contact information, and official domicile of the applicant.

b. The names and contact information for all persons who directly or indirectly own more than ten percent of the applicant and for the controlling person designated pursuant to section 543E.7, and such additional information the administrator may need to enforce section 543E.6, subsection 1.

c. Information as reasonably necessary to establish the size of the applicant's nationwide and Iowa appraiser panels, in accordance with rules adopted by the administrator.

d. Certification that the applicant does all of the following:

(1) Verifies that appraisers who will perform appraisal assignments concerning real estate located in this state hold a valid, unexpired certificate in good standing as a real estate appraiser issued under chapter 543D.

(2) Requires that appraisals provided or coordinated by the applicant comply with the uniform standards of professional appraisal practice and has a system in place to monitor such compliance.

(3) Maintains a system to assure that appraisal management services are performed independently and free from inappropriate influence and coercion pursuant to the appraisal independence standards established under section 129E of the federal Truth in Lending Act, including the requirements for the payment of reasonable and customary fees, and pursuant to section 543D.18, subsections 1 and 2, and section 543D.18A.

(4) Maintains a system to retain detailed records of all appraisal management services to be performed in this state.

(5) Maintains a system to assure that the appraiser selected for an appraisal assignment is independent of the transaction and has the requisite education, expertise, and experience

necessary to competently complete the appraisal assignment for the particular market and property type.

e. If the applicant is not domiciled in this state, the name and contact information for the applicant's agent for service of process in this state and consent to service of process upon the secretary of state in any action or proceeding against the applicant arising out of a transaction or operation connected with or incidental to services performed by the applicant as a registered appraisal management company in this state or involving real property located in this state.

f. Any additional information that is reasonably needed for the administrator to implement the provisions of this chapter and assure that the applicant is eligible for registration under this chapter.

2016 Acts, ch 1124, §8, 32
Referred to in §543E.9

543E.9 Registration renewal.

1. A registration issued under this chapter shall be valid for one year as provided by rule.

2. An application to renew registration shall be submitted in the form and in the manner prescribed by the administrator. The administrator may further require periodic disclosures of changes impacting registration, such as a change in ownership or the designated controlling person.

3. An application to renew registration shall contain the information described in section 543E.8, subsection 2.

4. A registration issued under this chapter shall lapse if not timely renewed, in accordance with rules adopted by the administrator.

5. A person holding a lapsed registration shall not directly or indirectly engage in or attempt to engage in business as an appraisal management company or advertise or hold itself out as engaging in or conducting business as an appraisal management company in this state until the registration has been reinstated under the process prescribed by the administrator by rule.

2016 Acts, ch 1124, §9, 32

543E.10 Fees.

1. The administrator shall by rule establish fees for registration, renewal, reinstatement, and such additional fees as are reasonably necessary for the administration of this chapter. The fees shall be established in consideration of the costs of administering this chapter and the actual cost of the specific service to be provided or performed. The administrator shall periodically review and adjust the schedule of fees as needed to cover projected expenses.

2. Except as provided in subsection 3, all fees collected under this chapter shall be deposited into the department of commerce revolving fund created in section 546.12 and are appropriated to the administrator to be used to administer this chapter including but not limited to purposes such as examinations, investigations, and administrative staffing. Notwithstanding section 8.33, moneys appropriated pursuant to this subsection are not subject to reversion to the general fund of the state.

3. The administrator shall also collect the appraisal management company national registry fee from each appraisal management company seeking to register in this state and from federally regulated appraisal management companies operating in this state. The administrator shall transfer all appraisal management company national registry fees collected by the administrator to the appraisal subcommittee.

2016 Acts, ch 1124, §10, 32

543E.11 Appraiser, appraisal review, and employee restrictions.

1. The following individuals shall not have had a license or certificate to act as an appraiser refused, denied, canceled, revoked, or surrendered in lieu of revocation in any state for a substantive reason, but may have had a license or certificate to act as an appraiser refused, denied, canceled, revoked, or surrendered in lieu of revocation in a state for a nonsubstantive reason if the license or certificate was subsequently granted or reinstated:

a. An appraiser in an appraisal management company's appraiser panel who performs or may perform appraisals of real estate located in this state.

b. An employee, independent contractor, or other agent of an appraisal management company who performs an appraisal review of an appraisal of real estate located in this state.

c. An employee, independent contractor, or other agent of an appraisal management company who, with respect to real estate located in this state, has any responsibility for assigning appraisers to specific appraisal assignments, providing quality control for appraisal reports, or communicating with appraisers regarding potential appraisal report deficiencies.

2. An appraiser who on behalf of an appraisal management company performs an appraisal review of an appraisal of a dwelling located in this state shall comply with the review provisions of the uniform standards of professional appraisal practice, and shall be certified as an appraiser under the laws of any state, except that a review appraiser shall be certified under chapter 543D if such certification is required by any applicable state or federal law, rule, or regulation, or to the extent the review appraiser provides the review appraiser's own opinion of value, concurs with the original appraiser's opinion of value, or disagrees with the original appraiser's opinion of value.

3. An appraisal management company may rely on the national registry of appraisers of the appraisal subcommittee for purposes of verifying compliance with this section.

2016 Acts, ch 1124, §11, 32

543E.12 Adherence to standards — mandatory reporting.

1. An appraisal management company shall direct all appraisers it requests to perform appraisal assignments involving real estate located in this state to comply with the uniform standards of professional appraisal practice, including the competency rule.

2. An appraisal management company shall have an appraisal review system in place to monitor compliance with subsection 1.

3. An appraisal management company that has a reasonable basis to believe an appraiser has materially failed to comply with the uniform standards of professional appraisal practice or has otherwise materially violated chapter 543D or this chapter shall refer the matter to the administrator in conformance with applicable federal law and regulations. An appraisal management company that has a reasonable basis to believe another appraisal management company is failing to comply with the provisions of this chapter shall refer the matter to the administrator in conformance with section 272C.9, subsection 2.

4. An appraiser who is employed by or is on the appraiser panel of an appraisal management company registered under this chapter who has a reasonable basis to believe the appraisal management company is in violation of this chapter shall refer the matter to the administrator.

2016 Acts, ch 1124, §12, 32

543E.13 Recordkeeping — payment.

1. An appraisal management company shall maintain a detailed record of each service request the appraisal management company receives involving real estate located in this state and the identity of the appraiser who performs the appraisal assignment. All such records shall be maintained for at least five years after the request is sent by the appraisal management company to the appraiser or the completion of the appraisal report, whichever period expires later. An appraisal management company shall maintain such additional records regarding appraisal management services performed in this state as the administrator may specify by rule.

2. An appraisal management company shall, except in the case of breach of contract or substandard performance of an appraisal service, make payment to an appraiser for the completion of an appraisal service within forty-five days of the date on which the appraiser transmits or otherwise provides the results of the completed appraisal service to the appraisal management company. An appraisal management company shall maintain detailed records to verify that all payments to appraisers have been made in compliance

with this section. All such records shall be maintained for at least five years after payment is made or the completion of the appraisal service, whichever is later.

2016 Acts, ch 1124, §13, 32

543E.14 Appraiser independence — compensation.

1. An appraisal management company registered under this chapter shall take all reasonable steps to assure that appraisals are conducted independently and free from inappropriate influence or coercion pursuant to the appraisal independence standards established under section 129E of the federal Truth in Lending Act, including the requirements for the payment of reasonable and customary fees, and in compliance with the independence, objectivity, and impartiality provisions of section 543D.18, subsections 1 and 2, and section 543D.18A.

2. An appraisal management company shall compensate appraisers at a rate that is reasonable and customary for appraisal services being performed in the market area of the property being appraised in accordance with federal law.

2016 Acts, ch 1124, §14, 32

Referred to in §543E.15

543E.15 Prohibited acts.

An appraisal management company registered under this chapter, or an employee, owner, director, controlling person, or other agent of an appraisal management company, shall not do any of the following:

1. Require an appraiser to indemnify an appraisal management company or hold an appraisal management company harmless for any liability, damage, losses, or claims arising out of the services performed by the appraisal management company, and not the services performed by the appraiser.

2. Alter, modify, or otherwise change a completed appraisal report submitted by an appraiser without the appraiser's written consent.

3. Require that an appraiser provide the appraisal management company with the appraiser's digital or electronic signature, seal, or certification, or any password or other form of security intended to prevent persons other than the appraiser from affixing the appraiser's digital or electronic signature, seal, or certification on a completed appraisal report.

4. Remove an appraiser from an appraiser panel without prior written notice that identifies the basis for removal. Upon request or in conjunction with an examination, an appraisal management company shall forward to the administrator copies of such notices issued to an appraiser located or certified in Iowa.

5. Require an appraiser to modify any aspect of an appraisal report other than through a request permitted under section 543D.18A, subsection 4.

6. Require an appraiser to perform an appraisal assignment if the appraiser has notified the appraisal management company that, in the appraiser's own professional judgment, any of the following apply:

a. The appraiser does not have the necessary competence or expertise for the specific geographic area or type of property to be appraised.

b. The time frame under which the appraisal assignment is to be performed is insufficient for the appraiser to meet all relevant legal and professional obligations.

7. Require, either knowingly or through lack of reasonable diligence, an appraiser to take any action that would violate the uniform standards of professional appraisal practice, or any provision of chapter 543D or rule adopted pursuant thereto.

8. Prohibit an appraiser from disclosing the fee paid to the appraiser for appraisal services in the appraisal report.

9. Prohibit or inhibit lawful communications between the appraiser and the lender, a real estate salesperson or broker, or any other person from whom the appraiser, in the appraiser's own professional judgment, believes information obtained would be relevant to the appraisal assignment.

10. Condition payment of all or any part of an appraiser's fee or the appraisal management

company's fee on a particular outcome, including but not limited to any of the following outcomes:

a. A loan closing.

b. A specific dollar amount in an appraisal report.

c. An outcome that would violate section 543D.18, subsection 2, or section 543D.18A, subsection 1.

11. Engage in any acts or practices that violate section 543E.14.

2016 Acts, ch 1124, §15, 32

543E.16 Display of registration number.

An appraisal management company registered under this chapter shall be issued a unique registration number and shall include its registration number in any record, such as an engagement letter, order, or agreement, in which the appraisal management company contracts with an appraiser to perform an appraisal assignment involving real estate located in this state.

2016 Acts, ch 1124, §16, 32

543E.17 Grounds for disciplinary action.

1. After notice and hearing, the administrator may revoke, suspend, or refuse to issue, renew, or reinstate a registration; reprimand, censure, or limit the scope of practice of any registrant; impose a civil penalty not to exceed ten thousand dollars per violation; require remedial action; or place any registrant on probation; all with or without terms, conditions, or in combinations of remedies, for any one or more of the following reasons:

a. Fraud or deceit in obtaining registration, which may also result in permanent revocation of the registration.

b. Dishonesty, fraud, or gross negligence in the provision of appraisal management services.

c. A violation of this chapter or implementing rules by the appraisal management company or by an employee, owner, director, controlling person, or other agent of the appraisal management company.

d. Conviction of a felony or other indictable offense, any element of which is dishonesty, deception, or fraud, or is otherwise related to the performance of appraisal management services, under the laws of any state or the United States.

e. Cancellation, revocation, suspension, or refusal to renew the authority to practice as an appraisal management company, or the acceptance of the voluntary surrender of a registration to practice as an appraisal management company to conclude a disciplinary investigation or action, by any other state, a federal agency, or foreign authority for any cause other than failure to pay appropriate fees in the other jurisdiction.

f. A violation of section 272C.10.

2. When determining whether to initiate a disciplinary proceeding against an appraisal management company based on actions or omissions by an employee, owner, director, controlling person, or other agent of the appraisal management company, the administrator shall take into consideration all of the following:

a. Whether the appraisal management company took reasonable steps to prevent the violation.

b. Whether the violation was or could have been discovered by the appraisal management company upon reasonable inquiry.

c. What steps the appraisal management company took upon discovering the violation.

d. Whether the violation could have been avoided had the appraisal management company established the systems or other procedures required under this chapter.

e. Whether the violation is an isolated matter or more systemic to the appraisal management company's performance.

2016 Acts, ch 1124, §17, 32

543E.18 Unlawful practice — complaints and investigations — remedies and penalties.

1. If, as the result of a complaint or otherwise, the administrator believes that a person

has engaged, or is about to engage, in an act or practice that constitutes or will constitute a violation of this chapter, the administrator may make application to the district court for an order enjoining such act or practice. Upon a showing by the administrator that such person has engaged, or is about to engage, in any such act or practice, an injunction, restraining order, or other order as may be appropriate shall be granted by the district court.

2. The administrator may investigate a complaint or initiate a complaint against a person who is not registered under this chapter to determine whether grounds exist to make application to the district court pursuant to subsection 1 or to issue an order pursuant to subsection 3, and in connection with such complaint or investigation may issue subpoenas to compel witnesses to testify or persons to produce evidence consistent with the provisions of section 272C.6, subsection 3, as needed to determine whether probable cause exists to initiate a proceeding under this section or to make application to the district court for an order enjoining a violation of this chapter.

3. In addition to or as an alternative to making application to the district court for an injunction, the administrator may issue an order to a person who is not registered under this chapter to require compliance with this chapter and may impose a civil penalty against such person for any violation specified in subsection 4 in an amount up to ten thousand dollars for each violation. All civil penalties collected pursuant to this section shall be deposited in the housing trust fund created in section 16.181. An order issued pursuant to this section may prohibit a person from applying for registration under this chapter or certification or registration under chapter 543D.

4. The administrator may impose a civil penalty against a person who is not registered under this chapter for any of the following:

a. A violation of section 543E.4.

b. A violation of section 543D.18A, subsection 1.

c. Fraud, deceit, or deception, through act or omission, in connection with an application for registration under this chapter.

5. The administrator, before issuing an order under this section, shall provide the person written notice and the opportunity to request a hearing. The hearing must be requested within thirty days after receipt of the notice and shall be conducted in the same manner as provided for disciplinary proceedings involving a registrant under this chapter.

6. A person aggrieved by the imposition of a civil penalty under this section may seek judicial review pursuant to section 17A.19.

7. If a person fails to pay a civil penalty within thirty days after entry of an order imposing the civil penalty, or if the order is stayed pending an appeal, within ten days after the court enters a final judgment in favor of the administrator, the administrator shall notify the attorney general. The attorney general may commence an action to recover the amount of the penalty, including reasonable attorney fees and costs.

8. An action to enforce an order under this section may be joined with an action for an injunction.

2016 Acts, ch 1124, §18, 32

543E.19 Surety bond.

1. The administrator shall require that an appraisal management company be covered by a surety bond in the amount of twenty-five thousand dollars.

2. The surety bond shall be in a form as prescribed by the administrator. The administrator may, pursuant to rule, determine requirements for such surety bonds as are necessary to accomplish the purposes of this chapter. The requirements for a surety bond shall only relate to liabilities, damages, losses, or claims arising out of the appraisal management services performed by the appraisal management company involving real estate located in this state. The bond shall provide that a person having a claim against an appraisal management company may bring suit directly on the bond or the administrator may bring suit on behalf of such person.

2016 Acts, ch 1124, §19, 32

543E.20 Additional administrator authority.

1. The administrator is vested with broad administrative authority to administer, interpret, and enforce this chapter and to promulgate rules implementing this chapter.

2. In addition to the duties and powers conferred upon the administrator in this chapter, the administrator shall have the authority to adopt such rules as are reasonably necessary to assure the administrator's registration and supervision of appraisal management companies comply with the minimum requirements of 12 U.S.C. §3352 and related federal laws and regulations, with respect to any of the following:

a. Reviewing and approving or denying an appraisal management company's application for initial or renewal registration.

b. Examining the books and records of an appraisal management company operating in the state and requiring the appraisal management company to submit reports, information, and documents.

c. Verifying that the appraisers on an appraisal management company's appraiser panel who perform appraisal assignments in this state hold valid certificates issued under chapter 543D.

d. Conducting investigations of appraisal management companies to assess potential violations of applicable appraisal-related laws, regulations, rules, or orders.

e. Disciplining, suspending, terminating, or denying renewal of the registration of an appraisal management company that violates applicable appraisal-related laws, regulations, rules, or orders.

f. Notwithstanding section 272C.6, subsection 4, reporting an appraisal management company's violation of applicable appraisal-related laws, regulations, rules, or orders, as well as disciplinary and enforcement investigations and actions and other relevant information about an appraisal management company's operations, to the appraisal subcommittee.

g. Imposing requirements on appraisal management companies that are mandated by federal law and regulations applicable to appraisal management companies that are not exempt under federal law, including any of the following:

(1) Registration and supervision requirements.

(2) Ownership limitations.

(3) Engaging only certified appraisers for federally related transactions in conformity with all applicable federally related transaction regulations.

(4) Establishing systems for engaging appraisers who are competent and independent, and who are suited for the appraisal assignments to which they are assigned based on education, expertise, and experience.

(5) Directing appraisers to perform appraisal assignments in accordance with the uniform standards of professional appraisal practice.

(6) Establishing and complying with processes and controls reasonably designed to ensure appraisal management companies conduct appraisal management services in accordance with the requirements of section 129E(a)–(i) of the federal Truth in Lending Act, 15 U.S.C. §1639e(a)–(i), and regulations thereunder including but not limited to the requirement that appraisers who complete an appraisal in connection with a consumer credit transaction secured by the principal dwelling of the consumer be compensated with a customary and reasonable fee.

h. Assessing, collecting, and forwarding to the appraisal subcommittee appraisal management company national registry fees from appraisal management companies registered under this chapter and from federally regulated appraisal management companies.

3. The administrator may conduct periodic examinations of applicants or registrants under this chapter as reasonably necessary to assure compliance with all or specific provisions of this chapter. All papers, documents, examination reports, and other records relating to such examinations shall be confidential as provided in section 272C.6, subsection 4, except as provided in this section.

4. The administrator may adopt rules governing an appraiser's use of associate real estate appraisers while performing appraisal assignments subject to this chapter. Associate real estate appraisers may provide appraisal services under the supervision of a certified appraiser

as provided in chapter 543D and associated rules, but shall not be on an appraiser panel of an appraisal management company.

5. The administrator may require a national criminal history check through the federal bureau of investigation or, if authorized by federal law or regulation, the nationwide mortgage licensing system and registry, as defined in section 535D.3, when conducting background investigations under this chapter. Except as inconsistent with the registry, the following shall apply:

a. The administrator may require owners and controlling persons who are subject to the background investigation provisions of sections 543E.6 and 543E.7 to provide a full set of fingerprints, in a form and manner prescribed by the administrator. Such fingerprints, if required, shall be submitted to the federal bureau of investigation through the state criminal history repository for purposes of the national criminal history check.

b. The administrator may also request and obtain, notwithstanding section 692.2, subsection 5, criminal history data for owners and controlling persons who are subject to the background investigation provisions of sections 543E.6 and 543E.7. A request for criminal history data shall be submitted to the department of public safety, division of criminal investigation, pursuant to section 692.2, subsection 1.

c. The administrator shall inform such owners and controlling persons of the requirement of a national criminal history check or request for criminal history data and obtain a signed waiver from the applicant, certificate holder, or registrant prior to requesting the check or data.

d. The administrator may, in addition to any other fees, charge and collect such amounts as may be incurred by the administrator, the department of public safety, or the federal bureau of investigation in obtaining criminal history information. Amounts collected shall be considered repayment receipts as defined in section 8.2.

e. Criminal history data and other criminal history information relating to affected owners or controlling persons, or their appraisal management companies obtained by the administrator pursuant to this section shall remain confidential. Such information may, however, be used by the administrator in a registration denial, enforcement, or disciplinary proceeding.

2016 Acts, ch 1124, §20, 32; 2017 Acts, ch 29, §156

CHAPTER 544

RESERVED

CHAPTER 544A

LICENSED ARCHITECTS

Referred to in §26.3, 26.14, 103.22, 103A.10, 105.11, 272C.1, 272C.6, 546.10, 669.2, 669.14, 714H.4

This chapter not enacted as a part of this title;
transferred from chapter 118 in Code 1993

544A.1 Practice regulated — creation of architectural examining board.
544A.2 Officers.
544A.3 Records — roster.
544A.4 Report. Repealed by 98 Acts, ch 1119, §11.
544A.5 Duties.
544A.6 and 544A.7 Reserved.
544A.8 Qualification for licensure.
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544A.25 Applicant — civil rights — moral character.
544A.26 Public members.
544A.27 Disclosure of confidential information.
544A.28 Seal required.
544A.29 Rules.
544A.30 Registered architects.

544A.1 Practice regulated — creation of architectural examining board.

1. The practice of architecture affects the public health, safety, and welfare and is subject to regulation and control in the public interest. Only persons qualified by the laws of the state are authorized to engage in the practice of architecture in the state.

2. The architectural examining board is created within the professional licensing and regulation bureau of the banking division of the department of commerce. The board consists of five members who possess a license issued under section 544A.9 and who have been in active practice of architecture for not less than five years, the last two of which shall have been in Iowa, and two members who do not possess a license issued under section 544A.9 and who shall represent the general public. Members shall be appointed by the governor subject to confirmation by the senate.

3. Professional associations or societies composed of licensed architects may recommend the names of potential board members to the governor but the governor is not bound by the recommendations. A board member is not required to be a member of any professional association or society composed of licensed architects. Appointments shall be for three-year terms and shall commence and end as provided in section 69.19. Vacancies shall be filled for the unexpired term by appointment of the governor and shall require senate confirmation. Members shall serve no more than three terms or nine years, whichever is less.

[C27, 31, 35, §1905-b1; C39, §**1905.58;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §118.1]
86 Acts, ch 1245, §725; 87 Acts, ch 92, §1
C93, §544A.1
2006 Acts, ch 1177, §41; 2017 Acts, ch 131, §7
Referred to in §544A.16
Confirmation, see §2.32

544A.2 Officers.

At a time to be determined by the board, the board shall elect from its members officers to serve for a term not to exceed one year. The division shall provide staff assistance.

[C27, 31, 35, §1905-b2; C39, §**1905.59;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §118.2]
87 Acts, ch 92, §2; 90 Acts, ch 1168, §22
C93, §544A.2
93 Acts, ch 5, §1

544A.3 Records — roster.

The board shall keep a record, open to public inspection at all reasonable times, of its proceedings relating to the issuance, refusal, renewal, suspension, and revocation of licenses. This record shall also contain a roster showing the name, place of business, and residence, and the date and number of the license of every licensed architect entitled to practice the profession in the state of Iowa.

[C27, 31, 35, §1905-b3; C39, §**1905.60;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §118.3]
C93, §544A.3
2017 Acts, ch 131, §7

544A.4 Report. Repealed by 98 Acts, ch 1119, §11.

544A.5 Duties.

The architectural examining board shall enforce this chapter, shall adopt rules pursuant to chapter 17A for the examination of applicants for the license provided by this chapter, and shall, after due public notice, hold meetings each year for the purpose of examining applicants for licensure and the transaction of business pertaining to the affairs of the board. Examinations shall be given as often as deemed necessary, but not less than annually. Action at a meeting shall not be taken without the affirmative votes of a majority of the members of the board. The administrator of the professional licensing and regulation bureau of the banking division of the department of commerce shall hire and provide staff to assist the board with implementing this chapter.

[C27, 31, 35, §1905-b5; C39, §**1905.62;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §118.5]
86 Acts, ch 1245, §726
C93, §544A.5
2006 Acts, ch 1177, §42; 2017 Acts, ch 131, §7; 2018 Acts, ch 1026, §161
Section amended

544A.6 and 544A.7 Reserved.

544A.8 Qualification for licensure.

1. Any person may apply for a license or may apply to take an examination for licensure under this chapter. The board shall not require that the application contain a photograph of the applicant.

2. The board shall adopt rules governing practical training and education and may adopt as its rules criteria published by a national certification body recognized by the board. The board may accept the accreditation decisions of a national accreditation body recognized by the board.

3. A person applying for licensure by examination, upon complying with the other requirements, shall satisfactorily pass an examination in technical and professional subjects prescribed by the board. The board may adopt the uniform standardized examination and grading procedures of a national certification body recognized by the board. The examination may be conducted by representatives of the board. The identity of the person taking the examination shall be concealed until after the examination has been graded. The board shall adopt rules regarding reexamination. An applicant who has failed the examination may request in writing information from the board concerning the applicant's examination grade and subject areas or questions which the applicant failed to answer correctly, except that if the board administers a uniform, standardized examination, the board shall only be required to provide the examination grade and the other information concerning the applicant's examination results which is available to the board.

4. In lieu of examination, the board may grant licensure by reciprocity. A person applying to the board for licensure by reciprocity shall furnish satisfactory evidence that the person holds qualifications determined by the board to be substantially equivalent to the requirements for initial licensure in accordance with section 546.10, subsection 8.

[C27, 31, 35, §1905-b8; C39, §**1905.65;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §118.8]
87 Acts, ch 92, §3

C93, §544A.8
2008 Acts, ch 1059, §6, 7; 2017 Acts, ch 131, §7
Referred to in §544A.9

544A.9 Licensure.

When the applicant has complied with the requirements as set forth in section 544A.8 and has paid the fees prescribed by the board, the executive officer shall enroll the applicant's name and address in the roster of licensed architects and issue to the applicant a license, signed by the officers of the board, which license shall entitle the applicant to practice as an architect in the state of Iowa.

[C27, 31, 35, §1905-b9; C39, §**1905.66;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §118.9]
C93, §544A.9
2008 Acts, ch 1059, §8; 2017 Acts, ch 131, §7
Referred to in §544A.1

544A.10 Renewals.

Licenses expire in intervals as determined by the board. Licensed architects shall renew their licenses and pay a renewal fee in the manner prescribed by the board. The board shall prescribe the conditions and reasonable penalties for renewal after a license's expiration date.

[C27, 31, 35, §1905-b10; C39, §**1905.67;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §118.10]
87 Acts, ch 92, §4
C93, §544A.10
2012 Acts, ch 1009, §26; 2017 Acts, ch 131, §7

544A.11 Fees.

1. The board shall set the fees for examination, for a license as an architect, for renewal of a license, for reinstatement of a license, and for other activities of the board pertaining to its duties. The fee for examination shall be based on the annual cost of administering the examinations. The fee for a license and for renewal of a license shall be based upon the administrative costs of sustaining the board which shall include, but are not limited to, the costs for all of the following:

a. Per diem, expenses, and travel for board members.
b. Office facilities, supplies, and equipment.
c. Staff assistance.

2. All fees shall be paid to the treasurer of state and deposited in the general fund of the state.

[C27, 31, 35, §1905-b11; C39, §**1905.68;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §118.11]
87 Acts, ch 92, §5; 90 Acts, ch 1168, §23; 90 Acts, ch 1261, §40
C93, §544A.11
94 Acts, ch 1107, §91; 2012 Acts, ch 1023, §157; 2017 Acts, ch 131, §7

544A.12 Expenses — compensation.

The members of the architectural examining board are entitled to be reimbursed for the actual expenses incurred in attending the meetings of the board, within the limits of the funds appropriated to the board. Each member of the board may also be eligible to receive compensation as provided in section 7E.6.

[C27, 31, 35, §1905-b12; C39, §**1905.69;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §118.12]
86 Acts, ch 1245, §727
C93, §544A.12

544A.13 Revocation or suspension.

1. A license to practice architecture may be revoked or suspended when the licensee is guilty of the following acts or offenses:

a. Fraud in procuring a license.
b. Professional incompetency.
c. Knowingly making misleading, deceptive, untrue or fraudulent representations in the

practice of the licensee's profession or engaging in unethical conduct or practice harmful or detrimental to the public. Proof of actual injury need not be established.

d. Habitual intoxication or addiction to the use of drugs.

e. Conviction of a felony related to the profession or occupation of the licensee or the conviction of any felony that would affect the licensee's ability to practice the profession of architecture. A copy of the record of conviction or plea of guilty shall be conclusive evidence.

f. Fraud in representations as to skill or ability.

g. Use of untruthful or improbable statements in advertisements.

h. Willful or repeated violations of the provisions of this chapter.

i. Willful or repeated violations of one or more rules of conduct adopted by the board.

2. The board may revoke any license after thirty days' notice with grant of hearing to the holder if satisfactory proof is presented to the board.

3. Proceedings for the revocation of a license shall be initiated by filing written charges against the accused with the board. A time and place for the hearing of the charges shall be fixed by the board if the board determines that a hearing is warranted. If personal service or service through counsel cannot be effected, service may be by publication. At the hearing, the accused has the right to be represented by counsel, to introduce evidence, and to examine and cross-examine witnesses. The board may subpoena witnesses, administer oaths to witnesses, and employ counsel.

[C27, 31, 35, §1905-b13; C39, §**1905.70;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §118.13]
87 Acts, ch 92, §6; 88 Acts, ch 1158, §26
C93, §544A.13
2008 Acts, ch 1059, §9; 2014 Acts, ch 1001, §5; 2017 Acts, ch 131, §7
Referred to in §272C.3, 272C.4, 544A.29

544A.14 Reserved.

544A.15 Unlawful practice — violations — criminal and civil penalties — consent agreement.

1. It is unlawful for a person to engage in or to offer to engage in the practice of architecture in this state or use in connection with the person's name the title "architect", "licensed architect", or "architectural designer", or to imply that the person provides or offers to provide professional architectural services, or to otherwise assume, use, or advertise any title, word, figure, sign, card, advertisement, or other symbol or description tending to convey the impression that the person is an architect or is engaged in the practice of architecture unless the person is qualified by licensure as provided in this chapter. However, the board may by rule authorize a person to offer to perform architectural services in this state prior to licensure in this state if the person is licensed in good standing to practice architecture in at least one other state or jurisdiction, the person holds a certificate from a national certification council recognized by the board, the person makes such disclosures as the board may require by rule, and the person becomes duly licensed in this state prior to otherwise practicing architecture in this state as defined in section 544A.16, subsection 9.

2. A person who violates this section is guilty of a serious misdemeanor.

3. *a.* In addition to the criminal penalty provided for in this section, the board may by order impose a civil penalty upon a person who is not licensed under this chapter as an architect pursuant to this chapter and who does any of the following:

(1) Engages in or offers to engage in the practice of architecture.

(2) Uses or employs the words "architect", "licensed architect", "architectural designer", or implies authorization to provide or offer professional architectural services, or otherwise uses or advertises any title, word, figure, sign, card, advertisement, or other symbol or description tending to convey the impression that the person or entity is an architect or is engaged in the practice of architecture.

(3) Presents or attempts to use the license or the seal of an architect.

(4) Gives false or forged evidence of any kind to the board or any member of the board in obtaining or attempting to obtain a license.

(5) Falsely impersonates any other licensed architect.

(6) Uses or attempts to use an expired, suspended, revoked, or nonexistent license.

(7) Knowingly aids or abets an unlicensed person who engages in any activity identified in this paragraph.

b. A civil penalty imposed shall not exceed one thousand dollars for each offense. Each day of a continued violation constitutes a separate offense.

c. In determining the amount of a civil penalty to be imposed, the board may consider any of the following:

(1) Whether the amount imposed will be a substantial economic deterrent to the violation.

(2) The circumstances leading to the violation.

(3) The severity of the violation and the risk of harm to the public.

(4) The economic benefits gained by the violator as a result of noncompliance.

(5) The interest of the public.

d. Before issuing an order under this section, the board shall provide the person written notice and the opportunity to request a hearing on the record. The hearing must be requested within thirty days of the issuance of the notice and shall be conducted in the same manner as provided for disciplinary proceedings involving a licensed architect.

e. The board, in connection with a proceeding under this subsection, may issue subpoenas to compel the attendance and testimony of witnesses and the disclosure of evidence, and may request the attorney general to bring an action to enforce the subpoena.

f. A person aggrieved by the imposition of a civil penalty under this subsection may seek judicial review in accordance with section 17A.19.

g. If a person fails to pay a civil penalty within thirty days after entry of an order under paragraph *"a"*, or if the order is stayed pending an appeal, within ten days after the court enters a final judgment in favor of the board, the board shall notify the attorney general. The attorney general may commence an action to recover the amount of the penalty, including reasonable attorney fees and costs.

h. An action to enforce an order under this section may be joined with an action for an injunction.

4. The board at its discretion and in lieu of prosecuting a first offense under this section may enter into a consent agreement with a violator, or with a person guilty of aiding or abetting a violator, which acknowledges the violation and the violator's agreement to refrain from any further violations.

[C66, 71, 73, 75, 77, 79, 81, §118.15]
87 Acts, ch 92, §7
C93, §544A.15
96 Acts, ch 1055, §3; 2008 Acts, ch 1059, §10; 2017 Acts, ch 131, §7

544A.16 Definitions.

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

1. *"Architect"* means a person qualified to engage in the practice of architecture who holds a current valid license under the laws of this state.

2. *"Board"* means the architectural examining board established in section 544A.1.

3. *"Construction"* means physical alteration of a building or improvement of real estate, and includes new construction, enlargements, or additions to existing construction, and alterations, renovation, remodeling, restoration, preservation, or other material modification to and within existing construction.

4. *"Construction documents"* means the drawings, specifications, technical submissions, and other documents upon which construction is based.

5. *"Direct supervision and responsible charge"* means an architect's personal supervisory control of work as to which the architect has detailed professional knowledge. In respect to preparing technical submissions, *"direct supervision and responsible charge"* means that the architect has the exercising, directing, guiding, and restraining power over the design of the building or structure and the preparation of the documents, and exercises professional judgment in all architectural matters embodied in the documents. Merely reviewing the work prepared by another person does not constitute *"direct supervision and responsible charge"*

unless the reviewer actually exercises supervision and control and is in responsible charge of the work.

6. *"Good moral character"* means a reputation for trustworthiness, honesty, and adherence to professional standards of conduct.

7. *"License"* means the license issued to an architect by the board.

8. *"Observation of construction site progress"* means intermittent visitation to the construction site by an architect or the architect's employee for the purpose of general familiarity with the progress and quality of the construction and general conformance of the construction to the construction documents and general compliance with the applicable building codes. For the purpose of this chapter, such observation does not imply exhaustive or continuous on-site inspections to check the quality or quantity of construction work.

9. *"Practice of architecture"* means performing, or offering to perform, professional architectural services in connection with the design, preparation of construction documents, or construction of one or more buildings, structures, or related projects, and the space within and surrounding the buildings or structures, or the addition to or alteration of one or more buildings or structures, which buildings or structures have as their principal purpose human occupancy or habitation, if the safeguarding of life, health, or property is concerned or involved, unless the buildings or structures are excepted from the requirements of this chapter by section 544A.18.

10. *"Professional architectural services"* means consultation, investigation, evaluation, programming, planning, preliminary design and feasibility studies, designs, drawings, specifications and other technical submissions, administration of construction contracts, observation of construction site progress, or other services and instruments of service related to architecture. A person is performing or offering to perform professional architectural services within the meaning of this chapter, if the person, by verbal claim, sign, advertisement, letterhead, card, or in any other way represents the person to be an architect or through the use of a title implies that the person is an architect.

11. *"Professional consultant"* means a person who is required by the laws of this state to hold a current and valid certificate of registration or license in the field of the person's professional practice, and who is employed by the architect to perform, or who offers to perform professional services as a consultant to the architect, in connection with the design, preparation of construction documents or other technical submissions, or construction of one or more buildings or structures, and the space within and surrounding the buildings or structures.

12. *"Programming"* means the identification, verification, and analysis of the architectural requirements precedent to the planning and design of a building or structure.

13. *"Technical submissions"* means the designs, drawings, sketches, specifications, details, studies, and other technical reports, including construction documents, prepared in the course of the practice of architecture.

[C66, 71, 73, 75, 77, 79, 81, §118.16]
87 Acts, ch 92, §8; 88 Acts, ch 1274, §37
C93, §544A.16
2005 Acts, ch 104, §1; 2017 Acts, ch 131, §3, 4, 7; 2018 Acts, ch 1026, §162
Referred to in §544A.15
Subsection 11 amended

544A.17 When not applicable.

The provisions of this chapter shall not apply to:

1. Professional engineers licensed under chapter 542B.

2. Persons acting under the instruction, control, or supervision of, and those executing the plans of, a licensed architect or a professional engineer licensed under chapter 542B, provided that such unlicensed persons shall not be placed in responsible charge of architectural or professional engineering work.

3. Superintendents, inspectors, supervisors and building trades craftspersons while performing their customary duties.

[C66, 71, 73, 75, 77, 79, 81, §118.17]

C93, §544A.17
2007 Acts, ch 126, §95; 2017 Acts, ch 131, §5; 2018 Acts, ch 1041, §107
Subsection 2 amended

544A.18 Exceptions.

Notwithstanding the other provisions of this chapter, persons who are not licensed architects may perform planning and design services in connection with any of the following:

1. Detached residential buildings containing twelve or fewer family dwelling units of not more than three stories and outbuildings in connection with the buildings.
2. Buildings used primarily for agricultural purposes including grain elevators and feed mills.
3. Nonstructural alterations to existing buildings which do not change the use of a building:
   a. From any other use to a place of assembly of people or public gathering.
   b. From any other use to a place of residence not exempted by subsection 1.
   c. From an industrial or warehouse use to a commercial or office use not exempted by subsection 4.
4. Warehouses and commercial buildings not more than one story in height, and not exceeding ten thousand square feet in gross floor area; commercial buildings not more than two stories in height and not exceeding six thousand square feet in gross floor area and light industrial buildings.
5. Factory built buildings which are not more than two stories in height and not exceeding twenty thousand square feet in gross floor area or which are certified by a professional engineer licensed under chapter 542B.
6. Churches and accessory buildings, whether attached or separate, not more than two stories in height and not exceeding two thousand square feet in gross floor area.

[C66, 71, 73, 75, 77, 79, 81, §118.18]
84 Acts, ch 1057, §1
C93, §544A.18
2007 Acts, ch 126, §96; 2017 Acts, ch 131, §7
Referred to in §544A.16, 544A.28

544A.19 Reserved.

544A.20 Injunction.

In addition to any other remedies, and on the petition of the board or any person, any violators of this chapter may be restrained and permanently enjoined.

[C66, 71, 73, 75, 77, 79, 81, §118.20]
C93, §544A.20

544A.21 Practice by business entities. Repealed by 2014 Acts, ch 1001, §6.

544A.22 through 544A.24 Reserved.

544A.25 Applicant — civil rights — moral character.

1. An applicant is not ineligible for licensure because of age, citizenship, sex, race, religion, marital status, or national origin, although the application form may require citizenship information. Character references may be required.
2. The board may consider the following aspects when investigating an applicant's good moral character:
   a. An applicant's conviction for commission of a felony, but only if the felony relates directly to the practice of architecture or to the applicant's honesty.
   b. An applicant's misstatement, omission, or misrepresentation of a material fact in connection with the applicant's application for licensure in this state or another jurisdiction.
   c. An applicant's violation of a rule of conduct of a jurisdiction in which the applicant has previously engaged in the practice of architecture, provided that the rule of conduct violated

is substantially equivalent to a then existing or current rule of conduct required of architects in this state.

d. An applicant's practice of architecture without being licensed in violation of licensure laws of the jurisdiction in which the practice took place.

3. If the applicant's background includes any of the foregoing, the board may license the applicant on the basis of suitable evidence of reform.

[C75, 77, 79, 81, §118.25]
87 Acts, ch 92, §11
C93, §544A.25
2012 Acts, ch 1023, §157; 2017 Acts, ch 131, §7

544A.26 Public members.

The public members of the board shall be allowed to participate in administrative, clerical, or ministerial functions incident to giving the examination, but shall not determine the content of the examination or determine the correctness of the answers.

[C75, 77, 79, 81, §118.26]
C93, §544A.26

544A.27 Disclosure of confidential information.

1. The board shall not disclose information relating to the following:

a. The contents of the examination.

b. The examination results other than final score except for information about the results of an examination which is given to the person who took the examination.

2. A member of the board who willfully communicates or seeks to communicate such information, and any person who willfully requests, obtains, or seeks to obtain such information, is guilty of a simple misdemeanor.

[C75, 77, 79, 81, §118.27]
C93, §544A.27
2008 Acts, ch 1059, §11

544A.28 Seal required.

1. An architect shall procure a seal with which to identify all technical submissions issued by the architect for use in this state. The seal shall be of a design, content, and size designated by the board.

2. *a.* Technical submissions prepared by an architect, or under an architect's direct supervision and responsible charge, shall be stamped with the impression of the architect's seal. The board shall designate by rule the location, frequency, and other requirements for use of the seal. An architect shall not impress the architect's seal on technical submissions if the architect was not the author of the technical submissions or if they were not prepared under the architect's direct supervision and responsible charge. An architect who merely reviews standardized construction documents for pre-engineered or prototype buildings, is not the author of the technical submissions and the technical submissions were not prepared under a reviewing architect's responsible charge.

b. An architect shall cause those portions of technical submissions prepared by a professional consultant to be stamped with the impression of the seal of the professional consultant, with a clear identification of the consultant's areas of responsibility, signature, and date of issuance.

3. A public official charged with the enforcement of the state building code, as adopted pursuant to section 103A.7, or a municipal or county building code, shall not accept or approve any technical submissions involving the practice of architecture unless the technical submissions have been stamped with the architect's seal as required by this section or unless the applicant has certified on the technical submission to the applicability of a specific exception under section 544A.18 permitting the preparation of technical submissions by a person not licensed under this chapter. A building permit issued with respect to technical submissions which do not conform to the requirements of this section is invalid.

87 Acts, ch 92, §12

CS87, §118.28
C93, §544A.28
2004 Acts, ch 1086, §90; 2015 Acts, ch 29, §85; 2017 Acts, ch 131, §7

544A.29 Rules.

The board may adopt rules consistent with this chapter for the administration and enforcement of this chapter and may prescribe forms to be issued. The rules may include, but are not limited to, standards and criteria for licensure, license renewal, professional conduct, misconduct, and discipline. Violation of a rule of conduct is grounds for disciplinary action or reprimand or probation at the discretion of the board. The board may enter into a consent order with an architect which acknowledges an architect's violation and agreement to refrain from any further violation. A willful or repeated violation of a rule of conduct is grounds for disciplinary action as provided in section 544A.13.

87 Acts, ch 92, §13
CS87, §118.29
C93, §544A.29

544A.30 Registered architects.

Any person who is registered as an architect pursuant to this chapter on July 1, 2017, shall be deemed to be licensed to practice as an architect.

2017 Acts, ch 131, §6

CHAPTER 544B

LANDSCAPE ARCHITECTS

Referred to in §26.3, 26.14, 103.22, 105.11, 272C.1, 272C.6, 546.10, 669.14, 714H.4

This chapter not enacted as a part of this title;
transferred from chapter 118A in Code 1993

544B.1	Definitions.	544B.11	Licensure.
544B.2	License required.	544B.12	Seal.
544B.3	Landscape architectural examining board created.	544B.13	Renewals.
544B.4	Organization of the board — meetings — quorum.	544B.14	Fees.
544B.5	Duties.	544B.15	Suspension, revocation, or reprimand.
544B.6	Annual report. Repealed by 98 Acts, ch 1119, §11.	544B.16	Procedure.
544B.7	Expenses — compensation.	544B.17	Attorney general to assist and witnesses.
544B.8	Examination.	544B.18	Unlawful practice.
544B.9	Applications.	544B.19	Injunction.
544B.10	Foreign licensees.	544B.20	Scope of chapter.
		544B.21	Examination not required.

544B.1 Definitions.

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

1. *"Board"* means the landscape architectural examining board established pursuant to section 544B.3.

2. *"Practice of landscape architecture"* means the performance of professional services such as consultations, investigations, reconnaissance, research, planning, design, or responsible supervision in connection with projects involving the arranging of land and the elements thereon for public and private use and enjoyment, including the alignment of roadways and the location of buildings, service areas, parking areas, walkways, steps, ramps, pools and other structures, and the grading of the land, surface and subsoil drainage, erosion control, planting, reforestation, and the preservation of the natural landscape and aesthetic values, in accordance with accepted professional standards of public health, welfare, and safety. This practice shall include the location and arrangement of such tangible

objects and features as are incidental and necessary to the purposes outlined in this chapter but shall not include the design of structures or facilities with separate and self-contained purposes for habitation or industry, or the design of public streets and highways, utilities, storm and sanitary sewers, and sewage treatment facilities, such as are ordinarily included in the practice of engineering or architecture; and shall not include the making of land surveys or final land plats for official approval or recording. Nothing contained in this chapter shall be construed as authorizing a professional landscape architect to engage in the practice of architecture, engineering, or land surveying.

3. *"Professional landscape architect"* means a person who has obtained a license pursuant to section 544B.2, and who engages in the practice of landscape architecture as defined in this section.

[C75, 77, 79, 81, §118A.1]
C93, §544B.1
2002 Acts, ch 1045, §1, 2; 2003 Acts, ch 108, §102
Referred to in §544B.19

544B.2 License required.

A person shall not engage in the practice of landscape architecture, or use the title "landscape architect", "professional landscape architect", "landscape architecture designer", or use other titles or words, letters, figures, signs, cards, advertisements, symbols, or other devices to represent that the person or a business associated with the person is authorized to practice landscape architecture, without first obtaining a license as a professional landscape architect from the board pursuant to this chapter. Every holder of a license as a professional landscape architect shall display it in a conspicuous place in the holder's principal office.

[C75, 77, 79, 81, §118A.2]
C93, §544B.2
2002 Acts, ch 1045, §3
Referred to in §544B.1, 544B.19

544B.3 Landscape architectural examining board created.

1. A landscape architectural examining board is created within the professional licensing and regulation bureau of the banking division of the department of commerce. The board consists of five members who are professional landscape architects and two members who are not professional landscape architects and who shall represent the general public. Members shall be appointed by the governor, subject to confirmation by the senate. A professional member shall be actively engaged in the practice of landscape architecture or the teaching of landscape architecture in an accredited college or university, and shall have been so engaged for five years preceding appointment, the last two of which shall have been in Iowa. Associations or societies composed of professional landscape architects may recommend the names of potential board members to the governor. However, the governor is not bound by the recommendations. A board member shall not be required to be a member of any professional association or society composed of professional landscape architects.

2. Appointments shall be for three-year terms and shall commence and end as provided in section 69.19. Vacancies shall be filled for the unexpired term by appointment of the governor and are subject to senate confirmation. Members shall serve no more than three terms or nine years, whichever is less.

[C75, 77, 79, 81, §118A.3]
86 Acts, ch 1245, §728
C93, §544B.3
2002 Acts, ch 1045, §4; 2006 Acts, ch 1177, §43
Referred to in §544B.1, 544B.19
Confirmation, see §2.32

544B.4 Organization of the board — meetings — quorum.

The board shall elect annually from its members a chairperson and vice chairperson. The duties of the officers are those usually performed by such officers. The board shall hold at least one meeting each year at the location of the board's principal office, and meetings shall

be called at other times by division staff at the request of the chairperson or four members of the board. A majority of the members constitutes a quorum. No action at any meeting can be taken without the affirmative votes of a majority of the members of the board.

[C75, 77, 79, 81, §118A.4]
88 Acts, ch 1158, §27; 90 Acts, ch 1168, §24
C93, §544B.4
Referred to in §544B.19

544B.5 Duties.

The board shall enforce this chapter, shall make rules for the examination of applicants for licensure, and, after public notice, shall conduct examinations of applicants for licensure. The board shall keep a record of its proceedings. The board shall adopt an official seal which shall be affixed to all certificates of licensure granted. The board may make other rules, not inconsistent with law, as necessary for the proper performance of its duties. The board shall maintain a roster showing the name, place of business, and residence, and the date and number of the certificate of licensure of every professional landscape architect in this state. The administrator of the professional licensing and regulation bureau of the banking division of the department of commerce shall hire and provide staff to assist the board in implementing this chapter.

[C75, 77, 79, 81, §118A.5]
86 Acts, ch 1245, §729
C93, §544B.5
2002 Acts, ch 1045, §5; 2006 Acts, ch 1177, §44
Referred to in §544B.19

544B.6 Annual report. Repealed by 98 Acts, ch 1119, §11.

544B.7 Expenses — compensation.

Members of the board are entitled to receive reimbursement of actual expenses incurred in the discharge of their duties within the limits of funds appropriated to the board. Each member of the board may also be eligible to receive compensation as provided in section 7E.6.

[C75, 77, 79, 81, §118A.7]
86 Acts, ch 1245, §730
C93, §544B.7
Referred to in §544B.19

544B.8 Examination.

1. The board shall conduct examinations of applicants for certificates of licensure as professional landscape architects at least once each year, or, if there are sufficient applications, at such additional times as the board may deem necessary. The examination shall determine the ability of the applicant to use and understand the theory and practice of landscape architecture and may be divided into such subjects as the board deems necessary. The board shall determine the annual cost of administering the examinations and shall set the fees accordingly. The public members of the board shall be allowed to participate in administrative, clerical, or ministerial functions incident to giving the examination, but shall not determine the content of the examination or determine the correctness of the answers.

2. An applicant who has failed the examination may request in writing information from the board concerning the applicant's examination grade and subject areas or questions which the applicant failed to answer correctly, except that if the board administers a uniform, standardized examination, the board shall only be required to provide the examination grade and such other information concerning the applicant's examination results which are available to the board.

[C75, 77, 79, 81, §118A.8]
C93, §544B.8
2002 Acts, ch 1045, §6
Referred to in §544B.19

544B.9 Applications.

1. Any person may apply for a certificate of licensure or may apply to take an examination for such certification. Applications for licensure shall be on forms prescribed and furnished by the board, shall contain statements made under oath, showing the applicant's education and detail summary of the applicant's pertinent practical landscape architectural work and experience. The board shall not require that a recent photograph of the applicant be attached to the application form. An applicant shall not be ineligible for licensure because of age, citizenship, sex, race, religion, marital status, or national origin. The board may consider the past felony record of an applicant only if the felony conviction relates directly to the practice of landscape architecture. Character references may be required but shall not be obtained from professional landscape architects. An application for examination shall be accompanied by an examination fee in the amount determined by the board. Each applicant for licensure as a professional landscape architect shall meet one of the following requirements:

a. Graduation from a course in landscape architecture in a school, college, or university offering an accredited minimum four-year curriculum in landscape architecture, and a minimum of three years of practical experience in landscape architectural work which in the opinion of the board is of satisfactory character, at least one year of which must be under the supervision of a professional landscape architect or a person who becomes a professional landscape architect within one year after July 1, 2002.

b. Graduation from a nonaccredited course of landscape architecture of a minimum of four years in a school, college, or university and a minimum of four years of practical experience in landscape architectural work which in the opinion of the board is of satisfactory character, at least one year of which must be under the supervision of a professional landscape architect.

c. A minimum of ten years of practical experience in landscape architectural work which in the opinion of the board is of satisfactory character to properly prepare the applicant for the examination.

2. A satisfactorily completed year of study in an accredited course of landscape architecture in an accredited school, college, or university may be accepted in lieu of one year of practical experience.

3. A master's degree from an accredited school, college, or university may be accepted in lieu of one year of practical experience.

4. Any four-year college or university degree may be accepted in lieu of two years of practical experience.

[C75, 77, 79, 81, §118A.9]
C93, §544B.9
2002 Acts, ch 1045, §7; 2012 Acts, ch 1023, §157
Referred to in §544B.19

544B.10 Foreign licensees.

Any applicant who holds a license or certificate to practice landscape architecture issued to the applicant upon examination by a board of examiners in any other state, territory, or possession of the United States, the District of Columbia, or of any foreign country, if the requirements for such license or certificate were, at the time it was issued, in the opinion of the board, equal to or higher than the requirements of this state, may be licensed without further examination.

[C75, 77, 79, 81, §118A.10]
C93, §544B.10
2002 Acts, ch 1045, §8
Referred to in §544B.19

544B.11 Licensure.

When an applicant has complied with the application requirements of this chapter and has passed the examination to the satisfaction of a majority of the licensed members of the board, or is a foreign registrant and has qualified for licensure under this chapter, and has paid the required licensure fee, the secretary shall enroll the applicant's name and address in the

roster of professional landscape architects and issue to the applicant a certificate of licensure, signed by the officers of the board.

[C75, 77, 79, 81, §118A.11]
C93, §544B.11
2002 Acts, ch 1045, §9
Referred to in §544B.19, 544B.20

544B.12 Seal.

Every professional landscape architect shall have a seal, approved by the board, which shall contain the name of the landscape architect and the words "Professional Landscape Architect, State of Iowa", and such other words or figures as the board may deem necessary. All landscape architectural plans and specifications, prepared by such professional landscape architect or under the supervision of such professional landscape architect, shall be dated and bear the legible seal of such professional landscape architect. Nothing contained in this section shall be construed to permit the seal of a professional landscape architect to serve as a substitute for the seal of a licensed architect, a licensed professional engineer, or a licensed professional land surveyor whenever the seal of an architect, engineer, or land surveyor is required under the laws of this state.

[C75, 77, 79, 81, §118A.12]
C93, §544B.12
2002 Acts, ch 1045, §10; 2003 Acts, ch 44, §95; 2007 Acts, ch 126, §97; 2012 Acts, ch 1009, §27; 2017 Acts, ch 131, §7
Referred to in §544B.19

544B.13 Renewals.

Certificates of licensure shall expire in intervals as determined by the board. Professional landscape architects shall renew their certificates of licensure and pay a renewal fee in the manner and amount prescribed by the board. A person who fails to renew a certificate by the expiration date shall be allowed to do so within thirty days following its expiration, but the board may assess a reasonable penalty.

[C75, 77, 79, 81, §118A.13]
C93, §544B.13
2002 Acts, ch 1045, §11; 2012 Acts, ch 1009, §28
Referred to in §544B.19

544B.14 Fees.

1. The board shall set the fees for a certificate of licensure as a professional landscape architect, and for renewal of a certificate. The fee for a certificate of licensure and for renewal of a certificate shall be based upon the administrative costs of sustaining the board which shall include, but shall not be limited to, the costs for:

a. Per diem, expenses, and travel for board members.
b. Office facilities, supplies and equipment.
c. Staff assistance.

2. All fees shall be collected by the secretary, paid to the treasurer of state and deposited in the general fund of the state.

[C75, 77, 79, 81, §118A.14]
90 Acts, ch 1168, §25; 90 Acts, ch 1261, §41
C93, §544B.14
94 Acts, ch 1107, §92; 2002 Acts, ch 1045, §12; 2012 Acts, ch 1023, §157
Referred to in §544B.19

544B.15 Suspension, revocation, or reprimand.

The board may by a five-sevenths vote of the entire board, suspend for a period not exceeding two years, or revoke the certificate of licensure of, or reprimand any licensee who is found guilty of the following acts or offenses:

1. Fraud in procuring a certificate of licensure.
2. Professional incompetency.

3. Knowingly making misleading, deceptive, untrue, or fraudulent representations in the practice of the licensee's profession or engaging in unethical conduct or practice harmful or detrimental to the public. Proof of actual injury need not be established.

4. Habitual intoxication or addiction to the use of drugs.

5. Conviction of a felony related to the profession or occupation of the licensee that would affect the licensee's ability to practice professional landscape architecture. A copy of the record of conviction or plea of guilty is conclusive evidence.

6. Fraud in representations as to skill or ability.

7. Use of untruthful or improbable statements in advertisements.

8. Willful or repeated violations of the provisions of this chapter.

[C75, 77, 79, 81, §118A.15]
85 Acts, ch 195, §14
C93, §544B.15
2002 Acts, ch 1045, §13
Referred to in §272C.3, 272C.4, 544B.19

544B.16 Procedure.

A person may file charges with the board against a professional landscape architect or the board may initiate charges. The charges shall be in writing, sworn to if by a complainant other than the board, and filed with the board. Unless the charges are dismissed by the board as unfounded or trivial, the board may request the department of inspections and appeals to conduct an investigation into the charges. The department of inspections and appeals shall report its findings to the board, and the board shall hold a hearing within sixty days after the date on which the charges are filed. The board shall fix the time and place for such hearing and shall cause a copy of the charges, together with a notice of the time and place fixed for the hearing, to be served on the accused at least thirty days before the date fixed for the hearing. Where personal service cannot be effected, service may be effected by publication. At such hearing, the accused shall have the right to appear personally or by counsel, to cross-examine witnesses against the accused, and to produce evidence and witnesses in defense. After the hearing, the board may suspend or revoke the certificate of licensure. The board may restore the certificate of licensure to any person whose certificate of licensure has been revoked. Application for the restoration of a certificate of licensure shall be made in such manner, form, and content as the board may prescribe.

[C75, 77, 79, 81, §118A.16]
88 Acts, ch 1158, §28
C93, §544B.16
2002 Acts, ch 1045, §14
Referred to in §272C.5, 544B.19

544B.17 Attorney general to assist and witnesses.

The board is entitled to the counsel and services of the attorney general or such assistance as the attorney general may so designate. The board may compel the attendance of witnesses, pay witness fees and mileage, and take testimony and affidavits and administer oaths concerning any matter within its jurisdiction.

[C75, 77, 79, 81, §118A.17]
C93, §544B.17
Referred to in §544B.19

544B.18 Unlawful practice.

Any person who uses the words "landscape architect", "professional landscape architect", or "landscape architecture designer", or any word or any letters or figures indicating or tending to imply that the person using the same is a professional landscape architect, without

having a valid certificate of licensure as a professional landscape architect issued pursuant to this chapter, or who knowingly assists such a person, is guilty of a simple misdemeanor.

[C75, 77, 79, 81, §118A.18]
C93, §544B.18
2002 Acts, ch 1045, §15
Referred to in §544B.19

544B.19 Injunction.

In addition to any other remedies, and on the petition of the board or any person, any person violating any of the provisions of sections 544B.1 to 544B.5 and 544B.7 to 544B.21 may be restrained and permanently enjoined from committing or continuing the violations.

[C75, 77, 79, 81, §118A.19]
C93, §544B.19
98 Acts, ch 1119, §10

544B.20 Scope of chapter.

Nothing contained in this chapter shall be construed:

1. To apply to a professional engineer duly licensed under the laws of this state.
2. To apply to an architect licensed under the laws of this state.
3. To prevent a licensed architect or licensed professional engineer from doing landscape planning and designing.
4. To affect or prevent the practice of land surveying by a professional land surveyor licensed under the laws of this state.
5. To apply to the business conducted in this state by any planner, agriculturist, soil conservationist, horticulturist, tree expert, arborist, forester, nursery or landscape nursery person, gardener, landscape gardener, landscape contractor, garden or lawn caretaker, tiling contractor, grader or cultivator of land, golf course designer or contractor, or similar business. However, such person shall not use the designation landscape architect or any title or device indicating or representing that such person is a professional landscape architect or is practicing landscape architecture unless such person is licensed under the provisions of section 544B.11.

[C75, 77, 79, 81, §118A.20]
C93, §544B.20
2002 Acts, ch 1045, §16; 2007 Acts, ch 126, §98; 2012 Acts, ch 1009, §29; 2017 Acts, ch 131, §7
Referred to in §544B.19

544B.21 Examination not required.

Any person who is registered pursuant to this chapter on July 1, 2002, shall be issued a license to practice as a professional landscape architect.

[C75, 77, 79, 81, §118A.21]
C93, §544B.21
2002 Acts, ch 1045, §17
Referred to in §544B.19

CHAPTER 544C

REGISTERED INTERIOR DESIGNERS

Referred to in §546.10, 669.14

544C.1	Definitions.	544C.9	Revocation, suspension, and nonissuance of registration.
544C.2	Establishment of interior design examining board.	544C.10	Unlawful use of title of "registered interior designer" — violations — penalty — consent agreement.
544C.3	Duties of the board.		
544C.4	Expenses — compensation.		
544C.5	Qualifications for registration.		
544C.6	Reciprocal registration.	544C.11	Injunction.
544C.7	Registration issuance.	544C.12	Scope of chapter.
544C.8	Continuing education.	544C.13	Transition provisions.

544C.1 Definitions.

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

1. *"Board"* means the interior design examining board established pursuant to this chapter.

2. *"Bureau"* means the professional licensing and regulation bureau of the banking division of the department of commerce.

3. *"Interior design"* means the design of interior spaces including the preparation of documents relating to space planning, finish materials, furnishings, fixtures, and equipment, and the preparation of documents relating to interior construction that does not affect the mechanical or structural systems of a building. *"Interior design"* does not include services that constitute the practice of architecture or the practice of professional engineering.

4. *"Registered interior designer"* means a person registered under this chapter.

2005 Acts, ch 104, §2; 2006 Acts, ch 1177, §45

544C.2 Establishment of interior design examining board.

1. An interior design examining board is established within the bureau. The board consists of seven members: five members who are interior designers who are registered under this chapter and who have been in the active practice of interior design for not less than five years, the last two of which shall have been in Iowa; and two members who are not registered under this chapter and who shall represent the general public. Members shall be appointed by the governor subject to confirmation by the senate.

2. Professional associations or societies composed of interior designers may recommend the names of potential board members to the governor, but the governor is not bound by the recommendations. A board member is not required to be a member of any professional association or society composed of registered interior designers.

3. Appointments shall be for three-year terms and shall commence and end as provided in section 69.19. Vacancies shall be filled for the unexpired term by appointment of the governor and shall require senate confirmation. Members shall serve no more than three terms or nine years, whichever is less.

2005 Acts, ch 104, §3; 2006 Acts, ch 1177, §46

Confirmation, see §2.32

544C.3 Duties of the board.

1. The duties of the board shall include, but are not limited to, all of the following:

a. Administering and enforcing this chapter.

b. Establishing requirements for the examination, education, and practical training of applicants for registration.

c. Holding meetings each year for the purpose of transacting business pertaining to the affairs of the board. Action at a meeting shall not be taken without the affirmative votes of a majority of members of the board.

d. Adopting rules under chapter 17A necessary for the proper performance of its duties. The rules shall include provisions addressing conflicts of interest and full disclosure, including sources of compensation.

e. Establishing fees for registration as a registered interior designer, renewal of registration, reinstatement of registration, and for other activities of the board pertaining to its duties. The fees shall be sufficient to defray the costs of administering this chapter, and shall be deposited in the general fund of the state.

f. Maintaining records, which are open to public inspection at all reasonable times, of its proceedings relating to the issuance, refusal, renewal, suspension, and revocation of registration. The records shall also contain a roster indicating the name, place of business and residence, and the date and registration number of every registrant.

2. The administrator of the bureau shall provide staff to assist the board in the implementation of this chapter.

2005 Acts, ch 104, §4; 2006 Acts, ch 1177, §47; 2012 Acts, ch 1023, §157

544C.4 Expenses — compensation.

The members of the board are entitled to be reimbursed for the actual expenses incurred in the performance of their duties within the limits of the funds appropriated to the board. Each member of the board may also be eligible to receive compensation as provided in section 7E.6.

2005 Acts, ch 104, §5

544C.5 Qualifications for registration.

Each applicant for registration must meet the interior design education and practical training requirements adopted by rule by the board, and have passed an examination prescribed by the board that is task-oriented, focused on public safety, and validated by a recognized testing agency. The bureau shall register an individual who submits an application to the board on the form and in the manner prescribed by the board as a registered interior designer if the individual satisfies the following requirements:

1. Submits written proof that the individual has successfully passed the national council for interior design qualification examination, or its equivalent.

2. Has completed any of the following:

a. Four years of interior design education plus two years of full-time work experience in interior design.

b. Three years of interior design education plus three years of full-time work experience in interior design.

c. Two years of interior design education plus four years of full-time work experience in interior design.

3. Submits the required registration fee to the board.

2005 Acts, ch 104, §6; 2006 Acts, ch 1177, §48

Referred to in §544C.7, 544C.13

544C.6 Reciprocal registration.

The board may also grant registration by reciprocity. An applicant applying to the board for registration by reciprocity shall furnish satisfactory evidence that the applicant meets both of the following requirements:

1. Holds a valid registration or license issued by another registration authority recognized by the board, where the qualifications for registration or licensure were substantially equivalent to those prescribed in this state on the date of original registration or licensure with the other registration authority.

2. Holds a current certificate number issued by the national council for interior design qualification.

2005 Acts, ch 104, §7

Referred to in §544C.7

544C.7 Registration issuance.

When an applicant has complied with the qualifications for registration in section 544C.5 or 544C.6 to the satisfaction of a majority of the members of the board and has paid the fees prescribed by the board, the board shall enroll the applicant's name and address in the roster of registered interior designers and issue to the applicant a registration certificate, signed by

the officers of the board. The certificate shall entitle the applicant to use the title "registered interior designer" in this state.

2005 Acts, ch 104, §8

544C.8 Continuing education.

A registered interior designer shall, at the time of application for renewal of a certificate of registration, submit proof of completion of continuing education requirements established by rules adopted by the board.

2005 Acts, ch 104, §9

544C.9 Revocation, suspension, and nonissuance of registration.

1. The board may revoke, suspend, or refuse to issue or renew the registration of any person upon a finding of any of the following:

a. Fraud in obtaining or renewing a certificate of registration.

b. Professional incompetency.

c. Knowingly making misleading, deceptive, untrue, or fraudulent representations in the practice of the registrant's profession or engaging in unethical conduct or practice harmful or detrimental to the public. Proof of actual injury need not be established.

d. Conviction of a felony related to the profession or occupation of the registrant. A copy of the record of conviction or plea of guilty shall be conclusive evidence of the conviction.

e. Unlawful use of the title of "registered interior designer".

f. Willful or repeated violations of the provisions of this chapter or a rule adopted under this chapter.

2. Any person may appeal a finding of the board within thirty days of the date of notification of action. Upon appeal, the board shall schedule a hearing in accordance with chapter 17A.

2005 Acts, ch 104, §10

544C.10 Unlawful use of title of "registered interior designer" — violations — penalty — consent agreement.

1. It is unlawful for a person to use the title, or aid or abet a person in using the title, of "registered interior designer" or any title or device indicating that the person is a registered interior designer unless the person has been issued a certificate of registration as provided in this chapter. This section does not prohibit the provision of interior design services, or the use of the terms "interior design" or "interior designer", by an architect or by a person who is not registered as an interior designer.

2. A person who violates this section is guilty of a simple misdemeanor. The board, in its discretion and in lieu of prosecuting a first offense under this section, may enter into a consent agreement with a violator, or with a person guilty of aiding or abetting a violator, which acknowledges the violation and the violator's agreement to refrain from any further violations.

2005 Acts, ch 104, §11

544C.11 Injunction.

In addition to any other remedies, and on the petition of the board, any person violating this chapter may be restrained and permanently enjoined from committing or continuing the violations.

2005 Acts, ch 104, §12

544C.12 Scope of chapter.

This chapter does not apply to the following:

1. A person licensed to practice architecture pursuant to the laws of this state.

2. A person licensed as a professional engineer pursuant to the laws of this state.

3. A person who performs the following services: selling, selecting, or assisting in selecting personal property used in connection with furnishings of interior spaces or fixtures such as, but not limited to, furnishings, decorative accessories, furniture, paint,

wall coverings, window treatments, floor coverings, cabinets, countertops, surface-mounted lighting, or decorative materials for a retail sale; or installing or coordinating installations as a part of the prospective retail sale, or providing computer-aided or other drawings for the purpose of retail sale if the drawings are used for material listed for retail sale; and who does not represent that the person is a registered interior designer.

2005 Acts, ch 104, §13

544C.13 Transition provisions.

For a period of two years from July 1, 2005, the board may issue a certificate as a registered interior designer to a person residing in Iowa who does not meet the examination requirements specified in section 544C.5, if the person submits evidence to the board demonstrating both of the following:

1. A minimum of two years of interior design education and a combined total of six years of interior design education and experience that is acceptable to the board.
2. Successful completion of section 1 of the national council for interior design qualification examination relating to life safety codes and barrier-free requirements.

2005 Acts, ch 104, §14

CHAPTER 545

RESERVED

SUBTITLE 5

REGULATION OF COMMERCIAL ENTERPRISES

CHAPTER 546

DEPARTMENT OF COMMERCE

Referred to in §669.14

546.1 Definitions.
546.2 Department of commerce.
546.3 Banking division.
546.4 Credit union division.
546.5 Savings and loan division. Repealed by 2007 Acts, ch 88, §50.
546.6 Repealed by 87 Acts, ch 234, §440.
546.7 Utilities division.
546.8 Insurance division.
546.9 Alcoholic beverages division.
546.10 Professional licensing and regulation bureau — superintendent of banking.
546.11 Repealed by 94 Acts, ch 1107, §99.
546.12 Department of commerce revolving fund.

546.1 Definitions.

When used in this chapter, unless the context otherwise requires:

1. *"Department"* means the department of commerce.
2. *"Director"* means the director of the department of commerce.

86 Acts, ch 1245, §701

546.2 Department of commerce.

1. A department of commerce is created to coordinate and administer the various regulatory, service, and licensing functions of the state relating to the conducting of business or commerce in the state.

2. The chief administrative officer of the department is the director. The director shall be appointed by the governor from among those individuals who serve as heads of the divisions within the department. A division head appointed to be the director shall fulfill the responsibilities and duties of the director in addition to the individual's responsibilities and duties as the head of a division. The director shall serve at the pleasure of the governor. If the office of director becomes vacant, the vacancy shall be filled in the same manner as the original appointment was made.

3. The department is administratively organized into the following divisions:

a. Banking.
b. Credit union.
c. Utilities.
d. Insurance.
e. Alcoholic beverages.

4. The director shall have the following responsibilities:

a. To establish general operating policies for the department to provide general uniformity among the divisions while providing for necessary flexibility.

b. To assemble a department structure and strategic plan that will provide optimal decentralization of responsibilities and authorities with sufficient coordination for appropriate growth and development.

c. To coordinate personnel services and shared administrative support services to assure maximum support and assistance to the divisions.

d. To coordinate the development of an annual budget which quantifies the operational plans of the divisions.

e. To identify and, with the chief administrative officers of each division, facilitate the opportunities for consolidation and efficiencies within the department.

f. To maintain monitoring and control systems, procedures, and policies which will permit

each level of responsibility to quickly and precisely measure its results with its plan and standards.

5. The chief administrative officer of each division shall have the following responsibilities:

a. To make rules pursuant to chapter 17A except to the extent that rulemaking authority is vested in a policymaking commission.

b. To hire, allocate, develop, and supervise employees of the division necessary to perform duties assigned to the division by law.

c. To supervise and direct personnel and other resources to accomplish duties assigned to the division by law.

d. To establish fees assessed to the regulated industry except to the extent this power is vested in a policymaking commission.

6. Each division is responsible for policymaking and enforcement duties assigned to the division under the law. Except as provided in section 546.10, subsection 3:

a. Each division shall adopt rules pursuant to chapter 17A to implement its duties.

b. Decisions by the divisions are final agency actions pursuant to chapter 17A.

86 Acts, ch 1245, §702; 87 Acts, ch 234, §438; 93 Acts, ch 175, §20; 2000 Acts, ch 1219, §17; 2006 Acts, ch 1177, §49; 2007 Acts, ch 88, §44

Referred to in §7E.5

546.3 Banking division.

1. The banking division shall regulate and supervise banks under chapter 524, debt management licensees under chapter 533A, money services under chapter 533C, delayed deposit services under chapter 533D, mortgage bankers and brokers under chapter 535B, regulated loan companies under chapter 536, industrial loan companies under chapter 536A, real estate appraisers under chapter 543D, and appraisal management companies under chapter 543E, and shall perform other duties assigned to the division by law. The division is headed by the superintendent of banking who is appointed pursuant to section 524.201. The state banking council shall render advice within the division when requested by the superintendent.

2. The banking division shall administer and manage the professional licensing and regulation bureau within the division. The division shall separately account for funds of the bureau. However, the division may allocate costs for administrative, technical, support, and other shared services across the entire division.

86 Acts, ch 1245, §703; 91 Acts, ch 63, §5; 2004 Acts, ch 1141, §32; 2006 Acts, ch 1177, §50; 2007 Acts, ch 88, §45; 2012 Acts, ch 1017, §151; 2016 Acts, ch 1124, §29, 32

546.4 Credit union division.

1. The credit union division created by section 533.103 shall regulate and supervise credit unions under chapter 533.

2. The division is headed by the superintendent of credit unions who shall be appointed pursuant to section 533.104.

3. The credit union review board shall perform duties within the division as prescribed in chapter 533.

86 Acts, ch 1245, §704; 2007 Acts, ch 174, §96

546.5 Savings and loan division. Repealed by 2007 Acts, ch 88, §50.

546.6 Repealed by 87 Acts, ch 234, §440.

546.7 Utilities division.

The utilities division shall regulate and supervise public utilities operating in the state. The division shall enforce and implement chapters 476, 476A, 477C, 478, 479, 479A, and 479B and shall perform other duties assigned to it by law. The division is headed by the administrator of public utilities who shall be appointed by the governor pursuant to section 474.1.

86 Acts, ch 1245, §707; 91 Acts, ch 97, §58; 92 Acts, ch 1163, §105; 95 Acts, ch 192, §60

546.8 Insurance division.

The insurance division shall regulate and supervise the conducting of the business of insurance in the state. The division shall enforce and implement Title XIII, subtitle 1, insurance and related regulation, and chapter 502, and shall perform other duties assigned to the division by law. The division is headed by the commissioner of insurance who shall be appointed pursuant to section 505.2.

86 Acts, ch 1245, §708; 93 Acts, ch 60, §24; 94 Acts, ch 1023, §115

546.9 Alcoholic beverages division.

The alcoholic beverages division shall enforce and implement chapter 123. The division is headed by the administrator of alcoholic beverages who shall be appointed pursuant to section 123.7. The alcoholic beverages commission shall perform duties within the division pursuant to chapter 123.

86 Acts, ch 1245, §709; 90 Acts, ch 1247, §17; 94 Acts, ch 1107, §93

546.10 Professional licensing and regulation bureau — superintendent of banking.

1. The professional licensing and regulation bureau of the banking division shall administer and coordinate the licensing and regulation of several professions by bringing together the following licensing boards:

a. The engineering and land surveying examining board created pursuant to chapter 542B.

b. The Iowa accountancy examining board created pursuant to chapter 542.

c. The real estate commission created pursuant to chapter 543B.

d. The architectural examining board created pursuant to chapter 544A.

e. The landscape architectural examining board created pursuant to chapter 544B.

f. The interior design examining board created pursuant to chapter 544C.

2. The bureau is headed by the administrator of professional licensing and regulation who shall be the superintendent of banking. The administrator shall appoint and supervise staff and shall coordinate activities for the licensing boards within the bureau.

3. *a.* The licensing and regulation examining boards included in the bureau pursuant to subsection 1 retain the powers granted them pursuant to the chapters in which they are created, except for budgetary and personnel matters which shall be handled by the administrator. Each licensing board shall adopt rules pursuant to chapter 17A. Decisions by a licensing board are final agency actions for purposes of chapter 17A.

b. Notwithstanding subsection 5, eighty-five percent of the funds received annually resulting from an increase in licensing fees implemented on or after April 1, 2002, by a licensing board or commission listed in subsection 1, is appropriated to the professional licensing and regulation bureau to be allocated to the board or commission for the fiscal year beginning July 1, 2002, and succeeding fiscal years, for purposes related to the duties of the board or commission, including but not limited to additional full-time equivalent positions. In addition, notwithstanding subsection 5, twenty-five dollars from each real estate salesperson's license fee and each broker's license fee received pursuant to section 543B.14 is appropriated to the professional licensing and regulation bureau for the purpose of hiring and compensating a real estate education director and regulatory compliance personnel. The director of the department of administrative services shall draw warrants upon the treasurer of state from the funds appropriated as provided in this section and shall make the funds available to the professional licensing and regulation bureau on a monthly basis during each fiscal year.

4. The professional licensing and regulation bureau of the banking division of the department of commerce may expend additional funds, including funds for additional personnel, if those additional expenditures are directly the cause of actual examination expenses exceeding funds budgeted for examinations. Before the bureau expends or encumbers an amount in excess of the funds budgeted for examinations, the director of the department of management shall approve the expenditure or encumbrance. Before approval is given, the director of the department of management shall determine that the examination expenses exceed the funds budgeted by the general assembly to the bureau and the bureau

does not have other funds from which the expenses can be paid. Upon approval of the director of the department of management, the bureau may expend and encumber funds for excess examination expenses. The amounts necessary to fund the examination expenses shall be collected as fees from additional examination applicants and shall be treated as repayment receipts as defined in section 8.2, subsection 8.

5. Fees collected under chapters 542, 542B, 543B, 544A, 544B, and 544C shall be paid to the treasurer of state and credited to the general fund of the state. All expenses required in the discharge of the duties and responsibilities imposed upon the professional licensing and regulation bureau of the banking division of the department of commerce, the administrator, and the licensing boards by the laws of this state shall be paid from moneys appropriated by the general assembly for those purposes. All fees deposited into the general fund of the state, as provided in this subsection, shall be subject to the requirements of section 8.60.

6. The licensing boards included in the bureau pursuant to subsection 1 may refuse to issue or renew a license to practice a profession to any person otherwise qualified upon any of the grounds for which a license may be revoked or suspended or a licensee may otherwise be disciplined, or upon any other grounds set out in the chapter governing the respective board.

7. The licensing boards included in the bureau pursuant to subsection 1 may suspend, revoke, or refuse to issue or renew a license, or may discipline a licensee based upon a suspension, revocation, or other disciplinary action taken by a licensing authority in this or another state, territory, or country. For purposes of this subsection, "*disciplinary action*" includes the voluntary surrender of a license to resolve a pending disciplinary investigation or proceeding. A certified copy of the record or order of suspension, revocation, voluntary surrender, or other disciplinary action is prima facie evidence of such fact.

8. Notwithstanding any other provision of law to the contrary, the licensing boards included within the bureau pursuant to subsection 1 may by rule establish the conditions under which an individual licensed in a different jurisdiction may be issued a reciprocal or comity license, if, in the board's discretion, the applicant's qualifications for licensure are substantially equivalent to those required of applicants for initial licensure in this state.

9. Notwithstanding section 272C.6, the licensing boards included within the bureau pursuant to subsection 1 may by rule establish the conditions under which the board may supply to a licensee who is the subject of a disciplinary complaint or investigation, prior to the initiation of a disciplinary proceeding, all or such parts of a disciplinary complaint, disciplinary or investigatory file, report, or other information, as the board in its sole discretion believes would aid the investigation or resolution of the matter.

10. Notwithstanding section 17A.6, subsection 2, the licensing boards included within the bureau pursuant to subsection 1 may adopt standards by reference to another publication without providing a copy of the publication to the administrative rules coordinator if the publication containing the standards is readily accessible on the internet at no cost and the internet site at which the publication may be found is included in the administrative rules that adopt the standard.

11. Renewal periods for all licenses and certificates of the licensing boards included within the bureau pursuant to subsection 1 may be annual or multiyear, as provided by rule.

12. A quorum of a licensing board included within the bureau pursuant to subsection 1 shall be a majority of the members of the board and action may be taken upon a majority vote of board members present at a meeting who are not disqualified.

86 Acts, ch 1245, §710; 88 Acts, ch 1274, §41; 90 Acts, ch 1247, §18; 90 Acts, ch 1261, §42; 91 Acts, ch 260, §1246; 93 Acts, ch 131, §24; 94 Acts, ch 1107, §94, 95; 94 Acts, ch 1187, §22; 2001 Acts, ch 55, §33, 34, 38; 2002 Acts, 2nd Ex, ch 1003, §33, 35; 2003 Acts, ch 145, §286; 2005 Acts, ch 19, §115; 2006 Acts, ch 1030, §66; 2006 Acts, ch 1177, §52; 2007 Acts, ch 170, §7; 2010 Acts, ch 1055, §3; 2011 Acts, ch 34, §131; 2012 Acts, ch 1023, §157; 2013 Acts, ch 93, §2; 2016 Acts, ch 1124, §30 – 32

Referred to in §543D.5, 544A.8, 546.2

546.11 Repealed by 94 Acts, ch 1107, §99.

546.12 Department of commerce revolving fund.

1. A department of commerce revolving fund is created in the state treasury. The fund shall consist of moneys collected by the banking division; credit union division; utilities division, including moneys collected on behalf of the office of consumer advocate established in section 475A.3; and the insurance division of the department; and deposited into an account for that division or office within the fund on a monthly basis. Except as otherwise provided by statute, all costs for operating the office of consumer advocate and the banking division, the credit union division, the utilities division, and the insurance division of the department shall be paid from the division's accounts within the fund, subject to appropriation by the general assembly. The insurance division shall administer the fund and all other divisions shall work with the insurance division to make sure the fund is properly accounted and reported to the department of management and the department of administrative services. The divisions shall provide quarterly reports to the department of management and the legislative services agency on revenues billed and collected and expenditures from the fund in a format as determined by the department of management in consultation with the legislative services agency.

2. To meet cash flow needs for the office of consumer advocate and the banking division, credit union division, utilities division, or the insurance division of the department, the administrative head of that division or office may temporarily use funds from the general fund of the state to pay expenses in excess of moneys available in the revolving fund for that division or office if those additional expenditures are fully reimbursable and the division or office reimburses the general fund of the state and ensures all moneys are repaid in full by the close of the fiscal year. Notwithstanding any provision to the contrary, the divisions shall, to the fullest extent possible, make an estimate of billings and make such billings as early as possible in each fiscal year, so that the need for the use of general fund moneys is minimized to the lowest extent possible. Periodic billings shall be deemed sufficient to satisfy this requirement. Because any general fund moneys used shall be fully reimbursed, such temporary use of funds from the general fund of the state shall not constitute an appropriation for purposes of calculating the state general fund expenditure limitation pursuant to section 8.54.

3. Section 8.33 does not apply to any moneys credited or appropriated to the revolving fund from any other fund.

4. The establishment of the revolving fund pursuant to this section shall not be interpreted in any manner to compromise or impact the accountability of, or limit authority with respect to, an agency or entity under state law. Any provision applicable to, or responsibility of, a division or office collecting moneys for deposit into the fund established pursuant to this section shall not be altered or impacted by the existence of the fund and shall remain applicable to the same extent as if the division or office were receiving moneys pursuant to a general fund appropriation. The divisions of the department of commerce shall comply with directions by the governor to executive branch departments regarding restrictions on out-of-state travel, hiring justifications, association memberships, equipment purchases, consulting contracts, and any other expenditure efficiencies that the governor deems appropriate.

2009 Acts, ch 181, §108; 2011 Acts, ch 127, §51, 89

Referred to in §475A.3, 476.10, 476.51, 476.87, 476.95B, 476.103, 476A.14, 478.4, 479.16, 479A.9, 479B.12, 505.7, 524.207, 533.111, 533A.14, 543D.6, 543E.10

CHAPTER 546A

UNUSED PROPERTY MARKETS — REGULATION OF SALES

Referred to in §669.14

546A.1	Definitions.	546A.3	Receipts.
546A.2	Sales prohibited.	546A.4	Penalties.

546A.1 Definitions.

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

1. *"Baby food"* or *"infant formula"* means any food manufactured, packaged, and labeled specifically for sale for consumption by a child under two years of age.

2. *"Cosmetic"* means any of the following, but does not include soap:

a. An article intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body or any part of a human body for cleaning, beautifying, promoting attractiveness, or altering the appearance.

b. An article intended for use as a component of an article defined in paragraph *"a"*.

3. *"Medical device"* means an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, tool, or other similar or related article, including any component, part, or accessory, to which either of the following applies:

a. The article is required under federal law to bear the label "Caution: Federal law requires dispensing by or on the order of a physician".

b. The article is defined by federal law as a medical device, and is intended for use in one of the following:

(1) The diagnosis of disease or other conditions.

(2) The cure, mitigation, treatment, or prevention of disease in humans or other animals.

(3) To affect the structure or any function of the body of man or other animals, but none of its principal intended purposes are achieved through chemical action within or on the body of a human or other animal nor is achievement of any of its principal intended purposes dependent upon the article being metabolized.

4. *"New and unused property"* means tangible personal property that was acquired by the unused property merchant directly from the producer, manufacturer, wholesaler, or retailer in the ordinary course of business which has never been used since its production or manufacture or which is in its original and unopened package or container, if such personal property was so packaged when originally produced or manufactured.

5. *"Nonprescription drug"* means any nonnarcotic medicine, drug, or other substance that may be sold without a prescription or medication order, and is prepackaged for use by the consumer, prepared by the manufacturer or producer for use by the consumer, and properly labeled and unadulterated, pursuant to the requirements of state and federal laws. *"Nonprescription drug"* does not include herbal products, dietary supplements, botanical extracts, or vitamins.

6. *"Personal care product"* means an item used in essential activities of daily living which may include but are not limited to bathing, personal hygiene, dressing, and grooming.

7. *a. "Unused property market"* means any of the following:

(1) An event where two or more persons offer personal property for sale or exchange, for which a fee is charged for sale or exchange of personal property, or at which a fee is charged to prospective buyers for admission to the area at which personal property is offered or displayed for sale or exchange, provided that the event is held more than six times in any twelve-month period.

(2) Any similar event that involves a series of sales sufficient in number, scope, and character to constitute a regular course of business, regardless of where the event is held, and regardless of the terminology applied to such event, including but not limited to "swap meet", "indoor swap meet", "flea market", or other similar terms.

b. "Unused property market" shall not mean any of the following:

(1) An event that is organized for the exclusive benefit of any community chest, fund,

foundation, association, or corporation organized and operated for religious, educational, or charitable purposes, provided that no part of any admission fee or parking fee charged vendors or prospective purchasers or the gross receipts or net earnings from the sale or exchange of personal property, whether in the form of a percentage of the receipts or earnings, as salary, or otherwise, inures to the benefit of any private shareholder or person participating in the organization or conduct of the event.

(2) An event where all of the personal property offered for sale or displayed is new, and all persons selling, exchanging, or offering or displaying personal property for sale or exchange are manufacturers or authorized representatives of manufacturers or distributors.

8. *"Unused property merchant"* means any person, other than a vendor or merchant with an established retail store in the county where the unused property market event occurs, who transports an inventory of goods to a building, vacant lot, or other unused property market location and who, at that location, displays the goods for sale and sells the goods at retail or offers the goods for sale at retail. *"Unused property merchant"* does not mean a merchant as defined in section 554.2104.

2004 Acts, ch 1053, §1; 2005 Acts, ch 3, §92

546A.2 Sales prohibited.

1. An unused property merchant shall not offer for sale or knowingly permit the sale at an unused property market of baby food, infant formula, cosmetics, or personal care products, or any nonprescription drug or medical device.

2. This section shall not apply to a person who possesses and keeps available for public inspection authentic written authorization identifying that person as an authorized representative of the manufacturer or distributor of such product. Authorization that is false, fraudulent, or fraudulently obtained shall not satisfy the requirement under this subsection.

2004 Acts, ch 1053, §2

546A.3 Receipts.

1. An unused property merchant shall maintain receipts for the purchase of new and unused property from the producer, manufacturer, wholesaler, or retailer. A receipt shall include all of the following:

a. The date of the purchase.

b. The name and address of the person from whom the new or unused property was acquired.

c. An identification and description of the new and unused property acquired.

d. The price paid for such new and unused property.

e. The signature of the seller and buyer of the new and unused property.

2. An unused property merchant shall maintain receipts required under subsection 1 for two years.

3. An unused property merchant shall not knowingly do either of the following:

a. Falsify, obliterate, or destroy receipts required under subsection 1. Disposal or destruction of receipts after the two-year retention period required by subsection 2 shall not violate this paragraph.

b. Refuse or fail upon request and reasonable notice to make receipts required under subsection 1 available for inspection.

4. This section shall not apply to any of the following:

a. The sale of a motor vehicle or trailer that is required to be registered or is subject to the certificate of title laws of this state.

b. The sale of wood for fuel, ice, or livestock.

c. Business conducted during an industry or association trade show.

d. New and unused property that was not recently produced or manufactured, and the style, packaging, or material of the property clearly indicates that it was not recently produced or manufactured.

e. A person who sells by sample, catalog, or brochure for future delivery.

f. The sale of arts or crafts or other merchandise by a person who produces such arts or crafts or merchandise or by a person acting on such person's behalf.

g. A person who makes a sales presentation pursuant to a prior, individualized invitation issued to the consumer by the owner or legal occupant of the premises.

2004 Acts, ch 1053, §3

546A.4 Penalties.

A person who violates any provision of this chapter commits:

1. A simple misdemeanor for a first offense.
2. A serious misdemeanor for a second offense.
3. An aggravated misdemeanor for a third or subsequent offense.

2004 Acts, ch 1053, §4; 2005 Acts, ch 3, §93

CHAPTER 546B

VETERANS BENEFITS ASSISTANCE

Referred to in §669.14

Former chapter 546B repealed by 2018 Acts, ch 1115, §7

546B.1 Definitions.
546B.2 Advertising or promotion disclosures.
546B.3 Prohibited acts or practices.
546B.4 Inapplicability of chapter.
546B.5 Unfair practice — penalties.

546B.1 Definitions.

When used in this chapter, unless the context otherwise requires:

1. *"Compensation"* means money, property, or anything else of value, which includes but is not limited to exclusive arrangements or agreements for the provision of services or the purchase of products.
2. *"Person"* includes, where applicable, natural persons, corporations, trusts, unincorporated associations, and partnerships.
3. *"Trade or commerce"* includes the marketing or sale of assets, goods, or services, or any commerce directly or indirectly affecting the people of this state.
4. *"Veteran"* means as defined in section 35.1.
5. *"Veterans' benefit matter"* means any preparation, presentation, or prosecution of a claim affecting a person who has filed or has expressed an intention to file an application for determination of payment, service, commodity, function, or status, entitlement to which is determined under laws administered by the United States department of veterans affairs or the Iowa department of veterans affairs pertaining to veterans and their dependents or survivors.

2018 Acts, ch 1115, §2
Former §546B.1 repealed by 2018 Acts, ch 1115, §7
NEW section

546B.2 Advertising or promotion disclosures.

1. A person who advertises or promotes any event, presentation, seminar, workshop, or other public gathering regarding veterans' benefits or entitlements shall include a disclosure as provided in this section and must disseminate the disclosure, both orally and in writing, at the beginning of the event, presentation, seminar, workshop, or other public gathering. The written disclosure must be in the same type size and font as the term "veteran" or any variation of that term as used in the advertisement or promotional materials for the event, presentation, seminar, workshop, or public gathering.
2. The disclosure required by this section shall be in the following form:

> This event is not sponsored by, or affiliated with, the United States Department of Veterans Affairs, the Iowa Department of Veterans Affairs, or any other congressionally chartered or recognized organization of honorably discharged members of

the Armed Forces of the United States or any of their auxiliaries. Products or services that may be discussed at this event are not necessarily endorsed by those organizations. You may qualify for benefits other than or in addition to the benefits discussed at this event.

3. The requirement to provide a disclosure as provided in this section shall not apply under any of the following circumstances:

a. The United States department of veterans affairs, the Iowa department of veterans affairs, or any other congressionally chartered or recognized organization of honorably discharged members of the armed forces of the United States or any of their auxiliaries have granted written permission to the person for the use of its name, symbol, or insignia to advertise or promote any event, presentation, seminar, workshop, or other public gathering regarding veterans' benefits or entitlements.

b. The event, presentation, seminar, workshop, or public gathering is part of an accredited continuing legal education course.

2018 Acts, ch 1115, §3
Former §546B.2 repealed by 2018 Acts, ch 1115, §7
NEW section

546B.3 Prohibited acts or practices.

A person who commits any of the following acts or practices commits a violation of this chapter:

1. Receives compensation for advising or assisting another person with a veterans' benefit matter, except as permitted under Tit. 38 of the United States Code.

2. Uses financial or other personal information gathered in order to prepare documents for, or otherwise represent the interests of, another in a veterans' benefit matter for purposes of trade or commerce, except as permitted under Tit. 38 of the United States Code.

3. Receives compensation for referring another person to a person accredited by the United States department of veterans affairs.

4. Represents, either directly or by implication, and either orally or in writing, that the receipt of a certain level of veterans' benefits is guaranteed.

5. Fails to provide a disclosure required to be provided pursuant to section 546B.2.

2018 Acts, ch 1115, §4
Former §546B.3 repealed by 2018 Acts, ch 1115, §7
NEW section

546B.4 Inapplicability of chapter.

This chapter does not apply to officers, employees, or volunteers of the state, or of any county, city, or other political subdivision, or of a federal agency of the United States, who are acting in their official capacity.

2018 Acts, ch 1115, §5
NEW section

546B.5 Unfair practice — penalties.

A violation of this chapter is a violation of section 714.16, subsection 2, paragraph "*a*". Any civil penalty recovered for a violation of this chapter shall be deposited in the veterans trust fund created in section 35A.13.

2018 Acts, ch 1115, §6
NEW section

CHAPTER 547

TRADE NAMES

Referred to in §446.16, 488.905, 543C.2, 669.14

547.1	Use of trade name — verified statement required.	547.4	Penalty.
547.2	Change in statement.	547.5	"Offense" defined.
547.3	Fee for recording.	547.6	Repealed by 91 Acts, ch 4, §1.

547.1 Use of trade name — verified statement required.

A person shall not engage in or conduct a business under a trade name, or an assumed name of a character other than the true surname of each person owning or having an interest in the business, unless the person first records with the county recorder of the county in which the business is to be conducted a verified statement showing the name, post office address, and residence address of each person owning or having an interest in the business, and the address where the business is to be conducted. However, this provision does not apply to any person organized or incorporated in this state as a domestic entity or authorized to do business in this state as a foreign entity if the person is a limited partnership under chapter 488; a limited liability company under chapter 489; a corporation under chapter 490; a professional corporation under chapter 496C; a cooperative or cooperative association under chapter 497, 498, 499, 501, or 501A; or a nonprofit corporation under chapter 504.

[C27, 31, 35, §9866-a1; C39, §**9866.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §547.1]

89 Acts, ch 102, §3; 96 Acts, ch 1170, §23; 2004 Acts, ch 1021, §119; 2004 Acts, ch 1049, §191; 2005 Acts, ch 4, §2; 2006 Acts, ch 1030, §67; 2008 Acts, ch 1162, §152, 154, 155; 2015 Acts, ch 29, §86

547.2 Change in statement.

A like verified statement shall be recorded of any change in ownership of the business, or persons interested in the business and the original owners are liable for all obligations until the certificate of change is recorded.

[C27, 31, 35, §9866-a2; C39, §**9866.2;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §547.2]

89 Acts, ch 102, §4

547.3 Fee for recording.

The county recorder shall collect fees in the amount specified in section 331.604 for each verified statement recorded under this chapter. The recorder may return the original instrument to the sender or dispose of the instrument if the sender does not wish to have the instrument returned. An instrument filed in the recorder's office before July 1, 1990, may be returned to the sender or disposed of if the sender does not wish to have the instrument returned and if there is an official copy of the instrument in the recorder's office.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §547.3]

85 Acts, ch 159, §4; 89 Acts, ch 102, §5; 90 Acts, ch 1021, §4; 2009 Acts, ch 27, §31

547.4 Penalty.

Any person violating the provisions of this chapter shall be guilty of a simple misdemeanor.

[C27, 31, 35, §9866-a3; C39, §**9866.3;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §547.4]

547.5 "Offense" defined.

Each day that any person or persons violate the provisions of this chapter shall be deemed to be a separate and distinct offense.

[C27, 31, 35, §9866-a4; C39, §**9866.4;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §547.5]

547.6 Repealed by 91 Acts, ch 4, §1.

CHAPTER 547A

MISUSE OF FINANCIAL INSTITUTION OR INSURER NAME

Referred to in §669.14

547A.1 Definition.
547A.2 Misuse of name — penalty.

547A.1 Definition.

As used in this chapter, unless the context otherwise requires, "*financial institution*" means the same as defined in section 527.2, and "*insurer*" means an insurer organized under Title XIII, subtitle 1, or similar laws of any other state or the United States.

2005 Acts, ch 22, §1

547A.2 Misuse of name — penalty.

1. A person who uses the name, trademark, logo, or symbol of a financial institution or insurer in connection with the sale, offering for sale, distribution, or advertising of any product or service without the consent of the financial institution or insurer, if such use is misleading or deceptive as to the source of origin or sponsorship of, or the affiliation with, the product or service, is guilty of a serious misdemeanor.

2. A financial institution or insurer may bring an action to enjoin the misleading or deceptive use prohibited in subsection 1 and recover all damages suffered by reason of the prohibited use, including reasonable attorney fees. The financial institution or insurer may recover any profits derived from the prohibited use. The state agency with regulatory authority over the financial institution or insurer may also bring an action to enjoin the misleading or deceptive use prohibited in subsection 1. This subsection does not preclude any other remedy provided by law.

2005 Acts, ch 22, §2

CHAPTER 548

REGISTRATION AND PROTECTION OF MARKS

Referred to in §669.14

548.101 Definitions.
548.102 Registrability.
548.103 Application for registration.
548.104 Filing of applications.
548.105 Certificate of registration.
548.106 Duration and renewal.
548.107 Assignments, changes of name, and other instruments.
548.108 Records.
548.109 Cancellation.
548.110 Classification.
548.111 Fraudulent registration.
548.112 Infringement.
548.113 Injury to business reputation — dilution.
548.114 Remedies.
548.115 Forum for actions regarding registration — service on out-of-state registrants.
548.116 Common law rights.
548.117 Fees.

548.101 Definitions.

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

1. *"Abandoned"* means the occurrence of any of the following in relation to a mark:

a. The use of the mark has been discontinued with intent not to resume such use. Intent not to resume may be inferred from circumstances. Nonuse for two consecutive years shall constitute prima facie evidence of abandonment.

b. A course of conduct of the owner of the mark, including acts of omission as well as commission, causes the mark to lose its significance as a mark.

2. *"Applicant"* means a person filing an application for registration of a mark under this chapter, and the person's legal representative, successor, or assignee.

3. *"Dilution"* means the lessening of the capacity of a mark to identify and distinguish goods or services, regardless of the presence or absence of any of the following:

a. Competition between parties.

b. Likelihood of confusion, mistake, or deception.

4. *"Mark"* means a trademark or service mark, entitled to registration under this chapter, whether registered or not.

5. *"Person"* and any other word or term used to designate the applicant or other party entitled to a benefit or privilege or rendered liable under this chapter includes a juristic person as well as a natural person. The term *"juristic person"* includes a firm, partnership, corporation, union, association, or other organization capable of suing and being sued in a court of law.

6. *"Registrant"* means a person to whom the registration of a mark under this chapter is issued, and the legal representative, successor, or assignee of such person.

7. *"Secretary"* means the secretary of state or the designee of the secretary charged with the administration of this chapter.

8. *"Service mark"* means a word, name, symbol, or device or any combination of a word, name, symbol, or device, used by a person to identify services and to distinguish the services of that person, including a unique service, from the services of others, and to indicate the source of the services, even if that source is unknown. Titles, character names used by a person, and other distinctive features of radio or television programs may be registered as service marks notwithstanding that they, or the programs, may advertise the goods of a sponsor.

9. *"Trademark"* means a word, name, symbol, or device or any combination of a word, name, symbol, or device, used by a person to identify and distinguish the goods of that person, including a unique product, from those manufactured and sold by others, and to indicate the source of the goods, even if that source is unknown.

10. *"Trade name"* means a name used by a person to identify a business or vocation of such person.

11. *"Use"* means the bona fide use of a mark in the ordinary course of trade, and not made merely to reserve a right in a mark. For the purposes of this chapter, a mark shall be deemed to be in use under any of the following circumstances:

a. On goods sold or transported in commerce in this state when the mark is placed in any manner on the goods or containers or associated displays, or on affixed tags or labels, or if the nature of the goods makes the placement on the goods or containers impracticable, on documents associated with the goods or their sale.

b. On services when the mark is used or displayed in the sale or advertising of services and the services are rendered in this state.

[C71, 73, 75, 77, 79, 81, §548.1]
94 Acts, ch 1090, §1
C95, §548.101
95 Acts, ch 49, §15; 95 Acts, ch 67, §38, 39

548.102 Registrability.

A mark by which the goods or services of any applicant for registration may be distinguished from the goods or services of others shall not be registered if the mark meets any of the following criteria:

1. Consists of or comprises immoral, deceptive, or scandalous matter.

2. Consists of or comprises matter which may disparage, bring into contempt or disrepute, or falsely suggest a connection with persons, living or dead, institutions, beliefs, or national symbols, or bring them into contempt, or disrepute.

3. Consists of or comprises the flag, or coat of arms, or other insignia of the United States, or of any state or municipality, or of any foreign nation, or any simulation thereof.

4. Consists of, or comprises the name, signature, or portrait identifying a particular living individual, except by the individual's written consent.

5. *a.* Consists of a mark which is one of the following:

(1) When used on or in connection with the goods or services of the applicant, is merely descriptive or deceptively misdescriptive of the goods or services.

(2) When used on or in connection with the goods or services of the applicant, is primarily geographically descriptive or geographically misdescriptive of the goods or services.

(3) Is primarily merely a surname.

b. This subsection 5 does not prevent the registration of a mark used by the applicant which has become distinctive of the applicant's goods or services. The secretary may accept as evidence that the mark has become distinctive as used on or in connection with the applicant's goods or services, proof of continuous use thereof as a mark by the applicant in this state for the five years before the date on which the claim for distinctiveness is made.

6. Consists of or comprises a mark which so resembles a mark registered in this state or a mark or trade name previously used by another and not abandoned, so as to be likely, when used on or in connection with the goods or services of the applicant, to cause confusion or mistake, or to deceive.

[C71, 73, 75, 77, 79, 81, §548.2]

86 Acts, ch 1087, §1, 2; 94 Acts, ch 1090, §2

C95, §548.102

95 Acts, ch 67, §40; 2012 Acts, ch 1023, §157

548.103 Application for registration.

1. Subject to the limitations set forth in this chapter, a person who uses a mark may file in the office of the secretary, in the manner which will comply with the requirements of the secretary, an application for the registration of that mark setting forth, but not limited to, all of the following information:

a. The name and business address of the person applying for registration; and if a corporation, the state of incorporation, or if a partnership, the state in which the partnership is organized and the names of the general partners, as specified by the secretary.

b. The goods or services on or in connection with which the mark is in use, the mode or manner in which the mark is used on or in connection with those goods or services, and the class in which such goods or services fall, as described in rules adopted by the secretary.

c. The date on which the mark was first used anywhere by the applicant or the applicant's predecessor in interest.

d. A statement that the applicant is the owner of the mark, that the mark is in use, and that, to the knowledge of the person verifying the application, no other person has registered, either federally or in this state, or has the right to use such mark either in the identical form or in such resemblance to the form as to be likely, when applied to the goods or services of such other person, to cause confusion or mistake, or to deceive.

2. The secretary may also require a statement as to whether an application to register the mark, or portions or a composite of the mark, has been filed by the applicant or a predecessor in interest in the United States patent and trademark office; and if so, the applicant shall provide full particulars with respect to the filing including the filing date and serial number of each application, the status of the application and if any application was finally refused registration or has otherwise not resulted in a registration, the reasons therefor.

3. The secretary may also require that a drawing of the mark, complying with such requirements as the secretary may specify, accompany the application.

4. The application shall be signed and verified by oath, affirmation, or declaration subject to perjury laws by the applicant or by a member of the firm or an officer of the corporation or association applying.

5. The application shall be accompanied by a specimen showing the mark as actually used.

6. The application shall be accompanied by the application fee payable to the secretary.

[C97, §5049; C24, 27, 31, 35, 39, §**9867, 9868, 9870;** C46, 50, 54, 58, 62, 66, §548.1, 548.2, 548.4; C71, 73, 75, 77, 79, 81, §548.3]

94 Acts, ch 1090, §3

C95, §548.103

97 Acts, ch 44, §1; 2012 Acts, ch 1023, §157

548.104 Filing of applications.

1. Upon the filing of an application for registration and payment of the application fee, the secretary may cause the application to be examined for conformity with this chapter.

2. The applicant shall provide any additional pertinent information requested by the secretary including a description of a design mark and may make, or authorize the secretary to make, such amendments to the application as may be reasonably requested by the secretary or deemed by the applicant to be advisable to respond to any rejection or objection.

3. The secretary may require the applicant to disclaim an unregisterable component of a mark otherwise registerable, and an applicant may voluntarily disclaim a component of a mark sought to be registered. A disclaimer shall not prejudice or affect the applicant's or registrant's rights existing at or after the time of disclaimer arising in the disclaimed matter, or the applicant's or registrant's rights of registration on another application if the disclaimed matter is or becomes distinctive of the applicant's or registrant's goods or services.

4. Amendments may be made by the secretary upon the application submitted by the applicant upon the applicant's agreement, or the secretary may require a new application to be submitted.

5. If the applicant is found not to be entitled to registration, the secretary shall advise the applicant thereof and of the reasons therefor. The applicant shall have a reasonable period of time specified by the secretary in which to reply or to amend the application, in which event the application shall be reexamined. This procedure may be repeated until the secretary finally refuses registration of the mark or the applicant fails to reply or amend within the specified period, whereupon the application shall be deemed to have been abandoned.

6. If the secretary finally refuses registration of the mark, the applicant may seek judicial review of the refusal in accordance with chapter 17A.

7. If the secretary is concurrently processing applications seeking registration of the same or confusingly similar marks for the same or related goods or services, the secretary shall grant priority to the applications in order of filing. If an application filed earlier is granted a registration, a later application shall be rejected. Any rejected applicant may bring an action for cancellation of the registration upon grounds of prior or superior rights to the mark, in accordance with the provisions of section 548.109.

94 Acts, ch 1090, §4

548.105 Certificate of registration.

Upon compliance by the applicant with the requirements of this chapter, the secretary shall issue and deliver a certificate of registration to the applicant. The certificate of registration shall be issued under the signature and seal of the secretary. The certificate of registration shall show the name and business address and, if a corporation, the state of incorporation, or if a partnership, the state in which the partnership is organized and the names of the general partners, as specified by the secretary, of the person claiming ownership of the mark. The certificate of registration shall also show the date claimed for the first use of the mark anywhere and the date claimed for the first use of the mark in this state, the class of goods or services and a description of the goods or services on or in connection with which the mark is used, a description of the mark, the registration date, and the term of the registration.

A certificate of registration issued by the secretary under this section or a copy thereof duly certified by the secretary shall be admissible in evidence as competent and sufficient proof of the registration of such mark in an action or judicial proceeding in any court in this state.

[C97, §5049; C24, 27, 31, 35, 39, §**9868, 9869;** C46, 50, 54, 58, 62, 66, §548.2, 548.3; C71, 73, 75, 77, 79, 81, §548.4]

94 Acts, ch 1090, §5

C95, §548.105

97 Acts, ch 44, §2

548.106 Duration and renewal.

1. A registration of a mark under this chapter shall be effective for a term of five years from the date of registration and, upon application filed within six months prior to the expiration of the term, in a manner complying with the requirements of the secretary, the registration

may be renewed for a like term from the end of the expiring term. A renewal fee payable to the secretary shall accompany an application for renewal of registration.

2. A registration may be renewed for successive periods of five years in like manner.

3. A registration in force on the date on which this chapter shall become effective shall continue in full force and effect for the unexpired term thereof and may be renewed by filing an application for renewal with the secretary complying with the requirements of the secretary and paying the renewal fee within six months prior to the expiration of the registration.

4. All applicants for renewal under this chapter, whether of registration made under this chapter or of registrations effected under any prior statute, shall include a verified statement that the mark has been and is still in use and include a specimen showing actual use of the mark on or in connection with the goods or services.

[C46, 50, 54, 58, 62, 66, §548.6; C71, 73, 75, 77, 79, 81, §548.5]
94 Acts, ch 1090, §6
C95, §548.106
2018 Acts, ch 1041, §127
Code editor directive applied

548.107 Assignments, changes of name, and other instruments.

1. A mark and its registration under this chapter is assignable with the goodwill of the business in which the mark is used or with that part of the goodwill of the business connected with the use of and symbolized by the mark. Assignment shall be by a duly executed written instrument which may be recorded with the secretary upon the payment of a recording fee to the secretary, who, upon recording of the assignment, shall issue a new certificate in the name of the assignee for the remainder of the term of the assigned registration or of the last renewal of the registration. An assignment of a registration under this chapter shall be void as against any subsequent purchase for valuable consideration without notice, unless the assignment is recorded with the secretary within three months after the date of the assignment or prior to such subsequent purchase.

2. A registrant or applicant effecting a change of the name of the person to whom the mark was issued or for whom an application was filed may record a certificate of change of name of the registrant or applicant with the secretary upon the payment of the recording fee. The secretary may issue a certificate of registration of an assigned application in the name of the assignee. The secretary may issue in the name of the assignee, a new certificate or registration for the remainder of the term of the registration or last renewal of the registration.

3. Other instruments which relate to a mark registered or application pending pursuant to this chapter, such as, by way of example, licenses, security interests, or mortgages, may be recorded in the discretion of the secretary, if such instrument is in writing and duly executed.

4. Acknowledgment shall be prima facie evidence of the execution of an assignment or other instrument and, when recorded by the secretary, the record shall be prima facie evidence of execution.

5. A photocopy of any instrument referred to in subsections 1 through 3, shall be accepted for recording if it is certified by any of the parties to the registration, or their successors, to be a true and correct copy of the original.

[C46, 50, 54, 58, 62, 66, §548.5; C71, 73, 75, 77, 79, 81, §548.6]
94 Acts, ch 1090, §7
C95, §548.107
Referred to in §548.108

548.108 Records.

The secretary shall keep for public examination a record of all marks registered or renewed under this chapter, as well as a record of all documents recorded pursuant to section 548.107.

94 Acts, ch 1090, §8

548.109 Cancellation.

The secretary shall cancel from the register, in whole or in part, any of the following:

1. A registration concerning which the secretary receives a voluntary request for cancellation from the registrant or the assignee of record.

2. A registration granted under this chapter and not renewed in accordance with this chapter.

3. A registration concerning which a district court finds any of the following:

a. That the registered mark has been abandoned.

b. That the registrant is not the owner of the mark.

c. That the registration was granted improperly.

d. That the registration was obtained fraudulently.

e. That the mark has become the generic name for the goods or services, or a portion of the goods or services, for which the mark has been registered.

f. That the registered mark is so similar, as to be likely to cause confusion or mistake or to deceive, to a mark registered by another person in the United States patent and trademark office prior to the date of the filing of the application for registration by the registrant under this chapter, and not abandoned. However, if the registrant proves that the registrant is the owner of a concurrent registration of a mark in the United States patent and trademark office covering an area including this state, the registration under this chapter shall not be canceled for such area of the state.

4. A registration ordered canceled by a court on any ground.

[C71, 73, 75, 77, 79, 81, §548.7]
94 Acts, ch 1090, §9
C95, §548.109
Referred to in §548.104

548.110 Classification.

The secretary shall by rule establish a classification of goods and services for convenience in the administration of this chapter, but not limit or extend the applicant's or registrant's rights, and a single application for registration of a mark may include any or all goods upon which, or services with which, the mark is actually being used indicating the appropriate class or classes of goods or services. If a single application includes goods or services which fall within multiple classes, the secretary may require payment of a fee for each class. To the extent practical, the classification of goods and services should conform to the classification adopted by the United States patent and trademark office.

[C71, 73, 75, 77, 79, 81, §548.8]
94 Acts, ch 1090, §10
C95, §548.110

548.111 Fraudulent registration.

A person who, either on the person's own behalf or on behalf of any other person, procures the filing or registration of a mark in the office of the secretary under this chapter by knowingly making any false or fraudulent representation or declaration, orally or in writing, or by any other fraudulent means, is liable for the damages sustained in consequence of the filing or registration to be recovered by or on behalf of the party injured in district court.

[C71, 73, 75, 77, 79, 81, §548.9]
94 Acts, ch 1090, §11
C95, §548.111

548.112 Infringement.

1. Subject to section 548.116, a person shall not do any of the following:

a. Use, without the consent of the registrant, any reproduction, counterfeit, copy, or colorable imitation of a mark registered under this chapter in connection with the sale, distribution, offering for sale, or advertising of any goods or services on or in connection with which such use is likely to cause confusion or mistake, or to deceive as to the source of origin of such goods or services.

b. Reproduce, counterfeit, copy, or colorably imitate any such mark and apply such reproduction, counterfeit, copy, or colorable imitation to labels, signs, prints, packages,

wrappers, receptacles, or advertisements intended to be used upon or in connection with the sale or other distribution in this state of such goods or services.

2. The person shall be liable in a civil action by the registrant for any or all of the remedies provided in section 548.114, except that under subsection 1, paragraph *"b"*, the registrant shall not be entitled to recover profits or damages unless the acts have been committed with the intent to cause confusion or mistake or to deceive.

[C97, §5051; C24, 27, 31, 35, 39, §**9874;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §548.10]

94 Acts, ch 1090, §12

C95, §548.112

2012 Acts, ch 1023, §142

548.113 Injury to business reputation — dilution.

1. The owner of a mark which is famous in this state shall be entitled, subject to the principles of equity, to an injunction against another's use of a mark, commencing after the owner's mark becomes famous, which causes dilution of the distinctive quality of the owner's mark, and to obtain such other relief as is provided in this section. In determining whether a mark is famous, a court may consider factors such as, but not limited to:

a. The degree of inherent or acquired distinctiveness of the mark in this state.

b. The duration and extent of use of the mark in connection with the goods and services.

c. The duration and extent of advertising and publicity of the mark in this state.

d. The geographical extent of the trading area in which the mark is used.

e. The channels of trade for the goods or services with which the owner's mark is used.

f. The degree of recognition of the owner's mark in its and in the other's trading areas and channels of trade in this state.

g. The nature and extent of use of the same or similar mark by third parties.

2. The owner shall be entitled only to injunctive relief in this state in an action brought under this section, unless the subsequent user willfully intended to trade on the owner's reputation or to cause dilution of the owner's mark. If such willful intent is proven, the owner shall also be entitled to the remedies set forth in this chapter, subject to the discretion of the court and the principles of equity.

94 Acts, ch 1090, §13; 2012 Acts, ch 1023, §157

548.114 Remedies.

The owner of a mark registered under this chapter may proceed by suit to enjoin the manufacture, use, display, or sale of any counterfeits or imitations of the mark and any court may grant injunctions to restrain such manufacture, use, display, or sale as the court deems just and reasonable, and may require the defendants to pay to such owner all profits derived from or all damages suffered by reason of such wrongful manufacture, use, display, or sale. The court may also order that any counterfeits or imitations in the possession or under the control of a defendant be delivered to an officer of the court, or to the complainant, to be destroyed. The court, in its discretion, may enter judgment for an amount not to exceed three times such profits and damages and reasonable attorney fees of the prevailing party in cases where the court finds the other party committed such wrongful acts with knowledge or in bad faith or otherwise as according to the circumstances of the case.

The enumeration of any right or remedy in this section shall not affect a registrant's right to prosecute under any penal law of this state.

[C97, §5050, 5051; C24, 27, 31, 35, 39, §**9871 – 9873, 9875;** C46, 50, 54, 58, 62, 66, §548.7 – 548.9, 548.11; C71, 73, 75, 77, 79, 81, §548.11]

94 Acts, ch 1090, §14

C95, §548.114

Referred to in §548.112

548.115 Forum for actions regarding registration — service on out-of-state registrants.

1. Actions to require cancellation of a mark registered pursuant to this chapter shall be brought in district court. In an action for cancellation, the secretary shall not be made a party

to the proceeding but shall be notified of the filing of the complaint by the clerk of the district court in which it is filed and shall be given the right to intervene in the action.

2. In an action brought against a nonresident registrant, service may be effected upon the secretary as agent for service of the registrant in accordance with the procedures established for service upon nonresident corporations and business entities under section 617.3.

94 Acts, ch 1090, §15

548.116 Common law rights.

This chapter shall not adversely affect the rights or the enforcement of rights in marks acquired in good faith at any time at common law.

94 Acts, ch 1090, §16

Referred to in §548.112

548.117 Fees.

The secretary shall by rule adopted pursuant to chapter 17A prescribe the fees payable for the various applications and recording fees and for related services. Unless specified by the secretary, the fees payable pursuant to this chapter are not refundable.

94 Acts, ch 1090, §17

CHAPTER 549

MUSIC LICENSING FEES

Referred to in §669.14

549.1	Short title.	549.6	Investigations.
549.2	Definitions.	549.7	Remedies — injunction.
549.3	Licensing negotiations.	549.8	Remedies cumulative.
549.4	Royalty contract requirements.	549.9	Exceptions.
549.5	Improper licensing practices.		

549.1 Short title.

This chapter may be cited as the *"Music Licensing Fees Act"*.

96 Acts, ch 1155, §1

549.2 Definitions.

As used in this chapter:

1. *"Copyright owner"* means the owner of a copyright of a nondramatic musical work recognized and enforceable under the copyright laws of the United States under 17 U.S.C. §101 et seq.

2. *"Performing rights society"* means an association or corporation, including an agent or employee of the association or corporation, that licenses the public performance of a nondramatic musical work on behalf of a copyright owner, including the American society of composers, authors and publishers (ASCAP), broadcast music, inc. (BMI), and the society of European stage authors and composers, inc. (SESAC).

3. *"Proprietor"* means the owner of a retail establishment, restaurant, inn, bar, tavern, or any other similar place of business located in this state in which the public may assemble and in which nondramatic musical works may be performed, broadcast, or otherwise transmitted.

4. *"Royalty"* or *"royalties"* means the license fee or fees payable by a proprietor to a performing rights society for the public performance of a nondramatic musical work.

96 Acts, ch 1155, §2

549.3 Licensing negotiations.

1. A performing rights society shall not enter onto the business premises of a proprietor for the purpose of discussing a contract for the payment of royalties by the proprietor, unless

the performing rights society identifies itself to the proprietor and describes to the proprietor the purpose for entering onto the proprietor's business premises.

2. A performing rights society shall not enter into, or offer to enter into, a contract for the payment of royalties by a proprietor unless at the time of the offer, or any later time, but not later than seventy-two hours prior to the execution of the contract, the performing rights society provides to the proprietor, in writing, all of the following:

a. A schedule of the rates and terms of royalties under the contract.

b. Upon the request of the proprietor, the opportunity to review the most current available list of the members or affiliates represented by the performing rights society.

c. Notice that the performing rights society will make available, upon the written request of a proprietor, at the sole expense of the proprietor, the most current available listing of the copyrighted nondramatic musical or similar works in the performing rights society's repertory, provided that the notice shall specify the means by which the listing can be secured.

d. Notice that the performing rights society complies with federal law and orders of courts having appropriate jurisdiction regarding the rates and terms of royalties and the circumstances under which licenses for rights of public performance are offered to any proprietor.

96 Acts, ch 1155, §3

549.4 Royalty contract requirements.

A contract for the payment of royalties between a performing rights society and a proprietor executed in this state shall meet all of the following requirements:

1. Be in writing.
2. Be signed by the parties.
3. Include, at a minimum, the following information:

a. The proprietor's name and business address and the name and location of each place of business to which the contract applies.

b. The name of the performing rights society.

c. The duration of the contract.

d. The schedule of rates and terms of the royalties to be collected under the contract, including any sliding scale or schedule for any increase or decrease of rates for the duration of the contract.

96 Acts, ch 1155, §4

549.5 Improper licensing practices.

A performing rights society shall not collect, or attempt to collect, from a proprietor licensed by that performing rights society, a royalty payment except as provided in a contract executed pursuant to the provisions of this chapter.

96 Acts, ch 1155, §5

549.6 Investigations.

This chapter shall not be construed to prohibit a performing rights society from conducting investigations to determine the existence of music use by a proprietor or informing a proprietor of the proprietor's obligations under the federal copyright law, 17 U.S.C. §101 et seq.

96 Acts, ch 1155, §6

549.7 Remedies — injunction.

A person who suffers a violation of this chapter may bring an action to recover actual damages and reasonable attorney fees and to seek an injunction or any other available remedy.

96 Acts, ch 1155, §7

549.8 Remedies cumulative.

The rights, remedies, and prohibitions contained in this chapter shall be in addition to and cumulative of any other right, remedy, or prohibition accorded by common law or state or federal law. This chapter shall not be construed to deny, abrogate, or impair any such common law or statutory right, remedy, or prohibition.

96 Acts, ch 1155, §8

549.9 Exceptions.

This chapter shall not apply to a contract between a performing rights society or a copyright owner and a broadcaster licensed by the federal communications commission, or to a contract with a cable operator, programmer, or other transmission service. This chapter shall not apply to a nondramatic musical or similar work performed in synchronization with an audio or visual film or tape. This chapter shall also not apply to the gathering of information to determine compliance with or activities related to the enforcement of section 714.15.

96 Acts, ch 1155, §9

CHAPTER 550

TRADE SECRETS

Referred to in §15.318, 15E.46, 22.3A, 249A.20A, 669.14

550.1	Short title.	550.5	Defense — consent of disclosure.
550.2	Definitions.	550.6	Attorney fees.
550.3	Injunctive relief.	550.7	Preservation of secrecy.
550.4	Damages.	550.8	Statute of limitations.

550.1 Short title.

This chapter shall be known and may be cited as the "*Uniform Trade Secrets Act*".

90 Acts, ch 1201, §1

550.2 Definitions.

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

1. "*Improper means*" means theft, bribery, misrepresentation, breach or inducement of a breach of a duty to maintain secrecy, or espionage, including but not limited to espionage through an electronic device.

2. "*Knows*" or "*knowledge*" means that a person has actual knowledge of information or a circumstance or that the person has reason to know of the information or circumstance.

3. "*Misappropriation*" means doing any of the following:

a. Acquisition of a trade secret by a person who knows that the trade secret is acquired by improper means.

b. Disclosure or use of a trade secret by a person who uses improper means to acquire the trade secret.

c. Disclosure or use of a trade secret by a person who at the time of disclosure or use, knows that the trade secret is derived from or through a person who had utilized improper means to acquire the trade secret.

d. Disclosure or use of a trade secret by a person who at the time of disclosure or use knows that the trade secret is acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use.

e. Disclosure or use of a trade secret by a person who at the time of disclosure or use knows that the trade secret is derived from or through a person who owes a duty to maintain the trade secret's secrecy or limit its use.

f. Disclosure or use of a trade secret by a person who, before a material change in the person's position, knows that the information is a trade secret and that the trade secret has been acquired by accident or mistake.

4. *"Trade secret"* means information, including but not limited to a formula, pattern, compilation, program, device, method, technique, or process that is both of the following:

a. Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by a person able to obtain economic value from its disclosure or use.

b. Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

90 Acts, ch 1201, §2; 91 Acts, ch 35, §1
Referred to in §716.6B

550.3 Injunctive relief.

1. The owner of a trade secret may petition the district court to enjoin an actual or threatened misappropriation. Upon application to the district court, an injunction shall be terminated when the trade secret has ceased to exist. However, the injunction may be continued for an additional reasonable period of time in order to eliminate a commercial advantage that otherwise would be derived from the misappropriation.

2. In exceptional circumstances, an injunction may condition future use of a trade secret upon payment of a reasonable royalty. The payment of a royalty shall continue for a period no longer than the period for which use of the trade secret may be prohibited. Exceptional circumstances include, but are not limited to, a material and prejudicial change of position of the person prior to acquiring knowledge of a misappropriation that renders a prohibitive injunction inequitable.

3. In appropriate circumstances, affirmative acts to protect a trade secret may be compelled by court order.

90 Acts, ch 1201, §3

550.4 Damages.

1. Except to the extent that a material and prejudicial change of a person's position occurs prior to acquiring knowledge of a misappropriation and renders a monetary recovery inequitable, an owner of a trade secret is entitled to recover damages for the misappropriation. Damages may include the actual loss caused by the misappropriation, and the unjust enrichment caused by the misappropriation which is not taken into account in computing the actual loss. In lieu of damages measured by any other methods, the damages caused by misappropriation may be measured by imposition of liability for a reasonable royalty for a person's unauthorized disclosure or use of a trade secret.

2. If a person commits a willful and malicious misappropriation, the court may award exemplary damages in an amount not exceeding twice the award made under subsection 1.

90 Acts, ch 1201, §4

550.5 Defense — consent of disclosure.

In an action for injunctive relief or damages against a person under this chapter, it shall be a complete defense that the person disclosing a trade secret made the disclosure with the implied or express consent of the owner of the trade secret.

90 Acts, ch 1201, §5

550.6 Attorney fees.

The court may award actual and reasonable attorney fees to the prevailing party in an action under this chapter if any of the following is applicable:

1. A claim of misappropriation is made in bad faith.
2. A motion to terminate an injunction is made or resisted in bad faith.
3. A person acts willfully and maliciously in the misappropriation.

90 Acts, ch 1201, §6

550.7 Preservation of secrecy.

In an action brought under this chapter, a court shall preserve the secrecy of an alleged trade secret by reasonable means, including but not limited to granting protective orders in

connection with discovery proceedings, holding in-camera hearings, sealing the records of the action, and ordering a person involved in the litigation not to disclose an alleged trade secret without prior court approval.

90 Acts, ch 1201, §7

550.8 Statute of limitations.

An action for misappropriation under this chapter must be brought within three years after the misappropriation is discovered or should have been discovered by the exercise of reasonable diligence. For purposes of this section, a continuing misappropriation constitutes a single claim.

90 Acts, ch 1201, §8

CHAPTER 551

UNFAIR DISCRIMINATION

Referred to in §553.19, 669.14

551.1	Unfair discrimination in sales.	551.6	Enforcement.
551.2	Unfair discrimination in purchases.	551.7	Complaint — to whom made.
551.3	Repealed by 76 Acts, ch 1056, §45.	551.8	Revocation of permit.
551.4	Penalty.	551.9	Corporation to be enjoined.
551.5	Contracts or agreements.	551.10	Cumulative remedies.
		551.11	Exceptions.
		551.12	Repealed by 87 Acts, ch 3, §1.

551.1 Unfair discrimination in sales.

Any person, firm, company, association, or corporation, foreign or domestic, doing business in the state, and engaged in the production, manufacture, sale, or distribution of any commodity of commerce or commercial services excepting those, the rate of which is now subject to control of cities or other governmental agency, that shall, for the purpose of destroying the business of a competitor in any locality or creating a monopoly, discriminate between different sections, localities, communities or cities of this state, by selling such commodity or commercial services excepting those, the rate of which is now subject to control of cities or other governmental agency at a lower price or rate in one section, locality, community or city than such commodity or commercial services excepting those, the rate of which is now subject to control of cities or other governmental agency is sold for by said person, firm, association, company, or corporation, in another section, locality, community or city, after making due allowance in case of telephone service for the difference in the cost of furnishing service in different localities, and in the case of commodities and commercial services other than telephone service, for the difference, if any, in the grade or quality, and in the actual cost of transportation from the point of production or purchase, if a raw product, or from the point of manufacture, if a manufactured product, to a place of sale, storage, or distribution shall be deemed guilty of unfair discrimination, which is hereby prohibited and declared to be unlawful; provided, however, that prices made to meet competition in such section, locality, community or city shall not be in violation of this section.

[S13, §5028-b; C24, 27, 31, 35, 39, §**9885;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §551.1]

Referred to in §551.4, 551.5, 551.6, 551.7, 551.8, 551.9

551.2 Unfair discrimination in purchases.

Any person, firm, association, company, or corporation, foreign or domestic, doing business in the state, and engaged in the business of purchasing for manufacture, storage, sale, or distribution, any commodity of commerce that shall, for the purpose of destroying the business of a competitor or creating a monopoly, discriminate between different sections, localities, communities or cities, in this state, by purchasing such commodity at a higher

rate or price in one section, locality, community or city, than is paid for such commodity by such party in another section, locality, community or city, after making due allowance for the difference, if any, in the grade or quality, and in the actual cost of transportation from the point of purchase to the point of manufacture, sale, distribution, or storage, shall be deemed guilty of unfair discrimination, which is hereby prohibited and declared to be unlawful; provided, however, that prices made to meet competition in such section, locality, community or city shall not be in violation of this section.

[S13, §5028-b; C24, 27, 31, 35, 39, §**9886;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §551.2]

Referred to in §551.4, 551.5, 551.6, 551.7, 551.8, 551.9

551.3 Repealed by 76 Acts, ch 1056, §45.

551.4 Penalty.

Any person, firm, company, association, or corporation violating any of the provisions of sections 551.1 and 551.2, and any officer, agent, or receiver of any firm, company, association, or corporation, or any member of the same, or any individual violating any of such provisions shall be guilty of a serious misdemeanor.

[S13, §5028-c; C24, 27, 31, 35, 39, §**9888;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §551.4]

Referred to in §551.6

551.5 Contracts or agreements.

All contracts or agreements made in violation of any of the provisions of sections 551.1 and 551.2 shall be void.

[S13, §5028-d; C24, 27, 31, 35, 39, §**9889;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §551.5]

Referred to in §551.6

551.6 Enforcement.

It shall be the duty of the county attorneys, in their counties, and the attorney general, to enforce the provisions of sections 551.1 to 551.5, inclusive, by appropriate actions in courts of competent jurisdiction.

[S13, §5028-e; C24, 27, 31, 35, 39, §**9890;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §551.6]

551.7 Complaint — to whom made.

If complaint shall be made to the secretary of state that any corporation authorized to do business in this state is guilty of unfair discrimination, within the terms of sections 551.1 and 551.2, it shall be the duty of the secretary of state to refer the matter to the attorney general who may, if the facts justify it in the attorney general's judgment, institute proceedings in the courts against such corporation.

[S13, §5028-f; C24, 27, 31, 35, 39, §**9891;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §551.7]

551.8 Revocation of permit.

If any corporation, foreign or domestic, authorized to do business in this state, is found guilty of unfair discrimination, within the terms of sections 551.1 and 551.2, it shall be the duty of the secretary of state to immediately revoke the permit of such corporation to do business in this state.

[S13, §5028-g; C24, 27, 31, 35, 39, §**9892;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §551.8]

551.9 Corporation to be enjoined.

If after revocation of its permit such corporation, or any other corporation not having a permit and found guilty of having violated any of the provisions of sections 551.1 and 551.2, shall continue or attempt to do business in this state, it shall be the duty of the attorney

general, by a proper suit in the name of the state of Iowa, to enjoin such corporation from transacting all business of every kind and character in said state.

[S13, §5028-h; C24, 27, 31, 35, 39, §**9893;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §551.9]

551.10 Cumulative remedies.

Nothing in this chapter shall be construed as repealing any other Act, or part of an Act, but the remedies herein provided shall be cumulative to all other remedies provided by law.

[S13, §5028-i; C24, 27, 31, 35, 39, §**9894;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §551.10]

2013 Acts, ch 30, §139

551.11 Exceptions.

The provisions of this chapter shall not apply to any contract or agreement relating to any sale made to the state, its departments, commissions, agencies, boards and its governmental subdivisions.

[C71, 73, 75, 77, 79, 81, §551.11]

551.12 Repealed by 87 Acts, ch 3, §1.

CHAPTER 551A

BUSINESS OPPORTUNITY PROMOTIONS

Referred to in §669.14

Chapter transferred from ch 523B in Code 2005 pursuant to Code editor directive; 2004 Acts, ch 1104, §30

551A.1 Definitions.
551A.2 Scope.
551A.3 Disclosure documents — contracts.
551A.4 Exemptions from requirements — burden of proof.
551A.5 Waiver of rights.
551A.6 Cancellation of contract.
551A.7 Service of process — irrevocable consent.
551A.8 Liability — remedies.
551A.9 Fraudulent practices.
551A.10 Penalties.

551A.1 Definitions.

1. *"Advertising"* means a circular, prospectus, advertisement, or other material, or a communication by radio, television, pictures, or similar means used in connection with an offer or sale of a business opportunity.

2. *a. "Business opportunity"* means an opportunity to start a business according to the terms of a contract between a seller and purchaser in which the purchaser provides an initial investment exceeding five hundred dollars; the seller represents that the seller or a person recommended by the seller is to provide to the purchaser any products, equipment, supplies, materials, or services for the purpose of enabling the purchaser to start the business; and the seller represents, directly or indirectly, orally or in writing, any of the following:

(1) The seller or a person recommended by the seller will provide locations or assist the purchaser in finding locations for the use or operation of vending machines, racks, display cases, or other similar devices, on premises which are not owned or leased by the purchaser or seller.

(2) The seller or a person recommended by the seller will provide or assist the purchaser in finding outlets or accounts for the purchaser's products or services.

(3) The seller or a person specified by the seller will purchase any or all products made, produced, fabricated, grown, bred, or modified by the purchaser.

(4) The purchaser will derive income from the business which exceeds the price paid to the seller.

(5) The seller will refund all or part of the price paid to the seller, or repurchase any of the products, equipment, or supplies provided by the seller or a person recommended by the seller, if the purchaser is dissatisfied with the business.

(6) The seller will provide a marketing plan.

b. *"Business opportunity"* does not include any of the following:

(1) An offer or sale of an ongoing business operated by the seller which is to be sold in its entirety.

(2) An offer or sale of a business opportunity to an ongoing business where the seller will provide products, equipment, supplies, or services which are substantially similar to the products, equipment, supplies, or services sold by the purchaser in connection with the purchaser's ongoing business.

(3) An offer or sale of a business opportunity which involves a marketing plan made in conjunction with the licensing of a federally registered trademark or federally registered service mark provided that the seller has a minimum net worth of one million dollars as determined on the basis of the seller's most recent audited financial statement prepared within thirteen months of the first offer in this state. Net worth may be determined on a consolidated basis if the seller is at least eighty percent owned by one person and that person expressly guarantees the obligations of the seller with regard to the offer or sale of a business opportunity claimed to be excluded under this subparagraph.

(4) An offer or sale of a business opportunity by an executor, administrator, sheriff, receiver, trustee in bankruptcy, guardian, or conservator, or a judicial offer or sale of a business opportunity.

(5) The renewal or extension of a business opportunity entered into under this chapter or prior to July 1, 1981.

3. *"Contract"* means any agreement between parties which is express or implied, and which is made orally or in writing.

4. *a.* *"Franchise"* means a contract between a seller and a purchaser where the parties agree to all of the following:

(1) A franchisee is granted the right to engage in the business of offering, selling, or distributing goods or services under a marketing plan prescribed in substantial part by a franchisor.

(2) The operation of the franchisee's business pursuant to such a plan is substantially associated with the franchisor's business and trademark, service mark, trade name, logotype, advertising, or other commercial symbol designating the franchisor or its affiliate.

b. For the purposes of this subsection:

(1) *"Franchisee"* means a person to whom a franchise is granted.

(2) *"Franchisor"* means a person who grants a franchise.

5. *"Initial investment"* means the total amount a purchaser is obligated to pay under the terms of the business opportunity contract either prior to or at the time of the delivery of the merchandise or services or within six months of the purchaser commencing operation of the business opportunity. However, if payment is over a period of time, *"initial investment"* means the sum of the down payment and the total monthly payments specified in the contract.

6. *"Marketing plan"* means advice or training, provided to the purchaser by the seller or a person recommended by the seller, pertaining to the sale of any products, equipment, supplies, or services. The advice or training may include, but is not limited to, preparing or providing any of the following:

a. Promotional literature, brochures, pamphlets, or advertising materials.

b. Training regarding the promotion, operation, or management of the business opportunity.

c. Operational, managerial, technical, or financial guidelines or assistance.

7. *"Offer"* or *"offer to sell"* means an attempt to dispose of a business opportunity for value, or solicitation of an offer to purchase a business opportunity.

8. *"Ongoing business"* means an existing business that for at least six months prior to the offer, has been operated from a specific location, has been open for business to the general public, and has substantially all of the equipment and supplies necessary for operating the business.

9. *"Person"* means the same as defined in section 4.1, except that it does not include a government or governmental subdivision or agency.

10. *"Purchaser"* means a person who enters into a contract for the acquisition of a business opportunity or a person to whom an offer to sell a business opportunity is directed.

11. *"Record"* means the same as defined in section 516E.1.

12. *"Sale"* or *"sell"* includes every contract for sale, contract to sell, or disposition of, a business opportunity or interest in a business opportunity for value.

13. *"Seller"* means a person who sells or offers to sell a business opportunity or an agent or other person who directly or indirectly acts on behalf of such a person. *"Seller"* does not include the media in or by which an advertisement appears or is disseminated.

[81 Acts, ch 171, §1]

C83, §523B.1

91 Acts, ch 205, §1; 98 Acts, ch 1189, §11; 99 Acts, ch 90, §1, 3; 2000 Acts, ch 1147, §20; 2004 Acts, ch 1104, §5 – 10, 30

C2005, §551A.1

2012 Acts, ch 1023, §143

551A.2 Scope.

1. The provisions of this chapter concerning sales and offers to sell apply to persons who sell or offer to sell a business opportunity when any of the following apply:

a. An offer to sell is made in this state.

b. An offer to purchase is made and accepted in this state.

c. The purchaser is domiciled in this state and the business opportunity is or will be operated in this state.

2. For the purpose of this section, an offer to sell is made in this state, whether or not either party is then present in this state, when either of the following apply:

a. The offer originates from this state.

b. The offer is directed by the offeror to this state and received at the place to which the offer is directed or at a post office in this state in the case of a mailed offer.

3. An offer to sell is not made in this state under either of the following circumstances:

a. If the offer appears in a bona fide newspaper or other publication of general circulation which is not published in this state, or which is published in this state but has had more than two-thirds of its circulation outside this state during the past twelve months.

b. If the offer is made on a radio or television program originating outside this state which is received in this state.

4. For the purpose of this section, an offer to sell is accepted in this state when both of the following occur:

a. The acceptance is communicated to the offeror in this state.

b. The acceptance has not previously been communicated to the offeror, orally, or in writing, outside this state. For the purpose of this section the acceptance is communicated to the offeror in this state, whether or not either party is then present in this state, when the offeree directs it to the offeror in this state reasonably believing the offeror to be in this state, and the acceptance is received at the place to which it is directed or at a post office in this state in the case of a mailed acceptance.

91 Acts, ch 205, §10

CS91, §523B.13

94 Acts, ch 1031, §22; 2004 Acts, ch 1104, §29, 30

C2005, §551A.2

551A.3 Disclosure documents — contracts.

1. *Disclosure document required.* A person required to file an irrevocable consent to service of process with the secretary of state as a seller as provided in section 551A.7 shall not act as seller in this state unless the person provides a written disclosure document to each purchaser. The person shall deliver the written disclosure document to the purchaser at least ten business days prior to the earlier of the purchaser's execution of a contract

imposing a binding legal obligation on the purchaser or the payment by a purchaser of any consideration in connection with the offer or sale of the business opportunity.

2. *Disclosure document cover sheet.*

a. The disclosure document shall have a cover sheet which shall consist of a title printed in bold and a statement. The title and statement shall be in at least ten point type and shall appear as follows:

DISCLOSURE
REQUIRED BY IOWA LAW

This business opportunity does not have the approval, recommendation, or endorsement of the state of Iowa. The information contained in this disclosure document has not been verified by this state. If you have any questions or concerns about this investment, seek professional advice before you sign a contract or make any payment. You are to be provided ten (10) business days to review this document before signing a contract or making any payment to the seller or the seller's representative.

b. The seller's name and principal business address, along with the date of the disclosure document, shall also be provided on the cover sheet. No other information shall appear on the cover sheet.

3. *Disclosure document contents.* A disclosure document shall be in one of the following forms:

a. A uniform franchise offering circular prepared in accordance with the guidelines adopted by the North American securities administrators association, inc.

b. A disclosure document prepared pursuant to the federal trade commission rule relating to disclosure requirements and prohibitions concerning franchising and business opportunity ventures in accordance with 16 C.F.R. pt. 436 or any successor regulation.

c. A form that includes all of the following:

(1) The names and residential addresses of those salespersons who will engage in the offer or sale of the business opportunity in this state.

(2) The name of the seller; whether the seller is doing business as an individual, partnership, corporation, or other entity; the names under which the seller has done, is doing, or intends to do business; and the name of any parent or affiliated company that will engage in business transactions with purchasers or that will take responsibility for statements made by the seller.

(3) The names, addresses, and titles of the seller's officers, directors, trustees, general managers, principal executives, agents, and any other persons charged with responsibility for the seller's business activities relating to the sale of the business opportunity.

(4) Prior business experience of the seller relating to business opportunities including all of the following:

(a) The name, address, and a description of any business opportunity previously offered by the seller.

(b) The length of time the seller has offered each such business opportunity.

(c) The length of time the seller has conducted the business opportunity currently being offered to the purchaser.

(5) With respect to each person identified in subparagraph (3), all of the following:

(a) A description of the person's business experience for the ten-year period preceding the filing date of this disclosure document. The description of business experience shall list principal occupations and employers.

(b) A listing of the person's educational and professional background, including the names of schools attended and degrees received, and any other information that will demonstrate sufficient knowledge and experience to perform the services proposed.

(6) Whether any of the following apply to the seller or any person identified in subparagraph (3):

(a) The seller or other person has been convicted of a felony, pleaded nolo contendere to a felony charge, or has been the subject of a criminal, civil, or administrative proceeding

alleging the violation of a business opportunity law, securities law, commodities law, or franchise law, or alleging fraud or deceit, embezzlement, fraudulent conversion, restraint of trade, an unfair or deceptive practice, misappropriation of property, or making comparable allegations.

(b) The seller or other person has filed for bankruptcy, been adjudged bankrupt, or been reorganized due to insolvency, or was an owner, principal officer, or general partner of a person, or any other person that has filed for bankruptcy or was adjudged bankrupt, or been reorganized due to insolvency during the last seven years.

(7) The name of any person identified in subparagraph (6), the nature of and the parties to the action or proceeding, the court or other forum, the date of the institution of the action, the docket references to the action, the current status of the action or proceeding, the terms and conditions of any order or decree, and the penalties or damages assessed and terms of settlement.

(8) The initial payment required, or if the exact amount cannot be determined, a detailed estimate of the amount of the initial payment to be made to the seller.

(9) A detailed description of the actual services the seller agrees to perform for the purchaser.

(10) A detailed description of any training the seller agrees to provide for the purchaser.

(11) A detailed description of services the seller agrees to perform in connection with the placement of equipment, products, or supplies at a location, as well as any agreement necessary in order to locate or operate equipment, products, or supplies on premises which are not owned or leased by the purchaser or seller.

(12) A detailed description of any license or permit that will be necessary in order for the purchaser to engage in or operate the business opportunity.

(13) Any representations made by the seller to the purchaser concerning sales or earnings that may be made from this business opportunity, including, but not limited to the following:

(a) The bases or assumptions for any actual, average, projected, or forecasted sales, profits, income, or earnings.

(b) The total number of purchasers who, within a period of three years of the date of the disclosure document, purchased a business opportunity involving the product, equipment, supplies, or services being offered to the purchaser.

(c) The total number of purchasers who, within three years of the date of the disclosure document, purchased a business opportunity involving the product, equipment, supplies, or services being offered to the purchaser who, to the seller's knowledge, have actually received earnings in the amount or range specified.

(14) A detailed description of the elements of a guarantee made by a seller to a purchaser. The description shall include, but is not limited to, the duration, terms, scope, conditions, and limitations of the guarantee.

(15) A statement including all of the following:

(a) The total number of business opportunities that are the same or similar in nature to those being sold or organized by the seller.

(b) The names and addresses of purchasers who have requested a refund or rescission from the seller within the last twelve months and the number of those who have received the refund or rescission.

(c) The total number of business opportunities the seller intends to sell in this state within the next twelve months.

(d) The total number of purchasers known to the seller to have failed in the business opportunity.

(16) A statement describing any contractual restrictions, prohibitions, or limitations on the purchaser's conduct. Attach a copy of all contracts proposed for use or in use in this state including, without limitation, all lease agreements, option agreements, and purchase agreements.

(17) The rights and obligations of the seller and the purchaser regarding termination of the business opportunity contract.

(18) A statement accurately describing the grounds upon which the purchaser may initiate legal action to terminate the business opportunity contract.

(19) A copy of the most recent audited financial statement of the seller, prepared within thirteen months of the first offer in this state, together with a statement of any material changes in the financial condition of the seller from that date.

(20) A list of the states in which this business opportunity is registered.

(21) A list of the states in which this disclosure document is on file.

(22) A list of the states which have denied, suspended, or revoked the registration of this business opportunity.

(23) A section entitled "Risk Factors" containing a series of short concise statements summarizing the principal factors which make this business opportunity a high risk or one of a speculative nature. Each statement shall include a cross-reference to the page on which further information regarding that risk factor can be found in the disclosure document.

4. *Contract provisions.*

a. A person shall not offer or sell a business opportunity unless a business opportunity contract is in writing and a copy of the contract is provided to the purchaser at the time the purchaser executes the contract.

b. A business opportunity contract shall set forth in at least ten point type or equivalent size, if handwritten, all of the following:

(1) The terms and conditions of any and all payments due to the seller.

(2) The seller's principal business address and the name and address of the seller's agent in this state authorized to receive service of process.

(3) The business form of the seller, whether corporate, partnership, or otherwise.

(4) The delivery date, or when the contract provides for a periodic delivery of items to the purchaser, the approximate delivery date of the product, equipment, or supplies the seller is to deliver to the purchaser to enable the purchaser to start business.

(5) Whether the product, equipment, or supplies are to be delivered to the purchaser's home or business address or are to be placed or caused to be placed by the seller at locations owned or managed by persons other than the purchaser.

(6) A statement that accurately states the purchaser's right to void the contract under the circumstances and in the manner set forth in section 551A.6.

(7) The cancellation statement appearing in section 555A.3.

(8) The rights and responsibilities of the parties regarding the marketing of a business opportunity, including but not limited to all of the following:

(a) Whether the seller assigns the purchaser a territory in which to sell a business opportunity.

(b) Whether the seller assists the purchaser in finding locations in which to sell a business opportunity.

(c) Whether the purchaser is solely responsible for marketing a business opportunity.

[81 Acts, ch 171, §2]

C83, §523B.2

91 Acts, ch 205, §2; 98 Acts, ch 1189, §12 – 14; 99 Acts, ch 166, §11; 2000 Acts, ch 1147, §21 – 24; 2004 Acts, ch 1104, §11 – 19, 30

C2005, §551A.3

2005 Acts, ch 3, §94; 2005 Acts, ch 56, §1; 2006 Acts, ch 1030, §68; 2012 Acts, ch 1023, §157; 2014 Acts, ch 1092, §191; 2017 Acts, ch 54, §76

Referred to in §551A.4, 551A.8, 551A.9, 551A.10

551A.4 Exemptions from requirements — burden of proof.

1. The following business opportunities are exempt from the requirements of section 551A.3:

a. The offer or sale of a business opportunity if the purchaser is a bank, federally chartered savings and loan association, trust company, insurance company, credit union, or investment company as defined by the federal Investment Company Act of 1940, 15 U.S.C. §80a-1 et seq., a pension or profit-sharing trust, or other financial institution or institutional buyer, or a broker-dealer registered pursuant to chapter 502, whether the purchaser is acting for itself or in a fiduciary capacity.

b. (1) An offer or sale of a business opportunity which is a franchise, provided that the

seller delivers to each purchaser at the earlier of the first personal meeting between the seller and the purchaser, or fourteen days prior to the earlier of the execution by a purchaser of a contract imposing a binding legal obligation on the purchaser or the payment by a purchaser of any consideration in connection with the offer or sale of the business opportunity, one of the following disclosure documents:

(a) A uniform franchise offering circular prepared in accordance with the guidelines adopted by the North American securities administrators association, inc.

(b) A disclosure document prepared pursuant to the federal trade commission rule entitled "Disclosure requirements and prohibitions concerning franchising and business opportunity ventures", 16 C.F.R. pt. 436 or any successor regulation.

(2) For the purposes of this paragraph *"b"*, a *"personal meeting"* means a face-to-face meeting between the purchaser and the seller or their representatives, which is held for the purpose of discussing the offer or sale of a business opportunity.

c. The offer or sale of a business opportunity for which the cash payment made by a purchaser does not exceed five hundred dollars and the payment is made for the not-for-profit sale of sales demonstration equipment, material, or samples, or the payment is made for product inventory sold to the purchaser at a bona fide wholesale price.

2. In an administrative, civil, or criminal proceeding related to this chapter, the burden of proving an exemption, an exception from a definition, or an exclusion from this chapter is upon the person claiming it.

[81 Acts, ch 171, §3]
C83, §523B.3
91 Acts, ch 205, §3; 98 Acts, ch 1189, §15, 16; 99 Acts, ch 90, §2, 3; 2004 Acts, ch 1104, §21, 30
C2005, §551A.4
2005 Acts, ch 56, §2; 2012 Acts, ch 1017, §152; 2012 Acts, ch 1023, §157; 2014 Acts, ch 1092, §192; 2015 Acts, ch 30, §173

551A.5 Waiver of rights.

A waiver of this chapter by a purchaser prior to or at the time of sale is contrary to public policy and is void and unenforceable. An attempt by a seller to have a purchaser waive any rights given in this chapter is a violation of this chapter.

[81 Acts, ch 171, §9]
C83, §523B.9
2004 Acts, ch 1104, §30
C2005, §551A.5

551A.6 Cancellation of contract.

The purchaser has the right to cancel a contract with a seller for a business opportunity for any reason at any time within three business days of the date the purchaser signs the contract or the date the contract is accepted by the seller whichever is later. The notice of the right to cancel, the seller's obligation to provide the purchaser with cancellation forms, and the procedures to be followed when a contract is canceled shall be the same as the procedures in chapter 555A for door-to-door sales.

[81 Acts, ch 171, §6]
C83, §523B.6
2004 Acts, ch 1104, §30
C2005, §551A.6
Referred to in §551A.3

551A.7 Service of process — irrevocable consent.

A seller shall file an irrevocable consent with the secretary of state. The seller shall file the irrevocable consent prior to executing a business opportunity contract or engaging in the sale of a business opportunity in this state. The irrevocable consent shall appoint the secretary of state to be the seller's attorney to receive service of any lawful process in a noncriminal suit, action, or proceeding against the seller or the seller's successor, executor, or administrator

which arises under this chapter after the irrevocable consent has been filed. The irrevocable consent shall have the same force and validity as if the seller were served service of process personally.

2004 Acts, ch 1104, §20, 30
Referred to in §551A.3

551A.8 Liability — remedies.

1. A person who violates the requirements for disclosure or for the contents of a business opportunity contract pursuant to section 551A.3 is liable to the purchaser in an action for rescission of the contract, or for recovery of all money or other valuable consideration paid for the business opportunity, and for actual damages together with interest as determined pursuant to section 668.13 from the date of sale, reasonable attorney fees, and court costs.

2. Every person who directly or indirectly controls a party liable under this section, every partner in a partnership so liable, every principal executive officer or director of a corporation so liable, every person occupying a similar status in, or performing similar functions for, and every employee of, a party so liable who materially aids in the act or transaction constituting the violation is also liable jointly and severally with and to the same extent as the party, unless the person liable as a result of the person's relationship with the liable party as defined under this section proves that the person did not know, and in the exercise of reasonable care could not have known of the existence of the facts giving rise to the alleged liability. Among the persons held liable, a party paying more than the party's percentage share of damages may recover judgment for contribution upon motion to the court or in a separate action.

3. An action shall not be maintained under this section unless commenced within three years after the act or transaction constituting the violation, or within one year after the discovery of the facts constituting the violation, whichever period later expires.

4. In addition to any remedies provided by law, a person injured by a violation of this chapter may bring a civil action and recover damages or obtain other appropriate relief including injunctive or other equitable relief. If the person is the prevailing party, the person shall be awarded court costs, reasonable attorney fees, and expert fees which shall be taxed as part of the costs of the action.

[81 Acts, ch 171, §7]
C83, §523B.7
91 Acts, ch 205, §6; 98 Acts, ch 1189, §17; 2004 Acts, ch 1104, §22 – 24, 30
C2005, §551A.8
2017 Acts, ch 54, §76

551A.9 Fraudulent practices.

1. *Misleading statements.* A person shall not make or cause to be made a misleading statement in a disclosure document required pursuant to section 551A.3 or in a proceeding under this chapter. The statement shall be deemed to be misleading if any of the following apply:

a. At the time and in the light of the circumstances under which it is made, the statement is false or misleading in a material respect.

b. An omission of a material fact is necessary in order to make the statement made, in the light of the circumstances under which it is made, not misleading.

2. *Advertising.* A seller shall not, in connection with the offer or sale of a business opportunity in this state, publish, circulate, or use advertising which contains an untrue statement of a material fact or omits to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading.

3. *Misrepresentations, omissions, and misleading conduct.* A seller of a business opportunity shall not do any of the following:

a. Misrepresent, by failure to disclose or otherwise, the known required total investment for such business opportunity.

b. Misrepresent or fail to disclose efforts to sell or establish more business opportunities

than it is reasonable to expect the market or market area for the particular business opportunity to sustain.

c. Misrepresent the quantity or the quality of the products to be sold or distributed through the business opportunity.

d. Misrepresent the training and management assistance available to the purchaser.

e. Misrepresent the amount of profits, net or gross, which the purchaser can expect from the operation of the business opportunity.

f. Misrepresent, by failure to disclose or otherwise, the termination, transfer, or renewal provision of a business opportunity contract.

g. Falsely claim or imply that a primary marketer or trademark of products or services sponsors or participates directly or indirectly in the business opportunity.

h. Assign a so-called exclusive territory encompassing the same area to more than one purchaser.

i. Provide vending locations for which written authorizations have not been granted by the property owners or lessees.

j. Provide merchandise, machines, or displays of a brand or kind substantially different from or inferior to those promised by the seller.

k. Fail to provide the purchaser a written contract.

l. Misrepresent the ability of a person or entity providing services to provide locations or assist the purchaser in finding locations expected to have a positive impact on the success of the business opportunity.

m. Misrepresent or omit to state a material fact or create a false or misleading impression in the sale of a business opportunity.

91 Acts, ch 205, §9
CS91, §523B.12
98 Acts, ch 1189, §20; 2004 Acts, ch 1104, §26 – 28, 30
C2005, §551A.9
2005 Acts, ch 19, §116
Referred to in §551A.10

551A.10 Penalties.

1. A seller who willfully violates the requirements for disclosure or for the contents of a business opportunity contract pursuant to section 551A.3, who provides misleading advertising as provided in section 551A.9, who willfully violates a rule under this chapter, or who willfully violates an order of which the person has notice, upon conviction, is guilty of a class "D" felony. Otherwise, a person who violates a rule adopted or order issued under this chapter is, upon conviction, guilty of an aggravated misdemeanor. Each of the acts specified constitutes a separate offense and a prosecution or conviction for any one of such offenses does not bar prosecution or conviction for any other offense.

2. A violation of this chapter is an unlawful practice pursuant to section 714.16.

3. A seller who willfully uses any device or scheme to defraud a person in connection with an advertisement, offer to sell or lease, sale, or lease of a business opportunity, or who willfully violates any other provision of this chapter, except as provided in subsection 1, is, upon conviction, guilty of a fraudulent practice as provided in chapter 714.

[81 Acts, ch 171, §11]
C83, §523B.11
91 Acts, ch 205, §8; 98 Acts, ch 1189, §19; 2004 Acts, ch 1104, §25, 30
C2005, §551A.10
2013 Acts, ch 38, §1

CHAPTER 552

PHYSICAL EXERCISE CLUBS

Referred to in §552A.2, 669.14

552.1 Definitions.
552.2 Purpose.
552.3 Unenforceable contracts.
552.4 Contracts for physical exercise club services — right of cancellation.
552.5 Contract — statement of buyer's rights — form.
552.6 Delivery of physical exercise club rules.
552.7 Buyer's cancellation.
552.8 Duration of contract — renewal.
552.9 Notice of membership plans, prices, and right of cancellation.
552.10 Statement regarding assignability of buyer's obligation.
552.11 Buyer's rights upon assignment.
552.12 Listing of equipment and services.
552.13 Remedies — violations.
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552.16 Escrow — bond.
552.17 Consumer credit sales.
552.18 Waiver of provisions.
552.19 Immunity.
552.20 Rules.
552.21 Construction of chapter.
552.22 Applicability.

552.1 Definitions.

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

1. *"Contract price"* means the total price paid or to be paid, including service charges or membership fees, which entitles the buyer either directly or indirectly to membership in a physical exercise club or to the use of the services or facilities of a physical exercise club.

2. *"Finance charge"* means *"finance charge"* as defined in section 537.1301, subsection 21.

3. *"Physical exercise club"* means a person offering services or facilities, or both, for the preservation, maintenance, encouragement, or development of physical fitness or well-being in return for the payment of a fee entitling the buyer to the use of the services or facilities. The term includes but is not limited to persons offering services and facilities known as "health clubs", "health spas", "sports and health clubs", "tennis clubs", "racquetball courts", "golf clubs", "gymnasiums", "figure salons", "health studios", "weight control studios", and persons operating establishments whose primary purpose is the teaching of a particular form of self-defense or martial arts, such as judo, karate, or kung fu. *"Physical exercise club"* does not include:

a. A person or establishment which does not charge a membership fee and from which a buyer may only purchase or become obligated to purchase the use of services or facilities to be rendered for a period of not more than thirty days, and which does not collect more than thirty days in advance for the rendering of the services.

b. Except for purposes of sections 552.4, 552.7, 552.13, 552.14, and 552.16 a nonprofit organization organized and operating as a nonprofit organization.

c. An entity primarily engaged in physical rehabilitation activities related to an individual's injury or disease.

d. A private club owned and operated by its members.

e. Except for purposes of sections 552.4, 552.7, 552.13, and 552.14, a facility operated by the state or any of its political subdivisions.

f. A facility owned and operated on a not-for-profit basis by a person or a contractor of a person that is operated solely for the purpose of serving employees of the person, whether currently employed or retired, and family members of employees.

4. *"Physical exercise club contract"* means an agreement by which a buyer is entitled to membership in a physical exercise club or use of the services or facilities of a physical exercise club.

5. *"Prepayment"* means any partial or full payment for services or the use of facilities made before the services are actually made available by the physical exercise club or the facility is fully opened for business as described in section 552.16, subsection 3.

88 Acts, ch 1221, §1; 98 Acts, ch 1044, §1

Referred to in §552.12

552.2 Purpose.

The purpose of this chapter is to safeguard the public against fraud, deceit, and financial hardship and to foster and encourage competition, fair dealing, and prosperity in the field of physical exercise club operations and services by prohibiting or restricting practices by which the public has been injured in connection with contracts for and the marketing of physical exercise club services.

88 Acts, ch 1221, §2

552.3 Unenforceable contracts.

A physical exercise club contract or assignment of a contract that does not comply with this chapter is unenforceable as contrary to public policy.

88 Acts, ch 1221, §3

552.4 Contracts for physical exercise club services — right of cancellation.

A physical exercise club contract shall provide that the contract may be canceled within three business days after the date of receipt by the buyer of a copy of the signed contract. Cancellation shall be by written notice delivered to the seller at an address which shall be specified in the contract. Cancellation is complete upon mailing of the notice of cancellation. After receipt of the cancellation, the physical exercise club may request the return of contract forms, membership cards, and all other documents and evidence of membership previously delivered to the buyer. The buyer is entitled to a refund of the entire consideration paid for the contract, if any, less twenty dollars.

A physical exercise club contract shall in plain terms disclose whether the physical exercise club will allow the buyer to cancel the contract in the event of the death or disability of the buyer.

88 Acts, ch 1221, §4

Referred to in §552.1, 552.16

552.5 Contract — statement of buyer's rights — form.

1. *a.* A physical exercise club contract shall be in writing and signed by the buyer. The contract shall state in at least ten point boldface type:

NOTICE TO BUYER: Do not sign this contract until you read it.
Do not sign this contract if it contains blank spaces.

b. A copy of the physical exercise club contract shall be delivered to the buyer at the time the contract is signed.

2. *a.* A physical exercise club contract shall designate the date on which the buyer actually signs the contract and shall contain a statement of the buyer's rights which complies with this subsection. The statement shall appear in the contract under the conspicuous caption "BUYER'S RIGHT TO CANCEL", and shall read as follows:

.....
(enter date of transaction)

You may cancel this transaction within three business days from the above date.

If you cancel, any payments made by you under the contract, less twenty dollars, and any negotiable instrument executed by you will be returned within forty-five days following receipt by the seller of your cancellation notice, and any security interest arising out of the transaction will be canceled. After you cancel, the physical exercise club may request the return of all contracts, membership cards, and other documents or evidence of membership.

To cancel this transaction, send, or deliver a signed and dated copy of this cancellation notice or any other written notice by certified or registered mail to ..... (name of seller), at ..... (address of seller's place of business) not later than midnight of ..... (date).

I hereby cancel this transaction.

.....
(Date)

.....
(Buyer's signature)

b. The full text of this statement shall be in ten point boldface type.

88 Acts, ch 1221, §5; 2012 Acts, ch 1023, §157

552.6 Delivery of physical exercise club rules.

A physical exercise club contract shall include a complete statement of the rules of the physical exercise club, or an acknowledgment in a conspicuous form that the buyer has received a copy of the rules. Physical exercise club rules shall include, but are not limited to, the hours of operation.

88 Acts, ch 1221, §6

552.7 Buyer's cancellation.

If a buyer cancels a physical exercise club contract pursuant to the three-day cancellation provision, the physical exercise club shall send the buyer a written confirmation of cancellation, together with the buyer's refund and any negotiable instruments executed by the buyer, within forty-five days after receipt by the physical exercise club of the buyer's cancellation notice. If the physical exercise club fails to send the written confirmation to the buyer within forty-five days after receiving a timely cancellation, the physical exercise club is deemed to have accepted the cancellation.

88 Acts, ch 1221, §7

Referred to in §552.1

552.8 Duration of contract — renewal.

A physical exercise club contract shall not have a duration longer than thirty-six months. If a physical exercise club offers a contract of more than twelve months duration, it shall also offer a twelve-month contract. A physical exercise club contract shall not contain an automatic renewal clause.

88 Acts, ch 1221, §8

552.9 Notice of membership plans, prices, and right of cancellation.

The physical exercise club shall orally inform the buyer prior to the buyer's entering into a physical exercise club contract of the three-day cancellation provision and provide the buyer with a written list of all membership plans and their respective prices.

88 Acts, ch 1221, §9

552.10 Statement regarding assignability of buyer's obligation.

If the buyer's obligation is in a form that may be assigned, the contract shall state in boldface type on the front page of the contract that the contract may be discounted and sold to third parties to whom the buyer will become obligated to make full payment.

88 Acts, ch 1221, §10

552.11 Buyer's rights upon assignment.

1. A physical exercise club contract is not assignable by the physical exercise club without written notice of the assignment mailed to the buyer at the buyer's address as stated in the contract. The notice shall identify the contract, state the name and address of the assignee, the amount payable by the buyer and the number, amounts, and due dates of any payments, and shall contain a conspicuous notice to the buyer of the provisions of subsection 2.

2. If the physical exercise club assigns the buyer's obligation, the buyer has thirty days from the date of the mailing of the notice of the assignment within which to notify the assignee in writing of any claims or defenses the buyer may have against the physical exercise club. If written notification of the claims or defenses is not received by the assignee within the

thirty-day period, the assignee has the right to enforce the contract free of any claims or defenses the buyer may have against the physical exercise club.

88 Acts, ch 1221, §11

552.12 Listing of equipment and services.

1. A physical exercise club, which accepts prepayments as defined in section 552.1, subsection 5, shall compile a written list which shall be available to a buyer upon request showing:

a. The equipment by kind and quantity that is or will be made available.

b. Each service which the physical exercise club intends to have available for use by the buyers.

2. Subject to section 552.16, subsection 3, a physical exercise club that accepts prepayments shall not be considered fully open for business until all of the equipment and services so listed are actually available for use by the buyers.

88 Acts, ch 1221, §12; 2012 Acts, ch 1023, §157

552.13 Remedies — violations.

1. If a physical exercise club violates a provision of this chapter, the buyer may cancel the physical exercise club contract. The buyer also has a right of action against the physical exercise club for recovery of the amount the buyer paid to the physical exercise club under the contract. In addition to any judgment awarded to the buyer, the court may allow reasonable attorney's fees.

2. A violation of any of the provisions of this chapter shall be deemed an unlawful practice under section 714.16, subsection 2, paragraph "*a*".

3. Unless displaced by the particular provisions of this chapter, the principles of law and equity supplement the provisions of this chapter.

88 Acts, ch 1221, §13
Referred to in §552.1

552.14 Prohibited activities.

1. It is unlawful for a physical exercise club to make any misrepresentation to current members, prospective buyers, or buyers of physical exercise club contracts regarding:

a. Qualifications of staff.

b. Availability, quality, or extent of facilities or services.

c. Results obtained through exercise, dieting, or weight control programs.

d. Membership rights.

e. The period that a special offer or discount will be available.

2. It is unlawful for a physical exercise club to fail or refuse to establish the escrow account required by section 552.16.

3. It is unlawful for a physical exercise club to advertise, state, or represent that it is approved by the state or that it has complied with this chapter.

88 Acts, ch 1221, §14; 2000 Acts, ch 1021, §1
Referred to in §552.1

552.15 Repealed by 2000 Acts, ch 1021, §4.

552.16 Escrow — bond.

1. A physical exercise club or its assignee or agent that accepts prepayments shall deposit all of the funds received as prepayments in an escrow account established with a financial institution located in this state whose accounts are insured by the federal deposit insurance corporation, the national credit union administration, or the federal savings and loan insurance corporation, which shall hold the funds as escrow agent for the benefit of the buyers that prepay. The physical exercise club shall deposit all prepayments received at least biweekly and shall make the first deposit not later than the fourteenth day after the day on which the physical exercise club accepts the first prepayment. Not later than the fourteenth day after the day on which the first prepayment is received, the physical exercise club shall submit to the attorney general's consumer protection division a notarized statement that

identifies the financial institution in which the prepayments are held in escrow and the name and account number in which the account is held. The prepayments shall be held in escrow until the thirtieth day after the date that the physical exercise club fully opens for business.

2. If the physical exercise club does not fully open for business before the two hundred eleventh day after the date it enters into the first physical exercise club contract or if the club does not remain fully open for thirty days, the buyers whose payments are held in escrow under this section shall receive a full refund, including the buyer's pro rata share of any interest earned thereon, from the escrow agent. Refunds pursuant to this section shall be made not later than the two hundred forty-first day after the date the first physical exercise club contract was signed. If the escrow agent fails to make a full refund as provided for in this section, the attorney general shall hold a hearing and determine whether the physical exercise club has fully opened and has remained open for thirty days, and if not, determine those persons who, as buyers, are entitled to a refund and, if appropriate, distribute the escrow proceeds. Notice shall be provided to the physical exercise club at the address specified in the contract pursuant to section 552.4 and to all buyers who have funds in the escrow account. All hearings held under this section shall be held in accordance with chapter 17A.

3. For the purposes of this section, the date on which a physical exercise club fully opens for business is the date on which all of the equipment and services of the physical exercise club that were advertised before the opening or promised to be made available, whether or not contained in the contract, are actually available for use by buyers. The attorney general may upon application certify that a physical exercise club is fully open for business if substantially all of the promised equipment and services are available for use, and the physical exercise club has made a diligent effort to provide the remaining equipment and services.

4. The buyer retains ownership of all moneys and interest held in escrow under this section.

5. In lieu of establishing the escrow account described in subsections 1 through 4, a physical exercise club may post a one hundred fifty thousand dollar bond with the office of the attorney general, in a form deemed acceptable by the attorney general to protect the interest of buyers. Notice of the existence of the bond must be disclosed to the buyer in the physical exercise club contract. Either the attorney general or a buyer shall be entitled to collect on the bond in the same manner and on the same terms as provided for an escrow account in subsections 1 through 4. The aggregate liability of the surety for all damages shall not exceed the amount of the bond.

88 Acts, ch 1221, §16; 2000 Acts, ch 1021, §2
Referred to in §552.1, 552.12, 552.14

552.17 Consumer credit sales.

A physical exercise club contract where a finance charge is made or where payment is required or permitted by agreement to be made in more than four periodic payments, excluding a down payment, is a consumer credit sale within the meaning of section 537.1301, subsection 13, and is subject to chapter 537. If any periodic payment, other than the down payment under an agreement requiring or permitting two or more periodic payments, is more than twice the amount of any other periodic payment other than the down payment, a transaction is "payable in installments" within the meaning of section 537.1301, subsection 34.

The provisions of this chapter providing rights and protections to buyers are in addition to the provisions of chapter 537.

88 Acts, ch 1221, §17

552.18 Waiver of provisions.

A waiver by the buyer of any of the provisions of this chapter is void as contrary to public policy.

88 Acts, ch 1221, §18

552.19 Immunity.

Notwithstanding chapter 669, there is no liability on behalf of the state of Iowa, the attorney general, or the employees of the attorney general, for damages for failure to execute, or for negligently executing, the duties or authority conferred upon them by this chapter, or the rules adopted pursuant to this chapter.

88 Acts, ch 1221, §19

552.20 Rules.

The attorney general may adopt rules in accordance with chapter 17A to carry out the provisions of this chapter.

88 Acts, ch 1221, §20

552.21 Construction of chapter.

This chapter does not limit the power or authority of the attorney general to seek administrative, legal, or equitable relief as provided by other statutes or at common law.

88 Acts, ch 1221, §21

552.22 Applicability.

This chapter applies to all physical exercise club contracts entered into in this state on or after July 1, 1988, concerning physical exercise club facilities located, or services to be provided, in this state.

88 Acts, ch 1221, §22

CHAPTER 552A

BUYING CLUB MEMBERSHIPS

Referred to in §669.14

552A.1 Definitions.
552A.2 Exemptions.
552A.3 Right of cancellation — requirement of writing — internet sales.
552A.4 Limitation on membership period.
552A.5 Remedies.

552A.1 Definitions.

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

1. *"Buying club"* means a corporation, partnership, unincorporated association, or other business enterprise which sells or offers for sale to the public generally memberships or certificates of membership.

2. *"Contract"* means the agreement by which a person acquires a membership in a buying club.

3. *"Membership"* means certificates, memberships, shares, bonds, contracts, stocks, or agreements of any kind or character issued upon any plan offered generally to the public entitling the holder to purchase merchandise, materials, equipment, or service, either from the issuer or another person designated by the issuer, either under a franchise or otherwise, whether it be at a discount, at cost plus a percentage, at cost plus a fixed amount, at a fixed price, or on any other similar basis.

93 Acts, ch 60, §1

552A.2 Exemptions.

This chapter does not apply to any of the following:

1. Building and loan associations, state or national banks, insurance companies and associations, and mutual or cooperative telephone companies organized under chapter 491

which have been determined to be exempt from taxation under section 501(c)(12) of the Internal Revenue Code.

2. Corporations and cooperative associations subject to regulation under chapter 497, 498, or 499.

3. The sale of membership camping contracts by persons or entities registered or exempt under chapter 557B.

4. The sale of physical exercise club contracts by persons or entities registered under chapter 552.

5. Corporations, partnerships, unincorporated associations, or other business enterprises which sell or offer for sale memberships to an individual or to a family unit for consideration of no more than fifty dollars for a one-year period. Consideration for this purpose includes but is not limited to the amount of any required purchase under the terms of the contract.

6. *a.* The sale of goods or services by corporations, partnerships, unincorporated associations, or other business enterprises which sell products to direct sellers as defined by section 3508 of the Internal Revenue Code, where the initial contract establishing the relationship with the direct seller is terminable at will by either party, and where the corporation, partnership, unincorporated association, or other business enterprise offers to repurchase the products at reasonable commercial terms.

b. For purposes of this subsection, *"reasonable commercial terms"* includes the repurchase of all unencumbered products which are in an unused, commercially resalable condition within one year from the direct seller's date of purchase. The repurchase shall be at a price not less than ninety percent of the original net cost to the direct seller of the products being returned. *"Original net cost"* means the amount actually paid by the direct seller for the products, less any consideration received by the direct seller for the purchase of the products being returned. Products which are no longer marketed by a program shall be deemed resalable if the products are otherwise in an unused, commercially resalable condition and are returned to the seller within one year from the direct seller's date of purchase, provided, however, that products which are no longer marketed by a program shall not be deemed resalable if the products are sold to direct sellers as nonreturnable, discontinued, seasonal, or special promotion items and the nonreturnable nature of the product was clearly disclosed to the direct seller prior to purchase.

93 Acts, ch 60, §2; 2012 Acts, ch 1023, §157

Referred to in §557B.14

552A.3 Right of cancellation — requirement of writing — internet sales.

The requirements of sections 555A.1 through 555A.5, relating to door-to-door sales, shall apply to sales of buying club memberships, irrespective of the place or manner of sale or the purpose for which they are purchased, except that in connection with the sale of a buying club membership transacted through the internet by a company primarily engaged in the sale of goods through the internet, section 555A.4, subsections 1 and 3 shall not apply. In addition to the requirements of chapter 555A, a contract shall not be enforceable against a person acquiring a membership in a buying club unless the contract is in writing and signed by the purchaser.

93 Acts, ch 60, §3; 2015 Acts, ch 101, §1

552A.4 Limitation on membership period.

A contract shall not be valid for a term longer than eighteen months from the date on which the contract is signed. However, a buying club may allow a member to convert the contract into a contract for a period longer than eighteen months after the member has been a member of the club for at least one year. The duration of the contract shall be clearly and conspicuously disclosed in the contract in boldface type of a minimum size of fourteen points.

93 Acts, ch 60, §4

552A.5 Remedies.

1. A violation of this chapter is a violation of section 714.16, subsection 2, paragraph "*a*".

2. The rights, obligations, and remedies provided in this chapter shall be in addition to any other rights, obligations, or remedies provided by law or in equity.

3. In addition to the remedies otherwise provided by law, any person injured by a violation of this chapter may bring a civil action and recover damages, together with costs, including reasonable attorney's fees, and receive other equitable relief as determined by the court.

93 Acts, ch 60, §5

CHAPTER 553

IOWA COMPETITION LAW

Referred to in §13.2, 28G.9, 423.23, 669.14

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553.1 Short title.

This chapter shall be known and may be cited as the *"Iowa Competition Law"*.

[C77, 79, 81, §553.1]

553.2 Construction.

This chapter shall be construed to complement and be harmonized with the applied laws of the United States which have the same or similar purpose as this chapter. This construction shall not be made in such a way as to constitute a delegation of state authority to the federal government, but shall be made to achieve uniform application of the state and federal laws prohibiting restraints of economic activity and monopolistic practices.

[C77, 79, 81, §553.2]

553.3 Definitions.

As used in this chapter unless the context otherwise requires:

1. *"Commodity"* means tangible or intangible property, real, personal, or mixed.

2. *"Enterprise"* means a business, commercial or professional entity, including a corporation, partnership, limited partnership, professional corporation, proprietorship, incorporated or unincorporated association, or other form of organization.

3. *"Government agency"* means the state, its political subdivisions, and any public agency supported in whole or in part by taxation.

4. *"Person"* means a natural person, estate, trust, enterprise or government agency.

5. *"Price"* includes the terms and conditions of sale, rental, rate, fee, or any other form of payment for a commodity or service.

6. *"Relevant market"* means the geographical area of actual or potential competition in a line of commerce, all or any part of which is within this state.

7. *"Service"* means any activity which is performed in whole or part for financial gain.

8. *"Trade or commerce"* means any economic activity involving or relating to any commodity, service, or business activity.

[C77, 79, 81, §553.3]

553.4 Restraint prohibited.

A contract, combination, or conspiracy between two or more persons shall not restrain or monopolize trade or commerce in a relevant market.

[C97, §5060, 5061; S13, §5067-a; C24, 27, 31, 35, 39, §**9906, 9907, 9915;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §553.1, 553.2, 553.10; C77, 79, 81, §553.4]

553.5 Monopoly prohibited.

A person shall not attempt to establish or establish, maintain, or use a monopoly of trade or commerce in a relevant market for the purpose of excluding competition or of controlling, fixing, or maintaining prices.

[C97, §5060, 5061; S13, §5067-a; C24, 27, 31, 35, 39, §**9906, 9907, 9915;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §553.1, 553.2, 553.10; C77, 79, 81, §553.5]

553.6 Exemptions.

This chapter shall not be construed to prohibit:

1. The activities of any labor organization, individual members of such an organization, or group of such organizations, of any employer or group of employers, or of any groups of employees, if these activities are directed solely to legitimate labor objectives which are permitted under the laws of either this state or the United States.
2. The activities of any agricultural or horticultural organization, whether incorporated or unincorporated, or of the individual members of such organizations, if these activities carry out the legitimate objectives of such organizations, to the extent permitted under the laws of either this state or the United States.
3. The activities of persons engaged in the production of agricultural products when these persons act together in associations, corporate or otherwise, with or without capital stock, in collectively processing, preparing for market, handling, and marketing the products of these persons, to the extent permitted under the laws of either this state or the United States. These associations may have marketing and purchasing agencies in common and their members may make the necessary contracts and agreements to effect such purposes. However, such associations must be operated for the mutual benefit of the members of these associations acting as producers to qualify under this subsection.
4. The activities or arrangements expressly approved or regulated by any regulatory body or officer acting under authority of this state or of the United States.
5. The activities of a city or county, or an administrative or legal entity created by a city or county, when acting within its statutory or constitutional home rule powers and to the same extent that the activities would not be prohibited if undertaken by the state.

[C24, 27, 31, 35, 39, §**9916;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §553.11; C77, 79, 81, §553.6]
84 Acts, ch 1020, §1

553.7 Attorney general to enforce.

The attorney general, with such assistance as may be required from time to time of the county attorneys in their respective counties, shall institute all criminal and civil actions and proceedings brought under this Act in the name of the state.

[C97, §5067; C24, 27, 31, 35, 39, §**9913;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §553.8; C77, 79, 81, §553.7]
Referred to in §331.756(71)

553.8 Venue.

A suit or proceeding brought under this chapter may be brought in the county where the cause of action arose, where any defendant resides or transacts business, or where an act in furtherance of the conduct prohibited by this chapter occurred.

[C77, 79, 81, §553.8]

553.9 Investigation.

1. If the attorney general has reasonable cause to believe that a person has engaged in or is engaging in conduct prohibited by this chapter, the attorney general shall make such

investigation as is deemed necessary and may, prior to the commencement of a suit against this person under this chapter:

a. Issue written demand on this person, its officers, directors, partners, fiduciaries, or employees to compel their attendance before the attorney general and examine them under oath;

b. Issue written demand to produce, examine, and copy a document or tangible item in the possession of this person or its officers, directors, partners, or fiduciaries;

c. Upon an order of a district court, pursuant to a showing that such is reasonably necessary to an investigation being conducted under this section:

(1) Compel the attendance of any other person before the attorney general and examine this person under oath;

(2) Require the production, examination, and copying of a document or other tangible item in the possession of such person; and,

d. Upon an order of a district court, impound a document or other tangible item produced pursuant to this section and retain possession of it until the completion of all proceedings arising out of the investigation.

2. A written demand or court order issued pursuant to this section shall contain the following information, as applicable:

a. A reference to this chapter and a general description of the subject matter being investigated;

b. The date, time and place at which any person is to appear or to produce documents or other tangible items;

c. Where the production of documents or other tangible items is required, a description of such documents or items by class with sufficient clarity so that they may be reasonably identified.

3. Any procedure, testimony taken, or material produced under this section shall be sealed by the court and be kept confidential by the attorney general, until an action is filed against a person under this chapter for the violation under investigation, unless confidentiality is waived by the person being investigated and the person who has testified, answered interrogatories, or produced material, or unless disclosure is authorized by the court for the purposes of interstate cooperation in enforcing this chapter and similar state and federal laws.

4. This chapter shall not be construed to limit or abridge statutory or constitutional limitations on self-incrimination.

5. Evidence obtained from a natural person pursuant to the provisions of this section shall not be introduced in a subsequent criminal prosecution of this person. However, evidence obtained from a natural person pursuant to a grand jury proceeding may be so introduced.

[C77, 79, 81, §553.9]

Referred to in §553.10, 553.11

553.10 Investigation enforcement.

If a person objects or otherwise fails to obey a written demand or court order issued under section 553.9, the attorney general may file in the district court of the county in which the person resides or maintains a principal place of business within this state an application for an order to enforce the demand or order. Notice of hearing and a copy of the application shall be served upon the person, who may appear in opposition to the application. If the court finds that the demand or order is proper, that there is reasonable cause to believe there has been a violation of this chapter, and that the information sought or document or object demanded is relevant to the violation, it shall order the person to comply with the demand or order, subject to such modification as the court may prescribe. Upon motion by the person and for good cause shown, the court may make any further order in the proceedings which justice requires to protect the person from unreasonable annoyance, embarrassment, oppression, burden, or expense.

[C77, 79, 81, §553.10]

Referred to in §553.11

553.11 Protective orders.

Before the attorney general files an application under section 553.10 and upon application of any person who was served a written demand or court order under section 553.9, upon notice and hearing, and for good cause shown, the district court may make any order which justice requires to protect the person from annoyance, embarrassment, oppression, or undue burden of expense, including the following:

1. That the examination of this person shall not be taken or that documents or other tangible items shall not be produced for inspection and copying;

2. That the examination or production of documents or other tangible items shall be had only on specified terms and conditions, including a change in the time or place;

3. That certain matters shall not be inquired into or that the scope of the examination or production shall be limited to certain matters;

4. That the examination or production and inspection shall be conducted with only those persons present as designated by the court;

5. That the transcript of the examination shall be sealed and be opened only by order of the court;

6. That a trade secret or other confidential research, development, or commercial information shall not be disclosed or shall be disclosed only in a designated way.

[C77, 79, 81, §553.11]

553.12 Remedies.

The state or a person who is injured or threatened with injury by conduct prohibited under this chapter may bring suit to:

1. Prevent or restrain conduct prohibited under this chapter and remove the conduct's effect by injunction, divestiture, divorcement, dissolution of domestic enterprises right to do business in this state, compelling the forfeiture or restraint of the issuance of a certificate of incorporation, permit to transact business, license, or franchise, or granting other equitable relief. The state may bring suit under this section without posting bond.

2. Recover actual damages resulting from conduct prohibited under this chapter.

3. Recover, at the court's discretion, exemplary damages which do not exceed twice the actual damages awarded under subsection 2, from a person other than a city or county or legal entity created by a city or county, if:

a. The trier of fact determines that the prohibited conduct is willful or flagrant; and,

b. The person bringing suit is not the state.

4. Recover the necessary costs of bringing suit, including a reasonable attorney fee. However, the state may not recover any attorney fee.

[C77, 79, 81, §553.12]

84 Acts, ch 1020, §2

Referred to in §553.13, 553.16, 553.17

553.13 Civil penalty.

In addition to suit under section 553.12, the state may bring suit to assess a civil penalty against an enterprise whose conduct is prohibited under this chapter. The suit may be tried to the jury and the civil penalty provided for in this section shall be imposed by the court. The civil penalty assessed shall not exceed ten percent of the total value of the specific commodities by their brand, make, and size or of services either of which were the subject of the prohibited conduct sold in the relevant market in this state by the enterprise in each year in which this conduct occurred, but this penalty shall not exceed one hundred fifty thousand dollars. In computing this penalty, only the four most recent years in which the prohibited conduct occurred, as of commencement of suit under this section, shall be used in the computation.

[C77, 79, 81, §553.13]

Referred to in §553.16

553.14 Criminal penalties.

A person or a natural person having substantial control over an enterprise who knowingly and willfully engages in conduct prohibited by this chapter shall be guilty of a serious misdemeanor.

A person having substantial control over an enterprise who knowingly and willfully engages in bid rigging or price fixing involving a contract with the state or a governmental agency is guilty of a class "D" felony.

[C97, §5062; S13, §5062, 5067-c, 5077-a5; C24, 27, 31, 35, 39, **§9908, 9918, 9926;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §553.3, 553.13, 553.21; C77, 79, 81, §553.14]

84 Acts, ch 1143, §1

553.15 Election of remedies.

The bringing of suit to assess a civil penalty against a person by filing a petition shall be an election of remedies to not bring a criminal prosecution against this person. The bringing of a criminal prosecution against a person by filing an information or returning an indictment shall be an election of remedies to not bring suit to assess a civil penalty against this person.

[C77, 79, 81, §553.15]

553.16 Limitations.

1. Suit by the state to assess a civil penalty or to obtain a criminal conviction under this chapter must be commenced within four years after the cause of action accrues or, if there is fraudulent concealment of this cause of action, within four years after the cause of action becomes known, whichever period is later.

2. Suit under section 553.12 must be commenced within four years after the cause of action accrues or, if there is a fraudulent concealment of this cause of action, within four years after the cause of action becomes known, whichever period is later. However, if this cause is based, in whole or part, on the same set of facts as alleged in a suit brought under section 553.13, this period shall be suspended until one year after the suit brought under section 553.13 is concluded.

[C77, 79, 81, §553.16]

553.17 Prima facie evidence.

A final decree or judgment, other than a consent decree or consent judgment entered before trial, in a suit brought by the state is prima facie evidence against the defendant in a suit brought by any person other than the state under section 553.12 as to all matters respecting which this decree or judgment would be an estoppel between the state and the defendant. This section shall not affect the application of collateral estoppel or issue preclusion.

[C77, 79, 81, §553.17]

553.18 Debarment.

A contractor or supplier of goods or services to the state or a governmental agency, and the enterprise for which the illegal action was taken, convicted under this chapter, or convicted under the laws of any other state or the federal government for actions which would constitute a violation of this chapter, are prohibited from bidding on a governmental contract for one year from the date of conviction, unless the state or governmental agency accepting bids expressly allows the contractor or supplier to bid after being informed of the conviction.

84 Acts, ch 1143, §2

553.19 Antitrust fund.

1. An antitrust fund is created as a separate fund in the state treasury to be administered by the attorney general. Moneys credited to the fund shall include amounts received as a result of a state or federal civil antitrust judgment or settlement which are based on damages sustained by the state, civil penalties, costs, or attorney fees, and amounts which are specifically directed to the credit of the fund by the judgment or settlement, and amounts which are designated by the judgment or settlement for use by the attorney general for antitrust enforcement or education. Amounts based upon damages sustained by individuals

or entities outside of state government not designated for antitrust enforcement purposes or amounts based upon actual damages awarded to the state which would not otherwise be deposited in the general fund of the state shall not be credited to the fund.

2. For each fiscal year, not more than five hundred thousand dollars is appropriated from the fund to the department of justice to be used for enforcement of this chapter and chapter 551, and for enforcement of federal antitrust laws and for public education about state and federal antitrust laws.

3. Notwithstanding section 8.33, moneys credited to the fund shall not revert to any other fund. Notwithstanding section 12C.7, interest or earnings on the moneys in the fund shall be credited to the fund.

2007 Acts, ch 213, §23

CHAPTER 554

UNIFORM COMMERCIAL CODE

Referred to in §12.71, 12.81, 12.87, 12.91, 12A.4, 12E.11, 15.106D, 15E.204, 15E.207, 16.26, 16.105, 16.132, 16.177, 34A.21, 173.14B, 203.12A, 203C.4, 203C.12A, 257C.8, 260C.72, 261.43A, 321.50, 321.105A, 331.606B, 331.609, 390.17, 423.1, 453A.45, 455G.6, 462A.83, 463C.12, 483A.51, 491.46, 501A.902, 537.1103, 537A.3, 554B.2, 554D.104, 554D.118, 558.1, 558.42, 578A.6, 654A.1, 654A.6, 654A.8, 717.3, 717.4, 809A.1

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ARTICLE 1

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Referred to in §554.2103, 554.3103, 554.4104, 554.5102, 554.7102, 554.8102, 554.9102, 554.12105, 554.13103

PART 1

GENERAL PROVISIONS

554.1101 Short titles.

1. This chapter may be cited as the Uniform Commercial Code.
2. This Article may be cited as Uniform Commercial Code — General Provisions.

[C66, 71, 73, 75, 77, 79, 81, §554.1101]
2007 Acts, ch 41, §1

554.1102 Scope of Article.

This Article applies to a transaction to the extent that it is governed by another Article of this chapter.

2007 Acts, ch 41, §2, 57

554.1103 Construction of this chapter to promote its purposes and policies — applicability of supplemental principles of law.

1. This chapter must be liberally construed and applied to promote its underlying purposes and policies, which are:

a. to simplify, clarify, and modernize the law governing commercial transactions;

b. to permit the continued expansion of commercial practices through custom, usage, and agreement of the parties; and

c. to make uniform the law among the various jurisdictions.

2. Unless displaced by the particular provisions of this chapter, the principles of law and equity, including the law merchant and the law relative to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, and other validating or invalidating cause supplement its provisions.

[S13, §3060-a196, 3138-a56, -b50; C24, 27, 31, 35, 39, §**8295, 9657, 9716, 9931, 10002;** C46, §487.52, 541.197, 542.56, 554.2, 554.74; C50, 54, 58, 62, §487.52, 493A.18, 541.197, 542.56, 554.2, 554.74; C66, 71, 73, 75, 77, 79, 81, §554.1103]

2007 Acts, ch 41, §3

554.1104 Construction against implied repeal.

This chapter being a general Act intended as a unified coverage of its subject matter, no part of it shall be deemed to be impliedly repealed by subsequent legislation if such construction can reasonably be avoided.

[C66, 71, 73, 75, 77, 79, 81, §554.1104]

2007 Acts, ch 41, §4

554.1105 Severability.

If any provision or clause of this chapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

[C66, 71, 73, 75, 77, 79, 81, §554.1108]

2007 Acts, ch 41, §9, 48

CS2007, §554.1105

554.1106 Use of singular and plural — gender.

In this chapter, unless the statutory context otherwise requires:

1. words in the singular number include the plural, and those in the plural include the singular; and

2. words of any gender also refer to any other gender.

2007 Acts, ch 41, §7, 57

554.1107 Section captions.

Section captions are parts of this chapter.

[C66, 71, 73, 75, 77, 79, 81, §554.1109]

2007 Acts, ch 41, §49

CS2007, §554.1107

Referred to in §3.3

554.1108 Relation to Electronic Signatures in Global and National Commerce Act.

This Article modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. §7001 et seq., except that nothing in this Article modifies, limits, or supersedes §7001(c) of that Act or authorizes electronic delivery of any of the notices described in §7003(b) of that Act.

2007 Acts, ch 41, §10, 57

554.1109 Reserved.

554.1110 Rules for filing and indexing.

The secretary of state shall make and promulgate rules for all filing and indexing pursuant to this chapter and chapter 554B including but not limited to rules on whether statements and documents shall be indexed in real estate records.

[C71, 73, 75, 77, 79, 81, §554.1110]

2014 Acts, ch 1026, §117

PART 2

GENERAL DEFINITIONS AND PRINCIPLES OF INTERPRETATION

554.1201 General definitions.

1. Unless the context otherwise requires, words or phrases defined in this section, or in the additional definitions contained in other Articles of this chapter that apply to particular Articles or parts thereof, have the meanings stated.

2. Subject to definitions contained in other Articles of this chapter that apply to particular Articles or parts thereof:

a. "Action" in the sense of a judicial proceeding, includes recoupment, counterclaim, setoff, suit in equity, and any other proceedings in which rights are determined.

b. "Aggrieved party" means a party entitled to pursue a remedy.

c. "Agreement", as distinguished from "contract", means the bargain of the parties in fact, as found in their language or inferred from other circumstances, including course of performance, course of dealing, or usage of trade as provided in section 554.1303.

d. "Bank" means a person engaged in the business of banking and includes a savings bank, savings and loan association, credit union, and trust company.

e. "Bearer" means a person in control of a negotiable electronic document of title or a person in possession of a negotiable instrument, negotiable tangible document of title, or certificated security that is payable to bearer or indorsed in blank.

f. "Bill of lading" means a document of title evidencing the receipt of goods for shipment issued by a person engaged in the business of directly or indirectly transporting or forwarding goods. The term does not include a warehouse receipt.

g. "Branch" includes a separately incorporated foreign branch of a bank.

h. "Burden of establishing" a fact means the burden of persuading the trier of fact that the existence of the fact is more probable than its nonexistence.

i. "Buyer in ordinary course of business" means a person that buys goods in good faith, without knowledge that the sale violates the rights of another person in the goods, and in the ordinary course from a person, other than a pawnbroker, in the business of selling goods of that kind. A person buys goods in the ordinary course if the sale to the person comports with the usual or customary practices in the kind of business in which the seller is engaged or with the seller's own usual or customary practices. A person that sells oil, gas, or other minerals at the wellhead or minehead is a person in the business of selling goods of that kind. A buyer in ordinary course of business may buy for cash, by exchange of other property, or on secured or unsecured credit, and may acquire goods or documents of title under a preexisting contract for sale. Only a buyer that takes possession of the goods or has a right to recover the goods from the seller under Article 2 may be a buyer in ordinary course of business. *"Buyer in ordinary course of business"* does not include a person that acquires goods in a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

j. "Conspicuous", with reference to a term, means so written, displayed, or presented that a reasonable person against which it is to operate ought to have noticed it. Whether a term is *"conspicuous"* or not is a decision for the court. Conspicuous terms include the following:

(1) a heading in capitals equal to or greater in size than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same or lesser size; and

(2) language in the body of a record or display in larger type than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same size, or set off

from surrounding text of the same size by symbols or other marks that call attention to the language.

k. *"Consumer"* means an individual who enters into a transaction primarily for personal, family, or household purposes.

l. *"Contract"*, as distinguished from "agreement", means the total legal obligation that results from the parties' agreement as determined by this chapter as supplemented by any other applicable laws.

m. *"Creditor"* includes a general creditor, a secured creditor, a lien creditor, and any representative of creditors, including an assignee for the benefit of creditors, a trustee in bankruptcy, a receiver in equity, and an executor or administrator of an insolvent debtor's or assignor's estate.

n. *"Defendant"* includes a person in the position of defendant in a counterclaim, cross-claim, or third-party claim.

o. *"Delivery"*, with respect to an electronic document of title means voluntary transfer of control and with respect to an instrument, a tangible document of title, or chattel paper, means voluntary transfer of possession.

p. *"Document of title"* means a record that in the regular course of business or financing is treated as adequately evidencing that the person in possession or control of the record is entitled to receive, control, hold, and dispose of the record and the goods the record covers and that purports to be issued by or addressed to a bailee and to cover goods in the bailee's possession which are either identified or are fungible portions of an identified mass. The term includes a bill of lading, transport document, dock warrant, dock receipt, warehouse receipt, and order for delivery of goods. An *"electronic document of title"* means a document of title evidenced by a record consisting of information stored in an electronic medium. A *"tangible document of title"* means a document of title evidenced by a record consisting of information that is inscribed on a tangible medium.

q. *"Fault"* means a default, breach, or wrongful act or omission.

r. *"Fungible goods"* means:

(1) goods of which any unit, by nature or usage of trade, is the equivalent of any other like unit; or

(2) goods that by agreement are treated as equivalent.

s. *"Genuine"* means free of forgery or counterfeiting.

t. *"Good faith"*, except as otherwise provided in Article 5, means honesty in fact and the observance of reasonable commercial standards of fair dealing.

u. *"Holder"* means:

(1) the person in possession of a negotiable instrument that is payable either to bearer or to an identified person that is the person in possession;

(2) the person in possession of a negotiable tangible document of title if the goods are deliverable either to bearer or to the order of the person in possession; or

(3) the person in control of a negotiable electronic document of title.

v. *"Insolvency proceeding"* includes any assignment for the benefit of creditors or other proceeding intended to liquidate or rehabilitate the estate of the person involved.

w. *"Insolvent"* means:

(1) having generally ceased to pay debts in the ordinary course of business other than as a result of a bona fide dispute;

(2) being unable to pay debts as they become due; or

(3) being insolvent within the meaning of federal bankruptcy law.

x. *"Money"* means a medium of exchange currently authorized or adopted by a domestic or foreign government. The term includes a monetary unit of account established by an intergovernmental organization or by agreement between two or more countries.

y. *"Organization"* means a person other than an individual.

z. *"Party"*, as distinguished from "third party", means a person that has engaged in a transaction or made an agreement subject to this chapter.

aa. *"Person"* means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, public corporation, or any other legal or commercial entity.

ab. *"Present value"* means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain by use of either an interest rate specified by the parties if that rate is not manifestly unreasonable at the time the transaction is entered into or, if an interest rate is not so specified, a commercially reasonable rate that takes into account the facts and circumstances at the time the transaction is entered into.

ac. *"Purchase"* means taking by sale, lease, discount, negotiation, mortgage, pledge, lien, security interest, issue or reissue, gift, or any other voluntary transaction creating an interest in property.

ad. *"Purchaser"* means a person who takes by purchase.

ae. *"Record"* means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

af. *"Remedy"* means any remedial right to which an aggrieved party is entitled with or without resort to a tribunal.

ag. *"Representative"* means a person empowered to act for another, including an agent, an officer of a corporation or association, and a trustee, executor, or administrator of an estate.

ah. *"Right"* includes remedy.

ai. *"Security interest"* means an interest in personal property or fixtures which secures payment or performance of an obligation. *"Security interest"* includes any interest of a consignor and a buyer of accounts, chattel paper, a payment intangible, or a promissory note in a transaction that is subject to Article 9. *"Security interest"* does not include the special property interest of a buyer of goods on identification of those goods to a contract for sale under section 554.2401, but a buyer may also acquire a *"security interest"* by complying with Article 9. Except as otherwise provided in section 554.2505, the right of a seller or lessor of goods under Article 2 or 13 to retain or acquire possession of the goods is not a *"security interest"*, but a seller or lessor may also acquire a *"security interest"* by complying with Article 9. The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer under section 554.2401 is limited in effect to a reservation of a *"security interest"*. Whether a transaction in the form of a lease creates a *"security interest"* is determined pursuant to section 554.1203.

aj. *"Send"* in connection with a writing, record, or notice means:

(1) to deposit in the mail or deliver for transmission by any other usual means of communication with postage or cost of transmission provided for and properly addressed and, in the case of an instrument, to an address specified thereon or otherwise agreed, or if there be none to any address reasonable under the circumstances; or

(2) in any other way to cause to be received any record or notice within the time it would have arrived if properly sent.

ak. *"Signed"* includes using any symbol executed or adopted with present intention to adopt or accept a writing.

al. *"State"* means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

am. *"Surety"* includes a guarantor or other secondary obligor.

an. *"Term"* means that portion of an agreement that relates to a particular matter.

ao. *"Unauthorized signature"* means a signature made without actual, implied, or apparent authority. The term includes a forgery.

ap. *"Warehouse receipt"* means a document of title issued by a person engaged in the business of storing goods for hire.

aq. *"Writing"* includes printing, typewriting, or any other intentional reduction to tangible form. *"Written"* has a corresponding meaning.

[S13, §1889-a, 3060-a6, -a25, -a27, -a56, -a191, 3138-a1, -a58, -b, -b52; C24, 27, 31, 35, 39, §**8245, 8297, 9266, 9466, 9485 – 9487, 9516, 9652, 9661, 9718, 9932, 9934, 9935, 10000, 10005;** C46, 50, 54, 58, 62, §487.1, 487.54, 528.61, 541.6, 541.25 – 541.27, 541.56, 541.192,

542.1, 542.58, 554.3, 554.6, 554.7, 554.72, 554.77; C50, 54, 58, 62, §493A.22; C58, 62, §539.12; C66, 71, 73, 75, 77, 79, 81, §554.1201]

89 Acts, ch 113, §54; 94 Acts, ch 1052, §3; 94 Acts, ch 1167, §6, 122; 2000 Acts, ch 1149, §138, 139, 187; 2007 Acts, ch 30, §45 – 47; 2007 Acts, ch 41, §11, 43, 44; 2007 Acts, ch 215, §262; 2013 Acts, ch 30, §261; 2014 Acts, ch 1026, §118; 2018 Acts, ch 1041, §108, 109

Referred to in §123A.2, 537.3603, 554.3103, 554.12105, 554.13103, 554D.118
Subsection 1 amended
Subsection 2, unnumbered paragraph 1 amended

554.1202 Notice — knowledge.

1. Subject to subsection 6, a person has *"notice"* of a fact if the person:

a. has actual knowledge of it;

b. has received a notice or notification of it; or

c. from all the facts and circumstances known to the person at the time in question, has reason to know that it exists.

2. *"Knowledge"* means actual knowledge. *"Knows"* has a corresponding meaning.

3. *"Discover"*, *"learn"*, or words of similar import refer to knowledge rather than to reason to know.

4. A person *"notifies"* or *"gives"* a notice or notification to another person by taking such steps as may be reasonably required to inform the other person in ordinary course, whether or not the other person actually comes to know of it.

5. Subject to subsection 6, a person *"receives"* a notice or notification when:

a. it comes to that person's attention; or

b. it is duly delivered in a form reasonable under the circumstances at the place of business through which the contract was made or at another location held out by that person as the place for receipt of such communications.

6. Notice, knowledge, or a notice or notification received by an organization is effective for a particular transaction from the time it is brought to the attention of the individual conducting that transaction and, in any event, from the time it would have been brought to the individual's attention if the organization had exercised due diligence. An organization exercises due diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routines. Due diligence does not require an individual acting for the organization to communicate information unless the communication is part of the individual's regular duties or the individual has reason to know of the transaction and that the transaction would be materially affected by the information.

2007 Acts, ch 41, §13, 57
Referred to in §554.12106

554.1203 Lease distinguished from security interest.

1. Whether a transaction in the form of a lease creates a lease or security interest is determined by the facts of each case.

2. A transaction in the form of a lease creates a security interest if the consideration that the lessee is to pay the lessor for the right to possession and use of the goods is an obligation for the term of the lease and is not subject to termination by the lessee, and:

a. the original term of the lease is equal to or greater than the remaining economic life of the goods;

b. the lessee is bound to renew the lease for the remaining economic life of the goods or is bound to become the owner of the goods;

c. the lessee has an option to renew the lease for the remaining economic life of the goods for no additional consideration or for nominal additional consideration upon compliance with the lease agreement; or

d. the lessee has an option to become the owner of the goods for no additional consideration or for nominal additional consideration upon compliance with the lease agreement.

3. A transaction in the form of a lease does not create a security interest merely because:

a. the present value of the consideration the lessee is obligated to pay the lessor for the

right to possession and use of the goods is substantially equal to or is greater than the fair market value of the goods at the time the lease is entered into;

b. the lessee assumes risk of loss of the goods;

c. the lessee agrees to pay, with respect to the goods, taxes, insurance, filing, recording, or registration fees, or service or maintenance costs;

d. the lessee has an option to renew the lease or to become the owner of the goods;

e. the lessee has an option to renew the lease for a fixed rent that is equal to or greater than the reasonably predictable fair market rent for the use of the goods for the term of the renewal at the time the option is to be performed; or

f. the lessee has an option to become the owner of the goods for a fixed price that is equal to or greater than the reasonably predictable fair market value of the goods at the time the option is to be performed.

4. Additional consideration is nominal if it is less than the lessee's reasonably predictable cost of performing under the lease agreement if the option is not exercised. Additional consideration is not nominal if:

a. when the option to renew the lease is granted to the lessee, the rent is stated to be the fair market rent for the use of the goods for the term of the renewal determined at the time the option is to be performed; or

b. when the option to become the owner of the goods is granted to the lessee, the price is stated to be the fair market value of the goods determined at the time the option is to be performed.

5. The "remaining economic life of the goods" and "reasonably predictable" fair market rent, fair market value, or cost of performing under the lease agreement must be determined with reference to the facts and circumstances at the time the transaction is entered into.

2007 Acts, ch 41, §14, 57

Referred to in §554.1201

554.1204 Value.

Except as otherwise provided in Articles 3, 4, and 5, a person gives value for rights if the person acquires them:

1. in return for a binding commitment to extend credit or for the extension of immediately available credit, whether or not drawn upon and whether or not a charge-back is provided for in the event of difficulties in collection;

2. as security for, or in total or partial satisfaction of, a preexisting claim;

3. by accepting delivery under a preexisting contract for purchase; or

4. in return for any consideration sufficient to support a simple contract.

2007 Acts, ch 41, §16, 57

554.1205 Reasonable time — seasonableness.

1. Whether a time for taking an action required by this chapter is reasonable depends on the nature, purpose, and circumstances of the action.

2. An action is taken seasonably if it is taken at or within the time agreed or, if no time is agreed, at or within a reasonable time.

[S13, §3060-a193; C24, 27, 31, 35, 39, §**9654, 9972;** C46, 50, 54, 58, 62, §541.194, 554.44; C66, 71, 73, 75, 77, 79, 81, §554.1204]

2007 Acts, ch 41, §15, 52

CS2007, §554.1205

554.1206 Presumptions.

Whenever this chapter creates a "*presumption*" with respect to a fact, or provides that a fact is "*presumed*", the trier of fact must find the existence of the fact unless and until evidence is introduced that supports a finding of its nonexistence.

2007 Acts, ch 41, §18, 57

PART 3

TERRITORIAL APPLICABILITY
AND GENERAL RULES

554.1301 Territorial applicability — parties' power to choose applicable law.

1. Except as otherwise provided in this section, when a transaction bears a reasonable relation to this state and also to another state or nation the parties may agree that the law either of this state or of such other state or nation shall govern their rights and duties.

2. In the absence of an agreement effective under subsection 1, and except as provided in subsection 3, this chapter applies to transactions bearing an appropriate relation to this state.

3. If one of the following provisions of this chapter specifies the applicable law, that provision governs and a contrary agreement is effective only to the extent permitted by the law so specified:

a. Section 554.2402;
b. Section 554.4102;
c. Section 554.5116;
d. Section 554.8110;
e. Sections 554.9301 through 554.9307;
f. Section 554.12507;
g. Sections 554.13105 and 554.13106.

[C66, 71, 73, 75, 77, 79, 81, §554.1105]

92 Acts, ch 1146, §39; 94 Acts, ch 1052, §2; 94 Acts, ch 1121, §3; 96 Acts, ch 1026, §19; 96 Acts, ch 1138, §5, 84; 2000 Acts, ch 1149, §137, 187; 2007 Acts, ch 41, §5, 45

CS2007, §554.1301

554.1302 Variation by agreement.

1. Except as otherwise provided in subsection 2 or elsewhere in this chapter, the effect of provisions of this chapter may be varied by agreement.

2. The obligations of good faith, diligence, reasonableness, and care prescribed by this chapter may not be disclaimed by agreement. The parties, by agreement, may determine the standards by which the performance of those obligations is to be measured if those standards are not manifestly unreasonable. Whenever this chapter requires an action to be taken within a reasonable time, a time that is not manifestly unreasonable may be fixed by agreement.

3. The presence in certain provisions of this chapter of the phrase "unless otherwise agreed", or words of similar import, does not imply that the effect of other provisions may not be varied by agreement under this section.

2007 Acts, ch 41, §22

Referred to in §554.5103, 554.12204, 554.13518, 554.13519, 554.13527, 554.13528

554.1303 Course of performance, course of dealing, and usage of trade.

1. A *"course of performance"* is a sequence of conduct between the parties to a particular transaction that exists if:

a. the agreement of the parties with respect to the transaction involves repeated occasions for performance by a party; and

b. the other party, with knowledge of the nature of the performance and opportunity for objection to it, accepts the performance or acquiesces in it without objection.

2. A *"course of dealing"* is a sequence of conduct concerning previous transactions between the parties to a particular transaction that is fairly to be regarded as establishing a common basis of understanding for interpreting their expressions and other conduct.

3. A *"usage of trade"* is any practice or method of dealing having such regularity of observance in a place, vocation, or trade as to justify an expectation that it will be observed with respect to the transaction in question. The existence and scope of such a usage must be proved as facts. If it is established that such a usage is embodied in a trade code or similar record, the interpretation of the record is a question of law.

4. A course of performance or course of dealing between the parties or usage of trade in

the vocation or trade in which they are engaged or of which they are or should be aware is relevant in ascertaining the meaning of the parties' agreement, may give particular meaning to specific terms of the agreement, and may supplement or qualify the terms of the agreement. A usage of trade applicable in the place in which part of the performance under the agreement is to occur may be so utilized as to that part of the performance.

5. Except as otherwise provided in subsection 6, the express terms of an agreement and any applicable course of dealing, or usage of trade must be construed wherever reasonable as consistent with each other. If such a construction is unreasonable:

a. express terms prevail over course of performance, course of dealing, and usage of trade;

b. course of performance prevails over course of dealing and usage of trade; and

c. course of dealing prevails over usage of trade.

6. Subject to section 554.2209, a course of performance is relevant to show a waiver or modification of any term inconsistent with the course of performance.

7. Evidence of a relevant usage of trade offered by one party is not admissible unless that party has given the other party notice that the court finds sufficient to prevent unfair surprise to the other party.

[C24, 27, 31, 35, 39, §**9938, 9944, 9947, 10000;** C46, 50, 54, 58, 62, §554.10, 554.16, 554.19, 554.72; C66, 71, 73, 75, 77, 79, 81, §554.1205]

2007 Acts, ch 41, §17, 53

CS2007, §554.1303

Referred to in §554.1201, 554.2202

554.1304 Obligation of good faith.

Every contract or duty within this chapter imposes an obligation of good faith in its performance or enforcement.

[C66, 71, 73, 75, 77, 79, 81, §554.1203]

2007 Acts, ch 41, §51

CS2007, §554.1304

554.1305 Remedies to be liberally administered.

1. The remedies provided by this chapter must be liberally administered to the end that the aggrieved party may be put in as good a position as if the other party had fully performed but neither consequential or special damages nor penal damages may be had except as specifically provided in this chapter or by other rule of law.

2. Any right or obligation declared by this chapter is enforceable by action unless the provision declaring it specifies a different and limited effect.

[C24, 27, 31, 35, 39, §**10001;** C46, 50, 54, 58, 62, §554.73; C66, 71, 73, 75, 77, 79, 81, §554.1106]

2007 Acts, ch 41, §6, 46

CS2007, §554.1305

Referred to in §554.13501

554.1306 Waiver or renunciation of claim or right after breach.

A claim or right arising out of an alleged breach may be discharged in whole or in part without consideration by agreement of the aggrieved party in an authenticated record.

[S13, §3060-a118, -a122; SS15, §3060-a120; C24, 27, 31, 35, 39, §**9579, 9581, 9583;** C46, 50, 54, 58, 62, §541.119, 541.121, 541.123; C66, 71, 73, 75, 77, 79, 81, §554.1107]

2007 Acts, ch 41, §8, 47

CS2007, §554.1306

Referred to in §554D.104

554.1307 Prima facie evidence by third-party documents.

A document in due form purporting to be a bill of lading, policy or certificate of insurance, official weigher's or inspector's certificate, consular invoice, or any other document authorized or required by the contract to be issued by a third party is prima facie evidence

of its own authenticity and genuineness and of the facts stated in the document by the third party.

[C66, 71, 73, 75, 77, 79, 81, §554.1202]
2007 Acts, ch 41, §12, 50
CS2007, §554.1307

554.1308 Performance or acceptance under reservation of rights.

1. A party that with explicit reservation of rights performs or promises performance or assents to performance in a manner demanded or offered by the other party does not thereby prejudice the rights reserved. Such words as "without prejudice", "under protest", or the like are sufficient.

2. Subsection 1 does not apply to an accord and satisfaction.

[C66, 71, 73, 75, 77, 79, 81, §554.1207]
94 Acts, ch 1167, §7, 122; 2007 Acts, ch 41, §19, 54
CS2007, §554.1308

554.1309 Option to accelerate at will.

A term providing that one party or that party's successor in interest may accelerate payment or performance or require collateral or additional collateral "at will" or when the party "deems itself insecure" or words of similar import, means that that party has power to do so only if that party in good faith believes that the prospect of payment or performance is impaired. The burden of establishing lack of good faith is on the party against which the power has been exercised.

[C66, 71, 73, 75, 77, 79, 81, §554.1208]
2007 Acts, ch 41, §20, 55
CS2007, §554.1309

554.1310 Subordinated obligations.

An obligation may be issued as subordinated to performance of another obligation of the person obligated, or a creditor may subordinate its right to performance of an obligation by agreement with either the person obligated or another creditor of the person obligated. Subordination does not create a security interest as against either the common debtor or a subordinated creditor.

[C75, 77, 79, 81, §554.1209]
2007 Acts, ch 41, §21, 56
CS2007, §554.1310

ARTICLE 2

SALES

Referred to in §554.1201, 554.7509, 554.9110, 554.9203, 554.9322, 554D.104

PART 1

SHORT TITLE, GENERAL CONSTRUCTION, AND SUBJECT MATTER

554.2101 Short title.

This Article shall be known and may be cited as Uniform Commercial Code — Sales.

[C66, 71, 73, 75, 77, 79, 81, §554.2101]

554.2102 Scope — certain security and other transactions excluded from this Article.

Unless the context otherwise requires, this Article applies to transactions in goods; it does not apply to any transaction which although in the form of an unconditional contract to sell or present sale is intended to operate only as a security transaction nor does this Article

impair or repeal any statute regulating sales to consumers, farmers or other specified classes of buyers.

[C24, 27, 31, 35, 39, §**10004;** C46, 50, 54, 58, 62, §554.76; C66, 71, 73, 75, 77, 79, 81, §554.2102]

554.2103 Definitions and index of definitions.

1. In this Article unless the context otherwise requires

a. *"Buyer"* means a person who buys or contracts to buy goods.

b. Reserved.

c. *"Receipt"* of goods means taking physical possession of them.

d. *"Seller"* means a person who sells or contracts to sell goods.

2. Other definitions applying to this Article or to specified Parts thereof, and the sections in which they appear are:

a. "Acceptance" ..... Section 554.2606
b. "Banker's credit" ..... Section 554.2325
c. "Between merchants" ..... Section 554.2104
d. "Cancellation" ..... Section 554.2106(4)
e. "Commercial unit" ..... Section 554.2105
f. "Confirmed credit" ..... Section 554.2325
g. "Conforming to contract" ..... Section 554.2106
h. "Contract for sale" ..... Section 554.2106
i. "Cover" ..... Section 554.2712
j. "Entrusting" ..... Section 554.2403
k. "Financing agency" ..... Section 554.2104
l. "Future goods" ..... Section 554.2105
m. "Goods" ..... Section 554.2105
n. "Identification" ..... Section 554.2501
o. "Installment contract" ..... Section 554.2612
p. "Letter of credit" ..... Section 554.2325
q. "Lot" ..... Section 554.2105
r. "Merchant" ..... Section 554.2104
s. "Overseas" ..... Section 554.2323
t. "Person in position of seller" ..... Section 554.2707
u. "Present sale" ..... Section 554.2106
v. "Sale" ..... Section 554.2106
w. "Sale on approval" ..... Section 554.2326
x. "Sale or return" ..... Section 554.2326
y. "Termination" ..... Section 554.2106

3. The following definitions in other Articles apply to this Article:

a. "Check" ..... Section 554.3104
b. "Consignee" ..... Section 554.7102
c. "Consignor" ..... Section 554.7102
d. "Consumer goods" ..... Section 554.9102
e. "Control" ..... Section 554.7106
f. "Dishonor" ..... Section 554.3502
g. "Draft" ..... Section 554.3104

4. In addition Article 1 contains general definitions and principles of construction and interpretation applicable throughout this Article.

[C24, 27, 31, 35, 39, §**10005;** C46, 50, 54, 58, 62, §554.77; C66, 71, 73, 75, 77, 79, 81, §554.2103]

94 Acts, ch 1167, §8, 122; 2000 Acts, ch 1149, §140, 187; 2007 Acts, ch 30, §45, 46, 48; 2007 Acts, ch 41, §23; 2012 Acts, ch 1023, §144, 157

Referred to in §554.7102, 554.13103

554.2104 Definitions: "merchant" — "between merchants" — "financing agency".

1. *"Merchant"* means a person who deals in goods of the kind or otherwise by the person's

occupation holds that person out as having knowledge or skill peculiar to the practices or goods involved in the transaction or to whom such knowledge or skill may be attributed by the person's employment of an agent or broker or other intermediary who by the intermediary's occupation holds the intermediary out as having such knowledge or skill.

2. *"Financing agency"* means a bank, finance company or other person who in the ordinary course of business makes advances against goods or documents of title or who by arrangement with either the seller or the buyer intervenes in ordinary course to make or collect payment due or claimed under the contract for sale, as by purchasing or paying the seller's draft or making advances against it or by merely taking it for collection whether or not documents of title accompany or are associated with the draft. "Financing agency" includes also a bank or other person who similarly intervenes between persons who are in the position of seller and buyer in respect to the goods (section 554.2707).

3. *"Between merchants"* means in any transaction with respect to which both parties are chargeable with the knowledge or skill of merchants.

[S13, §3138-b34, -b36; C24, 27, 31, 35, 39, §**8279, 8281;** C46, 50, 54, 58, 62, §487.35, 487.37; C66, 71, 73, 75, 77, 79, 81, §554.2104]

2007 Acts, ch 30, §45, 46, 49

Referred to in §546A.1, 554.2103, 554.9102, 554.13103

554.2105 Definitions: transferability — "goods" — "future" goods — "lot" — "commercial unit".

1. *"Goods"* means all things (including specially manufactured goods) which are movable at the time of identification to the contract for sale other than the money in which the price is to be paid, investment securities (Article 8) and things in action. "Goods" also includes the unborn young of animals and growing crops and other identified things attached to realty as described in the section on goods to be severed from realty (section 554.2107).

2. Goods must be both existing and identified before any interest in them can pass. Goods which are not both existing and identified are "future" goods. A purported present sale of future goods or of any interest therein operates as a contract to sell.

3. There may be a sale of a part interest in existing identified goods.

4. An undivided share in an identified bulk of fungible goods is sufficiently identified to be sold although the quantity of the bulk is not determined. Any agreed proportion of such a bulk or any quantity thereof agreed upon by number, weight or other measure may to the extent of the seller's interest in the bulk be sold to the buyer who then becomes an owner in common.

5. *"Lot"* means a parcel or a single article which is the subject matter of a separate sale or delivery, whether or not it is sufficient to perform the contract.

6. *"Commercial unit"* means such a unit of goods as by commercial usage is a single whole for purposes of sale and division of which materially impairs its character or value on the market or in use. A commercial unit may be a single article (as a machine) or a set of articles (as a suite of furniture or an assortment of sizes) or a quantity (as a bale, gross, or carload) or any other unit treated in use or in the relevant market as a single whole.

[C24, 27, 31, 35, 39, §**9934, 9935, 10005;** C46, 50, 54, 58, 62, §554.6, 554.7, 554.77; C66, 71, 73, 75, 77, 79, 81, §554.2105]

Referred to in §537.1301, 554.2103

554.2106 Definitions: "contract" — "agreement" — "contract for sale" — "sale" — "present sale" — "conforming" to contract — "termination" — "cancellation".

1. In this Article unless the context otherwise requires "contract" and "agreement" are limited to those relating to the present or future sale of goods. *"Contract for sale"* includes both a present sale of goods and a contract to sell goods at a future time. A "sale" consists in the passing of title from the seller to the buyer for a price (section 554.2401). A "present sale" means a sale which is accomplished by the making of the contract.

2. Goods or conduct including any part of a performance are *"conforming"* or conform to the contract when they are in accordance with the obligations under the contract.

3. *"Termination"* occurs when either party pursuant to a power created by agreement or

law puts an end to the contract otherwise than for its breach. On "termination" all obligations which are still executory on both sides are discharged but any right based on prior breach or performance survives.

4. "*Cancellation*" occurs when either party puts an end to the contract for breach by the other and its effect is the same as that of "termination" except that the canceling party also retains any remedy for breach of the whole contract or any unperformed balance.

[C24, 27, 31, 35, 39, §**9930, 9940;** C46, 50, 54, 58, 62, §554.1, 554.12; C66, 71, 73, 75, 77, 79, 81, §554.2106]

Referred to in §554.2103, 554.7102, 554.9102, 554.13103

554.2107 Goods to be severed from realty: recording.

1. A contract for the sale of minerals or the like (including oil and gas) or a structure or its materials to be removed from realty is a contract for the sale of goods within this Article if they are to be severed by the seller but until severance a purported present sale thereof which is not effective as a transfer of an interest in land is effective only as a contract to sell.

2. A contract for the sale apart from the land of growing crops or other things attached to realty and capable of severance without material harm thereto but not described in subsection 1 or of timber to be cut is a contract for the sale of goods within this Article whether the subject matter is to be severed by the buyer or by the seller even though it forms part of the realty at the time of contracting, and the parties can by identification effect a present sale before severance.

3. The provisions of this section are subject to any third party rights provided by the law relating to realty records, and the contract for sale may be executed and recorded as a document transferring an interest in land and shall then constitute notice to third parties of the buyer's rights under the contract for sale.

[C24, 27, 31, 35, 39, §**10005;** C46, 50, 54, 58, 62, §554.77; C66, 71, 73, 75, 77, 79, 81, §554.2107]

Referred to in §554.2105

PART 2

FORM, FORMATION, AND READJUSTMENT OF CONTRACT

554.2201 Formal requirements — statute of frauds.

1. Except as otherwise provided in this section a contract for the sale of goods for the price of five hundred dollars or more is not enforceable by way of action or defense unless there is some writing sufficient to indicate that a contract for sale has been made between the parties and signed by the party against whom enforcement is sought or by that party's authorized agent or broker. A writing is not insufficient because it omits or incorrectly states a term agreed upon but the contract is not enforceable under this paragraph beyond the quantity of goods shown in such writing.

2. Between merchants if within a reasonable time a writing in confirmation of the contract and sufficient against the sender is received and the party receiving it has reason to know its contents, it satisfies the requirements of subsection 1 against such party unless written notice of objection to its contents is given within ten days after it is received.

3. A contract which does not satisfy the requirements of subsection 1 but which is valid in other respects is enforceable

a. if the goods are to be specially manufactured for the buyer and are not suitable for sale to others in the ordinary course of the seller's business and the seller, before notice of repudiation is received and under circumstances which reasonably indicate that the goods are for the buyer, has made either a substantial beginning of their manufacture or commitments for their procurement; or

b. if the party against whom enforcement is sought admits in that party's pleading, testimony or otherwise in court that a contract for sale was made, but the contract is not enforceable under this provision beyond the quantity of goods admitted; or

c. with respect to goods for which payment has been made and accepted or which have been received and accepted (section 554.2606).

[C24, 27, 31, 35, 39, §**9933;** C46, 50, 54, 58, 62, §554.4; C66, 71, 73, 75, 77, 79, 81, §554.2201]
Referred to in §554.2209, 554.2326

554.2202 Final written expression — parol or extrinsic evidence.

Terms with respect to which the confirmatory memoranda of the parties agree or which are otherwise set forth in a writing intended by the parties as a final expression of their agreement with respect to such terms as are included therein may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement but may be explained or supplemented

1. by course of performance, course of dealing, or usage of trade (section 554.1303); and
2. by evidence of consistent additional terms unless the court finds the writing to have been intended also as a complete and exclusive statement of the terms of the agreement.

[C66, 71, 73, 75, 77, 79, 81, §554.2202]
2007 Acts, ch 41, §24
Referred to in §554.2316, 554.2326, 715B.2

554.2203 Seals inoperative.

The affixing of a seal to a writing evidencing a contract for sale or an offer to buy or sell goods does not constitute the writing a sealed instrument and the law with respect to sealed instruments does not apply to such a contract or offer.

[C24, 27, 31, 35, 39, §**9932;** C46, 50, 54, 58, 62, §554.3; C66, 71, 73, 75, 77, 79, 81, §554.2203]

554.2204 Formation in general.

1. A contract for sale of goods may be made in any manner sufficient to show agreement, including conduct by both parties which recognizes the existence of such a contract.
2. An agreement sufficient to constitute a contract for sale may be found even though the moment of its making is undetermined.
3. Even though one or more terms are left open a contract for sale does not fail for indefiniteness if the parties have intended to make a contract and there is a reasonably certain basis for giving an appropriate remedy.

[C24, 27, 31, 35, 39, §**9930, 9932;** C46, 50, 54, 58, 62, §554.1, 554.3; C66, 71, 73, 75, 77, 79, 81, §554.2204]
Referred to in §554.2311

554.2205 Firm offers.

An offer by a merchant to buy or sell goods in a signed writing which by its terms gives assurance that it will be held open is not revocable, for lack of consideration, during the time stated or if no time is stated for a reasonable time, but in no event may such period of irrevocability exceed three months; but any such term of assurance on a form supplied by the offeree must be separately signed by the offeror.

[C24, 27, 31, 35, 39, §**9930, 9932;** C46, 50, 54, 58, 62, §554.1, 554.3; C66, 71, 73, 75, 77, 79, 81, §554.2205]

554.2206 Offer and acceptance in formation of contract.

1. Unless otherwise unambiguously indicated by the language or circumstances

a. an offer to make a contract shall be construed as inviting acceptance in any manner and by any medium reasonable in the circumstances;

b. an order or other offer to buy goods for prompt or current shipment shall be construed as inviting acceptance either by a prompt promise to ship or by the prompt or current shipment of conforming or nonconforming goods, but such a shipment of nonconforming goods does not constitute an acceptance if the seller seasonably notifies the buyer that the shipment is offered only as an accommodation to the buyer.

2. Where the beginning of a requested performance is a reasonable mode of acceptance

an offeror who is not notified of acceptance within a reasonable time may treat the offer as having lapsed before acceptance.

[C24, 27, 31, 35, 39, §**9930, 9932;** C46, 50, 54, 58, 62, §554.1, 554.3; C66, 71, 73, 75, 77, 79, 81, §554.2206]

554.2207 Additional terms in acceptance or confirmation.

1. A definite and seasonable expression of acceptance or a written confirmation which is sent within a reasonable time operates as an acceptance even though it states terms additional to or different from those offered or agreed upon, unless acceptance is expressly made conditional on assent to the additional or different terms.

2. The additional terms are to be construed as proposals for addition to the contract. Between merchants such terms become part of the contract unless:

a. the offer expressly limits acceptance to the terms of the offer;

b. they materially alter it; or

c. notification of objection to them has already been given or is given within a reasonable time after notice of them is received.

3. Conduct by both parties which recognizes the existence of a contract is sufficient to establish a contract for sale although the writings of the parties do not otherwise establish a contract. In such case the terms of the particular contract consist of those terms on which the writings of the parties agree, together with any supplementary terms incorporated under any other provisions of this chapter.

[C24, 27, 31, 35, 39, §**9930, 9932;** C46, 50, 54, 58, 62, §554.1, 554.3; C66, 71, 73, 75, 77, 79, 81, §554.2207]

554.2208 Course of performance or practical construction. Repealed by 2007 Acts, ch 41, §60. See §554.1303.

554.2209 Modification, rescission and waiver.

1. An agreement modifying a contract within this Article needs no consideration to be binding.

2. A signed agreement which excludes modification or rescission except by a signed writing cannot be otherwise modified or rescinded, but except as between merchants such a requirement on a form supplied by the merchant must be separately signed by the other party.

3. The requirements of the statute of frauds section of this Article (section 554.2201) must be satisfied if the contract as modified is within its provisions.

4. Although an attempt at modification or rescission does not satisfy the requirements of subsection 2 or 3 it can operate as a waiver.

5. A party who has made a waiver affecting an executory portion of the contract may retract the waiver by reasonable notification received by the other party that strict performance will be required of any term waived, unless the retraction would be unjust in view of a material change of position in reliance on the waiver.

[C24, 27, 31, 35, 39, §**9990;** C46, 50, 54, 58, 62, §554.62; C66, 71, 73, 75, 77, 79, 81, §554.2209]
Referred to in §554.1303

554.2210 Delegation of performance — assignment of rights.

1. A party may perform that party's duty through a delegate unless otherwise agreed or unless the other party has a substantial interest in having the original promisor perform or control the acts required by the contract. No delegation of performance relieves the party delegating of any duty to perform or any liability for breach.

2. Except as otherwise provided in section 554.9406, unless otherwise agreed all rights of either seller or buyer can be assigned except where the assignment would materially change the duty of the other party, or increase materially the burden of risk imposed on the other party by the contract, or impair materially the other party's chance of obtaining return performance. A right to damages for breach of the whole contract or a right arising out of

the assignor's due performance of the assignor's entire obligation can be assigned despite agreement otherwise.

3. The creation, attachment, perfection, or enforcement of a security interest in the seller's interest under a contract is not a transfer that materially changes the duty of or increases materially the burden or risk imposed on the buyer or impairs materially the buyer's chance of obtaining return performance within the purview of subsection 2 unless, and then only to the extent that, enforcement actually results in a delegation of material performance of the seller. Even in that event, the creation, attachment, perfection, and enforcement of the security interest remain effective, but the seller is liable to the buyer for damages caused by the delegation to the extent that the damages could not reasonably be prevented by the buyer, and a court having jurisdiction may grant other appropriate relief, including cancellation of the contract for sale or an injunction against enforcement of the security interest or consummation of the enforcement.

4. Unless the circumstances indicate the contrary a prohibition of assignment of "the contract" is to be construed as barring only the delegation to the assignee of the assignor's performance.

5. An assignment of "the contract" or of "all my rights under the contract" or an assignment in similar general terms is an assignment of rights and unless the language or the circumstances (as in an assignment for security) indicate the contrary, it is a delegation of performance of the duties of the assignor and its acceptance by the assignee constitutes a promise by the assignee to perform those duties. This promise is enforceable by either the assignor or the other party to the original contract.

6. The other party may treat any assignment which delegates performance as creating reasonable grounds for insecurity and may without prejudice to that party's rights against the assignor demand assurances from the assignee (section 554.2609).

[C66, 71, 73, 75, 77, 79, 81, §554.2210]

2000 Acts, ch 1149, §141, 142, 187; 2013 Acts, ch 30, §261

PART 3

GENERAL OBLIGATION AND CONSTRUCTION OF CONTRACT

554.2301 General obligations of parties.

The obligation of the seller is to transfer and deliver and that of the buyer is to accept and pay in accordance with the contract.

[C24, 27, 31, 35, 39, §**9940, 9970;** C46, 50, 54, 58, 62, §554.12, 554.42; C66, 71, 73, 75, 77, 79, 81, §554.2301]

554.2302 Unconscionable contract or clause.

1. If the court as a matter of law finds the contract or any clause of the contract to have been unconscionable at the time it was made the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result.

2. When it is claimed or appears to the court that the contract or any clause thereof may be unconscionable the parties shall be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose and effect to aid the court in making the determination.

[C66, 71, 73, 75, 77, 79, 81, §554.2302]

554.2303 Allocation or division of risks.

Where this Article allocates a risk or a burden as between the parties "unless otherwise agreed", the agreement may not only shift the allocation but may also divide the risk or burden.

[C66, 71, 73, 75, 77, 79, 81, §554.2303]

554.2304 Price payable in money, goods, realty, or otherwise.

1. The price can be made payable in money or otherwise. If it is payable in whole or in part in goods each party is a seller of the goods which that party is to transfer.

2. Even though all or part of the price is payable in an interest in realty the transfer of the goods and the seller's obligations with reference to them are subject to this Article, but not the transfer of the interest in realty or the transferor's obligations in connection therewith.

[C24, 27, 31, 35, 39, §**9938;** C46, 50, 54, 58, 62, §554.10; C66, 71, 73, 75, 77, 79, 81, §554.2304]

554.2305 Open price term.

1. The parties if they so intend can conclude a contract for sale even though the price is not settled. In such a case the price is a reasonable price at the time for delivery if

a. nothing is said as to price; or

b. the price is left to be agreed by the parties and they fail to agree; or

c. the price is to be fixed in terms of some agreed market or other standard as set or recorded by a third person or agency and it is not so set or recorded.

2. A price to be fixed by the seller or by the buyer means a price for that party to fix in good faith.

3. When a price left to be fixed otherwise than by agreement of the parties fails to be fixed through fault of one party the other may at that party's option treat the contract as canceled or fix a reasonable price.

4. Where, however, the parties intend not to be bound unless the price be fixed or agreed and it is not fixed or agreed there is no contract. In such a case the buyer must return any goods already received or if unable so to do must pay their reasonable value at the time of delivery and the seller must return any portion of the price paid on account.

[C24, 27, 31, 35, 39, §**9938, 9939;** C46, 50, 54, 58, 62, §554.10, 554.11; C66, 71, 73, 75, 77, 79, 81, §554.2305]

554.2306 Output, requirements and exclusive dealings.

1. A term which measures the quantity by the output of the seller or the requirements of the buyer means such actual output or requirements as may occur in good faith, except that no quantity unreasonably disproportionate to any stated estimate or in the absence of a stated estimate to any normal or otherwise comparable prior output or requirements may be tendered or demanded.

2. A lawful agreement by either the seller or the buyer for exclusive dealing in the kind of goods concerned imposes unless otherwise agreed an obligation by the seller to use best efforts to supply the goods and by the buyer to use best efforts to promote their sale.

[C66, 71, 73, 75, 77, 79, 81, §554.2306]

554.2307 Delivery in single lot or several lots.

Unless otherwise agreed all goods called for by a contract for sale must be tendered in a single delivery and payment is due only on such tender but where the circumstances give either party the right to make or demand delivery in lots the price if it can be apportioned may be demanded for each lot.

[C24, 27, 31, 35, 39, §**9974;** C46, 50, 54, 58, 62, §554.46; C66, 71, 73, 75, 77, 79, 81, §554.2307]

554.2308 Absence of specified place for delivery.

Unless otherwise agreed

1. the place for delivery of goods is the seller's place of business or if the seller has none the seller's residence; but

2. in a contract for sale of identified goods which to the knowledge of the parties at the time of contracting are in some other place, that place is the place for their delivery; and

3. documents of title may be delivered through customary banking channels.

[C24, 27, 31, 35, 39, §**9972;** C46, 50, 54, 58, 62, §554.44; C66, 71, 73, 75, 77, 79, 81, §554.2308]

2009 Acts, ch 41, §263

554.2309 Absence of specific time provisions — notice of termination.

1. The time for shipment or delivery or any other action under a contract if not provided in this Article or agreed upon shall be a reasonable time.

2. Where the contract provides for successive performances but is indefinite in duration it is valid for a reasonable time but unless otherwise agreed may be terminated at any time by either party.

3. Termination of a contract by one party except on the happening of an agreed event requires that reasonable notification be received by the other party and an agreement dispensing with notification is invalid if its operation would be unconscionable.

[C24, 27, 31, 35, 39, §**9972, 9974, 9976, 9977;** C46, 50, 54, 58, 62, §554.44, 554.46, 554.48, 554.49; C66, 71, 73, 75, 77, 79, 81, §554.2309]

554.2310 Open time for payment or running of credit — authority to ship under reservation.

Unless otherwise agreed

1. payment is due at the time and place at which the buyer is to receive the goods even though the place of shipment is the place of delivery; and

2. if the seller is authorized to send the goods the seller may ship them under reservation, and may tender the documents of title, but the buyer may inspect the goods after their arrival before payment is due unless such inspection is inconsistent with the terms of the contract (section 554.2513); and

3. if delivery is authorized and made by way of documents of title otherwise than by subsection 2 then payment is due regardless of where the goods are to be received at the time and place at which the buyer is to receive delivery of the tangible documents or at the time the buyer is to receive delivery of the electronic documents and at the seller's place of business or if none, the seller's residence; and

4. where the seller is required or authorized to ship the goods on credit the credit period runs from the time of shipment but post-dating the invoice or delaying its dispatch will correspondingly delay the starting of the credit period.

[C24, 27, 31, 35, 39, §**9971, 9976;** C46, 50, 54, 58, 62, §554.43, 554.48; C66, 71, 73, 75, 77, 79, 81, §554.2310]

2007 Acts, ch 30, §45, 46, 50; 2009 Acts, ch 41, §263; 2010 Acts, ch 1061, §72

554.2311 Options and cooperation respecting performance.

1. An agreement for sale which is otherwise sufficiently definite (section 554.2204, subsection 3) to be a contract is not made invalid by the fact that it leaves particulars of performance to be specified by one of the parties. Any such specification must be made in good faith and within limits set by commercial reasonableness.

2. Unless otherwise agreed specifications relating to assortment of the goods are at the buyer's option and except as otherwise provided in section 554.2319, subsection 1, paragraph "*c*", and section 554.2319, subsection 3, specifications or arrangements relating to shipment are at the seller's option.

3. Where such specification would materially affect the other party's performance but is not seasonably made or where one party's cooperation is necessary to the agreed performance of the other but is not seasonably forthcoming the other party in addition to all other remedies

a. is excused for any resulting delay in that party's own performance; and

b. may also either proceed to perform in any reasonable manner or after the time for a material part of that party's own performance treat the failure to specify or to cooperate as a breach by failure to deliver or accept the goods.

[C66, 71, 73, 75, 77, 79, 81, §554.2311]

2013 Acts, ch 30, §140; 2014 Acts, ch 1026, §119; 2015 Acts, ch 29, §87

Referred to in §554.2319

554.2312 Warranty of title and against infringement — buyer's obligation against infringement.

1. Subject to subsection 2 there is in a contract for sale a warranty by the seller that

a. the title conveyed shall be good, and its transfer rightful; and

b. the goods shall be delivered free from any security interest or other lien or encumbrance of which the buyer at the time of contracting has no knowledge.

2. A warranty under subsection 1 will be excluded or modified only by specific language or by circumstances which give the buyer reason to know that the person selling does not claim title or that the person selling is purporting to sell only such right or title as the person selling or a third person may have.

3. Unless otherwise agreed a seller who is a merchant regularly dealing in goods of the kind warrants that the goods shall be delivered free of the rightful claim of any third person by way of infringement or the like but a buyer who furnishes specifications to the seller must hold the seller harmless against any such claim which arises out of compliance with the specifications.

[C24, 27, 31, 35, 39, §**9942;** C46, 50, 54, 58, 62, §554.14; C66, 71, 73, 75, 77, 79, 81, §554.2312]
Referred to in §554.2607

554.2313 Express warranties by affirmation, promise, description, sample.

1. Express warranties by the seller are created as follows:

a. Any affirmation of fact or promise made by the seller to the buyer which relates to the goods and becomes part of the basis of the bargain creates an express warranty that the goods shall conform to the affirmation or promise.

b. Any description of the goods which is made part of the basis of the bargain creates an express warranty that the goods shall conform to the description.

c. Any sample or model which is made part of the basis of the bargain creates an express warranty that the whole of the goods shall conform to the sample or model.

2. It is not necessary to the creation of an express warranty that the seller use formal words such as "warrant" or "guarantee" or that the seller have a specific intention to make a warranty, but an affirmation merely of the value of the goods or a statement purporting to be merely the seller's opinion or commendation of the goods does not create a warranty.

[C24, 27, 31, 35, 39, §**9941, 9943, 9945;** C46, 50, 54, 58, 62, §554.13, 554.15, 554.17; C66, 71, 73, 75, 77, 79, 81, §554.2313]

554.2314 Implied warranty: merchantability — usage of trade.

1. Unless excluded or modified (section 554.2316), a warranty that the goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind. Under this section the serving for value of food or drink to be consumed either on the premises or elsewhere is a sale.

2. Goods to be merchantable must be at least such as

a. pass without objection in the trade under the contract description; and

b. in the case of fungible goods, are of fair average quality within the description; and

c. are fit for the ordinary purposes for which such goods are used; and

d. run, within the variations permitted by the agreement, of even kind, quality and quantity within each unit and among all units involved; and

e. are adequately contained, packaged, and labeled as the agreement may require; and

f. conform to the promises or affirmations of fact made on the container or label if any.

3. Unless excluded or modified (section 554.2316) other implied warranties may arise from course of dealing or usage of trade.

[C24, 27, 31, 35, 39, §**9944;** C46, 50, 54, 58, 62, §554.16; C66, 71, 73, 75, 77, 79, 81, §554.2314]
Referred to in §554A.1

554.2315 Implied warranty — fitness for particular purpose.

Where the seller at the time of contracting has reason to know any particular purpose for which the goods are required and that the buyer is relying on the seller's skill or judgment to

select or furnish suitable goods, there is unless excluded or modified under section 554.2316 an implied warranty that the goods shall be fit for such purpose.

[C24, 27, 31, 35, 39, §**9944;** C46, 50, 54, 58, 62, §554.16; C66, 71, 73, 75, 77, 79, 81, §554.2315]

2008 Acts, ch 1032, §67

Referred to in §554A.1

554.2316 Exclusion or modification of warranties.

1. Words or conduct relevant to the creation of an express warranty and words or conduct tending to negate or limit warranty shall be construed wherever reasonable as consistent with each other; but subject to the provisions of this Article on parol or extrinsic evidence (section 554.2202) negation or limitation is inoperative to the extent that such construction is unreasonable.

2. Subject to subsection 3, to exclude or modify the implied warranty of merchantability or any part of it the language must mention merchantability and in case of a writing must be conspicuous, and to exclude or modify any implied warranty of fitness the exclusion must be by a writing and conspicuous. Language to exclude all implied warranties of fitness is sufficient if it states, for example, that "There are no warranties which extend beyond the description on the face hereof."

3. Notwithstanding subsection 2

a. unless the circumstances indicate otherwise, all implied warranties are excluded by expressions like "as is", "with all faults" or other language which in common understanding calls the buyer's attention to the exclusion of warranties and makes plain that there is no implied warranty; and

b. when the buyer before entering into the contract has examined the goods or the sample or model as fully as the buyer desired or has refused to examine the goods there is no implied warranty with regard to defects which an examination ought in the circumstances to have revealed to the buyer; and

c. an implied warranty can also be excluded or modified by course of dealing or course of performance or usage of trade.

4. Remedies for breach of warranty can be limited in accordance with the provisions of this Article on liquidation or limitation of damages and on contractual modification of remedy (sections 554.2718 and 554.2719).

[C66, 71, 73, 75, 77, 79, 81, §554.2316]

Referred to in §554.2314, 554.2315, 554A.1

Livestock warranty exemption, chapter 554A

554.2317 Cumulation and conflict of warranties express or implied.

Warranties whether express or implied shall be construed as consistent with each other and as cumulative, but if such construction is unreasonable the intention of the parties shall determine which warranty is dominant. In ascertaining that intention the following rules apply:

1. Exact or technical specifications displace an inconsistent sample or model or general language of description.

2. A sample from an existing bulk displaces inconsistent general language of description.

3. Express warranties displace inconsistent implied warranties other than an implied warranty of fitness for a particular purpose.

[C24, 27, 31, 35, 39, §**9943 – 9945;** C46, 50, 54, 58, 62, §554.15 – 554.17; C66, 71, 73, 75, 77, 79, 81, §554.2317]

2009 Acts, ch 41, §263

554.2318 Third party beneficiaries of warranties express or implied.

A seller's warranty whether express or implied extends to any person who may reasonably be expected to use, consume or be affected by the goods and who is injured by breach of the warranty. A seller may not exclude or limit the operation of this section with respect to injury to the person of an individual to whom the warranty extends.

[C66, 71, 73, 75, 77, 79, 81, §554.2318]

554.2319 F.O.B. and F.A.S. terms.

1. Unless otherwise agreed the term F.O.B. (which means "free on board") at a named place, even though used only in connection with the stated price, is a delivery term under which

a. when the term is F.O.B. the place of shipment, the seller must at that place ship the goods in the manner provided in this Article (section 554.2504) and bear the expense and risk of putting them into the possession of the carrier; or

b. when the term is F.O.B. the place of destination, the seller must at the seller's own expense and risk transport the goods to that place and there tender delivery of them in the manner provided in this Article (section 554.2503);

c. when under either paragraph "*a*" or "*b*" the term is also F.O.B. vessel, car or other vehicle, the seller must in addition at the seller's own expense and risk load the goods on board. If the term is F.O.B. vessel the buyer must name the vessel and in an appropriate case the seller must comply with the provisions of this Article on the form of bill of lading (section 554.2323).

2. Unless otherwise agreed the term F.A.S. vessel (which means "free alongside") at a named port, even though used only in connection with the stated price, is a delivery term under which the seller must

a. at the seller's own expense and risk deliver the goods alongside the vessel in the manner usual in that port or on a dock designated and provided by the buyer; and

b. obtain and tender a receipt for the goods in exchange for which the carrier is under a duty to issue a bill of lading.

3. Unless otherwise agreed in any case falling within subsection 1, paragraph "*a*" or "*c*" or subsection 2 the buyer must seasonably give any needed instructions for making delivery, including when the term is F.A.S. or F.O.B. the loading berth of the vessel and in an appropriate case its name and sailing date. The seller may treat the failure of needed instructions as a failure of cooperation under this Article (section 554.2311). The seller may also at the seller's option move the goods in any reasonable manner preparatory to delivery or shipment.

4. Under the term F.O.B. vessel or F.A.S. unless otherwise agreed the buyer must make payment against tender of the required documents and the seller may not tender nor the buyer demand delivery of the goods in substitution for the documents.

[C66, 71, 73, 75, 77, 79, 81, §554.2319]

2013 Acts, ch 30, §141, 142

Referred to in §554.2311

554.2320 C.I.F. and C. & F. terms.

1. The term C.I.F. means that the price includes in a lump sum the cost of the goods and the insurance and freight to the named destination. The term C. & F. or C.F. means that the price so includes cost and freight to the named destination.

2. Unless otherwise agreed and even though used only in connection with the stated price and destination, the term C.I.F. destination or its equivalent requires the seller at the seller's own expense and risk to

a. put the goods into the possession of a carrier at the port for shipment and obtain a negotiable bill or bills of lading covering the entire transportation to the named destination; and

b. load the goods and obtain a receipt from the carrier (which may be contained in the bill of lading) showing that the freight has been paid or provided for; and

c. obtain a policy or certificate of insurance, including any war risk insurance, of a kind and on terms then current at the port of shipment in the usual amount, in the currency of the contract, shown to cover the same goods covered by the bill of lading and providing for payment of loss to the order of the buyer or for the account of whom it may concern; but the seller may add to the price the amount of the premium for any such war risk insurance; and

d. prepare an invoice of the goods and procure any other documents required to effect shipment or to comply with the contract; and

e. forward and tender with commercial promptness all the documents in due form and with any endorsement necessary to perfect the buyer's rights.

3. Unless otherwise agreed the term C. & F. or its equivalent has the same effect and imposes upon the seller the same obligations and risks as a C.I.F. term except the obligation as to insurance.

4. Under the term C.I.F. or C. & F. unless otherwise agreed the buyer must make payment against tender of the required documents and the seller may not tender nor the buyer demand delivery of the goods in substitution for the documents.

[C66, 71, 73, 75, 77, 79, 81, §554.2320]

554.2321 C.I.F. or C. & F. — "net landed weights" — "payment on arrival" — warranty of condition on arrival.

Under a contract containing a term C.I.F. or C. & F.

1. Where the price is based on or is to be adjusted according to "net landed weights", "delivered weights", "out turn" quantity or quality or the like, unless otherwise agreed the seller must reasonably estimate the price. The payment due on tender of the documents called for by the contract is the amount so estimated, but after final adjustment of the price a settlement must be made with commercial promptness.

2. An agreement described in subsection 1 or any warranty of quality or condition of the goods on arrival places upon the seller the risk of ordinary deterioration, shrinkage and the like in transportation but has no effect on the place or time of identification to the contract for sale or delivery or on the passing of the risk of loss.

3. Unless otherwise agreed where the contract provides for payment on or after arrival of the goods the seller must before payment allow such preliminary inspection as is feasible; but if the goods are lost delivery of the documents and payment are due when the goods should have arrived.

[C66, 71, 73, 75, 77, 79, 81, §554.2321]

Referred to in §554.2513

554.2322 Delivery "ex-ship".

1. Unless otherwise agreed a term for delivery of goods "ex-ship" (which means from the carrying vessel) or in equivalent language is not restricted to a particular ship and requires delivery from a ship which has reached a place at the named port of destination where goods of the kind are usually discharged.

2. Under such a term unless otherwise agreed

a. the seller must discharge all liens arising out of the carriage and furnish the buyer with a direction which puts the carrier under a duty to deliver the goods; and

b. the risk of loss does not pass to the buyer until the goods leave the ship's tackle or are otherwise properly unloaded.

[C66, 71, 73, 75, 77, 79, 81, §554.2322]

554.2323 Form of bill of lading required in overseas shipment — "overseas".

1. Where the contract contemplates overseas shipment and contains a term C.I.F. or C. & F. or F.O.B. vessel, the seller unless otherwise agreed must obtain a negotiable bill of lading stating that the goods have been loaded on board or, in the case of a term C.I.F. or C. & F., received for shipment.

2. Where in a case within subsection 1 a tangible bill of lading has been issued in a set of parts, unless otherwise agreed if the documents are not to be sent from abroad the buyer may demand tender of the full set; otherwise only one part of the bill of lading need be tendered. Even if the agreement expressly requires a full set,

a. due tender of a single part is acceptable within the provisions of this Article on cure of improper delivery (section 554.2508, subsection 1); and

b. even though the full set is demanded, if the documents are sent from abroad the person tendering an incomplete set may nevertheless require payment upon furnishing an indemnity which the buyer in good faith deems adequate.

3. A shipment by water or by air or a contract contemplating such shipment is "overseas"

insofar as by usage of trade or agreement it is subject to the commercial, financing or shipping practices characteristic of international deep water commerce.

[C66, 71, 73, 75, 77, 79, 81, §554.2323]

2007 Acts, ch 30, §45, 46, 51; 2015 Acts, ch 29, §88

Referred to in §554.2103, 554.2319, 554.2503

554.2324 "No arrival, no sale" term.

Under a term "no arrival, no sale" or terms of like meaning, unless otherwise agreed,

1. the seller must properly ship conforming goods and if they arrive by any means the seller must tender them on arrival but the seller assumes no obligation that the goods will arrive unless the seller has caused the nonarrival; and

2. where without fault of the seller the goods are in part lost or have so deteriorated as no longer to conform to the contract or arrive after the contract time, the buyer may proceed as if there had been casualty to identified goods (section 554.2613).

[C66, 71, 73, 75, 77, 79, 81, §554.2324]

2009 Acts, ch 41, §263

Referred to in §554.2613

554.2325 "Letter of credit" term — "confirmed credit".

1. Failure of the buyer seasonably to furnish an agreed letter of credit is a breach of the contract for sale.

2. The delivery to seller of a proper letter of credit suspends the buyer's obligation to pay. If the letter of credit is dishonored, the seller may on seasonable notification to the buyer require payment directly from the buyer.

3. Unless otherwise agreed the term *"letter of credit"* or *"banker's credit"* in a contract for sale means an irrevocable credit issued by a financing agency of good repute and, where the shipment is overseas, of good international repute. The term *"confirmed credit"* means that the credit must also carry the direct obligation of such an agency which does business in the seller's financial market.

[C66, 71, 73, 75, 77, 79, 81, §554.2325]

Referred to in §554.2103

554.2326 Sale on approval and sale or return — rights of creditors.

1. Unless otherwise agreed, if delivered goods may be returned by the buyer even though they conform to the contract, the transaction is

a. a "sale on approval" if the goods are delivered primarily for use, and

b. a "sale or return" if the goods are delivered primarily for resale.

2. Goods held on approval are not subject to the claims of the buyer's creditors until acceptance; goods held on sale or return are subject to such claims while in the buyer's possession.

3. Any "or return" term of a contract for sale is to be treated as a separate contract for sale within the statute of frauds section of this Article (section 554.2201) and as contradicting the sale aspect of the contract within the provisions of this Article on parol or extrinsic evidence (section 554.2202).

[C24, 27, 31, 35, 39, §**9948;** C46, 50, 54, 58, 62, §554.20; C66, 71, 73, 75, 77, 79, 81, §554.2326]

2000 Acts, ch 1149, §143, 187

Referred to in §554.2103, 554.13103

554.2327 Special incidents of sale on approval and sale or return.

1. Under a sale on approval unless otherwise agreed

a. although the goods are identified to the contract the risk of loss and the title do not pass to the buyer until acceptance; and

b. use of the goods consistent with the purpose of trial is not acceptance but failure seasonably to notify the seller of election to return the goods is acceptance, and if the goods conform to the contract acceptance of any part is acceptance of the whole; and

c. after due notification of election to return, the return is at the seller's risk and expense but a merchant buyer must follow any reasonable instructions.

2. Under a sale or return unless otherwise agreed

a. the option to return extends to the whole or any commercial unit of the goods while in substantially their original condition, but must be exercised seasonably; and

b. the return is at the buyer's risk and expense.

[C24, 27, 31, 35, 39, §**9948;** C46, 50, 54, 58, 62, §554.20; C66, 71, 73, 75, 77, 79, 81, §554.2327]
Referred to in §554.2509

554.2328 Sale by auction.

1. In a sale by auction if goods are put up in lots each lot is the subject of a separate sale.

2. A sale by auction is complete when the auctioneer so announces by the fall of the hammer or in other customary manner. Where a bid is made while the hammer is falling in acceptance of a prior bid the auctioneer may in the auctioneer's discretion reopen the bidding or declare the goods sold under the bid on which the hammer was falling.

3. Such a sale is with reserve unless the goods are in explicit terms put up without reserve. In an auction with reserve the auctioneer may withdraw the goods at any time until the auctioneer announces completion of the sale. In an auction without reserve, after the auctioneer calls for bids on an article or lot, that article or lot cannot be withdrawn unless no bid is made within a reasonable time. In either case a bidder may retract the bidder's bid until the auctioneer's announcement of completion of the sale, but a bidder's retraction does not revive any previous bid.

4. If the auctioneer knowingly receives a bid on the seller's behalf or the seller makes or procures such a bid, and notice has not been given that liberty for such bidding is reserved, the buyer may at the buyer's option avoid the sale or take the goods at the price of the last good faith bid prior to the completion of the sale. This subsection shall not apply to any bid at a forced sale.

[C24, 27, 31, 35, 39, §**9950;** C46, 50, 54, 58, 62, §554.22; C66, 71, 73, 75, 77, 79, 81, §554.2328]

PART 4

TITLE, CREDITORS, AND GOOD FAITH PURCHASERS

554.2401 Passing of title — reservation for security — limited application of this section.

Each provision of this Article with regard to the rights, obligations and remedies of the seller, the buyer, purchasers or other third parties applies irrespective of title to the goods except where the provision refers to such title. Insofar as situations are not covered by the other provisions of this Article and matters concerning title become material the following rules apply:

1. Title to goods cannot pass under a contract for sale prior to their identification to the contract (section 554.2501), and unless otherwise explicitly agreed the buyer acquires by their identification a special property as limited by this chapter. Any retention or reservation by the seller of the title (property) in goods shipped or delivered to the buyer is limited in effect to a reservation of a security interest. Subject to these provisions and to the provisions of the Article on Secured Transactions (Article 9), title to goods passes from the seller to the buyer in any manner and on any conditions explicitly agreed on by the parties.

2. Unless otherwise explicitly agreed title passes to the buyer at the time and place at which the seller completes the seller's performance with reference to the physical delivery of the goods, despite any reservation of a security interest and even though a document of title is to be delivered at a different time or place; and in particular and despite any reservation of a security interest by the bill of lading

a. if the contract requires or authorizes the seller to send the goods to the buyer but does not require the seller to deliver them at destination, title passes to the buyer at the time and place of shipment; but

b. if the contract requires delivery at destination, title passes on tender there.

3. Unless otherwise explicitly agreed where delivery is to be made without moving the goods,

a. if the seller is to deliver a tangible document of title, title passes at the time when and the place where the seller delivers such documents and if the seller is to deliver an electronic document of title, title passes when the seller delivers the document; or

b. if the goods are at the time of contracting already identified and no documents of title are to be delivered, title passes at the time and place of contracting.

4. A rejection or other refusal by the buyer to receive or retain the goods, whether or not justified, or a justified revocation of acceptance revests title to the goods in the seller. Such revesting occurs by operation of law and is not a "sale".

[C24, 27, 31, 35, 39, §**9946 – 9949;** C46, 50, 54, 58, 62, §554.18 – 554.21; C66, 71, 73, 75, 77, 79, 81, §554.2401]

2007 Acts, ch 30, §45, 46, 52

Referred to in §554.1201, 554.2106, 554.9102, 554.9109, 554.9110, 554.9309

554.2402 Rights of seller's creditors against sold goods.

1. Except as provided in subsections 2 and 3, rights of unsecured creditors of the seller with respect to goods which have been identified to a contract for sale are subject to the buyer's rights to recover the goods under this Article (sections 554.2502 and 554.2716).

2. A creditor of the seller may treat a sale or an identification of goods to a contract for sale as void if as against the creditor a retention of possession by the seller is fraudulent under any rule of law of the state where the goods are situated, except that retention of possession in good faith and current course of trade by a merchant-seller for a commercially reasonable time after a sale or identification is not fraudulent.

3. Nothing in this Article shall be deemed to impair the rights of creditors of the seller

a. under the provisions of the Article on Secured Transactions (Article 9); or

b. where identification to the contract or delivery is made not in current course of trade but in satisfaction of or as security for a pre-existing claim for money, security or the like and is made under circumstances which under any rule of law of the state where the goods are situated would apart from this Article constitute the transaction a fraudulent transfer or voidable preference.

[C24, 27, 31, 35, 39, §**9955;** C46, 50, 54, 58, 62, §554.27; C66, 71, 73, 75, 77, 79, 81, §554.2402]

Referred to in §554.1301, 554.7504

554.2403 Power to transfer — good faith purchase of goods — "entrusting".

1. A purchaser of goods acquires all title which the purchaser's transferor had or had power to transfer except that a purchaser of a limited interest acquires rights only to the extent of the interest purchased. A person with voidable title has power to transfer a good title to a good faith purchaser for value. When goods have been delivered under a transaction of purchase the purchaser has such power even though

a. the transferor was deceived as to the identity of the purchaser, or

b. the delivery was in exchange for a check which is later dishonored, or

c. it was agreed that the transaction was to be a "cash sale", or

d. the delivery was procured through fraud punishable as larcenous under the criminal law.

2. Any entrusting of possession of goods to a merchant who deals in goods of that kind gives the merchant power to transfer all rights of the entruster to a buyer in ordinary course of business.

3. "Entrusting" includes any delivery and any acquiescence in retention of possession regardless of any condition expressed between the parties to the delivery or acquiescence and regardless of whether the procurement of the entrusting or the possessor's disposition of the goods have been such as to be larcenous under the criminal law.

4. The rights of other purchasers of goods and of lien creditors are governed by the Articles on Secured Transactions (Article 9) and Documents of Title (Article 7).

[C24, 27, 31, 35, 39, §**9949, 9952 – 9954;** C46, 50, 54, 58, 62, §554.21, 554.24 – 554.26; C66, 71, 73, 75, 77, 79, 81, §554.2403]

94 Acts, ch 1121, §4

Referred to in §554.2103, 554.2702, 554.7209, 554.7503, 554.9315, 554.13103

PART 5

PERFORMANCE

554.2501 Insurable interest in goods — manner of identification of goods.

1. The buyer obtains a special property and an insurable interest in goods by identification of existing goods as goods to which the contract refers even though the goods so identified are nonconforming and the buyer has an option to return or reject them. Such identification can be made at any time and in any manner explicitly agreed to by the parties. In the absence of explicit agreement identification occurs

a. when the contract is made if it is for the sale of goods already existing and identified;

b. if the contract is for the sale of future goods other than those described in paragraph *"c"*, when goods are shipped, marked or otherwise designated by the seller as goods to which the contract refers;

c. when the crops are planted or otherwise become growing crops or the young are conceived if the contract is for the sale of unborn young to be born within twelve months after contracting or for the sale of crops to be harvested within twelve months or the next normal harvest season after contracting whichever is longer.

2. The seller retains an insurable interest in goods so long as title to or any security interest in the goods remains in the seller and where the identification is by the seller alone the seller may until default or insolvency or notification to the buyer that the identification is final substitute other goods for those identified.

3. Nothing in this section impairs any insurable interest recognized under any other statute or rule of law.

[C24, 27, 31, 35, 39, §**9946, 9948;** C46, 50, 54, 58, 62, §554.18, 554.20; C66, 71, 73, 75, 77, 79, 81, §554.2501]

Referred to in §554.2103, 554.2401, 554.2502

554.2502 Buyer's right to goods on seller's repudiation, failure to deliver, or insolvency.

1. Subject to subsections 2 and 3 and even though the goods have not been shipped a buyer who has paid a part or all of the price of goods in which the buyer has a special property under the provisions of section 554.2501 may on making and keeping good a tender of any unpaid portion of their price recover them from the seller if:

a. in the case of goods bought for personal, family, or household purposes, the seller repudiates or fails to deliver as required by the contract; or

b. in all cases the seller becomes insolvent within ten days after receipt of the first installment on their price.

2. The buyer's right to recover the goods under subsection 1, paragraph *"a"*, vests upon acquisition of a special property, even if the seller had not then repudiated or failed to deliver.

3. If the identification creating the buyer's special property has been made by the buyer, the buyer acquires the right to recover the goods only if they conform to the contract for sale.

[C24, 27, 31, 35, 39, §**9946 – 9948;** C46, 50, 54, 58, 62, §554.18 – 554.20; C66, 71, 73, 75, 77, 79, 81, §554.2502]

2000 Acts, ch 1149, §144, 187; 2008 Acts, ch 1032, §68

Referred to in §554.2402, 554.2711

554.2503 Manner of seller's tender of delivery.

1. Tender of delivery requires that the seller put and hold conforming goods at the buyer's disposition and give the buyer any notification reasonably necessary to enable the buyer to take delivery. The manner, time and place for tender are determined by the agreement and this Article, and in particular,

a. tender must be at a reasonable hour, and if it is of goods they must be kept available for the period reasonably necessary to enable the buyer to take possession; but

b. unless otherwise agreed the buyer must furnish facilities reasonably suited to the receipt of the goods.

2. Where the case is within section 554.2504 respecting shipment tender requires that the seller comply with its provisions.

3. Where the seller is required to deliver at a particular destination tender requires that the seller comply with subsection 1 and also in any appropriate case tender documents as described in subsections 4 and 5 of this section.

4. Where goods are in the possession of a bailee and are to be delivered without being moved,

a. tender requires that the seller either tender a negotiable document of title covering such goods or procure acknowledgment by the bailee of the buyer's right to possession of the goods; but

b. tender to the buyer of a nonnegotiable document of title or of a record directing the bailee to deliver is sufficient tender unless the buyer seasonably objects, and except as otherwise provided in Article 9 receipt by the bailee of notification of the buyer's rights fixes those rights as against the bailee and all third persons; but risk of loss of the goods and of any failure by the bailee to honor the nonnegotiable document of title or to obey the direction remains on the seller until the buyer has had a reasonable time to present the document or direction, and a refusal by the bailee to honor the document or to obey the direction defeats the tender.

5. Where the contract requires the seller to deliver documents,

a. the seller must tender all such documents in correct form except as provided in this Article with respect to bills of lading in a set (section 554.2323, subsection 2); and

b. tender through customary banking channels is sufficient and dishonor of a draft accompanying or associated with the documents constitutes nonacceptance or rejection.

[C24, 27, 31, 35, 39, §**9940, 9948, 9949, 9972, 9975, 9980;** C46, 50, 54, 58, 62, §554.12, 554.20, 554.21, 554.44, 554.47, 554.52; C66, 71, 73, 75, 77, 79, 81, §554.2503]

2007 Acts, ch 30, §45, 46, 53, 54; 2008 Acts, ch 1032, §69; 2015 Acts, ch 29, §89

Referred to in §554.2319, 554.2509

554.2504 Shipment by seller.

1. Where the seller is required or authorized to send the goods to the buyer and the contract does not require the seller to deliver them at a particular destination, then unless otherwise agreed the seller must:

a. Put the goods in the possession of such a carrier and make such a contract for their transportation as may be reasonable having regard to the nature of the goods and other circumstances of the case; and

b. Obtain and promptly deliver or tender in due form any document necessary to enable the buyer to obtain possession of the goods or otherwise required by the agreement or by usage of trade; and

c. Promptly notify the buyer of the shipment.

2. Failure to notify the buyer under subsection 1, paragraph "*c*", or to make a proper contract under subsection 1, paragraph "*a*", is a ground for rejection only if material delay or loss ensues.

[C24, 27, 31, 35, 39, §**9975;** C46, 50, 54, 58, 62, §554.47; C66, 71, 73, 75, 77, 79, 81, §554.2504]

2009 Acts, ch 41, §258

Referred to in §554.2319, 554.2503, 554.2505

554.2505 Seller's shipment under reservation.

1. Where the seller has identified goods to the contract by or before shipment:

a. the seller's procurement of a negotiable bill of lading to the seller's own order or otherwise reserves in the seller a security interest in the goods. The seller's procurement of the bill to the order of a financing agency or of the buyer indicates in addition only the seller's expectation of transferring that interest to the person named.

b. a nonnegotiable bill of lading to the seller or the seller's nominee reserves possession of the goods as security, but except in a case of conditional delivery (section 554.2507, subsection 2) a nonnegotiable bill of lading naming the buyer as consignee reserves no security interest even though the seller retains possession or control of the bill of lading.

2. When shipment by the seller with reservation of a security interest is in violation of the contract for sale it constitutes an improper contract for transportation under section 554.2504

but impairs neither the rights given to the buyer by shipment and identification of the goods to the contract nor the seller's powers as a holder of a negotiable document of title.

[C24, 27, 31, 35, 39, §**9949;** C46, 50, 54, 58, 62, §554.21; C66, 71, 73, 75, 77, 79, 81, §554.2505]

2007 Acts, ch 30, §45, 46, 55, 56; 2008 Acts, ch 1031, §61; 2015 Acts, ch 29, §90

Referred to in §554.1201, 554.2509, 554.9102, 554.9109, 554.9110, 554.9309

554.2506 Rights of financing agency.

1. A financing agency by paying or purchasing for value a draft which relates to a shipment of goods acquires to the extent of the payment or purchase and in addition to its own rights under the draft and any document of title securing it any rights of the shipper in the goods including the right to stop delivery and the shipper's right to have the draft honored by the buyer.

2. The right to reimbursement of a financing agency which has in good faith honored or purchased the draft under commitment to or authority from the buyer is not impaired by subsequent discovery of defects with reference to any relevant document which was apparently regular.

[S13, §3138-b36; C24, 27, 31, 35, 39, §**8281;** C46, 50, 54, 58, 62, §487.37; C66, 71, 73, 75, 77, 79, 81, §554.2506]

2007 Acts, ch 30, §45, 46, 57

554.2507 Effect of seller's tender — delivery on condition.

1. Tender of delivery is a condition to the buyer's duty to accept the goods and, unless otherwise agreed, to the buyer's duty to pay for them. Tender entitles the seller to acceptance of the goods and to payment according to the contract.

2. Where payment is due and demanded on the delivery to the buyer of goods or documents of title, the buyer's right as against the seller to retain or dispose of them is conditional upon the buyer's making the payment due.

[C24, 27, 31, 35, 39, §**9940, 9970, 9971, 9998;** C46, 50, 54, 58, 62, §554.12, 554.42, 554.43, 554.70; C66, 71, 73, 75, 77, 79, 81, §554.2507]

Referred to in §554.2505

554.2508 Cure by seller of improper tender or delivery — replacement.

1. Where any tender or delivery by the seller is rejected because nonconforming and the time for performance has not yet expired, the seller may seasonably notify the buyer of the seller's intention to cure and may then within the contract time make a conforming delivery.

2. Where the buyer rejects a nonconforming tender which the seller had reasonable grounds to believe would be acceptable with or without money allowance the seller may if the seller seasonably notifies the buyer have a further reasonable time to substitute a conforming tender.

[C66, 71, 73, 75, 77, 79, 81, §554.2508]

Referred to in §554.2323

554.2509 Risk of loss in the absence of breach.

1. Where the contract requires or authorizes the seller to ship the goods by carrier:

a. if it does not require the seller to deliver them at a particular destination, the risk of loss passes to the buyer when the goods are duly delivered to the carrier even though the shipment is under reservation (section 554.2505); but

b. if it does require the seller to deliver them at a particular destination and the goods are there duly tendered while in the possession of the carrier, the risk of loss passes to the buyer when the goods are there duly so tendered as to enable the buyer to take delivery.

2. Where the goods are held by a bailee to be delivered without being moved, the risk of loss passes to the buyer:

a. on the buyer's receipt of possession or control of a negotiable document of title covering the goods; or

b. on acknowledgment by the bailee of the buyer's right to possession of the goods; or

c. after the buyer's receipt of possession or control of a nonnegotiable document of title or

other direction to deliver in a record, as provided in section 554.2503, subsection 4, paragraph *"b"*.

3. In any case not within subsection 1 or 2, the risk of loss passes to the buyer on the buyer's receipt of the goods if the seller is a merchant; otherwise the risk passes to the buyer on tender of delivery.

4. The provisions of this section are subject to contrary agreement of the parties and to the provisions of this Article on sale on approval (section 554.2327) and on effect of breach on risk of loss (section 554.2510).

[C24, 27, 31, 35, 39, §**9951;** C46, 50, 54, 58, 62, §554.23; C66, 71, 73, 75, 77, 79, 81, §554.2509]

2007 Acts, ch 30, §45, 46, 58

554.2510 Effect of breach on risk of loss.

1. Where a tender or delivery of goods so fails to conform to the contract as to give a right of rejection the risk of their loss remains on the seller until cure or acceptance.

2. Where the buyer rightfully revokes acceptance the buyer may to the extent of any deficiency in the buyer's effective insurance coverage treat the risk of loss as having rested on the seller from the beginning.

3. Where the buyer as to conforming goods already identified to the contract for sale repudiates or is otherwise in breach before risk of their loss has passed to the buyer, the seller may to the extent of any deficiency in the seller's effective insurance coverage treat the risk of loss as resting on the buyer for a commercially reasonable time.

[C66, 71, 73, 75, 77, 79, 81, §554.2510]

Referred to in §554.2509

554.2511 Tender of payment by buyer — payment by check.

1. Unless otherwise agreed tender of payment is a condition to the seller's duty to tender and complete any delivery.

2. Tender of payment is sufficient when made by any means or in any manner current in the ordinary course of business unless the seller demands payment in legal tender and gives any extension of time reasonably necessary to procure it.

3. Subject to the provisions of this chapter on the effect of an instrument on an obligation (section 554.3310), payment by check is conditional and is defeated as between the parties by dishonor of the check on due presentment.

[C24, 27, 31, 35, 39, §**9971;** C46, 50, 54, 58, 62, §554.43; C66, 71, 73, 75, 77, 79, 81, §554.2511]

94 Acts, ch 1167, §9, 122

554.2512 Payment by buyer before inspection.

1. Where the contract requires payment before inspection nonconformity of the goods does not excuse the buyer from so making payment unless

a. the nonconformity appears without inspection; or

b. despite tender of the required documents the circumstances would justify injunction against honor under this chapter (section 554.5109, subsection 2).

2. Payment pursuant to subsection 1 does not constitute an acceptance of goods or impair the buyer's right to inspect or any of the buyer's remedies.

[C24, 27, 31, 35, 39, §**9976, 9978;** C46, 50, 54, 58, 62, §554.48, 554.50; C66, 71, 73, 75, 77, 79, 81, §554.2512]

96 Acts, ch 1026, §20; 97 Acts, ch 23, §68

554.2513 Buyer's right to inspection of goods.

1. Unless otherwise agreed and subject to subsection 3, where goods are tendered or delivered or identified to the contract for sale, the buyer has a right before payment or acceptance to inspect them at any reasonable place and time and in any reasonable manner. When the seller is required or authorized to send the goods to the buyer, the inspection may be after their arrival.

2. Expenses of inspection must be borne by the buyer but may be recovered from the seller if the goods do not conform and are rejected.

3. Unless otherwise agreed and subject to the provisions of this Article on C.I.F. contracts (section 554.2321, subsection 3), the buyer is not entitled to inspect the goods before payment of the price when the contract provides

a. for delivery "C.O.D." or on other like terms; or

b. for payment against documents of title, except where such payment is due only after the goods are to become available for inspection.

4. A place or method of inspection fixed by the parties is presumed to be exclusive but unless otherwise expressly agreed it does not postpone identification or shift the place for delivery or for passing the risk of loss. If compliance becomes impossible, inspection shall be as provided in this section unless the place or method fixed was clearly intended as an indispensable condition failure of which avoids the contract.

[C24, 27, 31, 35, 39, §**9976;** C46, 50, 54, 58, 62, §554.48; C66, 71, 73, 75, 77, 79, 81, §554.2513]

2015 Acts, ch 29, §91

Referred to in §554.2310

554.2514 When documents deliverable on acceptance — when on payment.

Unless otherwise agreed documents against which a draft is drawn are to be delivered to the drawee on acceptance of the draft if it is payable more than three days after presentment; otherwise, only on payment.

[S13, §3138-b40; C24, 27, 31, 35, 39, §**8285;** C46, 50, 54, 58, 62, §487.41; C66, 71, 73, 75, 77, 79, 81, §554.2514]

554.2515 Preserving evidence of goods in dispute.

In furtherance of the adjustment of any claim or dispute

1. either party on reasonable notification to the other and for the purpose of ascertaining the facts and preserving evidence has the right to inspect, test and sample the goods including such of them as may be in the possession or control of the other; and

2. the parties may agree to a third party inspection or survey to determine the conformity or condition of the goods and may agree that the findings shall be binding upon them in any subsequent litigation or adjustment.

[C66, 71, 73, 75, 77, 79, 81, §554.2515]

2009 Acts, ch 41, §263

PART 6

BREACH, REPUDIATION, AND EXCUSE

554.2601 Buyer's rights on improper delivery.

Subject to the provisions of this Article on breach in installment contracts (section 554.2612) and unless otherwise agreed under the sections on contractual limitations of remedy (sections 554.2718 and 554.2719), if the goods or the tender of delivery fail in any respect to conform to the contract, the buyer may

1. reject the whole; or

2. accept the whole; or

3. accept any commercial unit or units and reject the rest.

[C24, 27, 31, 35, 39, §**9940, 9973, 9998;** C46, 50, 54, 58, 62, §554.12, 554.45, 554.70; C66, 71, 73, 75, 77, 79, 81, §554.2601]

2009 Acts, ch 41, §263

554.2602 Manner and effect of rightful rejection.

1. Rejection of goods must be within a reasonable time after their delivery or tender. It is ineffective unless the buyer seasonably notifies the seller.

2. Subject to the provisions of the two following sections on rejected goods (sections 554.2603 and 554.2604),

a. after rejection any exercise of ownership by the buyer with respect to any commercial unit is wrongful as against the seller; and

b. if the buyer has before rejection taken physical possession of goods in which the buyer does not have a security interest under the provisions of this Article (section 554.2711, subsection 3), the buyer is under a duty after rejection to hold them with reasonable care at the seller's disposition for a time sufficient to permit the seller to remove them; but

c. the buyer has no further obligations with regard to goods rightfully rejected.

3. The seller's rights with respect to goods wrongfully rejected are governed by the provisions of this Article on seller's remedies in general (section 554.2703).

[C24, 27, 31, 35, 39, §**9979;** C46, 50, 54, 58, 62, §554.51; C66, 71, 73, 75, 77, 79, 81, §554.2602]
2015 Acts, ch 29, §92; 2016 Acts, ch 1011, §107
Referred to in §554.2606

554.2603 Merchant buyer's duties as to rightfully rejected goods.

1. Subject to any security interest in the buyer (section 554.2711, subsection 3), when the seller has no agent or place of business at the market of rejection a merchant buyer is under a duty after rejection of goods in the merchant buyer's possession or control to follow any reasonable instructions received from the seller with respect to the goods and in the absence of such instructions to make reasonable efforts to sell them for the seller's account if they are perishable or threaten to decline in value speedily. Instructions are not reasonable if on demand indemnity for expenses is not forthcoming.

2. When the buyer sells goods under subsection 1, that buyer is entitled to reimbursement from the seller or out of the proceeds for reasonable expenses of caring for and selling them, and if the expenses include no selling commission then to such commission as is usual in the trade or if there is none to a reasonable sum not exceeding ten percent on the gross proceeds.

3. In complying with this section the buyer is held only to good faith and good faith conduct hereunder is neither acceptance nor conversion nor the basis of an action for damages.

[C66, 71, 73, 75, 77, 79, 81, §554.2603]
2015 Acts, ch 29, §93
Referred to in §554.2602, 554.2604

554.2604 Buyer's options as to salvage of rightfully rejected goods.

Subject to the provisions of section 554.2603 on perishables if the seller gives no instructions within a reasonable time after notification of rejection the buyer may store the rejected goods for the seller's account or reship them to the seller or resell them for the seller's account with reimbursement as provided in section 554.2603. Such action is not acceptance or conversion.

[C66, 71, 73, 75, 77, 79, 81, §554.2604]
2008 Acts, ch 1032, §70
Referred to in §554.2602

554.2605 Waiver of buyer's objections by failure to particularize.

1. The buyer's failure to state in connection with rejection a particular defect which is ascertainable by reasonable inspection precludes the buyer from relying on the unstated defect to justify rejection or to establish breach:

a. where the seller could have cured it if stated seasonably; or

b. between merchants when the seller has after rejection made a request in writing for a full and final written statement of all defects on which the buyer proposes to rely.

2. Payment against documents made without reservation of rights precludes recovery of the payment for defects apparent in the documents.

[C66, 71, 73, 75, 77, 79, 81, §554.2605]
2007 Acts, ch 30, §45, 46, 59

554.2606 What constitutes acceptance of goods.

1. Acceptance of goods occurs when the buyer

a. after a reasonable opportunity to inspect the goods signifies to the seller that the goods are conforming or that the buyer will take or retain them in spite of their nonconformity; or

b. fails to make an effective rejection (section 554.2602, subsection 1), but such

acceptance does not occur until the buyer has had a reasonable opportunity to inspect them; or

c. does any act inconsistent with the seller's ownership; but if such act is wrongful as against the seller it is an acceptance only if ratified by the seller.

2. Acceptance of a part of any commercial unit is acceptance of that entire unit.

[C24, 27, 31, 35, 39, §**9977;** C46, 50, 54, 58, 62, §554.49; C66, 71, 73, 75, 77, 79, 81, §554.2606]

2015 Acts, ch 29, §94

Referred to in §554.2103, 554.2201

554.2607 Effect of acceptance — notice of breach — burden of establishing breach after acceptance — notice of claim or litigation to person answerable over.

1. The buyer must pay at the contract rate for any goods accepted.

2. Acceptance of goods by the buyer precludes rejection of the goods accepted and if made with knowledge of a nonconformity cannot be revoked because of it unless the acceptance was on the reasonable assumption that the nonconformity would be seasonably cured but acceptance does not of itself impair any other remedy provided by this Article for nonconformity.

3. Where a tender has been accepted.

a. the buyer must within a reasonable time after the buyer discovers or should have discovered any breach notify the seller of breach or be barred from any remedy; and

b. if the claim is one for infringement or the like (section 554.2312, subsection 3) and the buyer is sued as a result of such a breach the buyer must so notify the seller within a reasonable time after the buyer receives notice of the litigation or be barred from any remedy over for liability established by the litigation.

4. The burden is on the buyer to establish any breach with respect to the goods accepted.

5. Where the buyer is sued for breach of a warranty or other obligation for which the buyer's seller is answerable over

a. the buyer may give the buyer's seller written notice of the litigation. If the notice states that the seller may come in and defend and that if the seller does not do so the seller will be bound in any action against the seller by the seller's buyer by any determination of fact common to the two litigations, then unless the seller after seasonable receipt of the notice does come in and defend the seller is so bound.

b. if the claim is one for infringement or the like (section 554.2312, subsection 3) the original seller may demand in writing that the seller's buyer turn over to the seller control of the litigation including settlement or else be barred from any remedy over and if the seller also agrees to bear all expense and to satisfy any adverse judgment, then unless the buyer after seasonable receipt of the demand does turn over control the buyer is so barred.

6. The provisions of subsections 3, 4 and 5 apply to any obligation of a buyer to hold the seller harmless against infringement or the like (section 554.2312, subsection 3).

[C24, 27, 31, 35, 39, §**9970, 9978, 9998;** C46, 50, 54, 58, 62, §554.42, 554.50, 554.70; C66, 71, 73, 75, 77, 79, 81, §554.2607]

2015 Acts, ch 29, §95 – 97

Referred to in §554.2714

554.2608 Revocation of acceptance in whole or in part.

1. The buyer may revoke the buyer's acceptance of a lot or commercial unit whose nonconformity substantially impairs its value to the buyer if the buyer has accepted it

a. on the reasonable assumption that its nonconformity would be cured and it has not been seasonably cured; or

b. without discovery of such nonconformity if the buyer's acceptance was reasonably induced either by the difficulty of discovery before acceptance or by the seller's assurances.

2. Revocation of acceptance must occur within a reasonable time after the buyer discovers or should have discovered the ground for it and before any substantial change in condition of the goods which is not caused by their own defects. It is not effective until the buyer notifies the seller of it.

3. A buyer who so revokes has the same rights and duties with regard to the goods involved as if the buyer had rejected them.

[C24, 27, 31, 35, 39, §**9998;** C46, 50, 54, 58, 62, §554.70; C66, 71, 73, 75, 77, 79, 81, §554.2608]

554.2609 Right to adequate assurance of performance.

1. A contract for sale imposes an obligation on each party that the other's expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arise with respect to the performance of either party the other may in writing demand adequate assurance of due performance and until that party receives such assurance may if commercially reasonable suspend any performance for which that party has not already received the agreed return.

2. Between merchants the reasonableness of grounds for insecurity and the adequacy of any assurance offered shall be determined according to commercial standards.

3. Acceptance of any improper delivery or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance.

4. After receipt of a justified demand failure to provide within a reasonable time not exceeding thirty days such assurance of due performance as is adequate under the circumstances of the particular case is a repudiation of the contract.

[C24, 27, 31, 35, 39, §**9982 – 9984, 9992;** C46, 50, 54, 58, 62, §554.54 – 554.56, 554.64; C66, 71, 73, 75, 77, 79, 81, §554.2609]

Referred to in §554.2210, 554.2611

554.2610 Anticipatory repudiation.

When either party repudiates the contract with respect to a performance not yet due the loss of which will substantially impair the value of the contract to the other, the aggrieved party may

1. for a commercially reasonable time await performance by the repudiating party; or

2. resort to any remedy for breach (section 554.2703 or 554.2711), even though the aggrieved party has notified the repudiating party that the aggrieved party would await the latter's performance and has urged retraction; and

3. in either case suspend the aggrieved party's own performance or proceed in accordance with the provisions of this Article on the seller's right to identify goods to the contract notwithstanding breach or to salvage unfinished goods (section 554.2704).

[C24, 27, 31, 35, 39, §**9992, 9994;** C46, 50, 54, 58, 62, §554.64, 554.66; C66, 71, 73, 75, 77, 79, 81, §554.2610]

2009 Acts, ch 41, §263

Referred to in §554.2709

554.2611 Retraction of anticipatory repudiation.

1. Until the repudiating party's next performance is due the repudiating party can retract the repudiation unless the aggrieved party has since the repudiation canceled or materially changed the aggrieved party's position or otherwise indicated that the aggrieved party considers the repudiation final.

2. Retraction may be by any method which clearly indicates to the aggrieved party that the repudiating party intends to perform, but must include any assurance justifiably demanded under the provisions of this Article (section 554.2609).

3. Retraction reinstates the repudiating party's rights under the contract with due excuse and allowance to the aggrieved party for any delay occasioned by the repudiation.

[C66, 71, 73, 75, 77, 79, 81, §554.2611]

554.2612 "Installment contract" — breach.

1. An "installment contract" is one which requires or authorizes the delivery of goods in separate lots to be separately accepted, even though the contract contains a clause "each delivery is a separate contract" or its equivalent.

2. The buyer may reject any installment which is nonconforming if the nonconformity substantially impairs the value of that installment and cannot be cured or if the nonconformity

is a defect in the required documents; but if the nonconformity does not fall within subsection 3 and the seller gives adequate assurance of its cure the buyer must accept that installment.

3. Whenever nonconformity or default with respect to one or more installments substantially impairs the value of the whole contract there is a breach of the whole. But the aggrieved party reinstates the contract if the aggrieved party accepts a nonconforming installment without seasonably notifying of cancellation or if the aggrieved party brings an action with respect only to past installments or demands performance as to future installments.

[C24, 27, 31, 35, 39, §**9974;** C46, 50, 54, 58, 62, §554.46; C66, 71, 73, 75, 77, 79, 81, §554.2612]
Referred to in §554.2103, 554.2601, 554.2616, 554.2703, 554.2711

554.2613 Casualty to identified goods.

Where the contract requires for its performance goods identified when the contract is made, and the goods suffer casualty without fault of either party before the risk of loss passes to the buyer, or in a proper case under a "no arrival, no sale" term (section 554.2324) then

1. if the loss is total the contract is avoided; and

2. if the loss is partial or the goods have so deteriorated as no longer to conform to the contract the buyer may nevertheless demand inspection and at the buyer's option either treat the contract as avoided or accept the goods with due allowance from the contract price for the deterioration or the deficiency in quantity but without further right against the seller.

[C24, 27, 31, 35, 39, §**9936, 9937;** C46, 50, 54, 58, 62, §554.8, 554.9; C66, 71, 73, 75, 77, 79, 81, §554.2613]

2009 Acts, ch 41, §263
Referred to in §554.2324

554.2614 Substituted performance.

1. Where without fault of either party the agreed berthing, loading, or unloading facilities fail or an agreed type of carrier becomes unavailable or the agreed manner of delivery otherwise becomes commercially impracticable but a commercially reasonable substitute is available, such substitute performance must be tendered and accepted.

2. If the agreed means or manner of payment fails because of domestic or foreign governmental regulation, the seller may withhold or stop delivery unless the buyer provides a means or manner of payment which is commercially a substantial equivalent. If delivery has already been taken, payment by the means or in the manner provided by the regulation discharges the buyer's obligation unless the regulation is discriminatory, oppressive or predatory.

[C66, 71, 73, 75, 77, 79, 81, §554.2614]
Referred to in §554.2615

554.2615 Excuse by failure of presupposed conditions.

Except so far as a seller may have assumed a greater obligation and subject to section 554.2614 on substituted performance:

1. Delay in delivery or nondelivery in whole or in part by a seller who complies with subsections 2 and 3, is not a breach of the seller's duty under a contract for sale if performance as agreed has been made impracticable by the occurrence of a contingency the nonoccurrence of which was a basic assumption on which the contract was made or by compliance in good faith with any applicable foreign or domestic governmental regulation or order whether or not it later proves to be invalid.

2. Where the causes mentioned in subsection 1 affect only a part of the seller's capacity to perform, the seller must allocate production and deliveries among the seller's customers but may at the seller's option include regular customers not then under contract as well as the seller's own requirements for further manufacture. The seller may so allocate in any manner which is fair and reasonable.

3. The seller must notify the buyer seasonably that there will be delay or nondelivery and,

when allocation is required under subsection 2, of the estimated quota thus made available for the buyer.

[C66, 71, 73, 75, 77, 79, 81, §554.2615]

2008 Acts, ch 1032, §71; 2009 Acts, ch 41, §259

Referred to in §554.2616

554.2616 Procedure on notice claiming excuse.

1. Where the buyer receives notification of a material or indefinite delay or an allocation justified under section 554.2615 the buyer may by written notification to the seller as to any delivery concerned, and where the prospective deficiency substantially impairs the value of the whole contract under the provisions of this Article relating to breach of installment contracts (section 554.2612), then also as to the whole,

a. terminate and thereby discharge any unexecuted portion of the contract; or

b. modify the contract by agreeing to take the buyer's available quota in substitution.

2. If after receipt of such notification from the seller the buyer fails so to modify the contract within a reasonable time not exceeding thirty days the contract lapses with respect to any deliveries affected.

3. The provisions of this section may not be negated by agreement except insofar as the seller has assumed a greater obligation under section 554.2615.

[C66, 71, 73, 75, 77, 79, 81, §554.2616]

2008 Acts, ch 1032, §72

PART 7

REMEDIES

554.2701 Remedies for breach of collateral contracts not impaired.

Remedies for breach of any obligation or promise collateral or ancillary to a contract for sale are not impaired by the provisions of this Article.

[C66, 71, 73, 75, 77, 79, 81, §554.2701]

554.2702 Seller's remedies on discovery of buyer's insolvency.

1. Where the seller discovers the buyer to be insolvent the seller may refuse delivery except for cash including payment for all goods theretofore delivered under the contract, and stop delivery under this Article (section 554.2705).

2. Where the seller discovers that the buyer has received goods on credit while insolvent the seller may reclaim the goods upon demand made within ten days after the receipt, but if misrepresentation of solvency has been made to the particular seller in writing within three months before delivery the ten-day limitation does not apply. Except as provided in this subsection the seller may not base a right to reclaim goods on the buyer's fraudulent or innocent misrepresentation of solvency or of intent to pay.

3. The seller's right to reclaim under subsection 2 is subject to the rights of a buyer in ordinary course or other good faith purchaser under this Article (section 554.2403). Successful reclamation of goods excludes all other remedies with respect to them.

[C24, 27, 31, 35, 39, §**9982, 9983, 9986;** C46, 50, 54, 58, 62, §554.54, 554.55, 554.58; C66, 71, 73, 75, 77, 79, 81, §554.2702]

Referred to in §554.2705

554.2703 Seller's remedies in general.

Where the buyer wrongfully rejects or revokes acceptance of goods or fails to make a payment due on or before delivery or repudiates with respect to a part or the whole, then with respect to any goods directly affected and, if the breach is of the whole contract (section 554.2612), then also with respect to the whole undelivered balance, the aggrieved seller may:

1. withhold delivery of such goods;
2. stop delivery by any bailee as hereafter provided (section 554.2705);
3. proceed under section 554.2704 respecting goods still unidentified to the contract;

4. resell and recover damages as hereafter provided (section 554.2706);

5. recover damages for nonacceptance (section 554.2708) or in a proper case the price (section 554.2709);

6. cancel.

[C24, 27, 31, 35, 39, §**9993;** C46, 50, 54, 58, 62, §554.65; C66, 71, 73, 75, 77, 79, 81, §554.2703]

2008 Acts, ch 1032, §73

Referred to in §554.2602, 554.2610, 554.2704, 554.2706

554.2704 Seller's right to identify goods to the contract notwithstanding breach or to salvage unfinished goods.

1. An aggrieved seller under section 554.2703 may:

a. identify to the contract conforming goods not already identified if at the time the seller learned of the breach they are in the seller's possession or control;

b. treat as the subject of resale goods which have demonstrably been intended for the particular contract even though those goods are unfinished.

2. Where the goods are unfinished an aggrieved seller may in the exercise of reasonable commercial judgment for the purposes of avoiding loss and of effective realization either complete the manufacture and wholly identify the goods to the contract or cease manufacture and resell for scrap or salvage value or proceed in any other reasonable manner.

[C24, 27, 31, 35, 39, §**9992, 9993;** C46, 50, 54, 58, 62, §554.64, 554.65; C66, 71, 73, 75, 77, 79, 81, §554.2704]

2008 Acts, ch 1032, §74

Referred to in §554.2610, 554.2703

554.2705 Seller's stoppage of delivery in transit or otherwise.

1. The seller may stop delivery of goods in the possession of a carrier or other bailee when the seller discovers the buyer to be insolvent (section 554.2702) and may stop delivery of carload, truckload, planeload or larger shipments of express or freight when the buyer repudiates or fails to make a payment due before delivery or if for any other reason the seller has a right to withhold or reclaim the goods.

2. As against such buyer the seller may stop delivery until:

a. receipt of the goods by the buyer; or

b. acknowledgment to the buyer by any bailee of the goods except a carrier that the bailee holds the goods for the buyer; or

c. such acknowledgment to the buyer by a carrier by reshipment or as a warehouse; or

d. negotiation to the buyer of any negotiable document of title covering the goods.

3. *a.* To stop delivery the seller must so notify as to enable the bailee by reasonable diligence to prevent delivery of the goods.

b. After such notification the bailee must hold and deliver the goods according to the directions of the seller but the seller is liable to the bailee for any ensuing charges or damages.

c. If a negotiable document of title has been issued for goods the bailee is not obliged to obey a notification to stop until surrender of possession or control of the document.

d. A carrier who has issued a nonnegotiable bill of lading is not obliged to obey a notification to stop received from a person other than the consignor.

[S13, §3138-a9, -a11, -a49, -b11, -b13, -b41; C24, 27, 31, 35, 39, §**8256, 8258, 8286, 9669, 9671, 9709, 9986 – 9988;** C46, 50, 54, 58, 62, §487.12, 487.14, 487.42, 542.9, 542.11, 542.49, 554.58 – 554.60; C66, 71, 73, 75, 77, 79, 81, §554.2705]

2007 Acts, ch 30, §45, 46, 60, 61

Referred to in §554.2702, 554.2703, 554.2707, 554.7403, 554.7504

554.2706 Seller's resale including contract for resale.

1. Under the conditions stated in section 554.2703 on seller's remedies, the seller may resell the goods concerned or the undelivered balance thereof. Where the resale is made in good faith and in a commercially reasonable manner the seller may recover the difference between the resale price and the contract price together with any incidental damages allowed under the provisions of this Article (section 554.2710), but less expenses saved in consequence of the buyer's breach.

2. Except as otherwise provided in subsection 3 or unless otherwise agreed resale may be at public or private sale including sale by way of one or more contracts to sell or of identification to an existing contract of the seller. Sale may be as a unit or in parcels and at any time and place and on any terms but every aspect of the sale including the method, manner, time, place and terms must be commercially reasonable. The resale must be reasonably identified as referring to the broken contract, but it is not necessary that the goods be in existence or that any or all of them have been identified to the contract before the breach.

3. Where the resale is at private sale the seller must give the buyer reasonable notification of the seller's intention to resell.

4. Where the resale is at public sale

a. only identified goods can be sold except where there is a recognized market for a public sale of futures in goods of the kind; and

b. it must be made at a usual place or market for public sale if one is reasonably available and except in the case of goods which are perishable or threaten to decline in value speedily the seller must give the buyer reasonable notice of the time and place of the resale; and

c. if the goods are not to be within the view of those attending the sale the notification of sale must state the place where the goods are located and provide for their reasonable inspection by prospective bidders; and

d. the seller may buy.

5. A purchaser who buys in good faith at a resale takes the goods free of any rights of the original buyer even though the seller fails to comply with one or more of the requirements of this section.

6. The seller is not accountable to the buyer for any profit made on any resale. A person in the position of a seller (section 554.2707) or a buyer who has rightfully rejected or justifiably revoked acceptance must account for any excess over the amount of that person's security interest, as hereinafter defined (section 554.2711, subsection 3).

[C24, 27, 31, 35, 39, §**9989;** C46, 50, 54, 58, 62, §554.61; C66, 71, 73, 75, 77, 79, 81, §554.2706]
2015 Acts, ch 29, §98
Referred to in §554.2703, 554.2707, 554.2711, 554.2718

554.2707 "Person in the position of a seller".

1. A "person in the position of a seller" includes as against a principal an agent who has paid or become responsible for the price of goods on behalf of the agent's principal or anyone who otherwise holds a security interest or other right in goods similar to that of a seller.

2. A person in the position of a seller may as provided in this Article withhold or stop delivery (section 554.2705) and resell (section 554.2706) and recover incidental damages (section 554.2710).

[C24, 27, 31, 35, 39, §**9981;** C46, 50, 54, 58, 62, §554.53; C66, 71, 73, 75, 77, 79, 81, §554.2707]
Referred to in §554.2103, 554.2104, 554.2706

554.2708 Seller's damages for nonacceptance or repudiation.

1. Subject to subsection 2 and to the provisions of this Article with respect to proof of market price (section 554.2723), the measure of damages for nonacceptance or repudiation by the buyer is the difference between the market price at the time and place for tender and the unpaid contract price together with any incidental damages provided in this Article (section 554.2710), but less expenses saved in consequence of the buyer's breach.

2. If the measure of damages provided in subsection 1 is inadequate to put the seller in as good a position as performance would have done then the measure of damages is the profit (including reasonable overhead) which the seller would have made from full performance by the buyer, together with any incidental damages provided in this Article (section 554.2710), due allowance for costs reasonably incurred and due credit for payments or proceeds of resale.

[C24, 27, 31, 35, 39, §**9993;** C46, 50, 54, 58, 62, §554.65; C66, 71, 73, 75, 77, 79, 81, §554.2708]
Referred to in §554.2703, 554.2709, 554.2723

554.2709 Action for the price.

1. When the buyer fails to pay the price as it becomes due the seller may recover, together with any incidental damages under section 554.2710, the price:

a. of goods accepted or of conforming goods lost or damaged within a commercially reasonable time after risk of their loss has passed to the buyer; and

b. of goods identified to the contract if the seller is unable after reasonable effort to resell them at a reasonable price or the circumstances reasonably indicate that such effort will be unavailing.

2. Where the seller sues for the price the seller must hold for the buyer any goods which have been identified to the contract and are still in the seller's control except that if resale becomes possible the seller may resell them at any time prior to the collection of the judgment. The net proceeds of any such resale must be credited to the buyer and payment of the judgment entitles the buyer to any goods not resold.

3. After the buyer has wrongfully rejected or revoked acceptance of the goods or has failed to make a payment due or has repudiated (section 554.2610), a seller who is held not entitled to the price under this section shall nevertheless be awarded damages for nonacceptance under section 554.2708.

[C24, 27, 31, 35, 39, §**9992;** C46, 50, 54, 58, 62, §554.64; C66, 71, 73, 75, 77, 79, 81, §554.2709]
2008 Acts, ch 1032, §75; 2009 Acts, ch 41, §162
Referred to in §554.2703

554.2710 Seller's incidental damages.

Incidental damages to an aggrieved seller include any commercially reasonable charges, expenses or commissions incurred in stopping delivery, in the transportation, care and custody of goods after the buyer's breach, in connection with return or resale of the goods or otherwise resulting from the breach.

[C24, 27, 31, 35, 39, §**9993, 9999;** C46, 50, 54, 58, 62, §554.65, 554.71; C66, 71, 73, 75, 77, 79, 81, §554.2710]
Referred to in §554.2706, 554.2707, 554.2708, 554.2709

554.2711 Buyer's remedies in general — buyer's security interest in rejected goods.

1. Where the seller fails to make delivery or repudiates or the buyer rightfully rejects or justifiably revokes acceptance then with respect to any goods involved, and with respect to the whole if the breach goes to the whole contract (section 554.2612), the buyer may cancel and whether or not the buyer has done so may in addition to recovering so much of the price as has been paid:

a. "cover" and have damages under section 554.2712 as to all the goods affected whether or not they have been identified to the contract; or

b. recover damages for nondelivery as provided in this Article (section 554.2713).

2. Where the seller fails to deliver or repudiates the buyer may also:

a. if the goods have been identified recover them as provided in this Article (section 554.2502); or

b. in a proper case obtain specific performance or replevy the goods as provided in this Article (section 554.2716).

3. On rightful rejection or justifiable revocation of acceptance a buyer has a security interest in goods in the buyer's possession or control for any payments made on their price and any expenses reasonably incurred in their inspection, receipt, transportation, care and custody and may hold such goods and resell them in like manner as an aggrieved seller (section 554.2706).

[C24, 27, 31, 35, 39, §**9998;** C46, 50, 54, 58, 62, §554.70; C66, 71, 73, 75, 77, 79, 81, §554.2711]
2008 Acts, ch 1032, §76
Referred to in §554.2602, 554.2603, 554.2610, 554.2706, 554.2712, 554.9102, 554.9109, 554.9110, 554.9309, 554.9325

554.2712 "Cover" — buyer's procurement of substitute goods.

1. After a breach within section 554.2711 the buyer may "cover" by making in good faith and without unreasonable delay any reasonable purchase of or contract to purchase goods in substitution for those due from the seller.

2. The buyer may recover from the seller as damages the difference between the cost of cover and the contract price together with any incidental or consequential damages as hereinafter defined (section 554.2715), but less expenses saved in consequence of the seller's breach.

3. Failure of the buyer to effect cover within this section does not bar the buyer from any other remedy.

[C66, 71, 73, 75, 77, 79, 81, §554.2712]

2008 Acts, ch 1032, §77

Referred to in §554.2103, 554.2711

554.2713 Buyer's damages for nondelivery or repudiation.

1. Subject to the provisions of this Article with respect to proof of market price (section 554.2723), the measure of damages for nondelivery or repudiation by the seller is the difference between the market price at the time when the buyer learned of the breach and the contract price together with any incidental and consequential damages provided in this Article (section 554.2715), but less expenses saved in consequence of the seller's breach.

2. Market price is to be determined as of the place for tender or, in cases of rejection after arrival or revocation of acceptance, as of the place of arrival.

[C24, 27, 31, 35, 39, §**9996;** C46, 50, 54, 58, 62, §554.68; C66, 71, 73, 75, 77, 79, 81, §554.2713]

Referred to in §554.2711, 554.2723

554.2714 Buyer's damages for breach in regard to accepted goods.

1. Where the buyer has accepted goods and given notification (section 554.2607, subsection 3) the buyer may recover as damages for any nonconformity of tender the loss resulting in the ordinary course of events from the seller's breach as determined in any manner which is reasonable.

2. The measure of damages for breach of warranty is the difference at the time and place of acceptance between the value of the goods accepted and the value they would have had if they had been as warranted, unless special circumstances show proximate damages of a different amount.

3. In a proper case any incidental and consequential damages under section 554.2715 may also be recovered.

[C24, 27, 31, 35, 39, §**9998;** C46, 50, 54, 58, 62, §554.70; C66, 71, 73, 75, 77, 79, 81, §554.2714]

2008 Acts, ch 1032, §78; 2015 Acts, ch 29, §99

554.2715 Buyer's incidental and consequential damages.

1. Incidental damages resulting from the seller's breach include expenses reasonably incurred in inspection, receipt, transportation and care and custody of goods rightfully rejected, any commercially reasonable charges, expenses or commissions in connection with effecting cover and any other reasonable expense incident to the delay or other breach.

2. Consequential damages resulting from the seller's breach include

a. any loss resulting from general or particular requirements and needs of which the seller at the time of contracting had reason to know and which could not reasonably be prevented by cover or otherwise; and

b. injury to person or property proximately resulting from any breach of warranty.

[C24, 27, 31, 35, 39, §**9998, 9999;** C46, 50, 54, 58, 62, §554.70, 554.71; C66, 71, 73, 75, 77, 79, 81, §554.2715]

Referred to in §554.2712, 554.2713, 554.2714

554.2716 Buyer's right to specific performance or replevin.

1. Specific performance may be decreed where the goods are unique or in other proper circumstances.

2. The decree for specific performance may include such terms and conditions as to payment of the price, damages, or other relief as the court may deem just.

3. The buyer has a right of replevin for goods identified to the contract if after reasonable effort the buyer is unable to effect cover for such goods or the circumstances reasonably indicate that such effort will be unavailing or if the goods have been shipped under reservation

and satisfaction of the security interest in them has been made or tendered. In the case of goods bought for personal, family, or household purposes, the buyer's right of replevin vests upon acquisition of a special property, even if the seller had not then repudiated or failed to deliver.

[C24, 27, 31, 35, 39, §**9995, 9997;** C46, 50, 54, 58, 62, §554.67, 554.69; C66, 71, 73, 75, 77, 79, 81, §554.2716]

2000 Acts, ch 1149, §145, 187

Referred to in §554.2402, 554.2711

554.2717 Deduction of damages from the price.

The buyer on notifying the seller of the buyer's intention to do so may deduct all or any part of the damages resulting from any breach of the contract from any part of the price still due under the same contract.

[C24, 27, 31, 35, 39, §**9998;** C46, 50, 54, 58, 62, §554.70; C66, 71, 73, 75, 77, 79, 81, §554.2717]

554.2718 Liquidation or limitation of damages — deposits.

1. Damages for breach by either party may be liquidated in the agreement but only at an amount which is reasonable in the light of the anticipated or actual harm caused by the breach, the difficulties of proof of loss, and the inconvenience or nonfeasibility of otherwise obtaining an adequate remedy. A term fixing unreasonably large liquidated damages is void as a penalty.

2. Where the seller justifiably withholds delivery of goods because of the buyer's breach, the buyer is entitled to restitution of any amount by which the sum of the buyer's payments exceeds

a. the amount to which the seller is entitled by virtue of terms liquidating the seller's damages in accordance with subsection 1, or

b. in the absence of such terms, twenty percent of the value of the total performance for which the buyer is obligated under the contract or five hundred dollars, whichever is smaller.

3. The buyer's right to restitution under subsection 2 is subject to offset to the extent that the seller establishes

a. a right to recover damages under the provisions of this Article other than subsection 1, and

b. the amount or value of any benefits received by the buyer directly or indirectly by reason of the contract.

4. Where a seller has received payment in goods their reasonable value or the proceeds of their resale shall be treated as payments for the purposes of subsection 2; but if the seller has notice of the buyer's breach before reselling goods received in part performance, the seller's resale is subject to the conditions laid down in this Article on resale by an aggrieved seller (section 554.2706).

[C66, 71, 73, 75, 77, 79, 81, §554.2718]

Referred to in §554.2316, 554.2601, 554.2719

554.2719 Contractual modification or limitation of remedy.

1. Subject to the provisions of subsections 2 and 3 of this section and of section 554.2718 on liquidation and limitation of damages,

a. the agreement may provide for remedies in addition to or in substitution for those provided in this Article and may limit or alter the measure of damages recoverable under this Article, as by limiting the buyer's remedies to return of the goods and repayment of the price or to repair and replacement of nonconforming goods or parts; and

b. resort to a remedy as provided is optional unless the remedy is expressly agreed to be exclusive, in which case it is the sole remedy.

2. Where circumstances cause an exclusive or limited remedy to fail of its essential purpose, remedy may be had as provided in this chapter.

3. Consequential damages may be limited or excluded unless the limitation or exclusion is unconscionable. Limitation of consequential damages for injury to the person in the case

of consumer goods is prima facie unconscionable but limitation of damages where the loss is commercial is not.

[C66, 71, 73, 75, 77, 79, 81, §554.2719]

2008 Acts, ch 1032, §79

Referred to in §554.2316, 554.2601

554.2720 Effect of "cancellation" or "rescission" on claims for antecedent breach.

Unless the contrary intention clearly appears, expressions of "cancellation" or "rescission" of the contract or the like shall not be construed as a renunciation or discharge of any claim in damages for an antecedent breach.

[C24, 27, 31, 35, 39, §**9990;** C46, 50, 54, 58, 62, §554.62; C66, 71, 73, 75, 77, 79, 81, §554.2720]

554.2721 Remedies for fraud.

Remedies for material misrepresentation or fraud include all remedies available under this Article for nonfraudulent breach. Neither rescission or a claim for rescission of the contract for sale nor rejection or return of the goods shall bar or be deemed inconsistent with a claim for damages or other remedy.

[C24, 27, 31, 35, 39, §**9990;** C46, 50, 54, 58, 62, §554.62; C66, 71, 73, 75, 77, 79, 81, §554.2721]

554.2722 Who can sue third parties for injury to goods.

Where a third party so deals with goods which have been identified to a contract for sale as to cause actionable injury to a party to that contract

1. a right of action against the third party is in either party to the contract for sale who has title to or a security interest or a special property or an insurable interest in the goods; and if the goods have been destroyed or converted a right of action is also in the party who either bore the risk of loss under the contract for sale or has since the injury assumed that risk as against the other;

2. if at the time of the injury the party plaintiff did not bear the risk of loss as against the other party to the contract for sale and there is no arrangement between them for disposition of the recovery, the plaintiff's suit or settlement is, subject to plaintiff's own interest, as a fiduciary for the other party to the contract;

3. either party may with the consent of the other sue for the benefit of whom it may concern.

[C66, 71, 73, 75, 77, 79, 81, §554.2722]

2009 Acts, ch 41, §263

554.2723 Proof of market price — time and place.

1. If an action based on anticipatory repudiation comes to trial before the time for performance with respect to some or all of the goods, any damages based on market price (section 554.2708 or 554.2713) shall be determined according to the price of such goods prevailing at the time when the aggrieved party learned of the repudiation.

2. If evidence of a price prevailing at the times or places described in this Article is not readily available the price prevailing within any reasonable time before or after the time described or at any other place which in commercial judgment or under usage of trade would serve as a reasonable substitute for the one described may be used, making any proper allowance for the cost of transporting the goods to or from such other place.

3. Evidence of a relevant price prevailing at a time or place other than the one described in this Article offered by one party is not admissible unless and until that party has given the other party such notice as the court finds sufficient to prevent unfair surprise.

[C66, 71, 73, 75, 77, 79, 81, §554.2723]

Referred to in §554.2708, 554.2713

554.2724 Admissibility of market quotations.

If the prevailing price or value of goods regularly bought and sold in an established commodity market is in issue, reports in official publications or trade journals or in newspapers or periodicals of general circulation published as the reports of that market are admissible in evidence. The circumstances of the preparation of such a report may be

shown to affect its weight but not its admissibility. Reports are also admissible under rule of evidence 5.803(17).

[C66, 71, 73, 75, 77, 79, 81, §554.2724]

83 Acts, ch 37, §2

554.2725 Statute of limitations in contracts for sale.

1. By the original agreement the parties may reduce the period of limitation to not less than one year but may not extend it.

2. A cause of action accrues when the breach occurs, regardless of the aggrieved party's lack of knowledge of the breach. A breach of warranty occurs when tender of delivery is made, except that where a warranty explicitly extends to future performance of the goods and discovery of the breach must await the time of such performance the cause of action accrues when the breach is or should have been discovered.

3. Where an action commenced within the time limited by law or by agreement as provided in subsection 1 is so terminated as to leave available a remedy by another action for the same breach such other action may be commenced after the expiration of the time limited and within six months after the termination of the first action unless the termination resulted from voluntary discontinuance or from dismissal for failure or neglect to prosecute.

4. This section does not alter the law on tolling of the statute of limitations nor does it apply to causes of action which have accrued before this chapter becomes effective.

[C66, 71, 73, 75, 77, 79, 81, §554.2725]

Period of limitation, chapter 614

ARTICLE 2A

LEASES

Article on Leases codified as Article 13;
94 Acts, ch 1052, §5 – 84

ARTICLE 3

NEGOTIABLE INSTRUMENTS

Referred to in §533.314, 554.1204, 554.4102, 554.4107, 554.4203, 554.5110, 554.5116, 554.8103, 554.9331, 554D.118, 668.16

Article 3 takes effect July 1, 1995; 94 Acts,
ch 1167, §122; former Article 3 is repealed
effective July 1, 1995; 94 Acts, ch 1167,
§121, 122; for law prior to July 1, 1995, see Code 1993

PART 1

GENERAL PROVISIONS AND DEFINITIONS

554.3101 Short title.

This Article may be cited as Uniform Commercial Code — Negotiable Instruments.

94 Acts, ch 1167, §10, 121, 122

554.3102 Subject matter.

1. This Article applies to negotiable instruments. It does not apply to money, to payment orders governed by Article 12, or to securities governed by Article 8.

2. If there is conflict between this Article and Article 4 or 9, Articles 4 and 9 govern.

3. Regulations of the Board of Governors of the Federal Reserve System and operating circulars of the Federal Reserve Banks supersede any inconsistent provision of this Article to the extent of the inconsistency.

94 Acts, ch 1167, §11, 121, 122; 95 Acts, ch 67, §41

554.3103 Definitions.

1. In this Article:

a. *"Acceptor"* means a drawee who has accepted a draft.

b. *"Drawee"* means a person ordered in a draft to make payment.

c. *"Drawer"* means a person who signs or is identified in a draft as a person ordering payment.

d. Reserved.

e. *"Maker"* means a person who signs or is identified in a note as a person undertaking to pay.

f. *"Order"* means a written instruction to pay money signed by the person giving the instruction. The instruction may be addressed to any person, including the person giving the instruction, or to one or more persons jointly or in the alternative but not in succession. An authorization to pay is not an order unless the person authorized to pay is also instructed to pay.

g. *"Ordinary care"* in the case of a person engaged in business means observance of reasonable commercial standards, prevailing in the area in which the person is located, with respect to the business in which the person is engaged. In the case of a bank that takes an instrument for processing for collection or payment by automated means, reasonable commercial standards do not require the bank to examine the instrument if the failure to examine does not violate the bank's prescribed procedures and the bank's procedures do not vary unreasonably from general banking usage not disapproved by this Article or Article 4.

h. *"Party"* means a party to an instrument.

i. *"Promise"* means a written undertaking to pay money signed by the person undertaking to pay. An acknowledgment of an obligation by the obligor is not a promise unless the obligor also undertakes to pay the obligation.

j. *"Prove"* with respect to a fact means to meet the burden of establishing the fact (section 554.1201, subsection 2, paragraph *"h"*).

k. *"Remitter"* means a person who purchases an instrument from its issuer if the instrument is payable to an identified person other than the purchaser.

2. Other definitions applying to this Article and the sections in which they appear are:

a. "Acceptance" ..... Section 554.3409.
b. "Accommodated party"..... Section 554.3419.
c. "Accommodation party"..... Section 554.3419.
d. "Alteration" ..... Section 554.3407.
e. "Anomalous endorsement"..... Section 554.3205.
f. "Blank endorsement"..... Section 554.3205.
g. "Cashier's check"..... Section 554.3104.
h. "Certificate of deposit" ..... Section 554.3104.
i. "Certified check"..... Section 554.3409.
j. "Check"..... Section 554.3104.
k. "Consideration"..... Section 554.3303.
l. "Demand draft"..... Section 554.3104.
m. "Draft" ..... Section 554.3104.
n. "Holder in due course" ..... Section 554.3302.
o. "Incomplete instrument" ..... Section 554.3115.
p. "Endorsement"..... Section 554.3204.
q. "Endorser"..... Section 554.3204.
r. "Instrument"..... Section 554.3104.
s. "Issue" ..... Section 554.3105.
t. "Issuer"..... Section 554.3105.
u. "Negotiable instrument" ..... Section 554.3104.
v. "Negotiation" ..... Section 554.3201.
w. "Note"..... Section 554.3104.
x. "Payable at a definite time"..... Section 554.3108.
y. "Payable on demand"..... Section 554.3108.
z. "Payable to bearer" ..... Section 554.3109.

aa. "Payable to order" ..... Section 554.3109.
ab. "Payment" ..... Section 554.3602.
ac. "Person entitled to enforce" ..... Section 554.3301.
ad. "Presentment" ..... Section 554.3501.
ae. "Reacquisition" ..... Section 554.3207.
af. "Special endorsement" ..... Section 554.3205.
ag. "Teller's check" ..... Section 554.3104.
ah. "Transfer of instrument" ..... Section 554.3203.
ai. "Traveler's check" ..... Section 554.3104.
aj. "Value" ..... Section 554.3303.

3. The following definitions in other Articles apply to this Article:
a. "Bank" ..... Section 554.4105.
b. "Banking day" ..... Section 554.4104.
c. "Clearing house" ..... Section 554.4104.
d. "Collecting bank" ..... Section 554.4105.
e. "Depositary bank" ..... Section 554.4105.
f. "Documentary draft" ..... Section 554.4104.
g. "Intermediary bank" ..... Section 554.4105.
h. "Item" ..... Section 554.4104.
i. "Payor bank" ..... Section 554.4105.
j. "Suspends payments" ..... Section 554.4104.

4. In addition, Article 1 contains general definitions and principles of construction and interpretation applicable throughout this Article.

94 Acts, ch 1167, §12, 121, 122; 2005 Acts, ch 11, §1; 2007 Acts, ch 41, §25, 26
Referred to in §554.4104, 554.9102

554.3104 Negotiable instrument.

1. Except as provided in subsections 3 and 4, *"negotiable instrument"* means an unconditional promise or order to pay a fixed amount of money, with or without interest or other charges described in the promise or order, if it:

a. is payable to bearer or to order at the time it is issued or first comes into possession of a holder;

b. is payable on demand or at a definite time; and

c. does not state any other undertaking or instruction by the person promising or ordering payment to do any act in addition to the payment of money, but the promise or order may contain an undertaking or power to give, maintain, or protect collateral to secure payment, an authorization or power to the holder to confess judgment or realize on or dispose of collateral, or a waiver of the benefit of any law intended for the advantage or protection of an obligor.

2. *"Instrument"* means a negotiable instrument.

3. An order that meets all of the requirements of subsection 1, except paragraph *"a"*, and otherwise falls within the definition of "check" in subsection 6 is a negotiable instrument and a check.

4. A promise or order other than a check is not an instrument if, at the time it is issued or first comes into possession of a holder, it contains a conspicuous statement, however expressed, to the effect that the promise or order is not negotiable or is not an instrument governed by this Article.

5. An instrument is a *"note"* if it is a promise and is a *"draft"* if it is an order. If an instrument falls within the definition of both "note" and "draft", a person entitled to enforce the instrument may treat it as either.

6. *"Check"* means a draft, other than a documentary draft, payable on demand and drawn on a bank or a cashier's check or teller's check. An instrument may be a check even though it is described on its face by another term, such as "money order".

7. *"Cashier's check"* means a draft with respect to which the drawer and drawee are the same bank or branches of the same bank.

8. *"Teller's check"* means a draft drawn by a bank on another bank, or payable at or through a bank.

9. *"Traveler's check"* means an instrument that is payable on demand, is drawn on or payable at or through a bank, is designated by the term "traveler's check" or by a substantially similar term, and requires, as a condition to payment, a countersignature by a person whose specimen signature appears on the instrument.

10. *"Certificate of deposit"* means an instrument containing an acknowledgment by a bank that a sum of money has been received by the bank and a promise by the bank to repay the sum of money. A certificate of deposit is a note of the bank.

11. *a. "Demand draft"* means a writing not signed by a customer as defined in section 554.4104 that is created by a third party under the purported authority of the customer for the purpose of charging the customer's account with a bank. The writing must contain the customer's account number and may contain any of the following:

(1) The customer's printed or typewritten name;

(2) A notation that the customer authorized the draft; or

(3) The statement "no signature required", "authorized on file", "signature on file", or words to that effect.

b. "Demand draft" does not include a check purportedly drawn by and bearing the signature of a fiduciary as defined in section 554.3307.

94 Acts, ch 1167, §13, 121, 122; 2005 Acts, ch 11, §2; 2013 Acts, ch 30, §261
Referred to in §537.3211, 537.7102, 554.2103, 554.3103, 554.3106, 554.3115, 554.3417, 554.4104, 554.4208, 554.9102, 625.22, 631.14

554.3105 Issue of instrument.

1. *"Issue"* means the first delivery of an instrument by the maker or drawer, whether to a holder or nonholder, for the purpose of giving rights on the instrument to any person.

2. An unissued instrument, or an unissued incomplete instrument that is completed, is binding on the maker or drawer, but nonissuance is a defense. An instrument that is conditionally issued or is issued for a special purpose is binding on the maker or drawer, but failure of the condition or special purpose to be fulfilled is a defense.

3. *"Issuer"* applies to issued and unissued instruments and means a maker or drawer of an instrument.

94 Acts, ch 1167, §14, 121, 122
Referred to in §554.3103

554.3106 Unconditional promise or order.

1. Except as provided in this section, for the purposes of section 554.3104, subsection 1, a promise or order is unconditional unless it states an express condition to payment, that the promise or order is subject to or governed by another writing, or that rights or obligations with respect to the promise or order are stated in another writing. A reference to another writing does not of itself make the promise or order conditional.

2. A promise or order is not made conditional by a reference to another writing for a statement of rights with respect to collateral, prepayment, or acceleration, or because payment is limited to resort to a particular fund or source.

3. If a promise or order requires, as a condition to payment, a countersignature by a person whose specimen signature appears on the promise or order, the condition does not make the promise or order conditional for the purposes of section 554.3104, subsection 1. If the person whose specimen signature appears on an instrument fails to countersign the instrument, the failure to countersign is a defense to the obligation of the issuer, but the failure does not prevent a transferee of the instrument from becoming a holder of the instrument.

4. If a promise or order at the time it is issued or first comes into possession of a holder contains a statement, required by applicable statutory or administrative law, to the effect that the rights of a holder or transferee are subject to claims or defenses that the issuer could assert against the original payee, the promise or order is not thereby made conditional for the purposes of section 554.3104, subsection 1; but if the promise or order is an instrument, there cannot be a holder in due course of the instrument.

94 Acts, ch 1167, §15, 121, 122; 2013 Acts, ch 30, §261
Referred to in §554.3302

554.3107 Instrument payable in foreign money.

Unless the instrument otherwise provides, an instrument that states the amount payable in foreign money may be paid in the foreign money or in an equivalent amount in dollars calculated by using the current bank-offered spot rate at the place of payment for the purchase of dollars on the day on which the instrument is paid.

94 Acts, ch 1167, §16, 121, 122

554.3108 Payable on demand or at definite time.

1. A promise or order is *"payable on demand"* if it states that it is payable on demand or at sight, or otherwise indicates that it is payable at the will of the holder, or does not state any time of payment.

2. A promise or order is *"payable at a definite time"* if it is payable on elapse of a definite period of time after sight or acceptance or at a fixed date or dates or at a time or times readily ascertainable at the time the promise or order is issued, subject to rights of prepayment, acceleration, extension at the option of the holder, or extension to a further definite time at the option of the maker or acceptor or automatically upon or after a specified act or event.

3. If an instrument, payable at a fixed date, is also payable upon demand made before the fixed date, the instrument is payable on demand until the fixed date and, if demand for payment is not made before that date, becomes payable at a definite time on the fixed date.

94 Acts, ch 1167, §17, 121, 122; 2013 Acts, ch 30, §261

Referred to in §554.3103

554.3109 Payable to bearer or to order.

1. A promise or order is payable to bearer if it:

a. states that it is payable to bearer or to the order of bearer or otherwise indicates that the person in possession of the promise or order is entitled to payment;

b. does not state a payee; or

c. states that it is payable to or to the order of cash or otherwise indicates that it is not payable to an identified person.

2. A promise or order that is not payable to bearer is payable to order if it is payable to the order of an identified person or to an identified person or order. A promise or order that is payable to order is payable to the identified person.

3. An instrument payable to bearer may become payable to an identified person if it is specially endorsed pursuant to section 554.3205, subsection 1. An instrument payable to an identified person may become payable to bearer if it is endorsed in blank pursuant to section 554.3205, subsection 2.

94 Acts, ch 1167, §18, 121, 122; 2013 Acts, ch 30, §261

Referred to in §554.3103

554.3110 Identification of person to whom instrument is payable.

1. The person to whom an instrument is initially payable is determined by the intent of the person, whether or not authorized, signing as, or in the name or behalf of, the issuer of the instrument. The instrument is payable to the person intended by the signer even if that person is identified in the instrument by a name or other identification that is not that of the intended person. If more than one person signs in the name or behalf of the issuer of an instrument and all the signers do not intend the same person as payee, the instrument is payable to any person intended by one or more of the signers.

2. If the signature of the issuer of an instrument is made by automated means, such as a check-writing machine, the payee of the instrument is determined by the intent of the person who supplied the name or identification of the payee, whether or not authorized to do so.

3. A person to whom an instrument is payable may be identified in any way, including by name, identifying number, office, or account number. For the purpose of determining the holder of an instrument, the following rules apply:

a. if an instrument is payable to an account and the account is identified only by number, the instrument is payable to the person to whom the account is payable. If an instrument is payable to an account identified by number and by the name of a person, the instrument is

payable to the named person, whether or not that person is the owner of the account identified by number.

b. if an instrument is payable to:

(1) a trust, an estate, or a person described as trustee or representative of a trust or estate, the instrument is payable to the trustee, the representative, or a successor of either, whether or not the beneficiary or estate is also named;

(2) a person described as agent or similar representative of a named or identified person, the instrument is payable to the represented person, the representative, or a successor of the representative;

(3) a fund or organization that is not a legal entity, the instrument is payable to a representative of the members of the fund or organization; or

(4) an office or to a person described as holding an office, the instrument is payable to the named person, the incumbent of the office, or a successor to the incumbent.

4. If an instrument is payable to two or more persons alternatively, it is payable to any of them and may be negotiated, discharged, or enforced by any or all of them in possession of the instrument. If an instrument is payable to two or more persons not alternatively, it is payable to all of them and may be negotiated, discharged, or enforced only by all of them. If an instrument payable to two or more persons is ambiguous as to whether it is payable to the persons alternatively, the instrument is payable to the persons alternatively.

94 Acts, ch 1167, §19, 121, 122

Referred to in §554.3205, 554.3404

554.3111 Place of payment.

Except as otherwise provided for items in Article 4, an instrument is payable at the place of payment stated in the instrument. If no place of payment is stated, an instrument is payable at the address of the drawee or maker stated in the instrument. If no address is stated, the place of payment is the place of business of the drawee or maker. If a drawee or maker has more than one place of business, the place of payment is any place of business of the drawee or maker chosen by the person entitled to enforce the instrument. If the drawee or maker has no place of business, the place of payment is the residence of the drawee or maker.

94 Acts, ch 1167, §20, 121, 122

554.3112 Interest.

1. Unless otherwise provided in the instrument, an instrument is not payable with interest, and interest on an interest-bearing instrument is payable from the date of the instrument.

2. Interest may be stated in an instrument as a fixed or variable amount of money or it may be expressed as a fixed or variable rate or rates. The amount or rate of interest may be stated or described in the instrument in any manner and may require reference to information not contained in the instrument. If an instrument provides for interest, but the amount of interest payable cannot be ascertained from the description, interest is payable at the judgment rate in effect at the place of payment of the instrument and at the time interest first accrues.

94 Acts, ch 1167, §21, 121, 122; 2013 Acts, ch 30, §261

554.3113 Date of instrument.

1. An instrument may be antedated or postdated. The date stated determines the time of payment if the instrument is payable at a fixed period after date. Except as provided in section 554.4401, subsection 3, an instrument payable on demand is not payable before the date of the instrument.

2. If an instrument is undated, its date is the date of its issue or, in the case of an unissued instrument, the date it first comes into possession of a holder.

94 Acts, ch 1167, §22, 121, 122

554.3114 Contradictory terms of instrument.

If an instrument contains contradictory terms, typewritten terms prevail over printed terms, handwritten terms prevail over both, and words prevail over numbers.

94 Acts, ch 1167, §23, 121, 122

554.3115 Incomplete instrument.

1. *"Incomplete instrument"* means a signed writing, whether or not issued by the signer, the contents of which show at the time of signing that it is incomplete but that the signer intended it to be completed by the addition of words or numbers.

2. Subject to subsection 3, if an incomplete instrument is an instrument under section 554.3104, it may be enforced according to its terms if it is not completed, or according to its terms as augmented by completion. If an incomplete instrument is not an instrument under section 554.3104, but, after completion, the requirements of section 554.3104 are met, the instrument may be enforced according to its terms as augmented by completion.

3. If words or numbers are added to an incomplete instrument without authority of the signer, there is an alteration of the incomplete instrument under section 554.3407.

4. The burden of establishing that words or numbers were added to an incomplete instrument without authority of the signer is on the person asserting the lack of authority.

94 Acts, ch 1167, §24, 121, 122

Referred to in §554.3103, 554.3412, 554.3413, 554.3414, 554.3415, 554.4207

554.3116 Joint and several liability — contribution.

1. Except as otherwise provided in the instrument, two or more persons who have the same liability on an instrument as makers, drawers, acceptors, endorsers who endorse as joint payees, or anomalous endorsers are jointly and severally liable in the capacity in which they sign.

2. Except as provided in section 554.3419, subsection 5, or by agreement of the affected parties, a party having joint and several liability who pays the instrument is entitled to receive from any party having the same joint and several liability contribution in accordance with applicable law.

3. Discharge of one party having joint and several liability by a person entitled to enforce the instrument does not affect the right under subsection 2 of a party having the same joint and several liability to receive contribution from the party discharged.

94 Acts, ch 1167, §25, 121, 122

554.3117 Other agreements affecting instrument.

Subject to applicable law regarding exclusion of proof of contemporaneous or previous agreements, the obligation of a party to an instrument to pay the instrument may be modified, supplemented, or nullified by a separate agreement of the obligor and a person entitled to enforce the instrument, if the instrument is issued or the obligation is incurred in reliance on the agreement or as part of the same transaction giving rise to the agreement. To the extent an obligation is modified, supplemented, or nullified by an agreement under this section, the agreement is a defense to the obligation.

94 Acts, ch 1167, §26, 121, 122

554.3118 Accrual of cause of action.

1. A cause of action against a maker or an acceptor accrues

a. in the case of a time instrument on the day after maturity;

b. in the case of a demand instrument upon its date or, if no date is stated, on the date of issue.

2. A cause of action against the obligor of a demand or time certificate of deposit accrues upon demand, but demand on a time certificate may not be made until on or after the date of maturity.

3. A cause of action against a drawer of a draft or an endorser of any instrument accrues upon demand following dishonor of the instrument. Notice of dishonor is a demand.

4. Unless an instrument provides otherwise, interest runs at the rate provided by law for a judgment

a. in the case of a maker, acceptor or other primary obligor of a demand instrument, from the date of demand;

b. in all other cases from the date of accrual of the cause of action.

94 Acts, ch 1167, §27, 121, 122

554.3119 Notice of right to defend action.

In an action for breach of an obligation for which a third person is answerable over pursuant to this Article or Article 4, the defendant may give the third person written notice of the litigation, and the person notified may then give similar notice to any other person who is answerable over. If the notice states that the person notified may come in and defend and that failure to do so will bind the person notified in an action later brought by the person giving the notice as to any determination of fact common to the two litigations, the person notified is so bound unless after seasonable receipt of the notice the person notified does come in and defend.

94 Acts, ch 1167, §28, 121, 122; 2013 Acts, ch 30, §261

554.3120 through 554.3122 Repealed by 94 Acts, ch 1167, §121, 122.

PART 2

NEGOTIATION, TRANSFER, AND ENDORSEMENT

554.3201 Negotiation.

1. *"Negotiation"* means a transfer of possession, whether voluntary or involuntary, of an instrument by a person other than the issuer to a person who thereby becomes its holder.

2. Except for negotiation by a remitter, if an instrument is payable to an identified person, negotiation requires transfer of possession of the instrument and its endorsement by the holder. If an instrument is payable to bearer, it may be negotiated by transfer of possession alone.

94 Acts, ch 1167, §29, 121, 122

Referred to in §554.3103

554.3202 Negotiation subject to rescission.

1. Negotiation is effective even if obtained from an infant, a corporation exceeding its powers, or a person without capacity; by fraud, duress, or mistake; or in breach of duty or as part of an illegal transaction.

2. To the extent permitted by other law, negotiation may be rescinded or may be subject to other remedies, but those remedies may not be asserted against a subsequent holder in due course or a person paying the instrument in good faith and without knowledge of facts that are a basis for rescission or other remedy.

94 Acts, ch 1167, §30, 121, 122; 2013 Acts, ch 30, §143

554.3203 Transfer of instrument — rights acquired by transfer.

1. An instrument is transferred when it is delivered by a person other than its issuer for the purpose of giving to the person receiving delivery the right to enforce the instrument.

2. Transfer of an instrument, whether or not the transfer is a negotiation, vests in the transferee any right of the transferor to enforce the instrument, including any right as a holder in due course, but the transferee cannot acquire rights of a holder in due course by a transfer, directly or indirectly, from a holder in due course if the transferee engaged in fraud or illegality affecting the instrument.

3. Unless otherwise agreed, if an instrument is transferred for value and the transferee does not become a holder because of lack of endorsement by the transferor, the transferee has a specifically enforceable right to the unqualified endorsement of the transferor, but negotiation of the instrument does not occur until the endorsement is made.

4. If a transferor purports to transfer less than the entire instrument, negotiation of the instrument does not occur. The transferee obtains no rights under this Article and has only the rights of a partial assignee.

94 Acts, ch 1167, §31, 121, 122

Referred to in §554.3103

554.3204 Endorsement.

1. *"Endorsement"* means a signature, other than that of a signer as maker, drawer, or acceptor, that alone or accompanied by other words is made on an instrument for the purpose of negotiating the instrument, restricting payment of the instrument, or incurring endorser's liability on the instrument, but regardless of the intent of the signer, a signature and its accompanying words is an endorsement unless the accompanying words, terms of the instrument, place of the signature, or other circumstances unambiguously indicate that the signature was made for a purpose other than endorsement. For the purpose of determining whether a signature is made on an instrument, a paper affixed to the instrument is a part of the instrument.

2. *"Endorser"* means a person who makes an endorsement.

3. For the purpose of determining whether the transferee of an instrument is a holder, an endorsement that transfers a security interest in the instrument is effective as an unqualified endorsement of the instrument.

4. If an instrument is payable to a holder under a name that is not the name of the holder, endorsement may be made by the holder in the name stated in the instrument or in the holder's name or both, but signature in both names may be required by a person paying or taking the instrument for value or collection.

94 Acts, ch 1167, §32, 121, 122; 2013 Acts, ch 30, §261
Referred to in §554.3103

554.3205 Special endorsement — blank endorsement — anomalous endorsement.

1. If an endorsement is made by the holder of an instrument, whether payable to an identified person or payable to bearer, and the endorsement identifies a person to whom it makes the instrument payable, it is a *"special endorsement."* When specially endorsed, an instrument becomes payable to the identified person and may be negotiated only by the endorsement of that person. The principles stated in section 554.3110 apply to special endorsements.

2. If an endorsement is made by the holder of an instrument and it is not a special endorsement, it is a *"blank endorsement."* When endorsed in blank, an instrument becomes payable to bearer and may be negotiated by transfer of possession alone until specially endorsed.

3. The holder may convert a blank endorsement that consists only of a signature into a special endorsement by writing, above the signature of the endorser, words identifying the person to whom the instrument is made payable.

4. *"Anomalous endorsement"* means an endorsement made by a person who is not the holder of the instrument. An anomalous endorsement does not affect the manner in which the instrument may be negotiated.

94 Acts, ch 1167, §33, 121, 122
Referred to in §554.3103, 554.3109

554.3206 Restrictive endorsement.

1. An endorsement limiting payment to a particular person or otherwise prohibiting further transfer or negotiation of the instrument is not effective to prevent further transfer or negotiation of the instrument.

2. An endorsement stating a condition to the right of the endorsee to receive payment does not affect the right of the endorsee to enforce the instrument. A person paying the instrument or taking it for value or collection may disregard the condition, and the rights and liabilities of that person are not affected by whether the condition has been fulfilled.

3. If an instrument bears an endorsement described in section 554.4201, subsection 2, or in blank or to a particular bank using the words "for deposit," "for collection," or other words indicating a purpose of having the instrument collected by a bank for the endorser or for a particular account, the following rules apply:

a. A person, other than a bank, who purchases the instrument when so endorsed converts the instrument unless the amount paid for the instrument is received by the endorser or applied consistently with the endorsement.

b. A depositary bank that purchases the instrument or takes it for collection when so endorsed converts the instrument unless the amount paid by the bank with respect to the instrument is received by the endorser or applied consistently with the endorsement.

c. A payor bank that is also the depositary bank or that takes the instrument for immediate payment over the counter from a person other than a collecting bank converts the instrument unless the proceeds of the instrument are received by the endorser or applied consistently with the endorsement.

d. Except as otherwise provided in paragraph "*c*", a payor bank or intermediary bank may disregard the endorsement and is not liable if the proceeds of the instrument are not received by the endorser or applied consistently with the endorsement.

4. Except for an endorsement covered by subsection 3, if an instrument bears an endorsement using words to the effect that payment is to be made to the endorsee as agent, trustee, or other fiduciary for the benefit of the endorser or another person, the following rules apply:

a. Unless there is notice of breach of fiduciary duty as provided in section 554.3307, a person who purchases the instrument from the endorsee or takes the instrument from the endorsee for collection or payment may pay the proceeds of payment or the value given for the instrument to the endorsee without regard to whether the endorsee violates a fiduciary duty to the endorser.

b. A subsequent transferee of the instrument or person who pays the instrument is neither given notice nor otherwise affected by the restriction in the endorsement unless the transferee or payor knows that the fiduciary dealt with the instrument or its proceeds in breach of fiduciary duty.

5. The presence on an instrument of an endorsement to which this section applies does not prevent a purchaser of the instrument from becoming a holder in due course of the instrument unless the purchaser is a converter under subsection 3 or has notice or knowledge of breach of fiduciary duty as stated in subsection 4.

6. In an action to enforce the obligation of a party to pay the instrument, the obligor has a defense if payment would violate an endorsement to which this section applies and the payment is not permitted by this section.

94 Acts, ch 1167, §34, 121, 122; 2013 Acts, ch 30, §261
Referred to in §554.4203

554.3207 Reacquisition.

Reacquisition of an instrument occurs if it is transferred to a former holder, by negotiation or otherwise. A former holder who reacquires the instrument may cancel endorsements made after the reacquirer first became a holder of the instrument. If the cancellation causes the instrument to be payable to the reacquirer or to bearer, the reacquirer may negotiate the instrument. An endorser whose endorsement is canceled is discharged, and the discharge is effective against any subsequent holder.

94 Acts, ch 1167, §35, 121, 122
Referred to in §554.3103

554.3208 Reacquisition. Repealed by 94 Acts, ch 1167, §121, 122. See §554.3207.

PART 3

ENFORCEMENT OF INSTRUMENTS

554.3301 Person entitled to enforce instrument.

"Person entitled to enforce" an instrument means the holder of the instrument, a nonholder in possession of the instrument who has the rights of a holder, or a person not in possession of the instrument who is entitled to enforce the instrument pursuant to section 554.3309 or 554.3418, subsection 4. A person may be a person entitled to enforce the instrument even

though the person is not the owner of the instrument or is in wrongful possession of the instrument.

94 Acts, ch 1167, §36, 121, 122; 2013 Acts, ch 30, §261
Referred to in §554.3103, 554.3308, 554.4104

554.3302 Holder in due course.

1. Subject to subsection 3 and section 554.3106, subsection 4, *"holder in due course"* means the holder of an instrument if:

a. the instrument when issued or negotiated to the holder does not bear such apparent evidence of forgery or alteration or is not otherwise so irregular or incomplete as to call into question its authenticity; and

b. the holder took the instrument for value, in good faith, without notice that the instrument is overdue or has been dishonored or that there is an uncured default with respect to payment of another instrument issued as part of the same series, without notice that the instrument contains an unauthorized signature or has been altered, without notice of any claim to the instrument described in section 554.3306, and without notice that any party has a defense or claim in recoupment described in section 554.3305, subsection 1.

2. Notice of discharge of a party, other than discharge in an insolvency proceeding, is not notice of a defense under subsection 1, but discharge is effective against a person who became a holder in due course with notice of the discharge. Public filing or recording of a document does not of itself constitute notice of a defense, claim in recoupment, or claim to the instrument.

3. Except to the extent a transferor or predecessor in interest has rights as a holder in due course, a person does not acquire rights of a holder in due course of an instrument taken by legal process or by purchase in an execution, bankruptcy, or creditor's sale or similar proceeding, by purchase as part of a bulk transaction not in ordinary course of business of the transferor, or as the successor in interest to an estate or other organization.

4. If, under section 554.3303, subsection 1, paragraph *"a"*, the promise of performance that is the consideration for an instrument has been partially performed, the holder may assert rights as a holder in due course of the instrument only to the fraction of the amount payable under the instrument equal to the value of the partial performance divided by the value of the promised performance.

5. If the person entitled to enforce an instrument has only a security interest in the instrument and the person obliged to pay the instrument has a defense, claim in recoupment, or claim to the instrument that may be asserted against the person who granted the security interest, the person entitled to enforce the instrument may assert rights as a holder in due course only to an amount payable under the instrument which, at the time of enforcement of the instrument, does not exceed the amount of the unpaid obligation secured.

6. To be effective, notice must be received at a time and in a manner that gives a reasonable opportunity to act on it.

7. This section is subject to any law limiting status as a holder in due course in particular classes of transactions.

94 Acts, ch 1167, §37, 121, 122; 2013 Acts, ch 30, §261
Referred to in §523G.7, 554.3103, 554.4104, 554.4205, 554.4211, 554.9102, 554D.118

554.3303 Value and consideration.

1. An instrument is issued or transferred for value if:

a. the instrument is issued or transferred for a promise of performance, to the extent the promise has been performed;

b. the transferee acquires a security interest or other lien in the instrument other than a lien obtained by judicial proceeding;

c. the instrument is issued or transferred as payment of, or as security for, an antecedent claim against any person, whether or not the claim is due;

d. the instrument is issued or transferred in exchange for a negotiable instrument; or

e. the instrument is issued or transferred in exchange for the incurring of an irrevocable obligation to a third party by the person taking the instrument.

2. *"Consideration"* means any consideration sufficient to support a simple contract. The drawer or maker of an instrument has a defense if the instrument is issued without consideration. If an instrument is issued for a promise of performance, the issuer has a defense to the extent performance of the promise is due and the promise has not been performed. If an instrument is issued for value as stated in subsection 1, the instrument is also issued for consideration.

94 Acts, ch 1167, §38, 121, 122
Referred to in §554.3103, 554.3302, 554.5102, 554.9403

554.3304 Overdue instrument.

1. An instrument payable on demand becomes overdue at the earliest of the following times:

a. on the day after the day demand for payment is duly made;

b. if the instrument is a check, ninety days after its date; or

c. if the instrument is not a check, when the instrument has been outstanding for a period of time after its date which is unreasonably long under the circumstances of the particular case in light of the nature of the instrument and usage of the trade.

2. With respect to an instrument payable at a definite time the following rules apply:

a. If the principal is payable in installments and a due date has not been accelerated, the instrument becomes overdue upon default under the instrument for nonpayment of an installment, and the instrument remains overdue until the default is cured.

b. If the principal is not payable in installments and the due date has not been accelerated, the instrument becomes overdue on the day after the due date.

c. If a due date with respect to principal has been accelerated, the instrument becomes overdue on the day after the accelerated due date.

3. Unless the due date of principal has been accelerated, an instrument does not become overdue if there is default in payment of interest but no default in payment of principal.

94 Acts, ch 1167, §39, 121, 122

554.3305 Defenses and claims in recoupment.

1. Except as stated in subsection 2, the right to enforce the obligation of a party to pay an instrument is subject to the following:

a. a defense of the obligor based on infancy of the obligor to the extent it is a defense to a simple contract; duress, lack of legal capacity, or illegality of the transaction which, under other law, nullifies the obligation of the obligor; fraud that induced the obligor to sign the instrument with neither knowledge nor reasonable opportunity to learn of its character or its essential terms; or discharge of the obligor in insolvency proceedings;

b. a defense of the obligor stated in another section of this Article or a defense of the obligor that would be available if the person entitled to enforce the instrument were enforcing a right to payment under a simple contract; and

c. a claim in recoupment of the obligor against the original payee of the instrument if the claim arose from the transaction that gave rise to the instrument; but the claim of the obligor may be asserted against a transferee of the instrument only to reduce the amount owing on the instrument at the time the action is brought.

2. The right of a holder in due course to enforce the obligation of a party to pay the instrument is subject to defenses of the obligor stated in subsection 1, paragraph *"a"*, but is not subject to defenses of the obligor stated in subsection 1, paragraph *"b"*, or claims in recoupment stated in subsection 1, paragraph *"c"*, against a person other than the holder.

3. Except as stated in subsection 4, in an action to enforce the obligation of a party to pay the instrument, the obligor may not assert against the person entitled to enforce the instrument a defense, claim in recoupment, or claim to the instrument (section 554.3306) of another person, but the other person's claim to the instrument may be asserted by the obligor if the other person is joined in the action and personally asserts the claim against the person entitled to enforce the instrument. An obligor is not obliged to pay the instrument if the person seeking enforcement of the instrument does not have rights of a holder in due course and the obligor proves that the instrument is a lost or stolen instrument.

4. In an action to enforce the obligation of an accommodation party to pay an instrument, the accommodation party may assert against the person entitled to enforce the instrument any defense or claim in recoupment under subsection 1 that the accommodated party could assert against the person entitled to enforce the instrument, except the defenses of discharge in insolvency proceedings, infancy, and lack of legal capacity.

94 Acts, ch 1167, §40, 121, 122; 2013 Acts, ch 30, §144
Referred to in §554.3302, 554.4207, 554.9403

554.3306 Claims to an instrument.

A person taking an instrument, other than a person having rights of a holder in due course, is subject to a claim of a property or possessory right in the instrument or its proceeds, including a claim to rescind a negotiation and to recover the instrument or its proceeds. A person having rights of a holder in due course takes free of the claim to the instrument.

94 Acts, ch 1167, §41, 121, 122
Referred to in §554.3302, 554.3305, 554.3602

554.3307 Notice of breach of fiduciary duty.

1. In this section:

a. "*Fiduciary*" means an agent, trustee, partner, corporate officer or director, or other representative owing a fiduciary duty with respect to an instrument.

b. "*Represented person*" means the principal, beneficiary, partnership, corporation, or other person to whom the duty stated in paragraph "*a*" is owed.

2. If an instrument is taken from a fiduciary for payment or collection or for value, the taker has knowledge of the fiduciary status of the fiduciary, and the represented person makes a claim to the instrument or its proceeds on the basis that the transaction of the fiduciary is a breach of fiduciary duty, the following rules apply:

a. Notice of breach of fiduciary duty by the fiduciary is notice of the claim of the represented person.

b. In the case of an instrument payable to the represented person or the fiduciary as such, the taker has notice of the breach of fiduciary duty if the instrument is taken in payment of or as security for a debt known by the taker to be the personal debt of the fiduciary, taken in a transaction known by the taker to be for the personal benefit of the fiduciary, or deposited to an account other than an account of the fiduciary, as such, or an account of the represented person.

c. If an instrument is issued by the represented person or the fiduciary as such, and made payable to the fiduciary personally, the taker does not have notice of the breach of fiduciary duty unless the taker knows of the breach of fiduciary duty.

d. If an instrument is issued by the represented person or the fiduciary as such, to the taker as payee, the taker has notice of the breach of fiduciary duty if the instrument is taken in payment of or as security for a debt known by the taker to be the personal debt of the fiduciary, taken in a transaction known by the taker to be for the personal benefit of the fiduciary, or deposited to an account other than an account of the fiduciary, as such, or an account of the represented person.

94 Acts, ch 1167, §42, 121, 122; 2013 Acts, ch 30, §261
Referred to in §554.3104, 554.3206

554.3308 Proof of signatures and status as holder in due course.

1. In an action with respect to an instrument, the authenticity of, and authority to make, each signature on the instrument is admitted unless specifically denied in the pleadings. If the validity of a signature is denied in the pleadings, the burden of establishing validity is on the person claiming validity, but the signature is presumed to be authentic and authorized unless the action is to enforce the liability of the purported signer and the signer is dead or incompetent at the time of trial of the issue of validity of the signature. If an action to enforce the instrument is brought against a person as the undisclosed principal of a person who signed the instrument as a party to the instrument, the plaintiff has the burden of establishing that the defendant is liable on the instrument as a represented person under section 554.3402, subsection 1.

2. If the validity of signatures is admitted or proved and there is compliance with subsection 1, a plaintiff producing the instrument is entitled to payment if the plaintiff proves entitlement to enforce the instrument under section 554.3301, unless the defendant proves a defense or claim in recoupment. If a defense or claim in recoupment is proved, the right to payment of the plaintiff is subject to the defense or claim, except to the extent the plaintiff proves that the plaintiff has rights of a holder in due course which are not subject to the defense or claim.

94 Acts, ch 1167, §43, 122
Referred to in §554.3309

554.3309 Enforcement of lost, destroyed, or stolen instrument.

1. A person not in possession of an instrument is entitled to enforce the instrument if:

a. the person seeking to enforce the instrument:

(1) was entitled to enforce the instrument when loss of possession occurred, or

(2) has directly or indirectly acquired ownership of the instrument from a person who was entitled to the instrument when loss of possession occurred;

b. the loss of possession was not the result of a transfer by the person or a lawful seizure; and

c. the person cannot reasonably obtain possession of the instrument because the instrument was destroyed, its whereabouts cannot be determined, or it is in the wrongful possession of an unknown person or a person that cannot be found or is not amenable to service of process.

2. A person seeking enforcement of an instrument under subsection 1 must prove the terms of the instrument and the person's right to enforce the instrument. If that proof is made, section 554.3308 applies to the case as if the person seeking enforcement had produced the instrument. The court may not enter judgment in favor of the person seeking enforcement unless it finds that the person required to pay the instrument is adequately protected against loss that might occur by reason of a claim by another person to enforce the instrument. Adequate protection may be provided by any reasonable means.

94 Acts, ch 1167, §44, 122; 2005 Acts, ch 11, §3; 2006 Acts, ch 1030, §69
Referred to in §554.3301, 554.3312

554.3310 Effect of instrument on obligation for which taken.

1. Unless otherwise agreed, if a certified check, cashier's check, or teller's check is taken for an obligation, the obligation is discharged to the same extent discharge would result if an amount of money equal to the amount of the instrument were taken in payment of the obligation. Discharge of the obligation does not affect any liability that the obligor may have as an endorser of the instrument.

2. Unless otherwise agreed and except as provided in subsection 1, if a note or an uncertified check is taken for an obligation, the obligation is suspended to the same extent the obligation would be discharged if an amount of money equal to the amount of the instrument were taken, and the following rules apply:

a. In the case of an uncertified check, suspension of the obligation continues until dishonor of the check or until it is paid or certified. Payment or certification of the check results in discharge of the obligation to the extent of the amount of the check.

b. In the case of a note, suspension of the obligation continues until dishonor of the note or until it is paid. Payment of the note results in discharge of the obligation to the extent of the payment.

c. Except as provided in paragraph "*d*", if the check or note is dishonored and the obligee of the obligation for which the instrument was taken is the person entitled to enforce the instrument, the obligee may enforce either the instrument or the obligation. In the case of an instrument of a third person which is negotiated to the obligee by the obligor, discharge of the obligor on the instrument also discharges the obligation.

d. If the person entitled to enforce the instrument taken for an obligation is a person other than the obligee, the obligee may not enforce the obligation to the extent the obligation is suspended. If the obligee is the person entitled to enforce the instrument but no longer has

possession of it because it was lost, stolen, or destroyed, the obligation may not be enforced to the extent of the amount payable on the instrument, and to that extent the obligee's rights against the obligor are limited to enforcement of the instrument.

3. If an instrument other than one described in subsection 1 or 2 is taken for an obligation, the effect is that stated in subsection 1 if the instrument is one on which a bank is liable as maker or acceptor, or that stated in subsection 2 in any other case.

94 Acts, ch 1167, §45, 122; 2013 Acts, ch 30, §261
Referred to in §554.2511

554.3311 Accord and satisfaction by use of instrument.

1. If a person against whom a claim is asserted proves that that person in good faith tendered an instrument to the claimant as full satisfaction of the claim, the amount of the claim was unliquidated or subject to a bona fide dispute, and the claimant obtained payment of the instrument, the following subsections apply.

2. Unless subsection 3 applies, the claim is discharged if the person against whom the claim is asserted proves that the instrument or an accompanying written communication contained a conspicuous statement to the effect that the instrument was tendered as full satisfaction of the claim.

3. Subject to subsection 4, a claim is not discharged under subsection 2 if either of the following applies:

a. The claimant, if an organization, proves that:

(1) within a reasonable time before the tender, the claimant sent a conspicuous statement to the person against whom the claim is asserted that communications concerning disputed debts, including an instrument tendered as full satisfaction of a debt, are to be sent to a designated person, office, or place; and

(2) the instrument or accompanying communication was not received by that designated person, office, or place.

b. The claimant, whether or not an organization, proves that within ninety days after payment of the instrument, the claimant tendered repayment of the amount of the instrument to the person against whom the claim is asserted. This paragraph does not apply if the claimant is an organization that sent a statement complying with paragraph "*a*", subparagraph (1).

4. A claim is discharged if the person against whom the claim is asserted proves that within a reasonable time before collection of the instrument was initiated, the claimant, or an agent of the claimant having direct responsibility with respect to the disputed obligation, knew that the instrument was tendered in full satisfaction of the claim.

94 Acts, ch 1167, §46, 122; 2013 Acts, ch 30, §145

554.3312 Lost, destroyed, or stolen cashier's check, teller's check, or certified check.

1. In this section:

a. *"Check"* means a cashier's check, teller's check, or certified check.

b. *"Claimant"* means a person who claims the right to receive the amount of a cashier's check, teller's check, or certified check that was lost, destroyed, or stolen.

c. *"Declaration of loss"* means a written statement, made under penalty of perjury, to the effect that the declarer lost possession of a check; the declarer is the drawer or payee of the check, in the case of a certified check, or the remitter or payee of the check, in the case of a cashier's check or teller's check; the loss of possession was not the result of a transfer by the declarer or a lawful seizure; and the declarer cannot reasonably obtain possession of the check because the check was destroyed, its whereabouts cannot be determined, or it is in the wrongful possession of an unknown person or a person that cannot be found or is not amenable to service of process.

d. *"Obligated bank"* means the issuer of a cashier's check or teller's check or the acceptor of a certified check.

2. A claimant may assert a claim to the amount of a check by a communication to the obligated bank describing the check with reasonable certainty and requesting payment of the amount of the check, if the claimant is the drawer or payee of a certified check or

the remitter or payee of a cashier's check or teller's check, the communication contains or is accompanied by a declaration of loss of the claimant with respect to the check, the communication is received at a time and in a manner affording the bank a reasonable time to act on it before the check is paid, and the claimant provides reasonable identification if requested by the obligated bank. Delivery of a declaration of loss is a warranty of the truth of the statements made in the declaration. If a claim is asserted in compliance with this subsection, the following rules apply:

a. The claim becomes enforceable at the later of the time the claim is asserted, or the ninetieth day following the date of the check, in the case of a cashier's check or teller's check, or the ninetieth day following the date of the acceptance, in the case of a certified check.

b. Until the claim becomes enforceable, it has no legal effect and the obligated bank may pay the check or, in the case of a teller's check, may permit the drawee to pay the check. Payment to a person entitled to enforce the check discharges all liability of the obligated bank with respect to the check.

c. If the claim becomes enforceable before the check is presented for payment, the obligated bank is not obliged to pay the check.

d. When the claim becomes enforceable, the obligated bank becomes obliged to pay the amount of the check to the claimant if payment of the check has not been made to a person entitled to enforce the check. Subject to section 554.4302, subsection 1, paragraph *"a"*, payment to the claimant discharges all liability of the obligated bank with respect to the check.

3. If the obligated bank pays the amount of a check to a claimant under subsection 2, paragraph *"d"*, and the check is presented for payment by a person having rights of a holder in due course, the claimant is obliged to refund the payment to the obligated bank if the check is paid, or pay the amount of the check to the person having rights of a holder in due course if the check is dishonored.

4. If a claimant has the right to assert a claim under subsection 2 and is also a person entitled to enforce a cashier's check, teller's check, or certified check which is lost, destroyed, or stolen, the claimant may assert rights with respect to the check either under this section or section 554.3309.

94 Acts, ch 1167, §47, 122; 2013 Acts, ch 30, §146, 261; 2014 Acts, ch 1092, §122

PART 4

LIABILITY OF PARTIES

554.3401 Signature.

1. A person is not liable on an instrument unless the person signed the instrument, or the person is represented by an agent or representative who signed the instrument and the signature is binding on the represented person under section 554.3402.

2. A signature may be made manually or by means of a device or machine, and by the use of any name, including a trade or assumed name, or by a word, mark, or symbol executed or adopted by a person with present intention to authenticate a writing.

94 Acts, ch 1167, §48, 121, 122; 2013 Acts, ch 30, §261

554.3402 Signature by representative.

1. If a person acting, or purporting to act, as a representative signs an instrument by signing either the name of the represented person or the name of the signer, the represented person is bound by the signature to the same extent the represented person would be bound if the signature were on a simple contract. If the represented person is bound, the signature of the representative is the "authorized signature of the represented person" and the represented person is liable on the instrument, whether or not identified in the instrument.

2. If a representative signs the name of the representative to an instrument and the signature is an authorized signature of the represented person, the following rules apply:

a. If the form of the signature shows unambiguously that the signature is made on behalf

of the represented person who is identified in the instrument, the representative is not liable on the instrument.

b. Subject to subsection 3, if the form of the signature does not show unambiguously that the signature is made in a representative capacity or the represented person is not identified in the instrument, the representative is liable on the instrument to a holder in due course that took the instrument without notice that the representative was not intended to be liable on the instrument. With respect to any other person, the representative is liable on the instrument unless the representative proves that the original parties did not intend the representative to be liable on the instrument.

3. If a representative signs the name of the representative as drawer of a check without indication of the representative status and the check is payable from an account of the represented person who is identified on the check, the signer is not liable on the check if the signature is an authorized signature of the represented person.

94 Acts, ch 1167, §49, 121, 122; 2013 Acts, ch 30, §261
Referred to in §554.3308, 554.3401

554.3403 Unauthorized signature.

1. Unless otherwise provided in this Article or Article 4, an unauthorized signature is ineffective except as the signature of the unauthorized signer in favor of a person who in good faith pays the instrument or takes it for value. An unauthorized signature may be ratified for all purposes of this Article.

2. If the signature of more than one person is required to constitute the authorized signature of an organization, the signature of the organization is unauthorized if one of the required signatures is lacking.

3. The civil or criminal liability of a person who makes an unauthorized signature is not affected by any provision of this Article which makes the unauthorized signature effective for the purposes of this Article.

94 Acts, ch 1167, §50, 121, 122
Referred to in §554.4104

554.3404 Impostors — fictitious payees.

1. If an impostor, by use of the mails or otherwise, induces the issuer of an instrument to issue the instrument to the impostor, or to a person acting in concert with the impostor, by impersonating the payee of the instrument or a person authorized to act for the payee, an endorsement of the instrument by any person in the name of the payee is effective as the endorsement of the payee in favor of a person who, in good faith, pays the instrument or takes it for value or for collection.

2. If a person whose intent determines to whom an instrument is payable (section 554.3110, subsection 1 or 2) does not intend the person identified as payee to have any interest in the instrument, or the person identified as payee of an instrument is a fictitious person, the following rules apply until the instrument is negotiated by special endorsement:

a. Any person in possession of the instrument is its holder.

b. An endorsement by any person in the name of the payee stated in the instrument is effective as the endorsement of the payee in favor of a person who, in good faith, pays the instrument or takes it for value or for collection.

3. Under subsection 1 or 2, an endorsement is made in the name of a payee if it is made in a name substantially similar to that of the payee or the instrument, whether or not endorsed, is deposited in a depositary bank to an account in a name substantially similar to that of the payee.

4. With respect to an instrument to which subsection 1 or 2 applies, if a person paying the instrument or taking it for value or for collection fails to exercise ordinary care in paying or taking the instrument and that failure substantially contributes to loss resulting from payment of the instrument, the person bearing the loss may recover from the person failing to exercise ordinary care to the extent the failure to exercise ordinary care contributed to the loss.

94 Acts, ch 1167, §51, 121, 122; 2013 Acts, ch 30, §261
Referred to in §554.3417, 554.4208

554.3405 Employer's responsibility for fraudulent endorsement by employee.

1. In this section:

a. *"Employee"* includes an independent contractor and employee of an independent contractor retained by the employer.

b. *"Fraudulent endorsement"* means one of the following:

(1) in the case of an instrument payable to the employer, a forged endorsement purporting to be that of the employer;

(2) in the case of an instrument with respect to which the employer is the issuer, a forged endorsement purporting to be that of the person identified as payee.

c. *"Responsibility"* with respect to instruments means authority to sign or endorse instruments on behalf of the employer; to process instruments received by the employer for bookkeeping purposes, for deposit to an account, or for other disposition; to prepare or process instruments for issue in the name of the employer; to supply information determining the names or addresses of payees of instruments to be issued in the name of the employer; to control the disposition of instruments to be issued in the name of the employer; or to act otherwise with respect to instruments in a responsible capacity. *"Responsibility"* does not include authority that merely allows an employee to have access to instruments or blank or incomplete instrument forms that are being stored or transported or are part of incoming or outgoing mail, or similar access.

2. For the purpose of determining the rights and liabilities of a person who, in good faith, pays an instrument or takes it for value or for collection, if an employer entrusted an employee with responsibility with respect to the instrument and the employee or a person acting in concert with the employee makes a fraudulent endorsement of the instrument, the endorsement is effective as the endorsement of the person to whom the instrument is payable if it is made in the name of that person. If the person paying the instrument or taking it for value or for collection fails to exercise ordinary care in paying or taking the instrument and that failure substantially contributes to loss resulting from the fraud, the person bearing the loss may recover from the person failing to exercise ordinary care to the extent the failure to exercise ordinary care contributed to the loss.

3. Under subsection 2, an endorsement is made in the name of the person to whom an instrument is payable if it is made in a name substantially similar to the name of that person or the instrument, whether or not endorsed, is deposited in a depositary bank to an account in a name substantially similar to the name of that person.

94 Acts, ch 1167, §52, 121, 122; 2013 Acts, ch 30, §147, 261

Referred to in §554.3417, 554.4208

554.3406 Negligence contributing to forged signature or alteration of instrument.

1. A person whose failure to exercise ordinary care substantially contributes to an alteration of an instrument or to the making of a forged signature on an instrument is precluded from asserting the alteration or the forgery against a person who, in good faith, pays the instrument or takes it for value or for collection.

2. Under subsection 1, if the person asserting the preclusion fails to exercise ordinary care in paying or taking the instrument and that failure substantially contributes to loss, the loss is allocated between the person precluded and the person asserting the preclusion according to the extent to which the failure of each to exercise ordinary care contributed to the loss.

3. Under subsection 1, the burden of proving failure to exercise ordinary care is on the person asserting the preclusion. Under subsection 2, the burden of proving failure to exercise ordinary care is on the person precluded.

94 Acts, ch 1167, §53, 121, 122

Referred to in §554.3417, 554.4208

554.3407 Alteration.

1. *"Alteration"* means an unauthorized change in an instrument that purports to modify in any respect the obligation of a party, or an unauthorized addition of words or numbers or other change to an incomplete instrument relating to the obligation of a party.

2. Except as provided in subsection 3, an alteration fraudulently made discharges a party

whose obligation is affected by the alteration unless that party assents or is precluded from asserting the alteration. No other alteration discharges a party, and the instrument may be enforced according to its original terms.

3. A payor bank or drawee paying a fraudulently altered instrument or a person taking it for value, in good faith and without notice of the alteration, may enforce rights with respect to the instrument according to its original terms, or in the case of an incomplete instrument altered by unauthorized completion, according to its terms as completed.

94 Acts, ch 1167, §54, 121, 122; 2013 Acts, ch 30, §261
Referred to in §554.3103, 554.3115, 554.3412, 554.3413, 554.3414, 554.3415, 554.4104, 554.4207

554.3408 Drawee not liable on unaccepted draft.

A check or other draft does not of itself operate as an assignment of funds in the hands of the drawee available for its payment, and the drawee is not liable on the instrument until the drawee accepts it.

94 Acts, ch 1167, §55, 121, 122

554.3409 Acceptance of draft — certified check.

1. *"Acceptance"* means the drawee's signed agreement to pay a draft as presented. It must be written on the draft and may consist of the drawee's signature alone. Acceptance may be made at any time and becomes effective when notification pursuant to instructions is given or the accepted draft is delivered for the purpose of giving rights on the acceptance to any person.

2. A draft may be accepted although it has not been signed by the drawer, is otherwise incomplete, is overdue, or has been dishonored.

3. If a draft is payable at a fixed period after sight and the acceptor fails to date the acceptance, the holder may complete the acceptance by supplying a date in good faith.

4. *"Certified check"* means a check accepted by the bank on which it is drawn. Acceptance may be made as stated in subsection 1 or by a writing on the check which indicates that the check is certified. The drawee of a check has no obligation to certify the check, and refusal to certify is not dishonor of the check.

94 Acts, ch 1167, §56, 121, 122
Referred to in §554.3103, 554.4104, 554.5102

554.3410 Acceptance varying draft.

1. If the terms of a drawee's acceptance vary from the terms of the draft as presented, the holder may refuse the acceptance and treat the draft as dishonored. In that case, the drawee may cancel the acceptance.

2. The terms of a draft are not varied by an acceptance to pay at a particular bank or place in the United States, unless the acceptance states that the draft is to be paid only at that bank or place.

3. If the holder assents to an acceptance varying the terms of a draft, the obligation of each drawer and endorser that does not expressly assent to the acceptance is discharged.

94 Acts, ch 1167, §57, 121, 122

554.3411 Refusal to pay cashier's checks, teller's checks, and certified checks.

1. In this section, *"obligated bank"* means the acceptor of a certified check or the issuer of a cashier's check or teller's check bought from the issuer.

2. If the obligated bank wrongfully refuses to pay a cashier's check or certified check, stops payment of a teller's check, or refuses to pay a dishonored teller's check, the person asserting the right to enforce the check is entitled to compensation for expenses and loss of interest resulting from the nonpayment and may recover consequential damages if the obligated bank refuses to pay after receiving notice of particular circumstances giving rise to the damages.

3. Expenses or consequential damages under subsection 2 are not recoverable if the refusal of the obligated bank to pay occurs because the bank suspends payments, the obligated bank asserts a claim or defense of the bank that it has reasonable grounds to believe is available against the person entitled to enforce the instrument, the obligated bank

has a reasonable doubt whether the person demanding payment is the person entitled to enforce the instrument, or payment is prohibited by law.

94 Acts, ch 1167, §58, 121, 122; 2013 Acts, ch 30, §261

554.3412 Obligation of issuer of note or cashier's check.

The issuer of a note or cashier's check or other draft drawn on the drawer is obliged to pay the instrument according to its terms at the time it was issued or, if not issued, at the time it first came into possession of a holder, or if the issuer signed an incomplete instrument, according to its terms when completed, to the extent stated in sections 554.3115 and 554.3407. The obligation is owed to a person entitled to enforce the instrument or to an endorser who paid the instrument under section 554.3415.

94 Acts, ch 1167, §59, 121, 122; 2013 Acts, ch 30, §261

554.3413 Obligation of acceptor.

1. The acceptor of a draft is obliged to pay the draft according to its terms at the time it was accepted, even though the acceptance states that the draft is payable "as originally drawn" or equivalent terms, if the acceptance varies the terms of the draft, according to the terms of the draft as varied, or if the acceptance is of a draft that is an incomplete instrument, according to its terms when completed, to the extent stated in sections 554.3115 and 554.3407. The obligation is owed to a person entitled to enforce the draft or to the drawer or an endorser who paid the draft under section 554.3414 or 554.3415.

2. If the certification of a check or other acceptance of a draft states the amount certified or accepted, the obligation of the acceptor is that amount. If the certification or acceptance does not state an amount, the amount of the instrument is subsequently raised, and the instrument is then negotiated to a holder in due course, the obligation of the acceptor is the amount of the instrument at the time it was taken by the holder in due course.

94 Acts, ch 1167, §60, 121, 122; 2013 Acts, ch 30, §261

554.3414 Obligation of drawer.

1. This section does not apply to cashier's checks or other drafts drawn on the drawer.

2. If an unaccepted draft is dishonored, the drawer is obliged to pay the draft according to its terms at the time it was issued or, if not issued, at the time it first came into possession of a holder, or if the drawer signed an incomplete instrument, according to its terms when completed, to the extent stated in sections 554.3115 and 554.3407. The obligation is owed to a person entitled to enforce the draft or to an endorser who paid the draft under section 554.3415.

3. If a draft is accepted by a bank, the drawer is discharged, regardless of when or by whom acceptance was obtained.

4. If a draft is accepted and the acceptor is not a bank, the obligation of the drawer to pay the draft if the draft is dishonored by the acceptor is the same as the obligation of an endorser under section 554.3415, subsections 1 and 3.

5. If a draft states that it is drawn "without recourse" or otherwise disclaims liability of the drawer to pay the draft, the drawer is not liable under subsection 2 to pay the draft if the draft is not a check. A disclaimer of the liability stated in subsection 2 is not effective if the draft is a check.

6. If a check is not presented for payment or given to a depositary bank for collection within thirty days after its date, the drawee suspends payments after expiration of the thirty-day period without paying the check, and because of the suspension of payments, the drawer is deprived of funds maintained with the drawee to cover payment of the check, the drawer to the extent deprived of funds may discharge its obligation to pay the check by assigning to the person entitled to enforce the check the rights of the drawer against the drawee with respect to the funds.

94 Acts, ch 1167, §61, 121, 122; 2013 Acts, ch 30, §261

Referred to in §554.3413, 554.3503, 554.3605, 554.5108

554.3415 Obligation of endorser.

1. Subject to subsections 2, 3, and 4 and to section 554.3419, subsection 4, if an instrument is dishonored, an endorser is obliged to pay the amount due on the instrument according to the terms of the instrument at the time it was endorsed, or if the endorser endorsed an incomplete instrument, according to its terms when completed, to the extent stated in sections 554.3115 and 554.3407. The obligation of the endorser is owed to a person entitled to enforce the instrument or to a subsequent endorser who paid the instrument under this section.

2. If an endorsement states that it is made "without recourse" or otherwise disclaims liability of the endorser, the endorser is not liable under subsection 1 to pay the instrument.

3. If notice of dishonor of an instrument is required by section 554.3503 and notice of dishonor complying with that section is not given to an endorser, the liability of the endorser under subsection 1 is discharged.

4. If a draft is accepted by a bank after an endorsement is made, the liability of the endorser under subsection 1 is discharged.

5. If an endorser of a check is liable under subsection 1 and the check is not presented for payment, or given to a depositary bank for collection, within thirty days after the day the endorsement was made, the liability of the endorser under subsection 1 is discharged.

94 Acts, ch 1167, §62, 121, 122; 2013 Acts, ch 30, §261

Referred to in §554.3412, 554.3413, 554.3414, 554.3503, 554.5108

554.3416 Transfer warranties.

1. A person who transfers an instrument for consideration warrants to the transferee and, if the transfer is by endorsement, to any subsequent transferee that:

a. the warrantor is a person entitled to enforce the instrument;

b. all signatures on the instrument are authentic and authorized;

c. the instrument has not been altered;

d. the instrument is not subject to a defense or claim in recoupment of any party which can be asserted against the warrantor;

e. the warrantor has no knowledge of any insolvency proceeding commenced with respect to the maker or acceptor or, in the case of an unaccepted draft, the drawer; and

f. if the instrument is a demand draft, creation of the instrument according to the terms on its face was authorized by the person identified as the drawer.

2. A person to whom the warranties under subsection 1 are made and who took the instrument in good faith may recover from the warrantor as damages for breach of warranty an amount equal to the loss suffered as a result of the breach, but not more than the amount of the instrument plus expenses and loss of interest incurred as a result of the breach.

3. The warranties stated in subsection 1 cannot be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor within sixty days after the claimant has reason to know of the breach and the identity of the warrantor, the liability of the warrantor under subsection 2 is discharged to the extent of any loss caused by the delay in giving notice of the claim.

4. A cause of action for breach of warranty under this section accrues when the claimant has reason to know of the breach.

5. If a warranty under subsection 1, paragraph "*f*", is not given by a transferor under applicable conflict of laws rules, the warranty is not given to that transferor when that transferor is a transferee.

94 Acts, ch 1167, §63, 121, 122; 2005 Acts, ch 11, §4, 5

554.3417 Presentment warranties.

1. If an unaccepted draft is presented to the drawee for payment or acceptance and the drawee pays or accepts the draft, the person obtaining payment or acceptance, at the time of presentment, and a previous transferor of the draft, at the time of transfer, warrant to the drawee making payment or accepting the draft in good faith that:

a. the warrantor is, or was, at the time the warrantor transferred the draft, a person entitled to enforce the draft or authorized to obtain payment or acceptance of the draft on behalf of a person entitled to enforce the draft;

b. the draft has not been altered;

c. the warrantor has no knowledge that the signature of the drawer of the draft is unauthorized; and

d. if the draft is a demand draft, the creation of the demand draft according to the terms on its face was authorized by the person identified as the drawer.

2. A drawee making payment may recover from any warrantor damages for breach of warranty equal to the amount paid by the drawee less the amount the drawee received or is entitled to receive from the drawer because of the payment. In addition, the drawee is entitled to compensation for expenses and loss of interest resulting from the breach. The right of the drawee to recover damages under this subsection is not affected by any failure of the drawee to exercise ordinary care in making payment. If the drawee accepts the draft, breach of warranty is a defense to the obligation of the acceptor. If the acceptor makes payment with respect to the draft, the acceptor is entitled to recover from any warrantor for breach of warranty the amounts stated in this subsection.

3. If a drawee asserts a claim for breach of warranty under subsection 1 based on an unauthorized endorsement of the draft or an alteration of the draft, the warrantor may defend by proving that the endorsement is effective under section 554.3404 or 554.3405 or the drawer is precluded under section 554.3406 or 554.4406 from asserting against the drawee the unauthorized endorsement or alteration.

4. If a dishonored draft is presented for payment to the drawer or an endorser or any other instrument is presented for payment to a party obliged to pay the instrument, and payment is received, the following rules apply:

a. The person obtaining payment and a prior transferor of the instrument warrant to the person making payment in good faith that the warrantor is, or was, at the time the warrantor transferred the instrument, a person entitled to enforce the instrument or authorized to obtain payment on behalf of a person entitled to enforce the instrument.

b. The person making payment may recover from any warrantor for breach of warranty an amount equal to the amount paid plus expenses and loss of interest resulting from the breach.

5. The warranties stated in subsections 1 and 4 cannot be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor within sixty days after the claimant has reason to know of the breach and the identity of the warrantor, the liability of the warrantor under subsection 2 or 4 is discharged to the extent of any loss caused by the delay in giving notice of the claim.

6. A cause of action for breach of warranty under this section accrues when the claimant has reason to know of the breach.

7. A demand draft is a check as provided in section 554.3104, subsection 6.

8. If a warranty under subsection 1, paragraph *"d"*, is not given by a transferor under applicable conflict of laws rules, the warranty is not given to that transferor when that transferor is a transferee.

94 Acts, ch 1167, §64, 121, 122; 2005 Acts, ch 11, §6, 7; 2013 Acts, ch 30, §261
Referred to in §554.3418

554.3418 Payment or acceptance by mistake.

1. Except as provided in subsection 3, if the drawee of a draft pays or accepts the draft and the drawee acted on the mistaken belief that payment of the draft had not been stopped pursuant to section 554.4403 or the signature of the drawer of the draft was authorized, the drawee may recover the amount of the draft from the person to whom or for whose benefit payment was made or, in the case of acceptance, may revoke the acceptance. Rights of the drawee under this subsection are not affected by failure of the drawee to exercise ordinary care in paying or accepting the draft.

2. Except as provided in subsection 3, if an instrument has been paid or accepted by mistake and the case is not covered by subsection 1, the person paying or accepting may, to the extent permitted by the law governing mistake and restitution, recover the payment from the person to whom or for whose benefit payment was made or in the case of acceptance, may revoke the acceptance.

3. The remedies provided by subsection 1 or 2 may not be asserted against a person who took the instrument in good faith and for value or who in good faith changed position in reliance on the payment or acceptance. This subsection does not limit remedies provided by section 554.3417 or 554.4407.

4. Notwithstanding section 554.4215, if an instrument is paid or accepted by mistake and the payor or acceptor recovers payment or revokes acceptance under subsection 1 or 2, the instrument is deemed not to have been paid or accepted and is treated as dishonored, and the person from whom payment is recovered has rights as a person entitled to enforce the dishonored instrument.

94 Acts, ch 1167, §65, 121, 122; 2013 Acts, ch 30, §261
Referred to in §554.3301

554.3419 Instruments signed for accommodation.

1. If an instrument is issued for value given for the benefit of a party to the instrument ("accommodated party") and another party to the instrument ("accommodation party") signs the instrument for the purpose of incurring liability on the instrument without being a direct beneficiary of the value given for the instrument, the instrument is signed by the accommodation party "for accommodation."

2. An accommodation party may sign the instrument as maker, drawer, acceptor, or endorser and, subject to subsection 4, is obliged to pay the instrument in the capacity in which the accommodation party signs. The obligation of an accommodation party may be enforced notwithstanding any statute of frauds and whether or not the accommodation party receives consideration for the accommodation.

3. A person signing an instrument is presumed to be an accommodation party and there is notice that the instrument is signed for accommodation if the signature is an anomalous endorsement or is accompanied by words indicating that the signer is acting as surety or guarantor with respect to the obligation of another party to the instrument. Except as provided in section 554.3605, the obligation of an accommodation party to pay the instrument is not affected by the fact that the person enforcing the obligation had notice when the instrument was taken by that person that the accommodation party signed the instrument for accommodation.

4. If the signature of a party to an instrument is accompanied by words indicating unambiguously that the party is guaranteeing collection rather than payment of the obligation of another party to the instrument, the signer is obliged to pay the amount due on the instrument to a person entitled to enforce the instrument only if execution of judgment against the other party has been returned unsatisfied, the other party is insolvent or in an insolvency proceeding, the other party cannot be served with process, or it is otherwise apparent that payment cannot be obtained from the other party.

5. An accommodation party who pays the instrument is entitled to reimbursement from the accommodated party and is entitled to enforce the instrument against the accommodated party. An accommodated party who pays the instrument has no right of recourse against, and is not entitled to contribution from, an accommodation party.

94 Acts, ch 1167, §66, 121, 122; 2013 Acts, ch 30, §261
Referred to in §554.3103, 554.3116, 554.3415, 554.3605

554.3420 Conversion of instrument.

1. The law applicable to conversion of personal property applies to instruments. An instrument is also converted if it is taken by transfer, other than a negotiation, from a person not entitled to enforce the instrument or a bank makes or obtains payment with respect to the instrument for a person not entitled to enforce the instrument or receive payment. An action for conversion of an instrument may not be brought by the issuer or acceptor of the instrument or a payee or endorsee who did not receive delivery of the instrument either directly or through delivery to an agent or a co-payee.

2. In an action under subsection 1, the measure of liability is presumed to be the amount payable on the instrument, but recovery may not exceed the amount of the plaintiff's interest in the instrument.

3. A representative, other than a depositary bank, who has in good faith dealt with an instrument or its proceeds on behalf of one who was not the person entitled to enforce the instrument is not liable in conversion to that person beyond the amount of any proceeds that it has not paid out.

94 Acts, ch 1167, §67, 122; 2013 Acts, ch 30, §261
Referred to in §554.4203

PART 5

DISHONOR

554.3501 Presentment.

1. *"Presentment"* means a demand made by or on behalf of a person entitled to enforce an instrument:

a. to pay the instrument made to the drawee or a party obliged to pay the instrument or, in the case of a note or accepted draft payable at a bank, to the bank; or

b. to accept a draft made to the drawee.

2. The following rules are subject to Article 4, agreement of the parties, and clearing-house rules and the like:

a. Presentment may be made at the place of payment of the instrument and must be made at the place of payment if the instrument is payable at a bank in the United States; may be made by any commercially reasonable means, including an oral, written, or electronic communication; is effective when the demand for payment or acceptance is received by the person to whom presentment is made; and is effective if made to any one of two or more makers, acceptors, drawees, or other payors.

b. Upon demand of the person to whom presentment is made, the person making presentment must exhibit the instrument; give reasonable identification and, if presentment is made on behalf of another person, reasonable evidence of authority to do so; and sign a receipt on the instrument for any payment made or surrender the instrument if full payment is made.

c. Without dishonoring the instrument, the party to whom presentment is made may return the instrument for lack of a necessary endorsement, or refuse payment or acceptance for failure of the presentment to comply with the terms of the instrument, an agreement of the parties, or other applicable law or rule.

d. The party to whom presentment is made may treat presentment as occurring on the next business day after the day of presentment if the party to whom presentment is made has established a cut-off hour not earlier than 2:00 p.m. for the receipt and processing of instruments presented for payment or acceptance and presentment is made after the cut-off hour.

94 Acts, ch 1167, §68, 121, 122; 2013 Acts, ch 30, §148, 149; 2015 Acts, ch 29, §100
Referred to in §554.3103, 554.4104, 554.4212

554.3502 Dishonor.

1. Dishonor of a note is governed by the following rules:

a. If the note is payable on demand, the note is dishonored if presentment is duly made to the maker and the note is not paid on the day of presentment.

b. If the note is not payable on demand and is payable at or through a bank or the terms of the note require presentment, the note is dishonored if presentment is duly made and the note is not paid on the day it becomes payable or the day of presentment, whichever is later.

c. If the note is not payable on demand and paragraph *"b"* does not apply, the note is dishonored if it is not paid on the day it becomes payable.

2. Dishonor of an unaccepted draft other than a documentary draft is governed by the following rules:

a. If a check is duly presented for payment to the payor bank otherwise than for immediate payment over the counter, the check is dishonored if the payor bank makes timely return

of the check or sends timely notice of dishonor or nonpayment under section 554.4301 or 554.4302, or becomes accountable for the amount of the check under section 554.4302.

b. If a draft is payable on demand and paragraph *"a"* does not apply, the draft is dishonored if presentment for payment is duly made to the drawee and the draft is not paid on the day of presentment.

c. If a draft is payable on a date stated in the draft, the draft is dishonored if presentment for payment is duly made to the drawee and payment is not made on the day the draft becomes payable or the day of presentment, whichever is later, or presentment for acceptance is duly made before the day the draft becomes payable and the draft is not accepted on the day of presentment.

d. If a draft is payable on elapse of a period of time after sight or acceptance, the draft is dishonored if presentment for acceptance is duly made and the draft is not accepted on the day of presentment.

3. Dishonor of an unaccepted documentary draft occurs according to the rules stated in subsection 2, paragraphs *"b"*, *"c"*, and *"d"*, except that payment or acceptance may be delayed without dishonor until no later than the close of the third business day of the drawee following the day on which payment or acceptance is required by those paragraphs.

4. Dishonor of an accepted draft is governed by the following rules:

a. If the draft is payable on demand, the draft is dishonored if presentment for payment is duly made to the acceptor and the draft is not paid on the day of presentment.

b. If the draft is not payable on demand, the draft is dishonored if presentment for payment is duly made to the acceptor and payment is not made on the day it becomes payable or the day of presentment, whichever is later.

5. In any case in which presentment is otherwise required for dishonor under this section and presentment is excused under section 554.3504, dishonor occurs without presentment if the instrument is not duly accepted or paid.

6. If a draft is dishonored because timely acceptance of the draft was not made and the person entitled to demand acceptance consents to a late acceptance, from the time of acceptance the draft is treated as never having been dishonored.

94 Acts, ch 1167, §69, 121, 122; 2013 Acts, ch 30, §261
Referred to in §554.2103

554.3503 Notice of dishonor.

1. The obligation of an endorser stated in section 554.3415, subsection 1, and the obligation of a drawer stated in section 554.3414, subsection 4, may not be enforced unless the endorser or drawer is given notice of dishonor of the instrument complying with this section or notice of dishonor is excused under section 554.3504, subsection 2.

2. Notice of dishonor may be given by any person; may be given by any commercially reasonable means, including an oral, written, or electronic communication; and is sufficient if it reasonably identifies the instrument and indicates that the instrument has been dishonored or has not been paid or accepted. Return of an instrument given to a bank for collection is sufficient notice of dishonor.

3. Subject to section 554.3504, subsection 3, with respect to an instrument taken for collection by a collecting bank, notice of dishonor must be given by the bank before midnight of the next banking day following the banking day on which the bank receives notice of dishonor of the instrument, or by any other person within thirty days following the day on which the person receives notice of dishonor. With respect to any other instrument, notice of dishonor must be given within thirty days following the day on which dishonor occurs.

94 Acts, ch 1167, §70, 121, 122; 2013 Acts, ch 30, §261
Referred to in §554.3415, 554.4104

554.3504 Excused presentment and notice of dishonor.

1. Presentment for payment or acceptance of an instrument is excused if the person entitled to present the instrument cannot with reasonable diligence make presentment; the maker or acceptor has repudiated an obligation to pay the instrument or is dead or in insolvency proceedings; by the terms of the instrument presentment is not necessary to

enforce the obligation of endorsers or the drawer; the drawer or endorser whose obligation is being enforced has waived presentment or otherwise has no reason to expect or right to require that the instrument be paid or accepted; or the drawer instructed the drawee not to pay or accept the draft or the drawee was not obligated to the drawer to pay the draft.

2. Notice of dishonor is excused if by the terms of the instrument notice of dishonor is not necessary to enforce the obligation of a party to pay the instrument, or the party whose obligation is being enforced waived notice of dishonor. A waiver of presentment is also a waiver of notice of dishonor.

3. Delay in giving notice of dishonor is excused if the delay was caused by circumstances beyond the control of the person giving the notice and the person giving the notice exercised reasonable diligence after the cause of the delay ceased to operate.

94 Acts, ch 1167, §71, 121, 122; 2013 Acts, ch 30, §261; 2014 Acts, ch 1092, §123
Referred to in §554.3502, 554.3503

554.3505 Evidence of dishonor.

1. The following are admissible as evidence and create a presumption of dishonor and of any notice of dishonor stated:

a. a document regular in form as provided in subsection 2 which purports to be a protest;

b. a purported stamp or writing of the drawee, payor bank, or presenting bank on or accompanying the instrument stating that acceptance or payment has been refused unless reasons for the refusal are stated and the reasons are not consistent with dishonor;

c. a book or record of the drawee, payor bank, or collecting bank, kept in the usual course of business which shows dishonor, even if there is no evidence of who made the entry.

2. A protest is a certificate of dishonor made by a United States consul or vice consul, or a notarial officer as provided in chapter 9B or other person authorized to administer oaths by the law of the place where dishonor occurs. It may be made upon information satisfactory to that person. The protest must identify the instrument and certify either that presentment has been made or, if not made, the reason why it was not made, and that the instrument has been dishonored by nonacceptance or nonpayment. The protest may also certify that notice of dishonor has been given to some or all parties.

94 Acts, ch 1167, §72, 121, 122; 2012 Acts, ch 1050, §46, 60; 2013 Acts, ch 140, §99
Referred to in §9B.5

554.3506 through 554.3511 Repealed by 94 Acts, ch 1167, §121, 122.

554.3512 Holder's recourse for dishonor.

1. The holder of a dishonored check, draft, or order may assess against the maker of that check, draft, or order a surcharge not to exceed thirty dollars.

2. The surcharge authorized by this section shall not be assessed unless the holder clearly and conspicuously posts a notice at the usual place of payment, or in the billing statement of the holder, stating that a surcharge will be assessed and the amount of the surcharge. However, the surcharge shall not be assessed against the maker if the reason for the dishonor of the check, draft, or order is that the maker has stopped payment pursuant to section 554.4403.

95 Acts, ch 137, §2; 2003 Acts, ch 10, §1
Referred to in §331.553, 537.2501, 554.3513

554.3513 Civil remedy for dishonor.

1. In a civil action against a person who makes a check, draft, or order, which has been dishonored for lack of funds or credit, after having been presented twice, or because the maker has no account with the drawee, the plaintiff shall recover from the defendant total damages equaling three times the face value of the dishonored check, draft, or order, which sum shall include the face value of the check, draft, or order. However, total recovery under this section shall not exceed by more than five hundred dollars the amount of the check, draft, or order and may be awarded only if all of the following apply:

a. The plaintiff made written demand of the defendant for payment of the amount of the check, draft, or order not less than thirty days before commencing the action.

b. The written demand notified the defendant that treble damages would be sought if the face value of the dishonored check was not paid within thirty days of receipt, and was received by the defendant via any of the following methods:

(1) Personal service.

(2) Restricted certified mail.

(3) Regular mail to at least one of the following addresses, supported by an affidavit of service retained by the payee or holder of the dishonored check, which affidavit shall be presumptive evidence of the receipt of the demand by the maker three days from the date of execution of the affidavit:

(a) The address printed or written on the check.

(b) The address given by the drawer at the time of issuance of the check.

(c) The last known address of the drawer.

c. The defendant has failed to tender to the plaintiff, prior to commencement of the action, an amount of money not less than the face value of the dishonored check, draft, or order.

d. The plaintiff clearly and conspicuously posted a notice at the usual place of payment, or in a billing statement of the plaintiff, stating that civil damages pursuant to this section would be sought upon dishonorment.

2. In an action for damages pursuant to subsection 1, if the court or jury determines that the failure of the defendant to satisfy the dishonored check, draft, or order is due to economic hardship, the court or jury may waive all or part of the allowable civil damages. However, if the court or jury waives all or part of the civil damages, the court or jury shall render judgment against the defendant in the amount of the dishonored check, draft, or order and the actual costs incurred by the plaintiff in bringing the action.

3. This section does not apply if the reason for the dishonor of the check, draft, or order is that the maker has stopped payment pursuant to section 554.4403 because of a bona fide dispute between the maker and the holder relating to the consideration for which the check, draft, or order was given.

4. In actions brought pursuant to this section, no additional award pursuant to section 554.3512 or 625.22 shall be made.

5. The plaintiff in a civil action to collect a dishonored check, draft, or order brought before the district court sitting in small claims shall not request or recover punitive or exemplary damages, but may seek the civil damages allowed under this section. The plaintiff in a civil action to collect a dishonored check, draft, or order in the district court not sitting in small claims, may seek punitive or exemplary damages if appropriate under chapter 668A, or civil damages allowed under this section, but not both.

6. A violation of this section is an unlawful practice as provided in section 714.16, subsection 2, paragraph *"a"*.

95 Acts, ch 137, §3; 2003 Acts, ch 100, §1

PART 6

DISCHARGE AND PAYMENT

554.3601 Discharge and effect of discharge.

1. The obligation of a party to pay the instrument is discharged as stated in this Article or by an act or agreement with the party which would discharge an obligation to pay money under a simple contract.

2. Discharge of the obligation of a party is not effective against a person acquiring rights of a holder in due course of the instrument without notice of the discharge.

94 Acts, ch 1167, §73, 121, 122

554.3602 Payment.

1. Subject to subsection 2, an instrument is paid to the extent payment is made by or on behalf of a party obliged to pay the instrument, and to a person entitled to enforce the instrument. To the extent of the payment, the obligation of the party obliged to pay the

instrument is discharged even though payment is made with knowledge of a claim to the instrument under section 554.3306 by another person.

2. The obligation of a party to pay the instrument is not discharged under subsection 1 if:

a. a claim to the instrument under section 554.3306 is enforceable against the party receiving payment and payment is made with knowledge by the payor that payment is prohibited by injunction or similar process of a court of competent jurisdiction, or in the case of an instrument other than a cashier's check, teller's check, or certified check, the party making payment accepted, from the person having a claim to the instrument, indemnity against loss resulting from refusal to pay the person entitled to enforce the instrument; or

b. the person making payment knows that the instrument is a stolen instrument and pays a person it knows is in wrongful possession of the instrument.

94 Acts, ch 1167, §74, 121, 122; 2013 Acts, ch 30, §261
Referred to in §554.3103

554.3603 Tender of payment.

1. If tender of payment of an obligation to pay an instrument is made to a person entitled to enforce the instrument, the effect of tender is governed by principles of law applicable to tender of payment under a simple contract.

2. If tender of payment of an obligation to pay an instrument is made to a person entitled to enforce the instrument and the tender is refused, there is discharge, to the extent of the amount of the tender, of the obligation of an endorser or accommodation party having a right of recourse with respect to the obligation to which the tender relates.

3. If tender of payment of an amount due on an instrument is made to a person entitled to enforce the instrument, the obligation of the obligor to pay interest after the due date on the amount tendered is discharged. If presentment is required with respect to an instrument and the obligor is able and ready to pay on the due date at every place of payment stated in the instrument, the obligor is deemed to have made tender of payment on the due date to the person entitled to enforce the instrument.

94 Acts, ch 1167, §75, 121, 122

554.3604 Discharge by cancellation or renunciation.

1. A person entitled to enforce an instrument, with or without consideration, may discharge the obligation of a party to pay the instrument by an intentional voluntary act, such as surrender of the instrument to the party, destruction, mutilation, or cancellation of the instrument, cancellation or striking out of the party's signature, or the addition of words to the instrument indicating discharge; or by agreeing not to sue or otherwise renouncing rights against the party by a signed writing.

2. Cancellation or striking out of an endorsement pursuant to subsection 1 does not affect the status and rights of a party derived from the endorsement.

94 Acts, ch 1167, §76, 121, 122; 2013 Acts, ch 30, §150
Referred to in §554.3605

554.3605 Discharge of endorsers and accommodation parties.

1. In this section, the term "*endorser*" includes a drawer having the obligation described in section 554.3414, subsection 4.

2. Discharge, under section 554.3604, of the obligation of a party to pay an instrument does not discharge the obligation of an endorser or accommodation party having a right of recourse against the discharged party.

3. If a person entitled to enforce an instrument agrees, with or without consideration, to an extension of the due date of the obligation of a party to pay the instrument, the extension discharges an endorser or accommodation party having a right of recourse against the party whose obligation is extended to the extent the endorser or accommodation party proves that the extension caused loss to the endorser or accommodation party with respect to the right of recourse.

4. If a person entitled to enforce an instrument agrees, with or without consideration, to a material modification of the obligation of a party other than an extension of the due date, the modification discharges the obligation of an endorser or accommodation party having a right

of recourse against the person whose obligation is modified to the extent the modification causes loss to the endorser or accommodation party with respect to the right of recourse. The loss suffered by the endorser or accommodation party as a result of the modification is equal to the amount of the right of recourse unless the person enforcing the instrument proves that no loss was caused by the modification or that the loss caused by the modification was an amount less than the amount of the right of recourse.

5. If the obligation of a party to pay an instrument is secured by an interest in collateral and a person entitled to enforce the instrument impairs the value of the interest in collateral, the obligation of an endorser or accommodation party having a right of recourse against the obligor is discharged to the extent of the impairment. The value of an interest in collateral is impaired to the extent the value of the interest is reduced to an amount less than the amount of the right of recourse of the party asserting discharge, or the reduction in value of the interest causes an increase in the amount by which the amount of the right of recourse exceeds the value of the interest. The burden of proving impairment is on the party asserting discharge.

6. If the obligation of a party is secured by an interest in collateral not provided by an accommodation party and a person entitled to enforce the instrument impairs the value of the interest in collateral, the obligation of any party who is jointly and severally liable with respect to the secured obligation is discharged to the extent the impairment causes the party asserting discharge to pay more than that party would have been obliged to pay, taking into account rights of contribution, if impairment had not occurred. If the party asserting discharge is an accommodation party not entitled to discharge under subsection 5, the party is deemed to have a right to contribution based on joint and several liability rather than a right to reimbursement. The burden of proving impairment is on the party asserting discharge.

7. Under subsection 5 or 6, impairing value of an interest in collateral includes failure to obtain or maintain perfection or recordation of the interest in collateral; release of collateral without substitution of collateral of equal value; failure to perform a duty to preserve the value of collateral owed, under Article 9 or other law, to a debtor or surety or other person secondarily liable; or failure to comply with applicable law in disposing of collateral.

8. An accommodation party is not discharged under subsection 3, 4, or 5 unless the person entitled to enforce the instrument knows of the accommodation or has notice under section 554.3419, subsection 3, that the instrument was signed for accommodation.

9. A party is not discharged under this section if the party asserting discharge consents to the event or conduct that is the basis of the discharge, or the instrument or a separate agreement of the party provides for waiver of discharge under this section either specifically or by general language indicating that parties waive defenses based on suretyship or impairment of collateral.

94 Acts, ch 1167, §77, 121, 122; 2013 Acts, ch 30, §151
Referred to in §554.3419

554.3606 Impairment of recourse or of collateral. Repealed by 94 Acts, ch 1167, §121, 122. See §554.3605.

554.3701 and 554.3801 Repealed by 94 Acts, ch 1167, §121, 122.

554.3802 through 554.3806 Repealed by 94 Acts, ch 1167, §121, 122.

ARTICLE 4
BANK DEPOSITS AND COLLECTIONS

Referred to in §533.313, 554.1204, 554.3102, 554.3103, 554.3111, 554.3119, 554.3403, 554.3501, 554.5110, 554.5116, 554.12105, 668.16

PART 1
GENERAL PROVISIONS AND DEFINITIONS

554.4101 Short title.
This Article may be cited as Uniform Commercial Code — Bank Deposits and Collections.
[C66, 71, 73, 75, 77, 79, 81, §554.4101]
94 Acts, ch 1167, §78, 122

554.4102 Applicability.
1. To the extent that items within this Article are also within Articles 3 and 8, they are subject to the provisions of those Articles. If there is conflict, this Article governs Article 3, but Article 8 governs this Article.
2. The liability of a bank for action or nonaction with respect to an item handled by it for purposes of presentment, payment, or collection is governed by the law of the place where the bank is located. In the case of action or nonaction by or at a branch or separate office of a bank, its liability is governed by the law of the place where the branch or separate office is located.
[C66, 71, 73, 75, 77, 79, 81, §554.4102]
94 Acts, ch 1167, §79, 122
Referred to in §554.1301

554.4103 Variation by agreement — measure of damages — action constituting ordinary care.
1. The effect of the provisions of this Article may be varied by agreement, but the parties to the agreement cannot disclaim a bank's responsibility for its lack of good faith or failure to exercise ordinary care or limit the measure of damages for the lack or failure. However, the parties may determine by agreement the standards by which the bank's responsibility is to be measured if those standards are not manifestly unreasonable.
2. Federal reserve regulations and operating circulars, clearing-house rules, and the like have the effect of agreements under subsection 1, whether or not specifically assented to by all parties interested in items handled.
3. Action or nonaction approved by this Article or pursuant to federal reserve regulations or operating circulars is the exercise of ordinary care and, in the absence of special instructions, action or nonaction consistent with clearing-house rules and the like or with a general banking usage not disapproved by this Article, is prima facie the exercise of ordinary care.
4. The specification or approval of certain procedures by this Article is not disapproval of other procedures that may be reasonable under the circumstances.
5. The measure of damages for failure to exercise ordinary care in handling an item is the amount of the item reduced by an amount that could not have been realized by the exercise of ordinary care. If there is also bad faith it includes any other damages the party suffered as a proximate consequence.
[C66, 71, 73, 75, 77, 79, 81, §554.4103]
94 Acts, ch 1167, §80, 122

554.4104 Definitions and index of definitions.
1. In this Article, unless the context otherwise requires:
a. "Account" means any deposit or credit account with a bank, including a demand, time, savings, passbook, share draft, or like account, other than an account evidenced by a certificate of deposit.

b. *"Afternoon"* means the period of a day between noon and midnight.

c. *"Banking day"* means the part of a day on which a bank is open to the public for carrying on substantially all of its banking functions but for the purposes of determining a bank's midnight deadline, shall not include Saturday, Sunday, or any holiday when the federal reserve banks are not performing check clearing functions.

d. *"Clearing house"* means an association of banks or other payors regularly clearing items.

e. *"Customer"* means a person having an account with a bank or for whom a bank has agreed to collect items, including a bank that maintains an account at another bank.

f. *"Documentary draft"* means a draft to be presented for acceptance or payment if specified documents, certificated securities (section 554.8102) or instructions for uncertificated securities (section 554.8102), or other certificates, statements, or the like are to be received by the drawee or other payor before acceptance or payment of the draft.

g. *"Draft"* means a draft as defined in section 554.3104 or an item, other than an instrument, that is an order.

h. *"Drawee"* means a person ordered in a draft to make payment.

i. *"Item"* means an instrument or a promise or order to pay money handled by a bank for collection or payment. The term does not include a payment order governed by Article 12 or a credit or debit card slip.

j. *"Midnight deadline"* with respect to a bank is midnight on its next banking day following the banking day on which it receives the relevant item or notice or from which the time for taking action commences to run, whichever is later.

k. *"Settle"* means to pay in cash, by clearing-house settlement, in a charge or credit or by remittance, or otherwise as agreed. A settlement may be either provisional or final.

l. *"Suspends payments"* with respect to a bank means that it has been closed by order of the supervisory authorities, that a public officer has been appointed to take it over, or that it ceases or refuses to make payments in the ordinary course of business.

2. Other definitions applying to this Article and the sections in which they appear are:

a. "Agreement for electronic presentment"..... Section 554.4110
b. "Bank" ..... Section 554.4105
c. "Collecting bank" ..... Section 554.4105
d. "Depositary bank" ..... Section 554.4105
e. "Intermediary bank" ..... Section 554.4105
f. "Payor bank" ..... Section 554.4105
g. "Presenting bank"..... Section 554.4105
h. "Presentment notice"..... Section 554.4110

3. The following definitions in other Articles apply to this Article:

a. "Acceptance" .....Section 554.3409
b. "Alteration" .....Section 554.3407
c. "Cashier's check".....Section 554.3104
d. "Certificate of deposit" .....Section 554.3104
e. "Certified check".....Section 554.3409
f. "Check".....Section 554.3104
g. "Control".....Section 554.7106
h. "Holder in due course" .....Section 554.3302
i. "Instrument".....Section 554.3104
j. "Notice of dishonor".....Section 554.3503
k. "Order" .....Section 554.3103
l. "Ordinary care".....Section 554.3103
m. "Person entitled to enforce" .....Section 554.3301
n. "Presentment".....Section 554.3501
o. "Promise" .....Section 554.3103
p. "Prove" .....Section 554.3103
q. "Teller's check".....Section 554.3104
r. "Unauthorized signature" .....Section 554.3403

4. In addition Article 1 contains general definitions and principles of construction and interpretation applicable throughout this Article.

[C66, 71, 73, 75, 77, 79, 81, §554.4104]

88 Acts, ch 1102, §1; 91 Acts, ch 222, §1; 94 Acts, ch 1167, §81, 122; 95 Acts, ch 67, §42; 96 Acts, ch 1138, §7, 84; 2007 Acts, ch 30, §45, 46, 62; 2007 Acts, ch 41, §27; 2012 Acts, ch 1023, §145, 157

Referred to in §554.3103, 554.3104, 554.9102, 554.12105

554.4105 "Bank" — "depositary bank" — "intermediary bank" — "collecting bank" — "payor bank" — "presenting bank".

In this Article:

1. *"Bank"* means a person engaged in the business of banking, including a savings bank, savings and loan association, credit union, or trust company.

2. *"Depositary bank"* means the first bank to take an item even though it is also the payor bank, unless the item is presented for immediate payment over the counter.

3. *"Payor bank"* means a bank that is the drawee of the draft.

4. *"Intermediary bank"* means a bank to which an item is transferred in course of collection except the depositary or payor bank.

5. *"Collecting bank"* means a bank handling an item for collection except the payor bank.

6. *"Presenting bank"* means a bank presenting an item except a payor bank.

[C66, 71, 73, 75, 77, 79, 81, §554.4105]

94 Acts, ch 1167, §82, 122

Referred to in §554.3103, 554.4104

554.4106 Payable through or payable at bank — collecting bank.

1. If an item states that it is *"payable through"* a bank identified in the item, the item designates the bank as a collecting bank and does not by itself authorize the bank to pay the item, and the item may be presented for payment only by or through the bank.

2. If an item states that it is *"payable at"* a bank identified in the item, the item designates the bank as a collecting bank and does not by itself authorize the bank to pay the item, and the item may be presented for payment only by or through the bank.

3. If a draft names a nonbank drawee and it is unclear whether a bank named in the draft is a co-drawee or a collecting bank, the bank is a collecting bank.

94 Acts, ch 1167, §87, 120, 122; 2013 Acts, ch 30, §261

554.4107 Separate office of a bank.

A branch or separate office of a bank is a separate bank for the purpose of computing the time within which and determining the place at or to which action may be taken or notices or orders must be given under this Article and under Article 3.

[C66, 71, 73, 75, 77, 79, 81, §554.4106]

94 Acts, ch 1167, §83, 120, 122

C95, §554.4107

554.4108 Time of receipt of items.

1. For the purpose of allowing time to process items, prove balances, and make the necessary entries on its books to determine its position for the day, a bank may fix an afternoon hour of 2:00 p.m. or later as a cutoff hour for the handling of money and items and the making of entries on its books.

2. An item or deposit of money received on any day after a cutoff hour so fixed or after the close of the banking day may be treated as being received at the opening of the next banking day.

[C66, 71, 73, 75, 77, 79, 81, §554.4107]

94 Acts, ch 1167, §84, 120, 122

C95, §554.4108

554.4109 Delays.

1. Unless otherwise instructed, a collecting bank in a good faith effort to secure payment

of a specific item drawn on a payor other than a bank, and with or without the approval of any person involved, may waive, modify, or extend time limits imposed or permitted by this chapter for a period not exceeding two additional banking days without discharge of drawers or endorsers or liability to its transferor or a prior party.

2. Delay by a collecting bank or payor bank beyond time limits prescribed or permitted by this chapter or by instructions is excused if the delay is caused by interruption of communication or computer facilities, suspension of payments by another bank, war, emergency conditions, failure of equipment, or other circumstances beyond the control of the bank, and the bank exercises such diligence as the circumstances require.

[C66, 71, 73, 75, 77, 79, 81, §554.4108]
94 Acts, ch 1167, §85, 120, 122
C95, §554.4109
95 Acts, ch 49, §16; 2013 Acts, ch 30, §261

554.4110 Electronic presentment.

1. *"Agreement for electronic presentment"* means an agreement, clearing-house rule, or federal reserve regulation or operating circular, providing that presentment of an item may be made by transmission of an image of an item or information describing the item (*"presentment notice"*) rather than delivery of the item itself. The agreement may provide for procedures governing retention, presentment, payment, dishonor, and other matters concerning items subject to the agreement.

2. Presentment of an item pursuant to an agreement for presentment is made when the presentment notice is received.

3. If presentment is made by presentment notice, a reference to *"item"* or *"check"* in this Article means the presentment notice unless the context otherwise indicates.

94 Acts, ch 1167, §86, 122
Referred to in §554.4104

554.4111 Statute of limitations.

An action to enforce an obligation, duty, or right arising under this Article must be commenced within three years after the cause of action accrues.

2005 Acts, ch 11, §8

PART 2

COLLECTION OF ITEMS: DEPOSITARY AND COLLECTING BANKS

554.4201 Status of collecting bank as agent and provisional status of credits — applicability of Article — item endorsed "pay any bank".

1. Unless a contrary intent clearly appears and before the time that a settlement given by a collecting bank for an item is or becomes final, the bank, with respect to the item, is an agent or subagent of the owner of the item and any settlement given for the item is provisional. This provision applies regardless of the form of endorsement or lack of endorsement and even though credit given for the item is subject to immediate withdrawal as of right or is in fact withdrawn; but the continuance of ownership of an item by its owner and any rights of the owner to proceeds of the item are subject to rights of a collecting bank, such as those resulting from outstanding advances on the item and rights of recoupment or setoff. If an item is handled by banks for purposes of presentment, payment, collection, or return, the relevant provisions of this Article apply even though action of the parties clearly establishes that a particular bank has purchased the item and is the owner of it.

2. After an item has been endorsed with the words "pay any bank" or the like, only a bank may acquire the rights of a holder until the item has been:

a. returned to the customer initiating collection; or

b. specially endorsed by a bank to a person who is not a bank.

[C66, 71, 73, 75, 77, 79, 81, §554.4201]

94 Acts, ch 1167, §88, 122

Referred to in §554.3206

554.4202 Responsibility for collection or return — when action timely.

1. A collecting bank must exercise ordinary care in:

a. presenting an item or sending it for presentment;

b. sending notice of dishonor or nonpayment or returning an item other than a documentary draft to the bank's transferor after learning that the item has not been paid or accepted, as the case may be;

c. settling for an item when the bank receives final settlement; and

d. notifying its transferor of any loss or delay in transit within a reasonable time after discovery thereof.

2. A collecting bank exercises ordinary care under subsection 1 by taking proper action before its midnight deadline following receipt of an item, notice, or settlement. Taking proper action within a reasonably longer time may constitute the exercise of ordinary care, but the bank has the burden of establishing timeliness.

3. Subject to subsection 1, paragraph *"a"*, a bank is not liable for the insolvency, neglect, misconduct, mistake, or default of another bank or person or for loss or destruction of an item in the possession of others or in transit.

[C66, 71, 73, 75, 77, 79, 81, §554.4202]

94 Acts, ch 1167, §89, 122

554.4203 Effect of instructions.

Subject to Article 3 concerning conversion of instruments (section 554.3420) and restrictive endorsements (section 554.3206), only a collecting bank's transferor can give instructions that affect the bank or constitute notice to it, and a collecting bank is not liable to prior parties for any action taken pursuant to the instructions or in accordance with any agreement with its transferor.

[C66, 71, 73, 75, 77, 79, 81, §554.4203]

94 Acts, ch 1167, §90, 122

554.4204 Methods of sending and presenting — sending directly to payor bank.

1. A collecting bank shall send items by a reasonably prompt method, taking into consideration relevant instructions, the nature of the item, the number of those items on hand, the cost of collection involved, and the method generally used by it or others to present those items.

2. A collecting bank may send:

a. an item directly to the payor bank;

b. an item to a nonbank payor if authorized by its transferor; and

c. an item other than documentary drafts to any nonbank payor, if authorized by federal reserve regulation or operating circular, clearing-house rule, or the like.

3. Presentment may be made by a presenting bank at a place where the payor bank or other payor has requested that presentment be made.

[C66, 71, 73, 75, 77, 79, 81, §554.4204]

94 Acts, ch 1167, §91, 122

554.4205 Depositary bank holder of unendorsed item.

If a customer delivers an item to a depositary bank for collection:

1. The depositary bank becomes a holder of the item at the time it receives the item for collection if the customer at the time of delivery was a holder of the item, whether or not the customer endorses the item, and, if the bank satisfies the other requirements of section 554.3302, it is a holder in due course; and

2. The depositary bank warrants to collecting banks, the payor bank or other payor, and

the drawer that the amount of the item was paid to the customer or deposited to the customer's account.

[C66, 71, 73, 75, 77, 79, 81, §554.4205]

94 Acts, ch 1167, §92, 122

554.4206 Transfer between banks.

Any agreed method that identifies the transferor bank is sufficient for the item's further transfer to another bank.

[C66, 71, 73, 75, 77, 79, 81, §554.4206]

94 Acts, ch 1167, §93, 122

554.4207 Transfer warranties.

1. A customer or collecting bank that transfers an item and receives a settlement or other consideration warrants to the transferee and to any subsequent collecting bank that:

a. the warrantor is a person entitled to enforce the item;

b. all signatures on the item are authentic and authorized;

c. the item has not been altered;

d. the item is not subject to a defense or claim in recoupment (section 554.3305, subsection 1) of any party that can be asserted against the warrantor;

e. the warrantor has no knowledge of any insolvency proceeding commenced with respect to the maker or acceptor or, in the case of an unaccepted draft, the drawer; and

f. if the item is a demand draft, creation of the item according to the terms on its face was authorized by the person identified as the drawer.

2. If an item is dishonored, a customer or collecting bank transferring the item and receiving settlement or other consideration is obliged to pay the amount due on the item according to the terms of the item at the time it was transferred, or if the transfer was an incomplete item, according to its terms when completed as stated in sections 554.3115 and 554.3407. The obligation of a transferor is owed to the transferee and to any subsequent collecting bank that takes the item in good faith. A transferor cannot disclaim its obligation under this subsection by an endorsement stating that it is made "without recourse" or otherwise disclaiming liability.

3. A person to whom the warranties under subsection 1 are made and who took the item in good faith may recover from the warrantor as damages for breach of warranty an amount equal to the loss suffered as a result of the breach, but not more than the amount of the item plus expenses and loss of interest incurred as a result of the breach.

4. The warranties stated in subsection 1 cannot be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor within sixty days after the claimant has reason to know of the breach and the identity of the warrantor, the warrantor is discharged to the extent of any loss caused by the delay in giving notice of the claim.

5. A cause of action for breach of warranty under this section accrues when the claimant has reason to know of the breach.

6. If the warranty under subsection 1, paragraph *"f"*, is not given by a transferor or collecting bank under applicable conflict of laws rules, the warranty is not given to that transferor when the transferor is a transferee or to any prior collecting bank of that transferee.

[C66, 71, 73, 75, 77, 79, 81, §554.4207]

94 Acts, ch 1167, §94, 122; 2005 Acts, ch 11, §9, 10; 2013 Acts, ch 30, §261

554.4208 Presentment warranties.

1. If an unaccepted draft is presented to the drawee for payment or acceptance and the drawee pays or accepts the draft, the person obtaining payment or acceptance, at the time of presentment, and a previous transferor of the draft, at the time of transfer, warrant to the drawee that pays or accepts the draft in good faith that:

a. the warrantor is, or was, at the time the warrantor transferred the draft, a person

entitled to enforce the draft or authorized to obtain payment or acceptance of the draft on behalf of a person entitled to enforce the draft;

b. the draft has not been altered;

c. the warrantor has no knowledge that the signature of the purported drawer of the draft is unauthorized; and

d. if the draft is a demand draft, the creation of the demand draft according to the terms on its face was authorized by the person identified as the drawer.

2. A drawee making payment may recover from a warrantor damages for breach of warranty equal to the amount paid by the drawee less the amount the drawee received or is entitled to receive from the drawer because of the payment. In addition, the drawee is entitled to compensation for expenses and loss of interest resulting from the breach. The right of the drawee to recover damages under this subsection is not affected by any failure of the drawee to exercise ordinary care in making payment. If the drawee accepts the draft, breach of warranty is a defense to the obligation of the acceptor, and if the acceptor makes payment with respect to the draft, the acceptor is entitled to recover from a warrantor for breach of warranty the amounts stated in this subsection.

3. If a drawee asserts a claim for breach of warranty under subsection 1 based on an unauthorized endorsement of the draft or an alteration of the draft, the warrantor may defend by proving that the endorsement is effective under section 554.3404 or 554.3405 or the drawer is precluded under section 554.3406 or 554.4406 from asserting against the drawee the unauthorized endorsement or alteration.

4. If a dishonored draft is presented for payment to the drawer or an endorser or any other item is presented for payment to a party obliged to pay the item, and the item is paid, the person obtaining payment and a prior transferor of the item warrant to the person making payment in good faith that the warrantor is, or was, at the time the warrantor transferred the item, a person entitled to enforce the item or authorized to obtain payment on behalf of a person entitled to enforce the item. The person making payment may recover from any warrantor for breach of warranty an amount equal to the amount paid plus expenses and loss of interest resulting from the breach.

5. The warranties stated in subsections 1 and 4 cannot be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor within sixty days after the claimant has reason to know of the breach and the identity of the warrantor, the warrantor is discharged to the extent of any loss caused by the delay in giving notice of the claim.

6. A cause of action for breach of warranty under this section accrues when the claimant has reason to know of the breach.

7. A demand draft is a check as provided in section 554.3104, subsection 6.

8. If a warranty under subsection 1, paragraph *"d"*, is not given by a transferor under applicable conflict of laws rules, the warranty is not given to that transferor when that transferor is a transferee.

94 Acts, ch 1167, §102, 120, 122; 2005 Acts, ch 11, §11, 12; 2013 Acts, ch 30, §261
Referred to in §554.4302, 554.4406

554.4209 Encoding and retention warranties.

1. A person who encodes information on or with respect to an item after issue warrants to any subsequent collecting bank and to the payor bank or other payor that the information is correctly encoded. If the customer of a depositary bank encodes, that bank also makes the warranty.

2. A person who undertakes to retain an item pursuant to an agreement for electronic presentment warrants to any subsequent collecting bank and to the payor bank or other payor that retention and presentment of the item comply with the agreement. If a customer of a depositary bank undertakes to retain an item, that bank also makes this warranty.

3. A person to whom warranties are made under this section and who took the item in good faith may recover from the warrantor as damages for breach of warranty an amount

equal to the loss suffered as a result of the breach, plus expenses and loss of interest incurred as a result of the breach.

94 Acts, ch 1167, §103, 120, 122

554.4210 Security interest of collecting bank in items, accompanying documents and proceeds.

1. A collecting bank has a security interest in an item and any accompanying documents or the proceeds of either:

a. in case of an item deposited in an account, to the extent to which credit given for the item has been withdrawn or applied;

b. in case of an item for which it has given credit available for withdrawal as of right, to the extent of the credit given, whether or not the credit is drawn upon or there is a right of charge-back; or

c. if it makes an advance on or against the item.

2. If credit given for several items received at one time or pursuant to a single agreement is withdrawn or applied in part, the security interest remains upon all the items, any accompanying documents or the proceeds of either. For the purpose of this section, credits first given are first withdrawn.

3. Receipt by a collecting bank of a final settlement for an item is a realization on its security interest in the item, accompanying documents, and proceeds. So long as the bank does not receive final settlement for the item or give up possession of the item or possession or control of the accompanying documents for purposes other than collection, the security interest continues to that extent and is subject to Article 9, but:

a. no security agreement is necessary to make the security interest enforceable (section 554.9203, subsection 2, paragraph "*c*", subparagraph (1));

b. no filing is required to perfect the security interest; and

c. the security interest has priority over conflicting perfected security interests in the item, accompanying documents, or proceeds.

[C66, 71, 73, 75, 77, 79, 81, §554.4208]

94 Acts, ch 1167, §95, 120, 122

C95, §554.4210

2000 Acts, ch 1149, §146, 187; 2007 Acts, ch 30, §45, 46, 63

Referred to in §554.9102, 554.9109, 554.9203, 554.9309, 554.9322

554.4211 When bank gives value for purposes of holder in due course.

For purposes of determining its status as a holder in due course, a bank has given value to the extent it has a security interest in an item, if the bank otherwise complies with the requirements of section 554.3302 on what constitutes a holder in due course.

[S13, §3060-a27; C24, 27, 31, 35, 39, §**9487;** C46, 50, 54, 58, 62, §541.27; C66, 71, 73, 75, 77, 79, 81, §554.4209]

94 Acts, ch 1167, §96, 120, 122

C95, §554.4211

Referred to in §554.5102

554.4212 Presentment by notice of item not payable by, through, or at a bank; liability of drawer or endorser.

1. Unless otherwise instructed, a collecting bank may present an item not payable by, through or at a bank by sending to the party to accept or pay a written notice that the bank holds the item for acceptance or payment. The notice must be sent in time to be received on or before the day when presentment is due and the bank must meet any requirement of the party to accept or pay under section 554.3501 by the close of the bank's next banking day after it knows of the requirement.

2. If presentment is made by notice and payment, acceptance, or request for compliance with a requirement under section 554.3501 is not received by the close of business on the day after maturity or, in the case of demand items, by the close of business on the third banking

day after notice was sent, the presenting bank may treat the item as dishonored and charge any drawer or endorser by sending it notice of the facts.

[C73, §2094; C97, §3053; S13, §3053; C24, 27, 31, 35, 39, §**9545;** C46, 50, 54, 58, 62, §541.85; C66, 71, 73, 75, 77, 79, 81, §554.4210]

94 Acts, ch 1167, §97, 120, 122

C95, §554.4212

95 Acts, ch 67, §43

554.4213 Medium and time of settlement by bank.

1. With respect to settlement by a bank, the medium and time of settlement may be prescribed by federal reserve regulations or circulars, clearing-house rules, and the like, or agreement. In the absence of such prescription:

a. the medium of settlement is cash or credit to an account in a federal reserve bank of or specified by the person to receive settlement; and

b. the time of settlement is:

(1) with respect to tender of settlement by cash, a cashier's check, or teller's check, when the cash or check is sent or delivered;

(2) with respect to tender of settlement by credit in an account in a federal reserve bank, when the credit is made;

(3) with respect to tender of settlement by a credit or debit to an account in a bank, when the credit or debit is made or, in the case of tender of settlement by authority to charge an account, when the authority is sent or delivered; or

(4) with respect to tender of settlement by a funds transfer, when payment is made pursuant to section 554.12406, subsection 1 to the person receiving the settlement.

2. If the tender of settlement is not by a medium authorized by subsection 1 or the time of settlement is not fixed by subsection 1, no settlement occurs until the tender of settlement is accepted by the person receiving settlement.

3. If settlement for an item is made by cashier's check or teller's check and the person receiving settlement, before its midnight deadline:

a. presents or forwards the check for collection, settlement is final when the check is finally paid; or

b. fails to present or forward the check for collection, settlement is final at the midnight deadline of the person receiving settlement.

4. If settlement for an item is made by giving authority to charge the account of the bank giving settlement in the bank receiving settlement, settlement is final when the charge is made by the bank receiving settlement if there are funds available in the account for the amount of the item.

[C66, 71, 73, 75, 77, 79, 81, §554.4211]

94 Acts, ch 1167, §98, 120, 122

C95, §554.4213

554.4214 Right of charge-back or refund — liability of collecting bank — return of item.

1. If a collecting bank has made provisional settlement with its customer for an item and fails by reason of dishonor, suspension of payments by a bank, or otherwise to receive settlement for the item which is or becomes final, the bank may revoke the settlement given by it, charge back the amount of any credit given for the item to its customer's account, or obtain refund from its customer whether or not it is able to return the item, if by its midnight deadline or within a longer reasonable time after it learns the facts it returns the item or sends notification of the facts. If the return or notice is delayed beyond the bank's midnight deadline or a longer reasonable time after it learns the facts, the bank may revoke the settlement, charge back the credit, or obtain refund from its customer, but it is liable for any loss resulting from the delay. These rights to revoke, charge back, and obtain refund terminate if and when a settlement for the item received by the bank is or becomes final.

2. A collecting bank returns an item when it is sent or delivered to the bank's customer or transferor or pursuant to its instructions.

3. A depositary bank that is also the payor may charge back the amount of an item to its

customer's account or obtain refund in accordance with the section governing return of an item received by a payor bank for credit on its books (section 554.4301).

4. The right to charge back is not affected by:

a. previous use of a credit given for the item; or

b. failure by any bank to exercise ordinary care with respect to the item, but a bank so failing remains liable.

5. A failure to charge back or claim refund does not affect other rights of the bank against the customer or any other party.

6. If credit is given in dollars as the equivalent of the value of an item payable in foreign money, the dollar amount of any charge-back or refund must be calculated on the basis of the bank-offered spot rate for the foreign money prevailing on the day when the person entitled to the charge-back or refund learns that it will not receive payment in ordinary course.

[C66, 71, 73, 75, 77, 79, 81, §554.4212]

94 Acts, ch 1167, §99, 120, 122

C95, §554.4214

554.4215 Final payment of item by payor bank — when provisional debits and credits become final — when certain credits become available for withdrawal.

1. An item is finally paid by a payor bank when the bank has first done any of the following:

a. paid the item in cash;

b. settled for the item without having a right to revoke the settlement under statute, clearing-house rule, or agreement; or

c. made a provisional settlement for the item and failed to revoke the settlement in the time and manner permitted by statute, clearing-house rule, or agreement.

2. If provisional settlement for an item does not become final, the item is not finally paid.

3. If provisional settlement for an item between the presenting and payor banks is made through a clearing house or by debits or credits in an account between them, then to the extent that provisional debits or credits for the item are entered in accounts between the presenting and payor banks or between the presenting and successive prior collecting banks seriatim, they become final upon final payment of the item by the payor bank.

4. If a collecting bank receives a settlement for an item which is or becomes final, the bank is accountable to its customer for the amount of the item and any provisional credit given for the item in an account with its customer becomes final.

5. Subject to applicable law stating a time for availability of funds and any right of the bank to apply the credit to an obligation of the customer, credit given by a bank for an item in a customer's account becomes available for withdrawal as of right:

a. if the bank has received a provisional settlement for the item, when the settlement becomes final and the bank has had a reasonable time to receive return of the item and the item has not been received within that time;

b. if the bank is both the depositary bank and the payor bank, and the item is finally paid, at the opening of the bank's second banking day following receipt of the item.

6. Subject to applicable law stating a time for availability of funds and any right of a bank to apply a deposit to an obligation of the depositor, a deposit of money becomes available for withdrawal as of right at the opening of the bank's next banking day after receipt of the deposit.

[C66, 71, 73, 75, 77, 79, 81, §554.4213]

94 Acts, ch 1167, §100, 120, 122

C95, §554.4215

95 Acts, ch 49, §17; 95 Acts, ch 67, §44; 2013 Acts, ch 30, §261

Referred to in §554.3418

554.4216 Insolvency and preference.

1. If an item is in or comes into the possession of a payor or collecting bank that suspends payment and the item has not been finally paid, the item must be returned by the receiver, trustee, or agent in charge of the closed bank to the presenting bank or the closed bank's customer.

2. If a payor bank finally pays an item and suspends payments without making a settlement for the item with its customer or the presenting bank which settlement is or becomes final, the owner of the item has a preferred claim against the payor bank.

3. If a payor bank gives or a collecting bank gives or receives a provisional settlement for an item and thereafter suspends payments, the suspension does not prevent or interfere with the settlement's becoming final if the finality occurs automatically upon the lapse of certain time or the happening of certain events.

4. If a collecting bank receives from subsequent parties settlement for an item which settlement is or becomes final and the bank suspends payments without making a settlement for the item with its customer which settlement is or becomes final, the owner of the item has a preferred claim against the collecting bank.

[C66, 71, 73, 75, 77, 79, 81, §554.4214]
94 Acts, ch 1167, §101, 120, 122
C95, §554.4216

PART 3

COLLECTION OF ITEMS: PAYOR BANKS

554.4301 Deferred posting — recovery of payment by return of items — time of dishonor — return of items by payor bank.

1. If a payor settles for a demand item other than a documentary draft presented otherwise than for immediate payment over the counter before midnight of the banking day of receipt, the payor bank may revoke the settlement and recover the payment settlement if, before it has made final payment and before its midnight deadline, it

a. returns the item; or

b. sends written notice of dishonor or nonpayment if the item is unavailable for return; and the item or notice includes the reason for dishonor or nonpayment.

2. If a demand item is received by a payor bank for credit on its books, it may return the item or send notice of dishonor and may revoke any credit given or recover the amount thereof withdrawn by its customer, if it acts within the time limit and in the manner specified in subsection 1.

3. Unless previous notice of dishonor has been sent, an item is dishonored at the time when for purposes of dishonor it is returned or notice sent in accordance with this section.

4. An item is returned:

a. as to an item presented through a clearing house, when it is delivered to the presenting or last collecting bank or to the clearing house or is sent or delivered in accordance with clearing-house rules; or

b. in all other cases, when it is sent or delivered to the bank's customer or transferor or pursuant to that customer's or transferor's instructions.

[C66, 71, 73, 75, 77, 79, 81, §554.4301]
94 Acts, ch 1167, §104, 122
Referred to in §554.3502, 554.4214

554.4302 Payor bank's responsibility for late return of item.

1. If an item is presented to and received by a payor bank, the bank is accountable for the amount of:

a. a demand item, other than a documentary draft, whether properly payable or not, if the bank, in any case in which it is not also the depositary bank, retains the item beyond midnight of the banking day of receipt without settling for it or, whether or not it is also the depositary bank, does not pay or return the item or send notice of dishonor until after its midnight deadline; or

b. any other properly payable item unless, within the time allowed for acceptance or payment of that item, the bank either accepts or pays the item or returns it and accompanying documents.

2. The liability of a payor bank to pay an item pursuant to subsection 1 is subject to defenses based on breach of a presentment warranty (section 554.4208) or proof that the person seeking enforcement of the liability presented or transferred the item for the purpose of defrauding the payor bank.

[C66, 71, 73, 75, 77, 79, 81, §554.4302]

94 Acts, ch 1167, §105, 122

Referred to in §554.3312, 554.3502, 554.4303

554.4303 When items subject to notice, stop-payment order, legal process, or setoff — order in which items may be charged or certified.

1. Any knowledge, notice, or stop-payment order received by, legal process served upon, or setoff exercised by a payor bank comes too late to terminate, suspend, or modify the bank's right or duty to pay an item or to charge its customer's account for the item if the knowledge, notice, stop-payment order, or legal process is received or served and a reasonable time for the bank to act thereon expires or the setoff is exercised after the earliest of the following:

a. the bank accepts or certifies the item;

b. the bank pays the item in cash;

c. the bank settles for the item without having a right to revoke the settlement under statute, clearing-house rule, or agreement;

d. the bank becomes accountable for the amount of the item under section 554.4302 dealing with the payor bank's responsibility for late return of items; or

e. with respect to checks, a cutoff hour no earlier than one hour after the opening of the next banking day after the banking day on which the bank received the check and no later than the close of that next banking day or, if no cutoff hour is fixed, the close of the next banking day after the banking day on which the bank received the check.

2. Subject to subsection 1 items may be accepted, paid, certified, or charged to the indicated account of its customer in any order.

[C31, 35, §9266-d1; C39, §**9266.1;** C46, 50, 54, 58, 62, §528.62; C66, 71, 73, 75, 77, 79, 81, §554.4303]

94 Acts, ch 1167, §106, 122

Referred to in §554.4401, 554.4403

PART 4

RELATIONSHIP BETWEEN PAYOR BANK AND ITS CUSTOMER

554.4401 When bank may charge customer's account.

1. A bank may charge against the account of a customer an item that is properly payable from that account even though the charge creates an overdraft. An item is properly payable if it is authorized by the customer and is in accordance with any agreement between the customer and bank.

2. A customer is not liable for the amount of an overdraft if the customer neither signed the item nor benefited from the proceeds of the item.

3. A bank may charge against the account of a customer a check that is otherwise properly payable from the account, even though payment was made before the date of the check, unless the customer has given notice to the bank of the postdating describing the check with reasonable certainty. The notice is effective for the period stated in section 554.4403, subsection 2, for stop-payment orders, and must be received at such time and in such manner as to afford the bank a reasonable opportunity to act on it before the bank takes any action with respect to the check described in section 554.4303. If a bank charges against the account of a customer a check before the date stated in the notice of postdating, the bank is liable for damages for the loss resulting from its act. The loss may include damages for dishonor of subsequent items under section 554.4402.

4. A bank that in good faith makes payment to a holder may charge the indicated account of its customer according to:

a. the original terms of the customer's altered item; or

b. the terms of the customer's completed item, even though the bank knows the item has been completed unless the bank has notice that the completion was improper.

[C66, 71, 73, 75, 77, 79, 81, §554.4401]

94 Acts, ch 1167, §107, 122; 95 Acts, ch 67, §45

Referred to in §554.3113

554.4402 Bank's liability to customer for wrongful dishonor — time of determining insufficiency of account.

1. Except as otherwise provided in this Article, a payor bank wrongfully dishonors an item if it dishonors an item that is properly payable, but a bank may dishonor an item that would create an overdraft unless it has agreed to pay the overdraft.

2. A payor bank is liable to its customer for damages proximately caused by the wrongful dishonor of an item. Liability is limited to actual damages proved and may include damages for an arrest or prosecution of the customer or other consequential damages. Whether any consequential damages are proximately caused by the wrongful dishonor is a question of fact to be determined in each case.

3. A payor bank's determination of the customer's account balance on which a decision to dishonor for insufficiency of available funds is based may be made at any time between the time the item is received by the payor bank and the time that the payor bank returns the item or gives notice in lieu of return, and no more than one determination need be made. If, at the election of the payor bank, a subsequent balance determination is made for the purposes of reevaluating the bank's decision to dishonor the item, the account balance at the time is determinative of whether a dishonor for insufficiency of available funds is wrongful.

[C66, 71, 73, 75, 77, 79, 81, §554.4402]

94 Acts, ch 1167, §108, 122

Referred to in §554.4401, 554.4403

554.4403 Customer's right to stop payment — burden of proof of loss.

1. A customer or any person authorized to draw on the account if there is more than one person may stop payment of an item drawn on the customer's account or close the account by an order to the bank describing the item or account with reasonable certainty received at a time and in a manner that affords the bank a reasonable opportunity to act on it before any action by the bank with respect to the item described in section 554.4303. If the signature of more than one person is required to draw on an account, any of these persons may stop payment or close the account.

2. A stop-payment order is effective for six months, but it lapses after fourteen calendar days if the original order was oral and was not confirmed in writing within that period. A stop-payment order may be renewed for additional six-month periods by a writing given to the bank within a period during which the stop-payment order is effective.

2A. In addition to a stop-payment order made or renewed in writing as described in subsection 2, an equivalent stop-payment order may also be made or renewed as part of a record that is stored in an electronic medium, and submitted to the bank, which may include delivery via electronic transmission.

3. The burden of establishing the fact and amount of loss resulting from the payment of an item contrary to a stop-payment order or order to close an account is on the customer. The loss from payment of an item contrary to a stop-payment order may include damages for dishonor of subsequent items under section 554.4402.

[C31, 35, §9266-d1; C39, §**9266.1;** C46, 50, 54, 58, 62, §528.62; C66, 71, 73, 75, 77, 79, 81, §554.4403]

94 Acts, ch 1167, §109, 122; 2018 Acts, ch 1016, §1

Referred to in §537.2501, 554.3418, 554.3512, 554.3513, 554.4401

NEW subsection 2A

554.4404 Bank not obligated to pay check more than six months old.

A bank is under no obligation to a customer having a checking account to pay a check, other than a certified check, which is presented more than six months after its date, but it may charge its customer's account for a payment made thereafter in good faith.

[C66, 71, 73, 75, 77, 79, 81, §554.4404]

554.4405 Death or incompetence of customer.

1. A payor or collecting bank's authority to accept, pay, or collect an item or to account for proceeds of its collection, if otherwise effective, is not rendered ineffective by incompetence of a customer of either bank existing at the time the item is issued or its collection is undertaken if the bank does not know of an adjudication of incompetence. Neither death nor incompetence of a customer revokes the authority to accept, pay, collect or account until the bank knows of the fact of death or of an adjudication of incompetence and has reasonable opportunity to act on it.

2. Even with knowledge, a bank may for ten days after the date of death pay or certify checks drawn on or before that date unless ordered to stop payment by a person claiming an interest in the account.

[S13, §3060-a76; C24, 27, 31, 35, 39, §**9536;** C46, 50, 54, 58, 62, §541.76; C66, 71, 73, 75, 77, 79, 81, §554.4405]

94 Acts, ch 1167, §110, 122

554.4406 Customer's duty to discover and report unauthorized signature or alteration.

1. A bank that sends or makes available to a customer a statement of account showing payment of items for the account shall either return or make available to the customer the items paid or provide information in the statement of account sufficient to allow the customer reasonably to identify the items paid. The statement of account provides sufficient information, if the item is described by item number, amount, and date of payment.

2. If the items are not returned to the customer, the person retaining the items shall either retain the items or, if the items are destroyed, maintain the capacity to furnish legible copies of the items until the expiration of seven years after receipt of the items. A customer may request an item from the bank that paid the item, and that bank must provide in a reasonable time either the item or, if the item has been destroyed or is not otherwise obtainable, a legible copy of the item.

3. If a bank sends or makes available a statement of account or items pursuant to subsection 1, the customer must exercise reasonable promptness in examining the statement or the items to determine whether any payment was not authorized because of an alteration of an item or because a purported signature by or on behalf of the customer was not authorized. If, based on the statement or items provided, the customer should reasonably have discovered the unauthorized payment, the customer must promptly notify the bank of the relevant facts.

4. If the bank proves that the customer failed, with respect to an item, to comply with the duties imposed on the customer by subsection 3, the customer is precluded from asserting against the bank:

a. the customer's unauthorized signature or any alteration on the item, if the bank also proves that it suffered a loss by reason of the failure; and

b. the customer's unauthorized signature or alteration by the same wrongdoer on any other item paid in good faith by the bank if the payment was made before the bank received notice from the customer of the unauthorized signature or alteration and after the customer had been afforded a reasonable period of time, not exceeding sixty days, in which to examine the item or statement of account and notify the bank.

5. If subsection 4 applies and the customer proves that the bank failed to exercise ordinary care in paying the item and that the failure substantially contributed to loss, the loss is allocated between the customer precluded and the bank asserting the preclusion according to the extent to which the failure of the customer to comply with subsection 3 and the failure of the bank to exercise ordinary care contributed to the loss. If the customer

proves that the bank did not pay the item in good faith, the preclusion under subsection 4 does not apply.

6. Without regard to care or lack of care of either the customer or the bank, a customer who does not within one year after the statement or items are made available to the customer (subsection 1) discover and report the customer's unauthorized signature on or any alteration on the item is precluded from asserting against the bank the unauthorized signature or alteration. If there is a preclusion under this subsection, the payor bank may not recover for breach of warranty under section 554.4208 with respect to the unauthorized signature or alteration to which the preclusion applies.

[C66, 71, 73, 75, 77, 79, 81, §554.4406]

94 Acts, ch 1167, §111, 122; 2011 Acts, ch 87, §5

Referred to in §554.3417, 554.4208

554.4407 Payor bank's right to subrogation on improper payment.

If a payor bank has paid an item over the order of the drawer or maker to stop payment, or after an account has been closed, or otherwise under circumstances giving a basis for objection by the drawer or maker, to prevent unjust enrichment and only to the extent necessary to prevent loss to the bank by reason of its payment of the item, the payor bank is subrogated to the rights

1. of any holder in due course on the item against the drawer or maker;

2. of the payee or any other holder of the item against the drawer or maker either on the item or under the transaction out of which the item arose; and

3. of the drawer or maker against the payee or any other holder of the item with respect to the transaction out of which the item arose.

[C66, 71, 73, 75, 77, 79, 81, §554.4407]

94 Acts, ch 1167, §112, 122; 2009 Acts, ch 41, §263

Referred to in §554.3418

PART 5

COLLECTION OF DOCUMENTARY DRAFTS

554.4501 Handling of documentary drafts — duty to send for presentment and to notify customer of dishonor.

A bank that takes a documentary draft for collection shall present or send the draft and accompanying documents for presentment and, upon learning that the draft has not been paid or accepted in due course, shall seasonably notify its customer of the fact even though it may have discounted or bought the draft or extended credit available for withdrawal as of right.

[C66, 71, 73, 75, 77, 79, 81, §554.4501]

94 Acts, ch 1167, §113, 122

554.4502 Presentment of "on arrival" drafts.

If a draft or the relevant instructions require presentment "on arrival", "when goods arrive" or the like, the collecting bank need not present until in its judgment a reasonable time for arrival of the goods has expired. Refusal to pay or accept because the goods have not arrived is not dishonor; the bank must notify its transferor of the refusal but need not present the draft again until it is instructed to do so or learns of the arrival of the goods.

[C66, 71, 73, 75, 77, 79, 81, §554.4502]

94 Acts, ch 1167, §114, 122

554.4503 Responsibility of presenting bank for documents and goods — report of reasons for dishonor — referee in case of need.

1. Unless otherwise instructed and except as provided in Article 5, a bank presenting a documentary draft:

a. must deliver the documents to the drawee on acceptance of the draft if it is payable more than three days after presentment; otherwise, only on payment; and

b. upon dishonor, either in the case of presentment for acceptance or presentment for payment, may seek and follow instructions from any referee in case of need designated in the draft or, if the presenting bank does not choose to utilize the referee's services, it must use diligence and good faith to ascertain the reason for dishonor, must notify its transferor of the dishonor and of the results of its effort to ascertain the reasons therefor, and must request instructions.

2. However, the presenting bank is under no obligation with respect to goods represented by the documents except to follow any reasonable instructions seasonably received; it has a right to reimbursement for any expense incurred in following instructions and to prepayment of or indemnity for those expenses.

[S13, §3060-a131, 3138-b40; C24, 27, 31, 35, 39, §**8285, 9592;** C46, 50, 54, 58, 62, §487.41, 541.132; C66, 71, 73, 75, 77, 79, 81, §554.4503]

94 Acts, ch 1167, §115, 122; 2009 Acts, ch 41, §263

554.4504 Privilege of presenting bank to deal with goods — security interest for expenses.

1. A presenting bank that, following the dishonor of a documentary draft, has seasonably requested instructions but does not receive them within a reasonable time may store, sell, or otherwise deal with the goods in any reasonable manner.

2. For its reasonable expenses incurred by action under subsection 1 the presenting bank has a lien upon the goods or their proceeds, which may be foreclosed in the same manner as an unpaid seller's lien.

[C66, 71, 73, 75, 77, 79, 81, §554.4504]

94 Acts, ch 1167, §116, 122

ARTICLE 4A

FUNDS TRANSFERS

Article on Funds Transfers codified as Article 12;
92 Acts, ch 1146, §1 – 38

ARTICLE 5

LETTERS OF CREDIT

Referred to in §554.1201, 554.1204, 554.4503, 554.7509

554.5101 Short title.

This Article shall be known and may be cited as Uniform Commercial Code — Letters of Credit.

[C66, 71, 73, 75, 77, 79, 81, §554.5101]

554.5102 Definitions.

1. In this Article unless the context otherwise requires:

a. "Adviser" means a person who, at the request of the issuer, a confirmer, or another adviser, notifies or requests another adviser to notify the beneficiary that a letter of credit has been issued, confirmed, or amended.

b. "Applicant" means a person at whose request or for whose account a letter of credit is issued. The term includes a person who requests an issuer to issue a letter of credit on behalf of another if the person making the request undertakes an obligation to reimburse the issuer.

c. "Beneficiary" means a person who under the terms of a letter of credit is entitled to have its complying presentation honored. The term includes a person to whom drawing rights have been transferred under a transferable letter of credit.

d. "Confirmer" means a nominated person who undertakes, at the request or with the consent of the issuer, to honor a presentation under a letter of credit issued by another.

e. *"Dishonor"* of a letter of credit means failure timely to honor or to take an interim action, such as acceptance of a draft, that may be required by the letter of credit.

f. *"Document"* means a draft or other demand, document of title, investment security, certificate, invoice, or other record, statement, or representation of fact, law, right, or opinion which is presented in a written or other medium permitted by the letter of credit or, unless prohibited by the letter of credit, by the standard practice referred to in section 554.5108, subsection 5, and which is capable of being examined for compliance with the terms and conditions of the letter of credit. A document may not be oral.

g. *"Good faith"* means honesty in fact in the conduct or transaction concerned.

h. *"Honor"* of a letter of credit means performance of the issuer's undertaking in the letter of credit to pay or deliver an item of value. Unless the letter of credit otherwise provides, *"honor"* occurs

(1) upon payment,

(2) if the letter of credit provides for acceptance, upon acceptance of a draft and, at maturity, its payment, or

(3) if the letter of credit provides for incurring a deferred obligation, upon incurring the obligation and, at maturity, its performance.

i. *"Issuer"* means a bank or other person that issues a letter of credit, but does not include an individual who makes an engagement for personal, family, or household purposes.

j. *"Letter of credit"* means a definite undertaking that satisfies the requirements of section 554.5104 by an issuer to a beneficiary at the request or for the account of an applicant or, in the case of a financial institution, to itself or for its own account, to honor a documentary presentation by payment or delivery of an item of value.

k. *"Nominated person"* means a person whom the issuer designates or authorizes to pay, accept, negotiate, or otherwise give value under a letter of credit and undertakes by agreement or custom and practice to reimburse.

l. *"Presentation"* means delivery of a document to an issuer or nominated person for honor or giving of value under a letter of credit.

m. *"Presenter"* means a person making a presentation as or on behalf of a beneficiary or nominated person.

n. *"Record"* means information that is inscribed on a tangible medium, or that is stored in an electronic or other medium and is retrievable in perceivable form.

o. *"Successor of a beneficiary"* means a person who succeeds to substantially all of the rights of a beneficiary by operation of law, including a corporation with or into which the beneficiary has been merged or consolidated, an administrator, executor, personal representative, trustee in bankruptcy, debtor in possession, liquidator, and receiver.

2. Definitions in other Articles applying to this Article and the sections in which they appear are:

a. "Accept" or "Acceptance" ..... Section 554.3409

b. "Value"..... Sections 554.3303, 554.4211

3. Article 1 contains certain additional general definitions and principles of construction and interpretation applicable throughout this Article.

[C66, 71, 73, 75, 77, 79, 81, §554.5102]

96 Acts, ch 1026, §1, 28; 2012 Acts, ch 1023, §157; 2013 Acts, ch 30, §261

Referred to in §554.5103, 554.5108, 554.9102

554.5103 Scope.

1. This Article applies to letters of credit and to certain rights and obligations arising out of transactions involving letters of credit.

2. The statement of a rule in this Article does not by itself require, imply, or negate application of the same or a different rule to a situation not provided for, or to a person not specified, in this Article.

3. With the exception of this subsection, subsections 1 and 4, section 554.5102, subsection 1, paragraphs *"i"* and *"j"*, section 554.5106, subsection 4, and section 554.5114, subsection 4, and except to the extent prohibited in section 554.1302 and section 554.5117, subsection 4, the effect of this Article may be varied by agreement or by a provision stated or incorporated

by reference in an undertaking. A term in an agreement or undertaking generally excusing liability or generally limiting remedies for failure to perform obligations is not sufficient to vary obligations prescribed by this Article.

4. Rights and obligations of an issuer to a beneficiary or a nominated person under a letter of credit are independent of the existence, performance, or nonperformance of a contract or arrangement out of which the letter of credit arises or which underlies it, including contracts or arrangements between the issuer and the applicant and between the applicant and the beneficiary.

[C66, 71, 73, 75, 77, 79, 81, §554.5103]
94 Acts, ch 1167, §117, 122; 96 Acts, ch 1026, §2, 28; 2007 Acts, ch 41, §28
Referred to in §554.5116

554.5104 Formal requirements.

A letter of credit, confirmation, advice, transfer, amendment, or cancellation may be issued in any form that is a record and is authenticated by a signature or in accordance with the agreement of the parties or the standard practice referred to in section 554.5108, subsection 5.

[C66, 71, 73, 75, 77, 79, 81, §554.5104]
96 Acts, ch 1026, §3, 28; 2012 Acts, ch 1023, §146
Referred to in §554.5102, 554.5116

554.5105 Consideration.

Consideration is not required to issue, amend, transfer, or cancel a letter of credit, advice, or confirmation.

[C66, 71, 73, 75, 77, 79, 81, §554.5105]
96 Acts, ch 1026, §4, 28

554.5106 Issuance, amendment, cancellation, and duration.

1. A letter of credit is issued and becomes enforceable according to its terms against the issuer when the issuer sends or otherwise transmits it to the person requested to advise or to the beneficiary. A letter of credit is revocable only if it so provides.

2. After a letter of credit is issued, rights and obligations of a beneficiary, applicant, confirmer, and issuer are not affected by an amendment or cancellation to which that person has not consented except to the extent the letter of credit provides that it is revocable or that the issuer may amend or cancel the letter of credit without that consent.

3. If there is no stated expiration date or other provision that determines its duration, a letter of credit expires one year after its stated date of issuance or, if none is stated, after the date on which it is issued.

4. A letter of credit that states that it is perpetual expires five years after its stated date of issuance or, if none is stated, after the date on which it is issued.

[C66, 71, 73, 75, 77, 79, 81, §554.5106]
96 Acts, ch 1026, §5, 28
Referred to in §554.5103

554.5107 Confirmer, nominated person, and adviser.

1. A confirmer is directly obligated on a letter of credit and has the rights and obligations of an issuer to the extent of its confirmation. The confirmer also has rights against and obligations to the issuer as if the issuer were an applicant and the confirmer had issued the letter of credit at the request and for the account of the issuer.

2. A nominated person who is not a confirmer is not obligated to honor or otherwise give value for a presentation.

3. A person requested to advise may decline to act as an adviser. An adviser that is not a confirmer is not obligated to honor or give value for a presentation. An adviser undertakes to the issuer and to the beneficiary accurately to advise the terms of the letter of credit, confirmation, amendment, or advice received by that person and undertakes to the beneficiary to check the apparent authenticity of the request to advise. Even if the advice is inaccurate, the letter of credit, confirmation, or amendment is enforceable as issued.

4. A person who notifies a transferee beneficiary of the terms of a letter of credit, confirmation, amendment, or advice has the rights and obligations of an adviser under subsection 3. The terms in the notice to the transferee beneficiary may differ from the terms in any notice to the transferor beneficiary to the extent permitted by the letter of credit, confirmation, amendment, or advice received by the person who so notifies.

[C66, 71, 73, 75, 77, 79, 81, §554.5107]

96 Acts, ch 1026, §6, 28

554.5108 Issuer's rights and obligations.

1. Except as otherwise provided in section 554.5109, an issuer shall honor a presentation that, as determined by the standard practice referred to in subsection 5, appears on its face strictly to comply with the terms and conditions of the letter of credit. Except as otherwise provided in section 554.5113 and unless otherwise agreed with the applicant, an issuer shall dishonor a presentation that does not appear so to comply.

2. An issuer has a reasonable time after presentation, but not beyond the end of the seventh business day of the issuer after the day of its receipt of documents:

a. to honor,

b. if the letter of credit provides for honor to be completed more than seven business days after presentation, to accept a draft or incur a deferred obligation, or

c. to give notice to the presenter of discrepancies in the presentation.

3. Except as otherwise provided in subsection 4, an issuer is precluded from asserting as a basis for dishonor any discrepancy if timely notice is not given, or any discrepancy not stated in the notice if timely notice is given.

4. Failure to give the notice specified in subsection 2 or to mention fraud, forgery, or expiration in the notice does not preclude the issuer from asserting as a basis for dishonor fraud or forgery as described in section 554.5109, subsection 1, or expiration of the letter of credit before presentation.

5. An issuer shall observe standard practice of financial institutions that regularly issue letters of credit. Determination of the issuer's observance of the standard practice is a matter of interpretation for the court. The court shall offer the parties a reasonable opportunity to present evidence of the standard practice.

6. An issuer is not responsible for:

a. the performance or nonperformance of the underlying contract, arrangement, or transaction,

b. an act or omission of others, or

c. observance or knowledge of the usage of a particular trade other than the standard practice referred to in subsection 5.

7. If an undertaking constituting a letter of credit under section 554.5102, subsection 1, paragraph *"j"*, contains nondocumentary conditions, an issuer shall disregard the nondocumentary conditions and treat them as if they were not stated.

8. An issuer that has dishonored a presentation shall return the documents or hold them at the disposal of, and send advice to that effect to, the presenter.

9. An issuer that has honored a presentation as permitted or required by this Article:

a. is entitled to be reimbursed by the applicant in immediately available funds not later than the date of its payment of funds;

b. takes the documents free of claims of the beneficiary or presenter;

c. is precluded from asserting a right of recourse on a draft under sections 554.3414 and 554.3415;

d. except as otherwise provided in sections 554.5110 and 554.5117, is precluded from restitution of money paid or other value given by mistake to the extent the mistake concerns discrepancies in the documents or tender which are apparent on the face of the presentation; and

e. is discharged to the extent of its performance under the letter of credit unless the issuer honored a presentation in which a required signature of a beneficiary was forged.

[C66, 71, 73, 75, 77, 79, 81, §554.5108]

96 Acts, ch 1026, §7, 28

Referred to in §554.5102, 554.5104, 554.5112, 554.5113

554.5109 Fraud and forgery.

1. If a presentation is made that appears on its face strictly to comply with the terms and conditions of the letter of credit, but a required document is forged or materially fraudulent, or honor of the presentation would facilitate a material fraud by the beneficiary on the issuer or applicant:

a. the issuer shall honor the presentation, if honor is demanded by a nominated person who has given value in good faith and without notice of forgery or material fraud, a confirmer who has honored its confirmation in good faith, a holder in due course of a draft drawn under the letter of credit which was taken after acceptance by the issuer or nominated person, or an assignee of the issuer's or nominated person's deferred obligation that was taken for value and without notice of forgery or material fraud after the obligation was incurred by the issuer or nominated person; and

b. the issuer, acting in good faith, may honor or dishonor the presentation in any other case.

2. If an applicant claims that a required document is forged or materially fraudulent or that honor of the presentation would facilitate a material fraud by the beneficiary on the issuer or applicant, a court of competent jurisdiction may temporarily or permanently enjoin the issuer from honoring a presentation or grant similar relief against the issuer or other persons only if the court finds that:

a. the relief is not prohibited under the law applicable to an accepted draft or deferred obligation incurred by the issuer;

b. a beneficiary, issuer, or nominated person who may be adversely affected is adequately protected against loss that it may suffer because the relief is granted;

c. all of the conditions to entitle a person to the relief under the law of this state have been met; and

d. on the basis of the information submitted to the court, the applicant is more likely than not to succeed under its claim of forgery or material fraud and the person demanding honor does not qualify for protection under subsection 1, paragraph *"a"*.

[C66, 71, 73, 75, 77, 79, 81, §554.5109]

96 Acts, ch 1026, §8, 28; 2013 Acts, ch 30, §261

Referred to in §554.2512, 554.5108, 554.5110, 554.5113

554.5110 Warranties.

1. If its presentation is honored, the beneficiary warrants:

a. to the issuer, any other person to whom presentation is made, and the applicant that there is no fraud or forgery of the kind described in section 554.5109, subsection 1; and

b. to the applicant that the drawing does not violate any agreement between the applicant and beneficiary or any other agreement intended by them to be augmented by the letter of credit.

2. The warranties in subsection 1 are in addition to warranties arising under Articles 3, 4, 7, and 8 because of the presentation or transfer of documents covered by any of those Articles.

[C66, 71, 73, 75, 77, 79, 81, §554.5110]

96 Acts, ch 1026, §9, 28

Referred to in §554.5108

554.5111 Remedies.

1. If an issuer wrongfully dishonors or repudiates its obligation to pay money under a letter of credit before presentation, the beneficiary, successor, or nominated person presenting on its own behalf may recover from the issuer the amount that is the subject of the dishonor or repudiation. If the issuer's obligation under the letter of credit is not for

the payment of money, the claimant may obtain specific performance or, at the claimant's election, recover an amount equal to the value of performance from the issuer. In either case, the claimant may also recover incidental but not consequential damages. The claimant is not obligated to take action to avoid damages that might be due from the issuer under this subsection. If, although not obligated to do so, the claimant avoids damages, the claimant's recovery from the issuer must be reduced by the amount of damages avoided. The issuer has the burden of proving the amount of damages avoided. In the case of repudiation the claimant need not present any document.

2. If an issuer wrongfully dishonors a draft or demand presented under a letter of credit or honors a draft or demand in breach of its obligation to the applicant, the applicant may recover damages resulting from the breach, including incidental but not consequential damages, less any amount saved as a result of the breach.

3. If an adviser or nominated person other than a confirmer breaches an obligation under this Article or an issuer breaches an obligation not covered in subsection 1 or 2, a person to whom the obligation is owed may recover damages resulting from the breach, including incidental but not consequential damages, less any amount saved as a result of the breach. To the extent of the confirmation, a confirmer has the liability of an issuer specified in this subsection and subsections 1 and 2.

4. An issuer, nominated person, or adviser who is found liable under subsection 1, 2, or 3 shall pay interest on the amount owed thereunder from the date of wrongful dishonor or other appropriate date.

5. Reasonable attorney's fees and other expenses of litigation must be awarded to the prevailing party in an action in which a remedy is sought under this Article.

6. Damages that would otherwise be payable by a party for breach of an obligation under this Article may be liquidated by agreement or undertaking, but only in an amount or by a formula that is reasonable in light of the harm anticipated.

[C66, 71, 73, 75, 77, 79, 81, §554.5111]

96 Acts, ch 1026, §10, 28

554.5112 Transfer of letter of credit.

1. Except as otherwise provided in section 554.5113, unless a letter of credit provides that it is transferable, the right of a beneficiary to draw or otherwise demand performance under a letter of credit may not be transferred.

2. Even if a letter of credit provides that it is transferable, the issuer may refuse to recognize or carry out a transfer if:

a. the transfer would violate applicable law; or

b. the transferor or transferee has failed to comply with any requirement stated in the letter of credit or any other requirement relating to transfer imposed by the issuer which is within the standard practice referred to in section 554.5108, subsection 5, or is otherwise reasonable under the circumstances.

[C66, 71, 73, 75, 77, 79, 81, §554.5112]

96 Acts, ch 1026, §11, 28

Referred to in §539.1, 539.2

554.5113 Transfer by operation of law.

1. A successor of a beneficiary may consent to amendments, sign and present documents, and receive payment or other items of value in the name of the beneficiary without disclosing its status as a successor.

2. A successor of a beneficiary may consent to amendments, sign and present documents, and receive payment or other items of value in its own name as the disclosed successor of the beneficiary. Except as otherwise provided in subsection 5, an issuer shall recognize a disclosed successor of a beneficiary as beneficiary in full substitution for its predecessor upon compliance with the requirements for recognition by the issuer of a transfer of drawing rights by operation of law under the standard practice referred to in section 554.5108, subsection 5, or, in the absence of such a practice, compliance with other reasonable procedures sufficient to protect the issuer.

3. An issuer is not obliged to determine whether a purported successor is a successor of a beneficiary or whether the signature of a purported successor is genuine or authorized.

4. Honor of a purported successor's apparently complying presentation under subsection 1 or 2 has the consequences specified in section 554.5108, subsection 9, even if the purported successor is not the successor of a beneficiary. Documents signed in the name of the beneficiary or of a disclosed successor by a person who is neither the beneficiary nor the successor of the beneficiary are forged documents for the purposes of section 554.5109.

5. An issuer whose rights of reimbursement are not covered by subsection 4 or substantially similar law and any confirmer or nominated person may decline to recognize a presentation under subsection 2.

6. A beneficiary whose name is changed after the issuance of a letter of credit has the same rights and obligations as a successor of a beneficiary under this section.

[C66, 71, 73, 75, 77, 79, 81, §554.5113]

96 Acts, ch 1026, §12, 28

Referred to in §539.1, 539.2, 554.5108, 554.5112

554.5114 Assignment of proceeds.

1. In this section, *"proceeds of a letter of credit"* means the cash, check, accepted draft, or other item of value paid or delivered upon honor or giving of value by the issuer or any nominated person under the letter of credit. The term does not include a beneficiary's drawing rights or documents presented by the beneficiary.

2. A beneficiary may assign its right to part or all of the proceeds of a letter of credit. The beneficiary may do so before presentation as a present assignment of its right to receive proceeds contingent upon its compliance with the terms and conditions of the letter of credit.

3. An issuer or nominated person need not recognize an assignment of proceeds of a letter of credit until it consents to the assignment.

4. An issuer or nominated person has no obligation to give or withhold its consent to an assignment of proceeds of a letter of credit, but consent may not be unreasonably withheld if the assignee possesses and exhibits the letter of credit and presentation of the letter of credit is a condition to honor.

5. Rights of a transferee beneficiary or nominated person are independent of the beneficiary's assignment of the proceeds of a letter of credit and are superior to the assignee's right to the proceeds.

6. Neither the rights recognized by this section between an assignee and an issuer, transferee beneficiary, or nominated person nor the issuer's or nominated person's payment of proceeds to an assignee or a third person affect the rights between the assignee and any person other than the issuer, transferee beneficiary, or nominated person. The mode of creating and perfecting a security interest in or granting an assignment of a beneficiary's rights to proceeds is governed by Article 9 or other law. Against persons other than the issuer, transferee beneficiary, or nominated person, the rights and obligations arising upon the creation of a security interest or other assignment of a beneficiary's right to proceeds and its perfection are governed by Article 9 or other law.

[C66, 71, 73, 75, 77, 79, 81, §554.5114]

89 Acts, ch 113, §55; 96 Acts, ch 1026, §13, 28

Referred to in §539.1, 539.2, 554.5103, 554.9102, 554.9107, 554.9109

554.5115 Statute of limitations.

An action to enforce a right or obligation arising under this Article must be commenced within one year after the expiration date of the relevant letter of credit or one year after the cause of action accrues, whichever occurs later. A cause of action accrues when the breach occurs, regardless of the aggrieved party's lack of knowledge of the breach.

[C66, 71, 73, 75, 77, 79, 81, §554.5115]

96 Acts, ch 1026, §14, 28

554.5116 Choice of law and forum.

1. The liability of an issuer, nominated person, or adviser for action or omission is governed by the law of the jurisdiction chosen by an agreement in the form of a record

signed or otherwise authenticated by the affected parties in the manner provided in section 554.5104 or by a provision in the person's letter of credit, confirmation, or other undertaking. The jurisdiction whose law is chosen need not bear any relation to the transaction.

2. Unless subsection 1 applies, the liability of an issuer, nominated person, or adviser for action or omission is governed by the law of the jurisdiction in which the person is located. The person is considered to be located at the address indicated in the person's undertaking. If more than one address is indicated, the person is considered to be located at the address from which the person's undertaking was issued. For the purpose of jurisdiction, choice of law, and recognition of interbranch letters of credit, but not enforcement of a judgment, all branches of a bank are considered separate juridical entities and a bank is considered to be located at the place where its relevant branch is considered to be located under this subsection.

3. Except as otherwise provided in this subsection, the liability of an issuer, nominated person, or adviser is governed by any rules of custom or practice, such as the uniform customs and practice for documentary credits, to which the letter of credit, confirmation, or other undertaking is expressly made subject. If this Article would govern the liability of an issuer, nominated person, or adviser under subsection 1 or 2, the relevant undertaking incorporates rules of custom or practice, and there is conflict between this Article and those rules as applied to that undertaking, those rules govern except to the extent of any conflict with the nonvariable provisions specified in section 554.5103, subsection 3.

4. If there is conflict between this Article and Article 3, 4, 9, or 12, this Article governs.

5. The forum for settling disputes arising out of an undertaking within this Article may be chosen in the manner and with the binding effect that governing law may be chosen in accordance with subsection 1.

[C66, 71, 73, 75, 77, 79, 81, §554.5116]

96 Acts, ch 1026, §15, 28; 97 Acts, ch 23, §69; 2013 Acts, ch 30, §261

Referred to in §554.1301, 554.9306

554.5117 Subrogation of issuer, applicant, and nominated person.

1. An issuer that honors a beneficiary's presentation is subrogated to the rights of the beneficiary to the same extent as if the issuer were a secondary obligor of the underlying obligation owed to the beneficiary and of the applicant to the same extent as if the issuer were the secondary obligor of the underlying obligation owed to the applicant.

2. An applicant that reimburses an issuer is subrogated to the rights of the issuer against any beneficiary, presenter, or nominated person to the same extent as if the applicant were the secondary obligor of the obligations owed to the issuer and has the rights of subrogation of the issuer to the rights of the beneficiary stated in subsection 1.

3. A nominated person who pays or gives value against a draft or demand presented under a letter of credit is subrogated to the rights of:

a. the issuer against the applicant to the same extent as if the nominated person were a secondary obligor of the obligation owed to the issuer by the applicant;

b. the beneficiary to the same extent as if the nominated person were a secondary obligor of the underlying obligation owed to the beneficiary; and

c. the applicant to the same extent as if the nominated person were a secondary obligor of the underlying obligation owed to the applicant.

4. Notwithstanding any agreement or term to the contrary, the rights of subrogation stated in subsections 1 and 2 do not arise until the issuer honors the letter of credit or otherwise pays and the rights in subsection 3 do not arise until the nominated person pays or otherwise gives value. Until then, the issuer, nominated person, and the applicant do not derive under this section present or prospective rights forming the basis of a claim, defense, or excuse.

[C66, 71, 73, 75, 77, 79, 81, §554.5117]

96 Acts, ch 1026, §16, 28

Referred to in §554.5103, 554.5108

554.5118 Security interest of issuer or nominated person.

1. An issuer or nominated person has a security interest in a document presented under

a letter of credit to the extent that the issuer or nominated person honors or gives value for the presentation.

2. So long as and to the extent that an issuer or nominated person has not been reimbursed or has not otherwise recovered the value given with respect to a security interest in a document under subsection 1, the security interest continues and is subject to Article 9, but:

a. a security agreement is not necessary to make the security interest enforceable under section 554.9203, subsection 2, paragraph "*c*";

b. if the document is presented in a medium other than a written or other tangible medium, the security interest is perfected; and

c. if the document is presented in a written or other tangible medium and is not a certificated security, chattel paper, a document of title, an instrument, or a letter of credit, the security interest is perfected and has priority over a conflicting security interest in the document so long as the debtor does not have possession of the document.

2000 Acts, ch 1149, §147, 187

Referred to in §554.9102, 554.9109, 554.9203, 554.9309, 554.9322

ARTICLE 6

BULK TRANSFERS

Article repealed effective January 1, 1995, by 94 Acts, ch 1121, §17, 18; see chapter 684

ARTICLE 7

WAREHOUSE RECEIPTS, BILLS OF LADING, AND OTHER DOCUMENTS OF TITLE

Referred to in §203C.19, 427B.1, 554.2403, 554.5110, 554.9331, 554D.118, 578A.2, 809A.16

2007 amendments to this Article apply to a document of title issued or a bailment that arises on or after July 1, 2007; for law governing a document of title issued, a bailment that arose, or a cause of action that accrued prior to July 1, 2007, see Code 2007; 2007 Acts, ch 30, §45, 46

PART 1

GENERAL

554.7101 Short title.

This Article may be cited as Uniform Commercial Code — Documents of Title.

[S13, §3138-b56; C24, 27, 31, 35, 39, §**8299;** C46, 50, 54, 58, 62, §487.55; C66, 71, 73, 75, 77, 79, 81, §554.7101]

2007 Acts, ch 30, §1, 45, 46

554.7102 Definitions and index of definitions.

1. In this Article, unless the context otherwise requires:

a. "*Bailee*" means a person that by a warehouse receipt, bill of lading, or other document of title acknowledges possession of goods and contracts to deliver them.

b. "*Carrier*" means a person that issues a bill of lading.

c. "*Consignee*" means a person named in a bill of lading to which or to whose order the bill promises delivery.

d. "*Consignor*" means a person named in a bill of lading as the person from which the goods have been received for shipment.

e. "*Delivery order*" means a record that contains an order to deliver goods directed to a

warehouse, carrier, or other person that in the ordinary course of business issues warehouse receipts or bills of lading.

f. *"Good faith"* means honesty in fact and the observance of reasonable commercial standards of fair dealing.

g. *"Goods"* means all things that are treated as movable for the purposes of a contract for storage or transportation.

h. *"Issuer"* means a bailee that issues a document of title or, in the case of an unaccepted delivery order, the person that orders the possessor of goods to deliver. The term includes a person for which an agent or employee purports to act in issuing a document if the agent or employee has real or apparent authority to issue documents, even if the issuer did not receive any goods, the goods were misdescribed, or in any other respect the agent or employee violated the issuer's instructions.

i. *"Person entitled under the document"* means the holder, in the case of a negotiable document of title, or the person to which delivery of the goods is to be made by the terms of, or pursuant to instructions in a record under, a nonnegotiable document of title.

j. *"Record"* means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

k. *"Sign"* means, with present intent to authenticate or adopt a record:

(1) to execute or adopt a tangible symbol; or

(2) to attach to or logically associate with the record an electronic sound, symbol, or process.

l. *"Shipper"* means a person that enters into a contract of transportation with a carrier.

m. *"Warehouse"* means a person engaged in the business of storing goods for hire.

2. Definitions in other Articles applying to this Article and the sections in which they appear are:

a. "Contract for sale" ..... Section 554.2106

b. "Lessee in ordinary course of business" ..... Section 554.13103

c. "Receipt" of goods..... Section 554.2103

3. In addition, Article 1 contains general definitions and principles of construction and interpretation applicable throughout this Article.

[R60, §1903; C73, §2180; C97, §3132; S13, §3138-a58, -b52; C24, 27, 31, 35, 39, §**8297, 9718, 10005, 10325;** C46, 50, 54, 58, 62, §487.54, 542.58, 554.77, 575.1; C66, 71, 73, 75, 77, 79, 81, §554.7102]

2007 Acts, ch 30, §2, 45, 46

Referred to in §554.2103, 554.9102

554.7103 Relation of Article to treaty or statute.

1. This Article is subject to any treaty or statute of the United States or regulatory statute of this state to the extent that the treaty, statute, or regulatory statute is applicable.

2. This Article does not modify or repeal any law prescribing the form or content of a document of title or the services or facilities to be afforded by a bailee, or otherwise regulating a bailee's business in respects not specifically treated in this Article. However, violation of such a law does not affect the status of a document of title that otherwise is within the definition of a document of title.

3. This Article modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act (15 U.S.C. §7001 et seq.) but does not modify, limit, or supersede §101(c) of that Act (15 U.S.C. §7001(c)) or authorize electronic delivery of any of the notices described in §103(b) of that Act (15 U.S.C. §7003(b)).

4. To the extent there is a conflict between chapter 554D, the Uniform Electronic Transactions Act, and this Article, this Article governs.

[C66, 71, 73, 75, 77, 79, 81, §554.7103]

2007 Acts, ch 30, §3, 45, 46

Referred to in §554.10103

554.7104 Negotiable and nonnegotiable document of title.

1. Except as otherwise provided in subsection 3, a document of title is negotiable if by its terms the goods are to be delivered to bearer or to the order of a named person.

2. A document of title other than the one described in subsection 1 is nonnegotiable. A bill of lading that states that the goods are consigned to a named person is not made negotiable by a provision that the goods are to be delivered only against an order in a record signed by the same or another named person.

3. A document of title is nonnegotiable if, at the time it is issued, the document has a conspicuous legend, however expressed, that it is nonnegotiable.

[S13, §3138-a2 – a5, -a7, -b1 – b4, -b7, -b8, -b52; C24, 27, 31, 35, 39, §**8246 – 8249, 8253, 8254, 8297, 9662 – 9665, 9667, 9956, 9959, 10005;** C46, 50, 54, 58, 62, §487.2 – 487.5, 487.8, 487.9, 487.54, 542.2 – 542.5, 542.7, 554.28, 554.31, 554.77; C66, 71, 73, 75, 77, 79, 81, §554.7104]

2007 Acts, ch 30, §4, 45, 46

554.7105 Reissuance in alternative medium.

1. Upon request of a person entitled under an electronic document of title, the issuer of the electronic document may issue a tangible document of title as a substitute for the electronic document if:

a. the person entitled under the electronic document surrenders control of the document to the issuer; and

b. the tangible document when issued contains a statement that it is issued in substitution for the electronic document.

2. Upon issuance of a tangible document of title in substitution for an electronic document of title in accordance with subsection 1:

a. the electronic document ceases to have any effect or validity; and

b. the person that procured issuance of the tangible document warrants to all subsequent persons entitled under the tangible document that the warrantor was a person entitled under the electronic document when the warrantor surrendered control of the electronic document to the issuer.

3. Upon request of a person entitled under a tangible document of title, the issuer of the tangible document may issue an electronic document of title as a substitute for the tangible document if:

a. the person entitled under the tangible document surrenders possession of the document to the issuer; and

b. the electronic document when issued contains a statement that it is issued in substitution for the tangible document.

4. Upon issuance of an electronic document of title in substitution for a tangible document of title in accordance with subsection 3:

a. the tangible document ceases to have any effect or validity; and

b. the person that procured issuance of the electronic document warrants to all subsequent persons entitled under the electronic document that the warrantor was a person entitled under the tangible document when the warrantor surrendered possession of the tangible document to the issuer.

[C66, 71, 73, 75, 77, 79, 81, §554.7105]

2007 Acts, ch 30, §5, 45, 46

Referred to in §554.7305, 554.7402

554.7106 Control of electronic document of title.

1. A person has control of an electronic document of title if a system employed for evidencing the transfer of interests in the electronic document reliably establishes that person as the person to which the electronic document was issued or transferred.

2. A system satisfies subsection 1, and a person is deemed to have control of an electronic document of title, if the document is created, stored, and assigned in such a manner that:

a. a single authoritative copy of the document exists which is unique, identifiable, and, except as otherwise provided in paragraphs "*d*", "*e*", and "*f*", unalterable;

b. the authoritative copy identifies the person asserting control as:

(1) the person to which the document was issued; or

(2) if the authoritative copy indicates that the document has been transferred, the person to which the document was most recently transferred;

c. the authoritative copy is communicated to and maintained by the person asserting control or its designated custodian;

d. copies or amendments that add or change an identified assignee of the authoritative copy can be made only with the consent of the person asserting control;

e. each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy; and

f. any amendment of the authoritative copy is readily identifiable as authorized or unauthorized.

2007 Acts, ch 30, §6, 45, 46
Referred to in §554.2103, 554.4104, 554.9102, 554.9203, 554.9207, 554.9314, 554.9601

PART 2

WAREHOUSE RECEIPTS: SPECIAL PROVISIONS

554.7201 Person that may issue a warehouse receipt — storage under bond.

1. A warehouse receipt may be issued by any warehouse.

2. If goods, including distilled spirits and agricultural commodities, are stored under a statute requiring a bond against withdrawal or a license for the issuance of receipts in the nature of warehouse receipts, a receipt issued for the goods is deemed to be a warehouse receipt even if issued by a person that is the owner of the goods and is not a warehouse.

[S13, §3138-a1; C24, 27, 31, §9661, 9740; C35, §9661, 9751-g23; C39, §**9661, 9751.23;** C46, 50, 54, 58, 62, §542.1, 543.20; C66, 71, 73, 75, 77, 79, 81, §554.7201]

2007 Acts, ch 30, §7, 45, 46
Referred to in §554.9102

554.7202 Form of warehouse receipt — effect of omission.

1. A warehouse receipt need not be in any particular form.

2. Unless a warehouse receipt provides for each of the following, the warehouse is liable for damages caused to a person injured by its omission:

a. a statement of the location of the warehouse facility where the goods are stored;

b. the date of issue of the receipt;

c. the unique identification code of the receipt;

d. a statement whether the goods received will be delivered to the bearer, to a named person, or to a named person or its order;

e. the rate of storage and handling charges, unless goods are stored under a field warehousing arrangement, in which case a statement of that fact is sufficient on a nonnegotiable receipt;

f. a description of the goods or the packages containing them;

g. the signature of the warehouse or its agent;

h. if the receipt is issued for goods that the warehouse owns, either solely, jointly, or in common with others, a statement of the fact of that ownership; and

i. a statement of the amount of advances made and of liabilities incurred for which the warehouse claims a lien or security interest, unless the precise amount of advances made or liabilities incurred, at the time of the issue of the receipt, is unknown to the warehouse or to its agent that issued the receipt, in which case a statement of the fact that advances have been made or liabilities incurred and the purpose of the advances or liabilities is sufficient.

3. A warehouse may insert in its receipt any terms that are not contrary to this chapter

and do not impair its obligation of delivery under section 554.7403 or its duty of care under section 554.7204. Any contrary provision is ineffective.

[S13, §3138-a2, -a7; C24, 27, 31, 35, §975-g19; C39, §**9662, 9667, 9751.19;** C46, 50, 54, 58, 62, §542.2, 542.7, 543.21; C66, 71, 73, 75, 77, 79, 81, §554.7202]

2007 Acts, ch 30, §8, 45, 46

Referred to in §203C.18

554.7203 Liability for nonreceipt or misdescription.

A party to or purchaser for value in good faith of a document of title, other than a bill of lading, that relies upon the description of the goods in the document may recover from the issuer damages caused by the nonreceipt or misdescription of the goods, except to the extent that:

1. the document conspicuously indicates that the issuer does not know whether all or part of the goods in fact were received or conform to the description, such as the case in which the description is in terms of marks or labels or kind, quantity, or condition, or the receipt or description is qualified by "contents, condition, and quality unknown", "said to contain", or words of similar import, if the indication is true; or

2. the party or purchaser otherwise has notice of the nonreceipt or misdescription.

[S13, §3138-a20; C24, 27, 31, 35, 39, §**9680;** C46, 50, 54, 58, 62, §542.20; C66, 71, 73, 75, 77, 79, 81, §554.7203]

2007 Acts, ch 30, §9, 45, 46

554.7204 Duty of care — contractual limitation of warehouse's liability.

1. A warehouse is liable for damages for loss of or injury to the goods caused by its failure to exercise care with regard to the goods that a reasonably careful person would exercise under similar circumstances. Unless otherwise agreed, the warehouse is not liable for damages that could not have been avoided by the exercise of that care.

2. Damages may be limited by a term in the warehouse receipt or storage agreement limiting the amount of liability in case of loss or damage beyond which the warehouse is not liable. Such a limitation is not effective with respect to the warehouse's liability for conversion to its own use. On request of the bailor in a record at the time of signing the storage agreement or within a reasonable time after receipt of the warehouse receipt, the warehouse's liability may be increased on part or all of the goods covered by the storage agreement or the warehouse receipt. In this event, increased rates may be charged based on an increased valuation of the goods.

3. Reasonable provisions as to the time and manner of presenting claims and commencing actions based on the bailment may be included in the warehouse receipt or storage agreement.

4. This section does not modify or repeal any provision under chapter 203, 203C, or 203D.

[S13, §3138-a3, -a21, -a24; C24, 27, 31, 35, 39, §**9663, 9681, 9684;** C46, 50, 54, 58, 62, §542.3, 542.21, 542.24; C66, 71, 73, 75, 77, 79, 81, §554.7204]

2007 Acts, ch 30, §10, 45, 46

Referred to in §203C.18, 554.7202

554.7205 Title under warehouse receipt defeated in certain cases.

A buyer in ordinary course of business of fungible goods sold and delivered by a warehouse that is also in the business of buying and selling such goods takes the goods free of any claim under a warehouse receipt even if the receipt is negotiable and has been duly negotiated.

[C66, 71, 73, 75, 77, 79, 81, §554.7205]

2007 Acts, ch 30, §11, 45, 46

Referred to in §554.7502

554.7206 Termination of storage at warehouse's option.

1. A warehouse, by giving notice to the person on whose account the goods are held and any other person known to claim an interest in the goods, may require payment of any charges and removal of the goods from the warehouse at the termination of the period of storage fixed by the document of title or, if a period is not fixed, within a stated period not less than thirty

days after the warehouse gives notice. If the goods are not removed before the date specified in the notice, the warehouse may sell them pursuant to section 554.7210.

2. If a warehouse in good faith believes that goods are about to deteriorate or decline in value to less than the amount of its lien within the time provided in subsection 1 and section 554.7210, the warehouse may specify in the notice given under subsection 1 any reasonable shorter time for removal of the goods and, if the goods are not removed, may sell them at public sale held not less than one week after a single advertisement or posting.

3. If, as a result of a quality or condition of the goods of which the warehouse did not have notice at the time of deposit, the goods are a hazard to other property, the warehouse facilities, or other persons, the warehouse may sell the goods at public or private sale without advertisement or posting on reasonable notification to all persons known to claim an interest in the goods. If the warehouse, after a reasonable effort, is unable to sell the goods, it may dispose of them in any lawful manner and does not incur liability by reason of that disposition.

4. A warehouse shall deliver the goods to any person entitled to them under this Article upon due demand made at any time before sale or other disposition under this section.

5. A warehouse may satisfy its lien from the proceeds of any sale or disposition under this section but shall hold the balance for delivery on the demand of any person to which the warehouse would have been bound to deliver the goods.

[S13, §3138-a34; C24, 27, 31, §9694; C35, §9694, 9751-g21; C39, §**9694, 9751.21;** C46, 50, 54, 58, 62, §542.34, 543.23; C66, 71, 73, 75, 77, 79, 81, §554.7206]

2007 Acts, ch 30, §12, 45, 46

554.7207 Goods must be kept separate — fungible goods.

1. Unless the warehouse receipt provides otherwise, a warehouse shall keep separate the goods covered by each receipt so as to permit at all times identification and delivery of those goods. However, different lots of fungible goods may be commingled.

2. If different lots of fungible goods are commingled, the goods are owned in common by the persons entitled thereto and the warehouse is severally liable to each owner for that owner's share. If, because of overissue, a mass of fungible goods is insufficient to meet all the receipts the warehouse has issued against it, the persons entitled include all holders to which overissued receipts have been duly negotiated.

[S13, §3138-a22, -a23, -a24; C24, 27, 31, 35, 39, §**9682 – 9684;** C46, 50, 54, 58, 62, §542.22 – 542.24; C66, 71, 73, 75, 77, 79, 81, §554.7207]

2007 Acts, ch 30, §13, 45, 46

554.7208 Altered warehouse receipts.

If a blank in a negotiable tangible warehouse receipt has been filled in without authority, a good-faith purchaser for value and without notice of the lack of authority may treat the insertion as authorized. Any other unauthorized alteration leaves any tangible or electronic warehouse receipt enforceable against the issuer according to its original tenor.

[S13, §3138-a13; C24, 27, 31, 35, 39, §**9673;** C46, 50, 54, 58, 62, §542.13; C66, 71, 73, 75, 77, 79, 81, §554.7208]

2007 Acts, ch 30, §14, 45, 46

554.7209 Lien of warehouse.

1. A warehouse has a lien against the bailor on the goods covered by a warehouse receipt or storage agreement or on the proceeds thereof in its possession for charges for storage or transportation, including demurrage and terminal charges, insurance, labor, or other charges, present or future, in relation to the goods, and for expenses necessary for preservation of the goods or reasonably incurred in their sale pursuant to law. If the person on whose account the goods are held is liable for similar charges or expenses in relation to other goods whenever deposited and it is stated in the warehouse receipt or storage agreement that a lien is claimed for charges and expenses in relation to other goods, the warehouse also has a lien against the goods covered in the warehouse receipt or storage agreement or on the proceeds thereof in its possession for those charges and expenses, whether or not the other goods have been delivered by the warehouse. However, as against a person to which a negotiable warehouse

receipt is duly negotiated, a warehouse's lien is limited to charges in an amount or at a rate specified in the warehouse receipt or, if no charges are so specified, to a reasonable charge for storage of the specific goods covered by the receipt subsequent to the date of the receipt.

2. A warehouse may also reserve a security interest against the bailor for the maximum amount specified on the receipt for charges other than those specified in subsection 1, such as for money advanced and interest. The security interest is governed by Article 9.

3. A warehouse's lien for charges and expenses under subsection 1 or a security interest under subsection 2 is also effective against any person that so entrusted the bailor with possession of the goods that a pledge of them by the bailor to a good-faith purchaser for value would have been valid. However, the lien or security interest is not effective against a person that before issuance of a document of title had a legal interest or perfected security interest in the goods and that did not:

a. deliver or entrust the goods or any document of title covering the goods to the bailor or the bailor's nominee with:

(1) actual or apparent authority to ship, store, or sell;

(2) power to obtain delivery under section 554.7403; or

(3) power of disposition under section 554.2403, 554.9320, 554.9321, subsection 3, section 554.13304, subsection 2, or section 554.13305, subsection 2, or other statute or rule of law; or

b. acquiesce in the procurement by the bailor or its nominee of any document.

4. A warehouse's lien on household goods for charges and expenses in relation to the goods under subsection 1 is also effective against all persons if the depositor was the legal possessor of the goods at the time of deposit. In this subsection, *"household goods"* means furniture, furnishings, or personal effects used by the depositor in a dwelling.

5. A warehouse loses its lien on any goods that it voluntarily delivers or unjustifiably refuses to deliver.

[R60, §1898, 1899; C73, §2177, 2178; C97, §3130; S13, §3138-a27, -a28, -a29, -a30, -a31, -a32; C24, 27, 31, §9687 – 9692, 9741, 10326; C35, §9687 – 9692, 9751-g24, 10326; C39, §**9687 – 9692, 9751.24, 10326;** C46, 50, 54, 58, 62, §542.27 – 542.32, 543.24, 543.25, 575.2; C66, 71, 73, 75, 77, 79, 81, §554.7209]

2007 Acts, ch 30, §15, 45, 46

554.7210 Enforcement of warehouse's lien.

1. Except as otherwise provided in subsection 2, a warehouse's lien may be enforced by public or private sale of the goods, in bulk or in packages, at any time or place and on any terms that are commercially reasonable, after notifying all persons known to claim an interest in the goods. The notification must include a statement of the amount due, the nature of the proposed sale, and the time and place of any public sale. The fact that a better price could have been obtained by a sale at a different time or in a method different from that selected by the warehouse is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. The warehouse sells in a commercially reasonable manner if the warehouse sells the goods in the usual manner in any recognized market therefor, sells at the price current in that market at the time of the sale, or otherwise sells in conformity with commercially reasonable practices among dealers in the type of goods sold. A sale of more goods than apparently necessary to be offered to ensure satisfaction of the obligation is not commercially reasonable, except in cases covered by the preceding sentence.

2. A warehouse may enforce its lien on goods, other than goods stored by a merchant in the course of its business, only if the following requirements are satisfied:

a. All persons known to claim an interest in the goods must be notified.

b. The notification must include an itemized statement of the claim, a description of the goods subject to the lien, a demand for payment within a specified time not less than ten days after receipt of the notification, and a conspicuous statement that unless the claim is paid within that time the goods will be advertised for sale and sold by auction at a specified time and place.

c. The sale must conform to the terms of the notification.

d. The sale must be held at the nearest suitable place to where the goods are held or stored.

e. After the expiration of the time given in the notification, an advertisement of the sale

must be published once a week for two weeks consecutively in a newspaper of general circulation where the sale is to be held. The advertisement must include a description of the goods, the name of the person on whose account the goods are being held, and the time and place of the sale. The sale must take place at least fifteen days after the first publication. If there is no newspaper of general circulation where the sale is to be held, the advertisement must be posted at least ten days before the sale in not fewer than six conspicuous places in the neighborhood of the proposed sale.

3. Before any sale pursuant to this section, any person claiming a right in the goods may pay the amount necessary to satisfy the lien and the reasonable expenses incurred in complying with this section. In that event, the goods may not be sold but must be retained by the warehouse subject to the terms of the receipt and this Article.

4. A warehouse may buy at any public sale held pursuant to this section.

5. A purchaser in good faith of goods sold to enforce a warehouse's lien takes the goods free of any rights of persons against which the lien was valid, despite the warehouse's noncompliance with this section.

6. A warehouse may satisfy its lien from the proceeds of any sale pursuant to this section but shall hold the balance, if any, for delivery on demand to any person to which the warehouse would have been bound to deliver the goods.

7. The rights provided by this section are in addition to all other rights allowed by law to a creditor against a debtor.

8. If a lien is on goods stored by a merchant in the course of its business, the lien may be enforced in accordance with subsection 1 or 2.

9. A warehouse is liable for damages caused by failure to comply with the requirements for sale under this section and, in case of willful violation, is liable for conversion.

[R60, §1899 – 1904; C73, §2177 – 2181; C97, §3130 – 3133; S13, §3131, 3138-a33, -a35, -a36; C24, 27, 31, §9693, 9695, 9696, 9741, 10327 – 10330, 10333 – 10335; C35, §9693, 9695, 9696, 9751-g24, 10327 – 10330, 10333 – 10335; C39, §**9646, 9693, 9695, 9751.24, 10327, 10330, 10333 – 10335;** C46, 50, 54, 58, 62, §542.33, 542.35, 542.36, 543.24 – 543.26, 575.3 – 575.6, 575.9 – 575.11; C66, 71, 73, 75, 77, 79, 81, §554.7210]

2007 Acts, ch 30, §16, 45, 46

Referred to in §554.7206, 554.7308

PART 3

BILLS OF LADING: SPECIAL PROVISIONS

554.7301 Liability for nonreceipt or misdescription — "said to contain" — "shipper's weight, load, and count" — improper handling.

1. A consignee of a nonnegotiable bill of lading which has given value in good faith, or a holder to which a negotiable bill has been duly negotiated, relying upon the description of the goods in the bill or upon the date shown in the bill, may recover from the issuer damages caused by the misdating of the bill or the nonreceipt or misdescription of the goods, except to the extent that the bill indicates that the issuer does not know whether any part or all of the goods in fact were received or conform to the description, such as in a case in which the description is in terms of marks or labels or kind, quantity, or condition or the receipt or description is qualified by "contents or condition of contents of packages unknown", "said to contain", "shipper's weight, load, and count", or words of similar import, if that indication is true.

2. If goods are loaded by the issuer of a bill of lading,

a. the issuer shall count the packages of goods if shipped in packages and ascertain the kind and quantity if shipped in bulk; and

b. words such as "shipper's weight, load, and count", or words of similar import indicating that the description was made by the shipper are ineffective except as to goods concealed in packages.

3. If bulk goods are loaded by a shipper that makes available to the issuer of a bill of lading adequate facilities for weighing those goods, the issuer shall ascertain the kind and quantity within a reasonable time after receiving the shipper's request in a record to do so. In that case, "shipper's weight" or words of similar import are ineffective.

4. The issuer of a bill of lading, by including in the bill the words "shipper's weight, load, and count", or words of similar import, may indicate that the goods were loaded by the shipper, and, if that statement is true, the issuer is not liable for damages caused by the improper loading. However, omission of such words does not imply liability for damages caused by improper loading.

5. A shipper guarantees to an issuer the accuracy at the time of shipment of the description, marks, labels, number, kind, quantity, condition, and weight, as furnished by the shipper, and the shipper shall indemnify the issuer against damage caused by inaccuracies in those particulars. This right of indemnity does not limit the issuer's responsibility or liability under the contract of carriage to any person other than the shipper.

[S13, §2074-b, 3138-b22; C24, 27, 31, 35, 39, §**8267, 10980;** C46, 50, 54, 58, 62, §487.23, 613.6; C66, 71, 73, 75, 77, 79, 81, §554.7301]

2007 Acts, ch 30, §17, 45, 46

554.7302 Through bills of lading and similar documents of title.

1. The issuer of a through bill of lading, or other document of title embodying an undertaking to be performed in part by a person acting as its agent or by a performing carrier, is liable to any person entitled to recover on the bill or other document for any breach by the other person or the performing carrier of its obligation under the bill or other document. However, to the extent that the bill or other document covers an undertaking to be performed overseas or in territory not contiguous to the continental United States or an undertaking including matters other than transportation, this liability for breach by the other person or the performing carrier may be varied by agreement of the parties.

2. If goods covered by a through bill of lading or other document of title embodying an undertaking to be performed in part by a person other than the issuer are received by that person, the person is subject, with respect to its own performance while the goods are in its possession, to the obligation of the issuer. The person's obligation is discharged by delivery of the goods to another person pursuant to the bill or other document and does not include liability for breach by any other person or by the issuer.

3. The issuer of a through bill of lading or other document of title described in subsection 1 is entitled to recover from the performing carrier, or other person in possession of the goods when the breach of the obligation under the bill or other document occurred:

a. the amount it may be required to pay to any person entitled to recover on the bill or other document for the breach, as may be evidenced by any receipt, judgment, or transcript of judgment; and

b. the amount of any expense reasonably incurred by the issuer in defending any action commenced by any person entitled to recover on the bill or other document for the breach.

[C66, 71, 73, 75, 77, 79, 81, §554.7302]

2007 Acts, ch 30, §18, 45, 46

554.7303 Diversion — reconsignment — change of instructions.

1. Unless the bill of lading otherwise provides, a carrier may deliver the goods to a person or destination other than that stated in the bill or may otherwise dispose of the goods, without liability for misdelivery, on instructions from:

a. the holder of a negotiable bill;

b. the consignor on a nonnegotiable bill, even if the consignee has given contrary instructions;

c. the consignee on a nonnegotiable bill in the absence of contrary instructions from the consignor, if the goods have arrived at the billed destination or if the consignee is in possession of the tangible bill or in control of the electronic bill; or

d. the consignee on a nonnegotiable bill if the consignee is entitled as against the consignor to dispose of the goods.

2. Unless instructions described in subsection 1 are included in a negotiable bill of lading, a person to which the bill is duly negotiated may hold the bailee according to the original terms.

[C66, 71, 73, 75, 77, 79, 81, §554.7303]

2007 Acts, ch 30, §19, 45, 46

Referred to in §554.7403

554.7304 Tangible bills of lading in a set.

1. Except as customary in international transportation, a tangible bill of lading may not be issued in a set of parts. The issuer is liable for damages caused by violation of this subsection.

2. If a tangible bill of lading is lawfully issued in a set of parts, each of which contains an identification code and is expressed to be valid only if the goods have not been delivered against any other part, the whole of the parts constitutes one bill.

3. If a tangible negotiable bill of lading is lawfully issued in a set of parts and different parts are negotiated to different persons, the title of the holder to which the first due negotiation is made prevails as to both the document of title and the goods even if any later holder may have received the goods from the carrier in good faith and discharged the carrier's obligation by surrendering its part.

4. A person that negotiates or transfers a single part of a tangible bill of lading issued in a set is liable to holders of that part as if it were the whole set.

5. The bailee shall deliver in accordance with part 4 against the first presented part of a tangible bill of lading lawfully issued in a set. Delivery in this manner discharges the bailee's obligation on the whole bill.

[S13, §3138-b5; C24, 27, 31, 35, 39, §**8250;** C46, 50, 54, 58, 62, §487.6; C66, 71, 73, 75, 77, 79, 81, §554.7304]

2007 Acts, ch 30, §20, 45, 46; 2017 Acts, ch 54, §64

554.7305 Destination bills.

1. Instead of issuing a bill of lading to the consignor at the place of shipment, a carrier, at the request of the consignor, may procure the bill to be issued at destination or at any other place designated in the request.

2. Upon request of any person entitled as against a carrier to control the goods while in transit and on surrender of possession or control of any outstanding bill of lading or other receipt covering the goods, the issuer, subject to section 554.7105, may procure a substitute bill to be issued at any place designated in the request.

[C66, 71, 73, 75, 77, 79, 81, §554.7305]

2007 Acts, ch 30, §21, 45, 46

554.7306 Altered bills of lading.

An unauthorized alteration or filling in of a blank in a bill of lading leaves the bill enforceable according to its original tenor.

[S13, §3138-b15; C24, 27, 31, 35, 39, §**8260;** C46, 50, 54, 58, 62, §487.16; C66, 71, 73, 75, 77, 79, 81, §554.7306]

554.7307 Lien of carrier.

1. A carrier has a lien on the goods covered by a bill of lading or on the proceeds thereof in its possession for charges after the date of the carrier's receipt of the goods for storage or transportation, including demurrage and terminal charges, and for expenses necessary for preservation of the goods incident to their transportation or reasonably incurred in their sale pursuant to law. However, against a purchaser for value of a negotiable bill of lading, a carrier's lien is limited to charges stated in the bill or the applicable tariffs or, if no charges are stated, a reasonable charge.

2. A lien for charges and expenses under subsection 1 on goods that the carrier was required by law to receive for transportation is effective against the consignor or any person entitled to the goods unless the carrier had notice that the consignor lacked authority to subject the goods to those charges and expenses. Any other lien under subsection 1 is

effective against the consignor and any person that permitted the bailor to have control or possession of the goods unless the carrier had notice that the bailor lacked authority.

3. A carrier loses its lien on any goods that it voluntarily delivers or unjustifiably refuses to deliver.

[R60, §1898, 1899; C73, §2177, 2178; C97, §3130; S13, §3138-a27 – 32, -b25; C24, 27, 31, 35, 39, §**8270, 9687 – 9692, 10326;** C46, 50, 54, 58, 62, §487.26, 542.27 – 542.32, 575.2; C66, 71, 73, 75, 77, 79, 81, §554.7307]

2007 Acts, ch 30, §22, 45, 46

554.7308 Enforcement of carrier's lien.

1. A carrier's lien on goods may be enforced by public or private sale of the goods, in bulk or in packages, at any time or place and on any terms that are commercially reasonable, after notifying all persons known to claim an interest in the goods. The notification must include a statement of the amount due, the nature of the proposed sale, and the time and place of any public sale. The fact that a better price could have been obtained by a sale at a different time or in a method different from that selected by the carrier is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. The carrier sells goods in a commercially reasonable manner if the carrier sells the goods in the usual manner in any recognized market therefor, sells at the price current in that market at the time of the sale, or otherwise sells in conformity with commercially reasonable practices among dealers in the type of goods sold. A sale of more goods than apparently necessary to be offered to ensure satisfaction of the obligation is not commercially reasonable, except in cases covered by the preceding sentence.

2. Before any sale pursuant to this section, any person claiming a right in the goods may pay the amount necessary to satisfy the lien and the reasonable expenses incurred in complying with this section. In that event, the goods may not be sold but must be retained by the carrier, subject to the terms of the bill of lading and this Article.

3. A carrier may buy at any public sale pursuant to this section.

4. A purchaser in good faith of goods sold to enforce a carrier's lien takes the goods free of any rights of persons against which the lien was valid, despite the carrier's noncompliance with this section.

5. A carrier may satisfy its lien from the proceeds of any sale pursuant to this section but shall hold the balance, if any, for delivery on demand to any person to which the carrier would have been bound to deliver the goods.

6. The rights provided by this section are in addition to all other rights allowed by law to a creditor against a debtor.

7. A carrier's lien may be enforced pursuant to either subsection 1 or the procedure set forth in section 554.7210, subsection 2.

8. A carrier is liable for damages caused by failure to comply with the requirements for sale under this section and, in case of willful violation, is liable for conversion.

[R60, §1899 – 1904; C73, §2177 – 2181; C97, §3130 – 3133; S13, §3131, 3138-a33, -b26; C24, 27, 31, 35, 39, §**8271, 9693, 10327 – 10336;** C46, 50, 54, 58, 62, §487.27, 542.33, 575.3 – 575.7, 575.9 – 575.12; C66, 71, 73, 75, 77, 79, 81, §554.7308]

2007 Acts, ch 30, §23, 45, 46

Referred to in §576.2, 577.2, 577.3, 578.2

554.7309 Duty of care — contractual limitation of carrier's liability.

1. A carrier that issues a bill of lading, whether negotiable or nonnegotiable, shall exercise the degree of care in relation to the goods which a reasonably careful person would exercise under similar circumstances. This subsection does not affect any statute, regulation, or rule of law that imposes liability upon a common carrier for damages not caused by its negligence.

2. Damages may be limited by a term in the bill of lading or in a transportation agreement that the carrier's liability may not exceed a value stated in the bill or transportation agreement if the carrier's rates are dependent upon value and the consignor is afforded an opportunity to declare a higher value and the consignor is advised of the opportunity. However, such a limitation is not effective with respect to the carrier's liability for conversion to its own use.

3. Reasonable provisions as to the time and manner of presenting claims and commencing actions based on the shipment may be included in a bill of lading or a transportation agreement.

[S13, §2074-b, 3138-b2; C24, 27, 31, 35, 39, §**8247, 10980;** C46, 50, 54, 58, 62, §487.3, 613.6; C66, 71, 73, 75, 77, 79, 81, §554.7309]

2007 Acts, ch 30, §24, 45, 46

PART 4

WAREHOUSE RECEIPTS AND BILLS OF LADING: GENERAL OBLIGATIONS

Referred to in §554.7304, 554.7503

554.7401 Irregularities in issue of receipt or bill or conduct of issuer.

The obligations imposed by this Article on an issuer apply to a document of title even if:

1. the document does not comply with the requirements of this Article or of any other statute, rule, or regulation regarding its issuance, form, or content;

2. the issuer violated laws regulating the conduct of its business;

3. the goods covered by the document were owned by the bailee when the document was issued; or

4. the person issuing the document is not a warehouse but the document purports to be a warehouse receipt.

[S13, §3138-a20, -b22; C24, 27, 31, 35, 39, §**8267, 9680;** C46, 50, 54, 58, 62, §487.23, 542.20; C66, 71, 73, 75, 77, 79, 81, §554.7401]

2007 Acts, ch 30, §25, 45, 46

554.7402 Duplicate document of title — overissue.

A duplicate or any other document of title purporting to cover goods already represented by an outstanding document of the same issuer does not confer any right in the goods, except as provided in the case of tangible bills of lading in a set of parts, overissue of documents for fungible goods, substitutes for lost, stolen, or destroyed documents, or substitute documents issued pursuant to section 554.7105. The issuer is liable for damages caused by its overissue or failure to identify a duplicate document by a conspicuous notation.

[S13, §3138-a6, -a15, -b6, -b17; C24, 27, 31, 35, 39, §**8251, 8262, 9666, 9675;** C46, 50, 54, 58, 62, §487.7, 487.18, 542.6, 542.15, 543.20; C66, 71, 73, 75, 77, 79, 81, §554.7402]

2007 Acts, ch 30, §26, 45, 46

554.7403 Obligation of bailee to deliver — excuse.

1. A bailee shall deliver the goods to a person entitled under a document of title if the person complies with subsections 2 and 3, unless and to the extent that the bailee establishes any of the following:

a. delivery of the goods to a person whose receipt was rightful as against the claimant;

b. damage to or delay, loss, or destruction of the goods for which the bailee is not liable;

c. previous sale or other disposition of the goods in lawful enforcement of a lien or on a warehouse's lawful termination of storage;

d. the exercise by a seller of its right to stop delivery pursuant to section 554.2705 or by a lessor of its right to stop delivery pursuant to section 554.13526;

e. a diversion, reconsignment, or other disposition pursuant to section 554.7303;

f. release, satisfaction or any other personal defense against the claimant; or

g. any other lawful excuse.

2. A person claiming goods covered by a document of title shall satisfy the bailee's lien if the bailee so requests or if the bailee is prohibited by law from delivering the goods until the charges are paid.

3. Unless a person claiming the goods is a person against which the document of title does not confer a right under section 554.7503, subsection 1:

a. the person claiming under a document shall surrender possession or control of any outstanding negotiable document covering the goods for cancellation or indication of partial deliveries; and

b. the bailee shall cancel the document or conspicuously indicate in the document the partial delivery or the bailee is liable to any person to which the document is duly negotiated.

[S13, §3138-a8, -a9, -a10, -a11, -a12, -a16, -a19, -b10, -b11, -b12, -b13, -b14, -b18, -b21; C24, 27, 31, 35, 39, §**8255 – 8259, 8263, 8266, 9668 – 9672, 9676, 9679;** C46, 50, 54, 58, 62, §487.11 – 487.15, 487.19, 487.22, 542.8 – 542.12, 542.16, 542.19; C66, 71, 73, 75, 77, 79, 81, §554.7403]

2007 Acts, ch 30, §27, 45, 46

Referred to in §554.7202, 554.7209, 554.7503

554.7404 No liability for good-faith delivery pursuant to document of title.

A bailee that in good faith has received goods and delivered or otherwise disposed of the goods according to the terms of a document of title or pursuant to this Article is not liable for the goods even if:

1. the person from which the bailee received the goods did not have authority to procure the document or to dispose of the goods; or

2. the person to which the bailee delivered the goods did not have authority to receive the goods.

[S13, §2074-b, 3138-a10, -b12; C24, 27, 31, 35, 39, §**8257, 9670, 10980;** C46, 50, 54, 58, 62, §487.13, 542.10, 613.6; C66, 71, 73, 75, 77, 79, 81, §554.7404]

2007 Acts, ch 30, §28, 45, 46

PART 5

WAREHOUSE RECEIPTS AND BILLS OF LADING: NEGOTIATION AND TRANSFER

554.7501 Form of negotiation and requirements of due negotiation.

1. The following rules apply to a negotiable tangible document of title:

a. If the document's original terms run to the order of a named person, the document is negotiated by the named person's indorsement and delivery. After the named person's indorsement in blank or to bearer, any person may negotiate the document by delivery alone.

b. If the document's original terms run to bearer, it is negotiated by delivery alone.

c. If the document's original terms run to the order of a named person and it is delivered to the named person, the effect is the same as if the document had been negotiated.

d. Negotiation of the document after it has been indorsed to a named person requires indorsement by the named person and delivery.

e. A document is "duly negotiated" if it is negotiated in the manner stated in this subsection to a holder that purchases it in good faith, without notice of any defense against or claim to it on the part of any person, and for value, unless it is established that the negotiation is not in the regular course of business or financing or involves receiving the document in settlement or payment of a monetary obligation.

2. The following rules apply to a negotiable electronic document of title:

a. If the document's original terms run to the order of a named person or to bearer, the document is negotiated by delivery of the document to another person. Indorsement by the named person is not required to negotiate the document.

b. If the document's original terms run to the order of a named person and the named person has control of the document, the effect is the same as if the document had been negotiated.

c. A document is duly negotiated if it is negotiated in the manner stated in this subsection to a holder that purchases it in good faith, without notice of any defense against or claim to it on the part of any person, and for value, unless it is established that the negotiation is not

in the regular course of business or financing or involves taking delivery of the document in settlement or payment of a monetary obligation.

3. Indorsement of a nonnegotiable document of title neither makes it negotiable nor adds to the transferee's rights.

4. The naming in a negotiable bill of lading of a person to be notified of the arrival of the goods does not limit the negotiability of the bill or constitute notice to a purchaser of the bill of any interest of that person in the goods.

[S13, §3138-a37, -a38, -a39, -a40, -a47, -b27, -b28, -b29, -b30, -b37; C24, 27, 31, 35, 39, §**8272 – 8275, 8282, 9697 – 9700, 9707, 9957 – 9961, 9967;** C46, 50, 54, 58, 62, §487.28 – 487.31, 487.38, 542.37 – 542.40, 542.47, 554.29 – 554.32, 554.39; C66, 71, 73, 75, 77, 79, 81, §554.7501]

2007 Acts, ch 30, §29, 45, 46

Referred to in §554D.118

554.7502 Rights acquired by due negotiation.

1. Subject to sections 554.7205 and 554.7503, a holder to which a negotiable document of title has been duly negotiated acquires thereby:

a. title to the document;

b. title to the goods;

c. all rights accruing under the law of agency or estoppel, including rights to goods delivered to the bailee after the document was issued; and

d. the direct obligation of the issuer to hold or deliver the goods according to the terms of the document free of any defense or claim by the issuer except those arising under the terms of the document or under this Article, but in the case of a delivery order, the bailee's obligation accrues only upon the bailee's acceptance of the delivery order and the obligation acquired by the holder is that the issuer and any indorser will procure the acceptance of the bailee.

2. Subject to section 554.7503, title and rights acquired by due negotiation are not defeated by any stoppage of the goods represented by the document of title or by surrender of the goods by the bailee, and are not impaired even if:

a. the due negotiation or any prior due negotiation constituted a breach of duty;

b. any person has been deprived of possession of a negotiable tangible document or control of a negotiable electronic document by misrepresentation, fraud, accident, mistake, duress, loss, theft, or conversion; or

c. a previous sale or other transfer of the goods or document has been made to a third person.

[S13, §3138-a41, -a47, -a48, -a49, -b31, -b37, -b38, -b39, -b41; C24, 27, 31, 35, 39, §**8276, 8282 – 8284, 8286, 9701, 9707 – 9709, 9949, 9954, 9962, 9967, 9991;** C46, 50, 54, 58, 62, §487.32, 487.38 – 487.40, 487.42, 542.41, 542.47 – 542.49, 554.21, 554.26, 554.34, 554.39, 554.63; C66, 71, 73, 75, 77, 79, 81, §554.7502]

2007 Acts, ch 30, §30 – 32, 45, 46

554.7503 Document of title to goods defeated in certain cases.

1. A document of title confers no right in goods against a person that before issuance of the document had a legal interest or a perfected security interest in the goods and that did not:

a. deliver or entrust the goods or any document of title covering the goods to the bailor or the bailor's nominee with:

(1) actual or apparent authority to ship, store, or sell;

(2) power to obtain delivery under section 554.7403; or

(3) power of disposition under section 554.2403, 554.9320, 554.9321, subsection 3, section 554.13304, subsection 2, or section 554.13305, subsection 2, or other statute or rule of law; or

b. acquiesce in the procurement by the bailor or its nominee of any document.

2. Title to goods based upon an unaccepted delivery order is subject to the rights of any person to which a negotiable warehouse receipt or bill of lading covering the goods has been

duly negotiated. That title may be defeated under section 554.7504 to the same extent as the rights of the issuer or a transferee from the issuer.

3. Title to goods based upon a bill of lading issued to a freight forwarder is subject to the rights of any person to which a bill issued by the freight forwarder is duly negotiated. However, delivery by the carrier in accordance with part 4 pursuant to its own bill of lading discharges the carrier's obligation to deliver.

[S13, §3138-a41, -b31, -b42; C24, 27, 31, 35, 39, §**8276, 8287, 9701, 9962;** C46, 50, 54, 58, 62, §487.32, 487.43, 542.41, 554.34; C66, 71, 73, 75, 77, 79, 81, §554.7503]

2000 Acts, ch 1149, §148, 187; 2007 Acts, ch 30, §33, 45, 46; 2017 Acts, ch 54, §65

Referred to in §554.7403, 554.7502

554.7504 Rights acquired in absence of due negotiation — effect of diversion — stoppage of delivery.

1. A transferee of a document of title, whether negotiable or nonnegotiable, to which the document has been delivered but not duly negotiated, acquires the title and rights that its transferor had or had actual authority to convey.

2. In the case of a transfer of a nonnegotiable document of title, until but not after the bailee receives notice of the transfer, the rights of the transferee may be defeated:

a. by those creditors of the transferor who could treat the transfer as void under section 554.2402 or 554.13308;

b. by a buyer from the transferor in ordinary course of business if the bailee has delivered the goods to the buyer or received notification of the buyer's rights;

c. by a lessee from the transferor in ordinary course of business if the bailee has delivered the goods to the lessee or received notification of the lessee's rights; or

d. as against the bailee, by good-faith dealings of the bailee with the transferor.

3. A diversion or other change of shipping instructions by the consignor in a nonnegotiable bill of lading which causes the bailee not to deliver the goods to the consignee defeats the consignee's title to the goods if the goods have been delivered to a buyer in ordinary course of business or a lessee in ordinary course of business and, in any event, defeats the consignee's rights against the bailee.

4. Delivery of the goods pursuant to a nonnegotiable document of title may be stopped by a seller under section 554.2705, or a lessor under section 554.13526, subject to the requirements of due notification in those sections. A bailee that honors the seller's or lessor's instructions is entitled to be indemnified by the seller or lessor against any resulting loss or expense.

[S13, §3138-a41, -a42, -b31, -b32; C24, 27, 31, 35, 39, §**8276, 8277, 9701, 9702, 9959, 9963;** C46, 50, 54, 58, 62, §487.32, 487.33, 542.41, 542.42, 554.31, 554.35; C66, 71, 73, 75, 77, 79, 81, §554.7504]

2007 Acts, ch 30, §34, 45, 46

Referred to in §554.7503

554.7505 Indorser not guarantor for other parties.

The indorsement of a tangible document of title issued by a bailee does not make the indorser liable for any default by the bailee or previous indorsers.

[S13, §3138-a45, -b35; C24, 27, 31, 35, 39, §**8280, 9705, 9966;** C46, 50, 54, 58, 62, §487.36, 542.45, 554.38; C66, 71, 73, 75, 77, 79, 81, §554.7505]

2007 Acts, ch 30, §35, 45, 46

554.7506 Delivery without indorsement — right to compel indorsement.

The transferee of a negotiable tangible document of title has a specifically enforceable right to have its transferor supply any necessary indorsement, but the transfer becomes a negotiation only as of the time the indorsement is supplied.

[S13, §3138-a43, -b33; C24, 27, 31, 35, 39, §**8278, 9703, 9964;** C46, 50, 54, 58, 62, §487.34, 542.43, 554.36; C66, 71, 73, 75, 77, 79, 81, §554.7506]

2007 Acts, ch 30, §36, 45, 46

554.7507 Warranties on negotiation or delivery of document of title.

If a person negotiates or delivers a document of title for value otherwise than as a mere intermediary under section 554.7508, unless otherwise agreed, the transferor, in addition to any warranty made in selling or leasing the goods, warrants to its immediate purchaser only that:

1. the document is genuine;
2. the transferor does not have knowledge of any fact that would impair the document's validity or worth; and
3. the negotiation or delivery is rightful and fully effective with respect to the title to the document and the goods it represents.

[S13, §3138-a44, -b34, -b36; C24, 27, 31, 35, 39, §**8279, 8281, 9704, 9965;** C46, 50, 54, 58, 62, §487.35, 487.37, 542.44, 554.37; C66, 71, 73, 75, 77, 79, 81, §554.7507]

2007 Acts, ch 30, §37, 45, 46

554.7508 Warranties of collecting bank as to documents of title.

A collecting bank or other intermediary known to be entrusted with documents of title on behalf of another or with collection of a draft or other claim against delivery of documents warrants by the delivery of the documents only its own good faith and authority even if the collecting bank or other intermediary has purchased or made advances against the claim or draft to be collected.

[S13, §3138-a46; C24, 27, 31, 35, 39, §**9706;** C46, 50, 54, 58, 62, §542.46; C66, 71, 73, 75, 77, 79, 81, §554.7508]

2007 Acts, ch 30, §38, 45, 46

Referred to in §554.7507

554.7509 Adequate compliance with commercial contract.

Whether a document of title is adequate to fulfill the obligations of a contract for sale, a contract for lease, or the conditions of a letter of credit is determined by Article 2, 5, or 13.

[C66, 71, 73, 75, 77, 79, 81, §554.7509]

2007 Acts, ch 30, §39, 45, 46

PART 6

WAREHOUSE RECEIPTS AND BILLS OF LADING: MISCELLANEOUS PROVISIONS

554.7601 Lost, stolen, or destroyed documents of title.

1. If a document of title is lost, stolen, or destroyed, a court may order delivery of the goods or issuance of a substitute document and the bailee may without liability to any person comply with the order. If the document was negotiable, a court may not order delivery of the goods or issuance of a substitute document without the claimant's posting security unless it finds that any person that may suffer loss as a result of nonsurrender of possession or control of the document is adequately protected against the loss. If the document was not negotiable, the court may require security. The court may also order payment of the bailee's reasonable costs and attorney's fees in any action under this subsection.
2. A bailee that, without a court order, delivers goods to a person claiming under a missing negotiable document of title is liable to any person injured thereby. If the delivery is not in good faith, the bailee is liable for conversion. Delivery in good faith is not conversion if the claimant posts security with the bailee in an amount at least double the value of the goods at the time of posting to indemnify any person injured by the delivery which files a notice of claim within one year after the delivery.

[S13, §3138-a14, -b16; C24, 27, 31, 35, 39, §**8261, 9674;** C46, 50, 54, 58, 62, §487.17, 542.14; C66, 71, 73, 75, 77, 79, 81, §554.7601]

2007 Acts, ch 30, §40, 45, 46

Referred to in §203C.19

554.7601A Lost, stolen, or destroyed documents — additional requirements.

1. *a.* If a warehouse receipt has been lost, stolen, or destroyed, the warehouse shall issue a duplicate upon receipt of:

(1) an affidavit that the warehouse receipt has been lost, stolen, or destroyed.

(2) a bond in an amount at least double the value of the goods at the time of posting the bond, to indemnify any person injured by issuance of the duplicate warehouse receipt who files a notice of claim within one year after delivery of the goods.

b. A duplicate warehouse receipt shall be plainly marked to indicate that it is a duplicate. A receipt plainly marked as a duplicate is a representation and warranty by the warehouse that the duplicate receipt is an accurate copy of an original receipt properly issued and uncanceled at the date of the issue of the duplicate, but shall not impose upon the warehouse other liability.

c. A warehouse which in good faith delivers goods to the holder of a duplicate receipt issued in accordance with this subsection is liable to any person injured by the delivery, but only to the extent of the security posted in accordance with paragraph *"b"* of this subsection.

2. If a warehouse receipt has been lost or destroyed, the depositor may either remove the goods from the warehouse facility or sell the goods to the warehouse after executing a lost warehouse receipt release on a form prescribed by the department of agriculture and land stewardship. The form shall include an affidavit stating that the warehouse receipt has been lost or destroyed, and the depositor's undertaking to indemnify the warehouse for any loss incurred as a result of the loss or destruction of the warehouse receipt. The form shall be filed with the department of agriculture and land stewardship.

3. If a warehouse receipt has been lost or destroyed by a warehouse after delivery of the goods or purchase of the goods by the warehouse, the warehouse shall execute and file with the department of agriculture and land stewardship a notarized affidavit stating that the warehouse receipt has been lost or destroyed by the warehouse after delivery or purchase of the goods by the warehouse. The form of the affidavit shall be prescribed by the department of agriculture and land stewardship.

2007 Acts, ch 30, §41, 45, 46; 2008 Acts, ch 1032, §80

Referred to in §203C.19

554.7602 Judicial process against goods covered by negotiable document of title.

Unless a document of title was originally issued upon delivery of the goods by a person that did not have power to dispose of them, a lien does not attach by virtue of any judicial process to goods in the possession of a bailee for which a negotiable document of title is outstanding unless possession or control of the document is first surrendered to the bailee or the document's negotiation is enjoined. The bailee may not be compelled to deliver the goods pursuant to process until possession or control of the document is surrendered to the bailee or to the court. A purchaser of the document for value without notice of the process or injunction takes free of the lien imposed by judicial process.

[S13, §3138-a25, -b23, -b24; C24, 27, 31, 35, 39, §**8268, 8269, 9685, 9968, 9969;** C46, 50, 54, 58, 62, §487.24, 487.25, 542.25, 554.40, 554.41; C66, 71, 73, 75, 77, 79, 81, §554.7602]

2007 Acts, ch 30, §42, 45, 46

554.7603 Conflicting claims — interpleader.

If more than one person claims title to or possession of the goods, the bailee is excused from delivery until the bailee has a reasonable time to ascertain the validity of the adverse claims or to commence an action for interpleader. The bailee may assert an interpleader either in defending an action for nondelivery of the goods or by original action.

[S13, §3138-a16, -a17, -a18, -b19, -b20, -b42; C24, 27, 31, 35, 39, §**8264, 8265, 8287, 9676 – 9678;** C46, 50, 54, 58, 62, §487.20, 487.21, 487.43, 542.16 – 542.18; C66, 71, 73, 75, 77, 79, 81, §554.7603]

2007 Acts, ch 30, §43, 45, 46

ARTICLE 8
INVESTMENT SECURITIES

Referred to in §554.2105, 554.3102, 554.4102, 554.5110, 554.9331, 556.13

PART 1
SHORT TITLE AND GENERAL MATTERS

554.8101 Short title.

This Article shall be known and may be cited as Uniform Commercial Code — Investment Securities.

[C50, 54, 58, 62, §493A.24; C66, 71, 73, 75, 77, 79, 81, §554.8101]

554.8102 Definitions.

1. In this Article:

a. "Adverse claim" means a claim that a claimant has a property interest in a financial asset and that it is a violation of the rights of the claimant for another person to hold, transfer, or deal with the financial asset.

b. "Bearer form", as applied to a certificated security, means a form in which the security is payable to the bearer of the security certificate according to its terms but not by reason of an indorsement.

c. "Broker" means a person defined as a broker or dealer under the federal securities laws, but without excluding a bank acting in that capacity.

d. "Certificated security" means a security that is represented by a certificate.

e. "Clearing corporation" means:

(1) a person that is registered as a "clearing agency" under the federal securities laws;

(2) a federal reserve bank; or

(3) any other person that provides clearance or settlement services with respect to financial assets that would require it to register as a clearing agency under the federal securities laws but for an exclusion or exemption from the registration requirement, if its activities as a clearing corporation, including promulgation of rules, are subject to regulation by a federal or state governmental authority.

f. "Communicate" means to:

(1) send a signed writing; or

(2) transmit information by any mechanism agreed upon by the persons transmitting and receiving the information.

g. "Entitlement holder" means a person identified in the records of a securities intermediary as the person having a security entitlement against the securities intermediary. If a person acquires a security entitlement by virtue of section 554.8501, subsection 2, paragraph *"b"* or *"c"*, that person is the entitlement holder.

h. "Entitlement order" means a notification communicated to a securities intermediary directing transfer or redemption of a financial asset to which the entitlement holder has a security entitlement.

i. (1) *"Financial asset"*, except as otherwise provided in section 554.8103, means:

(a) a security;

(b) an obligation of a person or a share, participation, or other interest in a person or in property or an enterprise of a person, which is, or is of a type, dealt in or traded on financial markets, or which is recognized in any area in which it is issued or dealt in as a medium for investment; or

(c) any property that is held by a securities intermediary for another person in a securities account if the securities intermediary has expressly agreed with the other person that the property is to be treated as a financial asset under this Article.

(2) As context requires, the term means either the interest itself or the means by which a person's claim to it is evidenced, including a certificated or uncertificated security, a security certificate, or a security entitlement.

j. Reserved.

k. *"Indorsement"* means a signature that alone or accompanied by other words is made on a security certificate in registered form or on a separate document for the purpose of assigning, transferring, or redeeming the security or granting a power to assign, transfer, or redeem it.

l. *"Instruction"* means a notification communicated to the issuer of an uncertificated security which directs that the transfer of the security be registered or that the security be redeemed.

m. *"Registered form"*, as applied to a certificated security, means a form in which:

(1) the security certificate specifies a person entitled to the security; and

(2) a transfer of the security may be registered upon books maintained for that purpose by or on behalf of the issuer, or the security certificate so states.

n. *"Securities intermediary"* means:

(1) a clearing corporation; or

(2) a person, including a bank or broker, that in the ordinary course of its business maintains securities accounts for others and is acting in that capacity.

o. *"Security"*, except as otherwise provided in section 554.8103, means an obligation of an issuer or a share, participation, or other interest in an issuer or in property or an enterprise of an issuer:

(1) which is represented by a security certificate in bearer or registered form, or the transfer of which may be registered upon books maintained for that purpose by or on behalf of the issuer;

(2) which is one of a class or series or by its terms is divisible into a class or series of shares, participations, interests, or obligations; and

(3) which:

(a) is, or is of a type, dealt in or traded on securities exchanges or securities markets; or

(b) is a medium for investment and by its terms expressly provides that it is a security governed by this Article.

p. *"Security certificate"* means a certificate representing a security.

q. *"Security entitlement"* means the rights and property interest of an entitlement holder with respect to a financial asset specified in part 5.

r. *"Uncertificated security"* means a security that is not represented by a certificate.

2. Other definitions applying to this Article and the sections in which they appear are:

a. "Appropriate person" ..... Section 554.8107
b. "Control" ..... Section 554.8106
c. "Delivery" ..... Section 554.8301
d. "Investment company security" ..... Section 554.8103
e. "Issuer" ..... Section 554.8201
f. "Overissue" ..... Section 554.8210
g. "Protected purchaser" ..... Section 554.8303
h. "Securities account" ..... Section 554.8501

3. In addition, Article 1 contains general definitions and principles of construction and interpretation applicable throughout this Article.

4. The characterization of a person, business, or transaction for purposes of this Article does not determine the characterization of the person, business, or transaction for purposes of any other law, regulation, or rule.

[C66, 71, 73, 75, 77, 79, 81, §554.8102]

89 Acts, ch 113, §1; 96 Acts, ch 1138, §10, 84; 2007 Acts, ch 41, §29; 2012 Acts, ch 1023, §157; 2017 Acts, ch 54, §66

Referred to in §511.8(21)(a), 515.35, 518.14, 518A.12, 554.4104, 554.8103, 554.9102, 626.25, 633.89, 642.17

554.8103 Rules for determining whether certain obligations and interests are securities or financial assets.

1. A share or similar equity interest issued by a corporation, business trust, joint stock company, or similar entity is a security.

2. An *"investment company security"* is a security. *"Investment company security"* means a

share or similar equity interest issued by an entity that is registered as an investment company under the federal investment company laws, an interest in a unit investment trust that is so registered, or a face-amount certificate issued by a face-amount certificate company that is so registered. Investment company security does not include an insurance policy or endowment policy or annuity contract issued by an insurance company.

3. An interest in a partnership or limited liability company is not a security unless it is dealt in or traded on securities exchanges or in securities markets, its terms expressly provide that it is a security governed by this Article, or it is an investment company security. However, an interest in a partnership or limited liability company is a financial asset if it is held in a securities account.

4. A writing that is a security certificate is governed by this Article and not by Article 3, even though it also meets the requirements of that Article. However, a negotiable instrument governed by Article 3 is a financial asset if it is held in a securities account.

5. An option or similar obligation issued by a clearing corporation to its participants is not a security, but is a financial asset.

6. A commodity contract, as defined in section 554.9102, subsection 1, paragraph *"o"*, is not a security or a financial asset.

7. A document of title is not a financial asset unless section 554.8102, subsection 1, paragraph *"i"*, subparagraph (1), subparagraph division (c) applies.

[C50, 54, 58, 62, §493A.15; C66, 71, 73, 75, 77, 79, 81, §554.8103]

89 Acts, ch 113, §2; 96 Acts, ch 1138, §11, 84; 2000 Acts, ch 1149, §149, 187; 2007 Acts, ch 30, §45, 46, 64

Referred to in §501A.903, 554.8102

554.8104 Acquisition of security or financial asset or interest therein.

1. A person acquires a security or an interest therein, under this Article, if:

a. the person is a purchaser to whom a security is delivered pursuant to section 554.8301; or

b. the person acquires a security entitlement to the security pursuant to section 554.8501.

2. A person acquires a financial asset, other than a security, or an interest therein, under this Article, if the person acquires a security entitlement to the financial asset.

3. A person who acquires a security entitlement to a security or other financial asset has the rights specified in part 5, but is a purchaser of any security, security entitlement, or other financial asset held by the securities intermediary only to the extent provided in section 554.8503.

4. Unless the context shows that a different meaning is intended, a person who is required by other law, regulation, rule, or agreement to transfer, deliver, present, surrender, exchange, or otherwise put in the possession of another person a security or financial asset satisfies that requirement by causing the other person to acquire an interest in the security or financial asset pursuant to subsection 1 or 2.

[C66, 71, 73, 75, 77, 79, 81, §554.8104]

89 Acts, ch 113, §3; 96 Acts, ch 1138, §12, 84; 2017 Acts, ch 54, §67

554.8105 Notice of adverse claim.

1. A person has notice of an adverse claim if:

a. the person knows of the adverse claim;

b. the person is aware of facts sufficient to indicate that there is a significant probability that the adverse claim exists and deliberately avoids information that would establish the existence of the adverse claim; or

c. the person has a duty, imposed by statute or regulation, to investigate whether an adverse claim exists, and the investigation so required would establish the existence of the adverse claim.

2. Having knowledge that a financial asset or interest therein is or has been transferred by a representative imposes no duty of inquiry into the rightfulness of a transaction and is not notice of an adverse claim. However, a person who knows that a representative has transferred a financial asset or interest therein in a transaction that is, or whose proceeds are

being used, for the individual benefit of the representative or otherwise in breach of duty has notice of an adverse claim.

3. An act or event that creates a right to immediate performance of the principal obligation represented by a security certificate or sets a date on or after which the certificate is to be presented or surrendered for redemption or exchange does not itself constitute notice of an adverse claim except in the case of a transfer more than:

a. one year after a date set for presentment or surrender for redemption or exchange; or

b. six months after a date set for payment of money against presentation or surrender of the certificate, if money was available for payment on that date.

4. A purchaser of a certificated security has notice of an adverse claim if the security certificate:

a. whether in bearer or registered form, has been indorsed "for collection" or "for surrender" or for some other purpose not involving transfer; or

b. is in bearer form and has on it an unambiguous statement that it is the property of a person other than the transferor, but the mere writing of a name on the certificate is not such a statement.

5. Filing of a financing statement under Article 9 is not notice of an adverse claim to a financial asset.

[C66, 71, 73, 75, 77, 79, 81, §554.8105]

89 Acts, ch 113, §4; 96 Acts, ch 1138, §13, 84

554.8106 Control.

1. A purchaser has "control" of a certificated security in bearer form if the certificated security is delivered to the purchaser.

2. A purchaser has "control" of a certificated security in registered form if the certificated security is delivered to the purchaser, and:

a. the certificate is indorsed to the purchaser or in blank by an effective indorsement; or

b. the certificate is registered in the name of the purchaser, upon original issue or registration of transfer by the issuer.

3. A purchaser has "control" of an uncertificated security if:

a. the uncertificated security is delivered to the purchaser; or

b. the issuer has agreed that it will comply with instructions originated by the purchaser without further consent by the registered owner.

4. A purchaser has "control" of a security entitlement if:

a. the purchaser becomes the entitlement holder;

b. the securities intermediary has agreed that it will comply with entitlement orders originated by the purchaser without further consent by the entitlement holder; or

c. another person has control of the security entitlement on behalf of the purchaser or, having previously acquired control of the security entitlement, acknowledges that it has control on behalf of the purchaser.

5. If an interest in a security entitlement is granted by the entitlement holder to the entitlement holder's own securities intermediary, the securities intermediary has control.

6. A purchaser who has satisfied the requirements of subsection 3 or 4 has control, even if the registered owner in the case of subsection 3, or the entitlement holder in the case of subsection 4, retains the right to make substitutions for the uncertificated security or security entitlement, to originate instructions or entitlement orders to the issuer or securities intermediary, or otherwise to deal with the uncertificated security or security entitlement.

7. An issuer or a securities intermediary may not enter into an agreement of the kind described in subsection 3, paragraph *"b"*, or subsection 4, paragraph *"b"*, without the consent of the registered owner or entitlement holder, but an issuer or a securities intermediary is not required to enter into such an agreement even though the registered owner or entitlement holder so directs. An issuer or securities intermediary that has entered into such

an agreement is not required to confirm the existence of the agreement to another party unless requested to do so by the registered owner or entitlement holder.

[C66, 71, 73, 75, 77, 79, 81, §554.8106]

89 Acts, ch 113, §5; 96 Acts, ch 1138, §14, 84; 2000 Acts, ch 1149, §150, 187; 2002 Acts, ch 1119, §87

Referred to in §554.8102, 554.8107, 554.8510, 554.9106, 554.9208, 554.9328

554.8107 Whether indorsement, instruction, or entitlement order is effective.

1. *"Appropriate person"* means:

a. with respect to an indorsement, the person specified by a security certificate or by an effective special indorsement to be entitled to the security;

b. with respect to an instruction, the registered owner of an uncertificated security;

c. with respect to an entitlement order, the entitlement holder;

d. if the person designated in paragraph *"a"*, *"b"*, or *"c"* is deceased, the designated person's successor taking under other law or the designated person's personal representative acting for the estate of the decedent; or

e. if the person designated in paragraph *"a"*, *"b"*, or *"c"* lacks capacity, the designated person's guardian, conservator, or other similar representative who has power under other law to transfer the security or financial asset.

2. An indorsement, instruction, or entitlement order is effective if:

a. it is made by the appropriate person;

b. it is made by a person who has power under the law of agency to transfer the security or financial asset on behalf of the appropriate person, including, in the case of an instruction or entitlement order, a person who has control under section 554.8106, subsection 3, paragraph *"b"*, or subsection 4, paragraph *"b"*; or

c. the appropriate person has ratified it or is otherwise precluded from asserting its ineffectiveness.

3. An indorsement, instruction, or entitlement order made by a representative is effective even if:

a. the representative has failed to comply with a controlling instrument or with the law of the state having jurisdiction of the representative relationship, including any law requiring the representative to obtain court approval of the transaction; or

b. the representative's action in making the indorsement, instruction, or entitlement order or using the proceeds of the transaction is otherwise a breach of duty.

4. If a security is registered in the name of or specially indorsed to a person described as a representative, or if a securities account is maintained in the name of a person described as a representative, an indorsement, instruction, or entitlement order made by the person is effective even though the person is no longer serving in the described capacity.

5. Effectiveness of an indorsement, instruction, or entitlement order is determined as of the date the indorsement, instruction, or entitlement order is made, and an indorsement, instruction, or entitlement order does not become ineffective by reason of any later change of circumstances.

[C66, 71, 73, 75, 77, 79, 81, §554.8107]

89 Acts, ch 113, §6; 96 Acts, ch 1138, §15, 84

Referred to in §554.8102, 554.8402

554.8108 Warranties in direct holding.

1. A person who transfers a certificated security to a purchaser for value warrants to the purchaser, and an indorser, if the transfer is by indorsement, warrants to any subsequent purchaser, that:

a. the certificate is genuine and has not been materially altered;

b. the transferor or indorser does not know of any fact that might impair the validity of the security;

c. there is no adverse claim to the security;

d. the transfer does not violate any restriction on transfer;

e. if the transfer is by indorsement, the indorsement is made by an appropriate person,

or if the indorsement is by an agent, the agent has actual authority to act on behalf of the appropriate person; and

f. the transfer is otherwise effective and rightful.

2. A person who originates an instruction for registration of transfer of an uncertificated security to a purchaser for value warrants to the purchaser that:

a. the instruction is made by an appropriate person, or if the instruction is by an agent, the agent has actual authority to act on behalf of the appropriate person;

b. the security is valid;

c. there is no adverse claim to the security; and

d. at the time the instruction is presented to the issuer:

(1) the purchaser will be entitled to the registration of transfer;

(2) the transfer will be registered by the issuer free from all liens, security interests, restrictions, and claims other than those specified in the instruction;

(3) the transfer will not violate any restriction on transfer; and

(4) the requested transfer will otherwise be effective and rightful.

3. A person who transfers an uncertificated security to a purchaser for value and does not originate an instruction in connection with the transfer warrants that:

a. the uncertificated security is valid;

b. there is no adverse claim to the security;

c. the transfer does not violate any restriction on transfer; and

d. the transfer is otherwise effective and rightful.

4. A person who indorses a security certificate warrants to the issuer that:

a. there is no adverse claim to the security; and

b. the indorsement is effective.

5. A person who originates an instruction for registration of transfer of an uncertificated security warrants to the issuer that:

a. the instruction is effective; and

b. at the time the instruction is presented to the issuer the purchaser will be entitled to the registration of transfer.

6. A person who presents a certificated security for registration of transfer or for payment or exchange warrants to the issuer that the person is entitled to the registration, payment, or exchange, but a purchaser for value and without notice of adverse claims to whom transfer is registered warrants only that the person has no knowledge of any unauthorized signature in a necessary indorsement.

7. If a person acts as agent of another in delivering a certificated security to a purchaser, the identity of the principal was known to the person to whom the certificate was delivered, and the certificate delivered by the agent was received by the agent from the principal or received by the agent from another person at the direction of the principal, the person delivering the security certificate warrants only that the delivering person has authority to act for the principal and does not know of any adverse claim to the certificated security.

8. A secured party who redelivers a security certificate received, or after payment and on order of the debtor delivers the security certificate to another person, makes only the warranties of an agent under subsection 7.

9. Except as otherwise provided in subsection 7, a broker acting for a customer makes to the issuer and a purchaser the warranties provided in subsections 1 through 6. A broker that delivers a security certificate to its customer, or causes its customer to be registered as the owner of an uncertificated security, makes to the customer the warranties provided in subsection 1 or 2, and has the rights and privileges of a purchaser under this section. The warranties of and in favor of the broker acting as an agent are in addition to applicable warranties given by and in favor of the customer.

89 Acts, ch 113, §7; 96 Acts, ch 1138, §16, 84

Referred to in §554.8109, 554.8304, 554.8305

554.8109 Warranties in indirect holding.

1. A person who originates an entitlement order to a securities intermediary warrants to the securities intermediary that:

a. the entitlement order is made by an appropriate person, or if the entitlement order is by an agent, the agent has actual authority to act on behalf of the appropriate person; and

b. there is no adverse claim to the security entitlement.

2. A person who delivers a security certificate to a securities intermediary for credit to a securities account or originates an instruction with respect to an uncertificated security directing that the uncertificated security be credited to a securities account makes to the securities intermediary the warranties specified in section 554.8108, subsection 1 or 2.

3. If a securities intermediary delivers a security certificate to its entitlement holder or causes its entitlement holder to be registered as the owner of an uncertificated security, the securities intermediary makes to the entitlement holder the warranties specified in section 554.8108, subsection 1 or 2.

96 Acts, ch 1138, §17, 84

554.8110 Applicability — choice of law.

1. The local law of the issuer's jurisdiction, as specified in subsection 4, governs:

a. the validity of a security;

b. the rights and duties of the issuer with respect to registration of transfer;

c. the effectiveness of registration of transfer by the issuer;

d. whether the issuer owes any duties to an adverse claimant to a security; and

e. whether an adverse claim can be asserted against a person to whom transfer of a certificated or uncertificated security is registered or a person who obtains control of an uncertificated security.

2. The local law of the securities intermediary's jurisdiction, as specified in subsection 5, governs:

a. acquisition of a security entitlement from the securities intermediary;

b. the rights and duties of the securities intermediary and entitlement holder arising out of a security entitlement;

c. whether the securities intermediary owes any duties to an adverse claimant to a security entitlement; and

d. whether an adverse claim can be asserted against a person who acquires a security entitlement from the securities intermediary or a person who purchases a security entitlement or interest therein from an entitlement holder.

3. The local law of the jurisdiction in which a security certificate is located at the time of delivery governs whether an adverse claim can be asserted against a person to whom the security certificate is delivered.

4. *"Issuer's jurisdiction"* means the jurisdiction under which the issuer of the security is organized or, if permitted by the law of that jurisdiction, the law of another jurisdiction specified by the issuer. An issuer organized under the law of this state may specify the law of another jurisdiction as the law governing the matters specified in subsection 1, paragraphs *"b"* through *"e"*.

5. The following rules determine a "securities intermediary's jurisdiction" for purposes of this section:

a. if an agreement between the securities intermediary and its entitlement holder governing the securities account expressly provides that a particular jurisdiction is the securities intermediary's jurisdiction for purposes of this part, this Article, or 2000 Iowa Acts, ch. 1149, that jurisdiction is the securities intermediary's jurisdiction.

b. if paragraph *"a"* does not apply and an agreement between the securities intermediary and its entitlement holder governing the securities account expressly provides that the agreement is governed by the law of a particular jurisdiction, that jurisdiction is the securities intermediary's jurisdiction.

c. if neither paragraph *"a"* nor paragraph *"b"* applies and an agreement between the securities intermediary and its entitlement holder governing the securities account expressly provides that the securities account is maintained at an office in a particular jurisdiction, that jurisdiction is the securities intermediary's jurisdiction.

d. if none of the preceding paragraphs applies, the securities intermediary's jurisdiction

is the jurisdiction in which the office identified in an account statement as the office serving the entitlement holder's account is located.

e. if none of the preceding paragraphs applies, the securities intermediary's jurisdiction is the jurisdiction in which the chief executive office of the securities intermediary is located.

6. A securities intermediary's jurisdiction is not determined by the physical location of certificates representing financial assets, or by the jurisdiction in which is organized the issuer of the financial asset with respect to which an entitlement holder has a security entitlement, or by the location of facilities for data processing or other record keeping concerning the account.

96 Acts, ch 1138, §18, 84; 2000 Acts, ch 1149, §151, 187; 2015 Acts, ch 30, §174
Referred to in §554.1301, 554.9305

554.8111 Clearing corporation rules.

A rule adopted by a clearing corporation governing rights and obligations among the clearing corporation and its participants in the clearing corporation is effective even if the rule conflicts with this chapter and affects another party who does not consent to the rule.

96 Acts, ch 1138, §19, 84; 97 Acts, ch 23, §70

554.8112 Creditor's legal process.

1. The interest of a debtor in a certificated security may be reached by a creditor only by actual seizure of the security certificate by the officer making the attachment or levy, except as otherwise provided in subsection 4. However, a certificated security for which the certificate has been surrendered to the issuer may be reached by a creditor by legal process upon the issuer.

2. The interest of a debtor in an uncertificated security may be reached by a creditor only by legal process upon the issuer at its chief executive office in the United States, except as otherwise provided in subsection 4.

3. The interest of a debtor in a security entitlement may be reached by a creditor only by legal process upon the securities intermediary with whom the debtor's securities account is maintained, except as otherwise provided in subsection 4.

4. The interest of a debtor in a certificated security for which the certificate is in the possession of a secured party, or in an uncertificated security registered in the name of a secured party, or a security entitlement maintained in the name of a secured party, may be reached by a creditor by legal process upon the secured party.

5. A creditor whose debtor is the owner of a certificated security, uncertificated security, or security entitlement is entitled to aid from a court of competent jurisdiction, by injunction or otherwise, in reaching the certificated security, uncertificated security, or security entitlement or in satisfying the claim by means allowed at law or in equity in regard to property that cannot readily be reached by other legal process.

96 Acts, ch 1138, §20, 84

554.8113 Statute of frauds inapplicable.

A contract or modification of a contract for the sale or purchase of a security is enforceable whether or not there is a writing signed or record authenticated by a party against whom enforcement is sought, even if the contract or modification is not capable of performance within one year of its making.

96 Acts, ch 1138, §21, 84

554.8114 Evidentiary rules concerning certificated securities.

The following rules apply in an action on a certificated security against the issuer:

1. Unless specifically denied in the pleadings, each signature on a security certificate or in a necessary indorsement is admitted.

2. If the effectiveness of a signature is put in issue, the burden of establishing effectiveness is on the party claiming under the signature, but the signature is presumed to be genuine or authorized.

3. If signatures on a security certificate are admitted or established, production of the

certificate entitles a holder to recover on it unless the defendant establishes a defense or a defect going to the validity of the security.

4. If it is shown that a defense or defect exists, the plaintiff has the burden of establishing that the plaintiff or some person under whom the plaintiff claims is a person against whom the defense or defect cannot be asserted.

96 Acts, ch 1138, §22, 84

554.8115 Securities intermediary and others not liable to adverse claimant.

A securities intermediary that has transferred a financial asset pursuant to an effective entitlement order, or a broker or other agent or bailee that has dealt with a financial asset at the direction of its customer or principal, is not liable to a person having an adverse claim to the financial asset, unless the securities intermediary, or broker or other agent or bailee:

1. took the action after it had been served with an injunction, restraining order, or other legal process enjoining it from doing so, issued by a court of competent jurisdiction, and had a reasonable opportunity to act on the injunction, restraining order, or other legal process; or

2. acted in collusion with the wrongdoer in violating the rights of the adverse claimant; or

3. in the case of a security certificate that has been stolen, acted with notice of the adverse claim.

96 Acts, ch 1138, §23, 84

554.8116 Securities intermediary as purchaser for value.

A securities intermediary that receives a financial asset and establishes a security entitlement to the financial asset in favor of an entitlement holder is a purchaser for value of the financial asset. A securities intermediary that acquires a security entitlement to a financial asset from another securities intermediary acquires the security entitlement for value if the securities intermediary acquiring the security entitlement establishes a security entitlement to the financial asset in favor of an entitlement holder.

96 Acts, ch 1219, §30, 40

PART 2

ISSUE AND ISSUER

554.8201 Issuer.

1. With respect to an obligation on or a defense to a security, an "*issuer*" includes a person that:

a. places or authorizes the placing of its name on a security certificate, other than as authenticating trustee, registrar, transfer agent, or the like, to evidence a share, participation, or other interest in its property or in an enterprise, or to evidence its duty to perform an obligation represented by the certificate;

b. creates a share, participation, or other interest in its property or in an enterprise, or undertakes an obligation, that is an uncertificated security;

c. directly or indirectly creates a fractional interest in its rights or property, if the fractional interest is represented by a security certificate; or

d. becomes responsible for, or in place of, another person described as an issuer in this section.

2. With respect to an obligation on or defense to a security, a guarantor is an issuer to the extent of its guaranty, whether or not its obligation is noted on a security certificate.

3. With respect to a registration of a transfer, issuer means a person on whose behalf transfer books are maintained.

[S13, §3060-a29, -a60, -a61, -a62; C24, 27, 31, 35, 39, §**9489, 9520 – 9522;** C46, 50, 54, 58, 62, §541.29, 541.60 – 541.62; C66, 71, 73, 75, 77, 79, 81, §554.8201]

89 Acts, ch 113, §8; 96 Acts, ch 1138, §24, 84

Referred to in §515.35, 518.14, 518A.12, 554.8102, 554.9102

554.8202 Issuer's responsibility and defenses — notice of defect or defense.

1. Even against a purchaser for value and without notice, the terms of a certificated security include terms stated on the certificate and terms made part of the security by reference on the certificate to another instrument, indenture, or document or to a constitution, statute, ordinance, rule, regulation, order, or the like, to the extent the terms referred to do not conflict with terms stated on the certificate. A reference under this subsection does not of itself charge a purchaser for value with notice of a defect going to the validity of the security, even if the certificate expressly states that a person accepting it admits notice. The terms of an uncertificated security include those stated in any instrument, indenture, or document or in a constitution, statute, ordinance, rule, regulation, order, or the like, pursuant to which the security is issued.

2. The following rules apply if an issuer asserts that a security is not valid:

a. A security other than one issued by a government or governmental subdivision, agency, or instrumentality, even though issued with a defect going to its validity, is valid in the hands of a purchaser for value and without notice of the particular defect unless the defect involves a violation of a constitutional provision. In that case, the security is valid in the hands of a purchaser for value and without notice of the defect, other than one who takes by original issue.

b. Paragraph *"a"* applies to an issuer that is a government or governmental subdivision, agency, or instrumentality only if there has been substantial compliance with the legal requirements governing the issue or the issuer has received a substantial consideration for the issue as a whole or for the particular security and a stated purpose of the issue is one for which the issuer has power to borrow money or issue the security.

3. Except as otherwise provided in section 554.8205, lack of genuineness of a certificated security is a complete defense, even against a purchaser for value and without notice.

4. All other defenses of the issuer of a security, including nondelivery and conditional delivery of a certificated security, are ineffective against a purchaser for value who has taken the certificated security without notice of the particular defense.

5. This section does not affect the right of a party to cancel a contract for a security "when, as and if issued" or "when distributed" in the event of a material change in the character of the security that is the subject of the contract or in the plan or arrangement pursuant to which the security is to be issued or distributed.

6. If a security is held by a securities intermediary against whom an entitlement holder has a security entitlement with respect to the security, the issuer may not assert any defense that the issuer could not assert if the entitlement holder held the security directly.

[S13, §3060-a16, -a23, -a28, -a56, -a57, -a60, -a61, -a62; C24, 27, 31, 35, 39, §**9476, 9483, 9488, 9516, 9517, 9520 – 9522;** C46, 50, 54, 58, 62, §541.16, 541.23, 541.28, 541.56, 541.57, 541.60 – 541.62; C66, 71, 73, 75, 77, 79, 81, §554.8202]

89 Acts, ch 113, §9; 96 Acts, ch 1138, §25, 84

554.8203 Staleness as notice of defect or defense.

After an act or event, other than a call that has been revoked, creating a right to immediate performance of the principal obligation represented by a certificated security or setting a date on or after which the security is to be presented or surrendered for redemption or exchange, a purchaser is charged with notice of any defect in its issue or defense of the issuer, if the act or event:

1. requires the payment of money, the delivery of a certificated security, the registration of transfer of an uncertificated security, or any of them on presentation or surrender of the security certificate, the money or security is available on the date set for payment or exchange, and the purchaser takes the security more than one year after that date; or

2. is not covered by subsection 1 and the purchaser takes the security more than two years after the date set for surrender or presentation or the date on which performance became due.

[S13, §3060, -a52, -a53; C24, 27, 31, 35, 39, §**9512, 9513;** C46, 50, 54, 58, 62, §541.52, 541.53; C66, 71, 73, 75, 77, 79, 81, §554.8203]

89 Acts, ch 113, §10; 96 Acts, ch 1138, §26, 84

554.8204 Effect of issuer's restriction on transfer.

A restriction on transfer of a security imposed by the issuer, even if otherwise lawful, is ineffective against a person without knowledge of the restriction unless:

1. the security is certificated and the restriction is noted conspicuously on the security certificate; or

2. the security is uncertificated and the registered owner has been notified of the restriction.

[C50, 54, 58, 62, §493A.15; C66, 71, 73, 75, 77, 79, 81, §554.8204]

89 Acts, ch 113, §11; 96 Acts, ch 1138, §27, 84

Referred to in §554.8401

554.8205 Effect of unauthorized signature on security certificate.

An unauthorized signature placed on a security certificate before or in the course of issue is ineffective, but the signature is effective in favor of a purchaser for value of the certificated security if the purchaser is without notice of the lack of authority and the signing has been done by:

1. an authenticating trustee, registrar, transfer agent, or other person entrusted by the issuer with the signing of the security certificate or of similar security certificates, or the immediate preparation for signing of any of them; or

2. an employee of the issuer, or of any of the persons listed in subsection 1, entrusted with responsible handling of the security certificate.

[S13, §3060-a23; C24, 27, 31, 35, 39, §**9483;** C46, 50, 54, 58, 62, §541.23; C66, 71, 73, 75, 77, 79, 81, §554.8205]

89 Acts, ch 113, §12; 96 Acts, ch 1138, §28, 84; 97 Acts, ch 23, §71

Referred to in §554.8202

554.8206 Completion or alteration of security certificate.

1. If a security certificate contains the signatures necessary to its issue or transfer but is incomplete in any other respect:

a. any person may complete it by filling in the blanks as authorized; and

b. even if the blanks are incorrectly filled in, the security certificate as completed is enforceable by a purchaser who took it for value and without notice of the incorrectness.

2. A complete security certificate that has been improperly altered, even if fraudulently, remains enforceable, but only according to its original terms.

[S13, §3060-a14, -a15, -a124; C24, 27, 31, 35, 39, §**9474, 9475, 9585;** C46, §541.14, 541.15, 541.25; C50, 54, 58, 62, §493A.16, 541.14, 541.15, 541.125; C66, 71, 73, 75, 77, 79, 81, §554.8206]

89 Acts, ch 113, §13; 96 Acts, ch 1138, §29, 84

554.8207 Rights and duties of issuer with respect to registered owners.

1. Before due presentment for registration of transfer of a certificated security in registered form, or of an instruction requesting registration of transfer of an uncertificated security, the issuer or indenture trustee may treat the registered owner as the person exclusively entitled to vote, receive notifications, and otherwise exercise all the rights and powers of an owner.

2. This Article does not affect the liability of the registered owner of a security for a call, assessment, or the like.

[C50, 54, 58, 62, §493A.3, 493A.21; C66, 71, 73, 75, 77, 79, 81, §554.8207]

89 Acts, ch 113, §14; 96 Acts, ch 1138, §30, 84

554.8208 Effect of signature of authenticating trustee, registrar, or transfer agent.

1. A person signing a security certificate, as authenticating trustee, registrar, transfer agent, or the like, warrants to a purchaser for value of the certificated security, if the purchaser is without notice of a particular defect, that:

a. the certificate is genuine;

b. the person's own participation in the issue of the security is within the person's capacity and within the scope of the authority received by the person from the issuer; and

c. the person has reasonable grounds to believe that the certificated security is in the form and within the amount the issuer is authorized to issue.

2. Unless otherwise agreed, a person signing under subsection 1 does not assume responsibility for the validity of the security in other respects.

[C66, 71, 73, 75, 77, 79, 81, §554.8208]

89 Acts, ch 113, §15; 96 Acts, ch 1138, §31, 84

554.8209 Issuer's lien.

A lien in favor of an issuer upon a certificated security is valid against a purchaser only if the right of the issuer to the lien is noted conspicuously on the security certificate.

96 Acts, ch 1138, §32, 84

554.8210 Overissue.

1. In this section, *"overissue"* means the issue of securities in excess of the amount the issuer has corporate power to issue, but an overissue does not occur if appropriate action has cured the overissue.

2. Except as otherwise provided in subsections 3 and 4, the provisions of this Article which validate a security or compel its issue or reissue do not apply to the extent that validation, issue, or reissue would result in overissue.

3. If an identical security not constituting an overissue is reasonably available for purchase, a person entitled to issue or validation may compel the issuer to purchase the security and deliver it if certificated or register its transfer if uncertificated, against surrender of any security certificate the person holds.

4. If a security is not reasonably available for purchase, a person entitled to issue or validation may recover from the issuer the price the person or the last purchaser for value paid for it with interest from the date of the person's demand.

96 Acts, ch 1138, §33, 84

Referred to in §554.8102, 554.8404, 554.8405

PART 3

TRANSFER OF CERTIFICATED AND UNCERTIFICATED SECURITIES

554.8301 Delivery.

1. Delivery of a certificated security to a purchaser occurs when:

a. the purchaser acquires possession of the security certificate;

b. another person, other than a securities intermediary, either acquires possession of the security certificate on behalf of the purchaser or, having previously acquired possession of the certificate, acknowledges that it holds for the purchaser; or

c. a securities intermediary acting on behalf of the purchaser acquires possession of the security certificate, only if the certificate is in registered form and is registered in the name of the purchaser, payable to the order of the purchaser, or specially indorsed to the purchaser by an effective indorsement and has not been indorsed to the securities intermediary or in blank.

2. Delivery of an uncertificated security to a purchaser occurs when:

a. the issuer registers the purchaser as the registered owner, upon original issue or registration of transfer; or

b. another person, other than a securities intermediary, either becomes the registered

owner of the uncertificated security on behalf of the purchaser or, having previously become the registered owner, acknowledges that it holds for the purchaser.

[S13, §3060-a52, -a57, -a58, -a59; C24, 27, 31, 35, 39, §**9512, 9517 – 9519;** C46, §541.52, 541.57 – 541.59; C50, 54, 58, 62, §493A.4, 493A.7, 541.52, 541.57 – 541.59; C66, 71, 73, 75, 77, 79, 81, §554.8301]

89 Acts, ch 113, §16; 96 Acts, ch 1138, §34, 84; 2000 Acts, ch 1149, §152, 187; 2013 Acts, ch 30, §261

Referred to in §554.8102, 554.8104, 554.9203, 554.9313

554.8302 Rights of purchaser.

1. Except as otherwise provided in subsections 2 and 3, a purchaser of a certificated or uncertificated security acquires all rights in the security that the transferor had or had power to transfer.

2. A purchaser of a limited interest acquires rights only to the extent of the interest purchased.

3. A purchaser of a certificated security who as a previous holder had notice of an adverse claim does not improve its position by taking from a protected purchaser.

[S13, §3060-a52; C24, 27, 31, 35, 39, §**9512;** C46, 50, 54, 58, 62, §541.52; C66, 71, 73, 75, 77, 79, 81, §554.8302]

89 Acts, ch 113, §17; 96 Acts, ch 1138, §35, 84; 2000 Acts, ch 1149, §153, 187

554.8303 Protected purchaser.

1. *"Protected purchaser"* means a purchaser of a certificated or uncertificated security, or of an interest therein, who:

a. gives value;

b. does not have notice of any adverse claim to the security; and

c. obtains control of the certificated or uncertificated security.

2. In addition to acquiring the rights of a purchaser, a protected purchaser also acquires its interest in the security free of any adverse claim.

[C66, 71, 73, 75, 77, 79, 81, §554.8303]

89 Acts, ch 113, §18; 96 Acts, ch 1138, §36, 84

Referred to in §554.8102

554.8304 Indorsement.

1. An indorsement may be in blank or special. An indorsement in blank includes an indorsement to bearer. A special indorsement specifies to whom a security is to be transferred or who has power to transfer it. A holder may convert a blank indorsement to a special indorsement.

2. An indorsement purporting to be only of part of a security certificate representing units intended by the issuer to be separately transferable is effective to the extent of the indorsement.

3. An indorsement, whether special or in blank, does not constitute a transfer until delivery of the certificate on which it appears or, if the indorsement is on a separate document, until delivery of both the document and the certificate.

4. If a security certificate in registered form has been delivered to a purchaser without a necessary indorsement, the purchaser may become a protected purchaser only when the indorsement is supplied. However, against a transferor, a transfer is complete upon delivery and the purchaser has a specifically enforceable right to have any necessary indorsement supplied.

5. An indorsement of a security certificate in bearer form may give notice of an adverse claim to the certificate, but it does not otherwise affect a right to registration that the holder possesses.

6. Unless otherwise agreed, a person making an indorsement assumes only the

obligations provided in section 554.8108 and not an obligation that the security will be honored by the issuer.

[S13, §3060-a37, -a56; C24, 27, 31, 35, 39, §**9497, 9516;** C46, §541.37, 541.56; C50, 54, 58, 62, §493A.8, 541.37, 541.56; C66, 71, 73, 75, 77, 79, 81, §554.8304]

89 Acts, ch 113, §19; 96 Acts, ch 1138, §37, 84

554.8305 Instruction.

1. If an instruction has been originated by an appropriate person but is incomplete in any other respect, any person may complete it as authorized and the issuer may rely on it as completed, even though it has been completed incorrectly.

2. Unless otherwise agreed, a person initiating an instruction assumes only the obligations imposed by section 554.8108 and not an obligation that the security will be honored by the issuer.

[S13, §3060-a52, -a53; C24, 27, 31, 35, 39, §**9512, 9513;** C46, 50, 54, 58, 62, §541.52, 541.53; C66, 71, 73, 75, 77, 79, 81, §554.8305]

89 Acts, ch 113, §20; 96 Acts, ch 1138, §38, 84

554.8306 Effect of guaranteeing signature, indorsement, or instruction.

1. A person who guarantees a signature of an indorser of a security certificate warrants that at the time of signing:

a. the signature was genuine;

b. the signer was an appropriate person to indorse, or if the signature is by an agent, the agent had actual authority to act on behalf of the appropriate person; and

c. the signer had legal capacity to sign.

2. A person who guarantees a signature of the originator of an instruction warrants that at the time of signing:

a. the signature was genuine;

b. the signer was an appropriate person to originate the instruction, or if the signature is by an agent, the agent had actual authority to act on behalf of the appropriate person, if the person specified in the instruction as the registered owner was, in fact, the registered owner, as to which fact the signature guarantor does not make a warranty; and

c. the signer had legal capacity to sign.

3. A person who specially guarantees the signature of an originator of an instruction makes the warranties of a signature guarantor under subsection 2 and also warrants that at the time the instruction is presented to the issuer:

a. the person specified in the instruction as the registered owner of the uncertificated security will be the registered owner; and

b. the transfer of the uncertificated security requested in the instruction will be registered by the issuer free from all liens, security interests, restrictions, and claims other than those specified in the instruction.

4. A guarantor under subsections 1 and 2 or a special guarantor under subsection 3 does not otherwise warrant the rightfulness of the transfer.

5. A person who guarantees an indorsement of a security certificate makes the warranties of a signature guarantor under subsection 1 and also warrants the rightfulness of the transfer in all respects.

6. A person who guarantees an instruction requesting the transfer of an uncertificated security makes the warranties of a special signature guarantor under subsection 3 and also warrants the rightfulness of the transfer in all respects.

7. An issuer may not require a special guaranty of signature, a guaranty of indorsement, or a guaranty of instruction as a condition to registration of transfer.

8. The warranties under this section are made to a person taking or dealing with the security in reliance on the guaranty, and the guarantor is liable to the person for loss resulting from their breach. An indorser or originator of an instruction whose signature,

indorsement, or instruction has been guaranteed is liable to a guarantor for any loss suffered by the guarantor as a result of breach of the warranties of the guarantor.

[S13, §3060-a65, -a66, -a67, -a69; C24, 27, 31, 35, 39, §**9525 – 9527, 9529;** C46, §541.65 – 541.67, 541.69; C50, 54, 58, 62, §493A.6, 493A.11, 493A.12, 541.65 – 541.67, 541.69; C66, 71, 73, 75, 77, 79, 81, §554.8306]

89 Acts, ch 113, §21; 96 Acts, ch 1138, §39, 84

554.8307 Purchaser's right to requisites for registration of transfer.

Unless otherwise agreed, the transferor of a security on due demand shall supply the purchaser with proof of authority to transfer or with any other requisite necessary to obtain registration of the transfer of the security, but if the transfer is not for value, a transferor need not comply unless the purchaser pays the necessary expenses. If the transferor fails within a reasonable time to comply with the demand, the purchaser may reject or rescind the transfer.

[S13, §3060-a49; C24, 27, 31, 35, 39, §**9509;** C46, §541.49; C50, 54, 58, 62, §493A.9, 541.49; C66, 71, 73, 75, 77, 79, 81, §554.8307]

89 Acts, ch 113, §22; 96 Acts, ch 1138, §40, 84

554.8308 through 554.8321 Repealed by 96 Acts, ch 1138, §81, 84.

PART 4

REGISTRATION

554.8401 Duty of issuer to register transfer.

1. If a certificated security in registered form is presented to an issuer with a request to register transfer or an instruction is presented to an issuer with a request to register transfer of an uncertificated security, the issuer shall register the transfer as requested if:

a. under the terms of the security the person seeking registration of transfer is eligible to have the security registered in its name;

b. the indorsement or instruction is made by the appropriate person or by an agent who has actual authority to act on behalf of the appropriate person;

c. reasonable assurance is given that the indorsement or instruction is genuine and authorized (section 554.8402);

d. any applicable law relating to the collection of taxes has been complied with;

e. the transfer does not violate any restriction on transfer imposed by the issuer in accordance with section 554.8204;

f. a demand that the issuer not register transfer has not become effective under section 554.8403, or the issuer has complied with section 554.8403, subsection 2, but no legal process or indemnity bond is obtained as provided in section 554.8403, subsection 4; and

g. the transfer is in fact rightful or is to a protected purchaser.

2. If an issuer is under a duty to register a transfer of a security, the issuer is liable to a person presenting a certificated security or an instruction for registration or to the person's principal for loss resulting from unreasonable delay in registration or failure or refusal to register the transfer.

[C66, 71, 73, 75, 77, 79, 81, §554.8401]

89 Acts, ch 113, §37; 96 Acts, ch 1138, §41, 84; 97 Acts, ch 23, §72

554.8402 Assurance that indorsement or instruction is effective.

1. An issuer may require the following assurance that each necessary indorsement or each instruction is genuine and authorized:

a. in all cases, a guaranty of the signature of the person making an indorsement or originating an instruction including, in the case of an instruction, reasonable assurance of identity;

b. if the indorsement is made or the instruction is originated by an agent, appropriate assurance of actual authority to sign;

c. if the indorsement is made or the instruction is originated by a fiduciary pursuant to section 554.8107, subsection 1, paragraph "*d*" or "*e*", appropriate evidence of appointment or incumbency;

d. if there is more than one fiduciary, reasonable assurance that all who are required to sign have done so; and

e. if the indorsement is made or the instruction is originated by a person not covered by another provision of this subsection, assurance appropriate to the case corresponding as nearly as may be to the provisions of this subsection.

2. An issuer may elect to require reasonable assurance beyond that specified in this section.

3. In this section:

a. "Guaranty of the signature" means a guaranty signed by or on behalf of a person reasonably believed by the issuer to be responsible. An issuer may adopt standards with respect to responsibility if they are not manifestly unreasonable.

b. "Appropriate evidence of appointment or incumbency" means:

(1) in the case of a fiduciary appointed or qualified by a court, a certificate issued by or under the direction or supervision of the court or an officer thereof and dated within sixty days before the date of presentation for transfer; or

(2) in any other case, a copy of a document showing the appointment or a certificate issued by or on behalf of a person reasonably believed by an issuer to be responsible or, in the absence of that document or certificate, other evidence the issuer reasonably considers appropriate.

[C66, 71, 73, 75, 77, 79, 81, §554.8402]

86 Acts, ch 1047, §1; 89 Acts, ch 113, §38; 96 Acts, ch 1138, §42, 84

Referred to in §554.8401

554.8403 Demand that issuer not register transfer.

1. A person who is an appropriate person to make an indorsement or originate an instruction may demand that the issuer not register transfer of a security by communicating to the issuer a notification that identifies the registered owner and the issue of which the security is a part and provides an address for communications directed to the person making the demand. The demand is effective only if it is received by the issuer at a time and in a manner affording the issuer reasonable opportunity to act on it.

2. If a certificated security in registered form is presented to an issuer with a request to register transfer or an instruction is presented to an issuer with a request to register transfer of an uncertificated security after a demand that the issuer not register transfer has become effective, the issuer shall promptly communicate to the person who initiated the demand at the address provided in the demand and the person who presented the security for registration of transfer or initiated the instruction requesting registration of transfer a notification stating that:

a. the certificated security has been presented for registration of transfer or the instruction for registration of transfer of the uncertificated security has been received;

b. a demand that the issuer not register transfer had previously been received; and

c. the issuer will withhold registration of transfer for a period of time stated in the notification in order to provide the person who initiated the demand an opportunity to obtain legal process or an indemnity bond.

3. The period described in subsection 2, paragraph "*c*", may not exceed thirty days after the date of communication of the notification. A shorter period may be specified by the issuer if it is not manifestly unreasonable.

4. An issuer is not liable to a person who initiated a demand that the issuer not register transfer for any loss the person suffers as a result of registration of a transfer pursuant to an effective indorsement or instruction if the person who initiated the demand does not, within the time stated in the issuer's communication, either:

a. obtain an appropriate restraining order, injunction, or other process from a court of competent jurisdiction enjoining the issuer from registering the transfer; or

b. file with the issuer an indemnity bond, sufficient in the issuer's judgment to protect the issuer and any transfer agent, registrar, or other agent of the issuer involved from any loss it or they may suffer by refusing to register the transfer.

5. This section does not relieve an issuer from liability for registering transfer pursuant to an indorsement or instruction that was not effective.

[C66, 71, 73, 75, 77, 79, 81, §554.8403]

89 Acts, ch 113, §39; 90 Acts, ch 1168, §57; 96 Acts, ch 1138, §43, 84; 2013 Acts, ch 30, §261

Referred to in §554.8401, 554.8404

554.8404 Wrongful registration.

1. Except as otherwise provided in section 554.8406, an issuer is liable for wrongful registration of transfer if the issuer has registered a transfer of a security to a person not entitled to it, and the transfer was registered:

a. pursuant to an ineffective indorsement or instruction;

b. after a demand that the issuer not register transfer became effective under section 554.8403, subsection 1, and the issuer did not comply with section 554.8403, subsection 2;

c. after the issuer had been served with an injunction, restraining order, or other legal process enjoining it from registering the transfer, issued by a court of competent jurisdiction, and the issuer had a reasonable opportunity to act on the injunction, restraining order, or other legal process; or

d. by an issuer acting in collusion with the wrongdoer.

2. An issuer that is liable for wrongful registration of transfer under subsection 1 on demand shall provide the person entitled to the security with a like certificated or uncertificated security, and any payments or distributions that the person did not receive as a result of the wrongful registration. If an overissue would result, the issuer's liability to provide the person with a like security is governed by section 554.8210.

3. Except as otherwise provided in subsection 1 or in a law relating to the collection of taxes, an issuer is not liable to an owner or other person suffering loss as a result of the registration of a transfer of a security if registration was made pursuant to an effective indorsement or instruction.

[C66, 71, 73, 75, 77, 79, 81, §554.8404]

89 Acts, ch 113, §40; 96 Acts, ch 1138, §44, 84

Referred to in §554.8406

554.8405 Replacement of lost, destroyed, or wrongfully taken security certificate.

1. If an owner of a certificated security, whether in registered or bearer form, claims that the certificate has been lost, destroyed, or wrongfully taken, the issuer shall issue a new certificate if the owner:

a. so requests before the issuer has notice that the certificate has been acquired by a protected purchaser;

b. files with the issuer a sufficient indemnity bond; and

c. satisfies other reasonable requirements imposed by the issuer.

2. If, after the issue of a new security certificate, a protected purchaser of the original certificate presents it for registration of transfer, the issuer shall register the transfer unless an overissue would result. In that case, the issuer's liability is governed by section 554.8210. In addition to any rights on the indemnity bond, an issuer may recover the new certificate from a person to whom it was issued or any person taking under that person, except a protected purchaser.

[S13, §3060-a199, -a200; C24, 27, 31, 35, 39, §**9659, 9660;** C46, §541.199, 541.200; C50, 54, 58, 62, §493A.17, 541.199; C66, 71, 73, 75, 77, 79, 81, §554.8405]

89 Acts, ch 113, §41; 96 Acts, ch 1138, §45, 84

Referred to in §501A.905, 554.8406, 556.13

554.8406 Obligation to notify issuer of lost, destroyed, or wrongfully taken security certificate.

If a security certificate has been lost, apparently destroyed, or wrongfully taken, and the owner fails to notify the issuer of that fact within a reasonable time after the owner has notice of it and the issuer registers a transfer of the security before receiving notification, the owner may not assert against the issuer a claim for registering the transfer under section 554.8404 or a claim to a new security certificate under section 554.8405.

[C66, 71, 73, 75, 77, 79, 81, §554.8406]

89 Acts, ch 113, §42; 96 Acts, ch 1138, §46, 84

Referred to in §554.8404

554.8407 Authenticating trustee, transfer agent, and registrar.

A person acting as authenticating trustee, transfer agent, registrar, or other agent for an issuer in the registration of a transfer of its securities, in the issue of new security certificates or uncertificated securities, or in the cancellation of surrendered security certificates has the same obligation to the holder or owner of a certificated or uncertificated security with regard to the particular functions performed as the issuer has in regard to those functions.

89 Acts, ch 113, §43; 96 Acts, ch 1138, §47, 84

554.8408 Statements of uncertificated securities. Repealed by 96 Acts, ch 1138, §81, 84.

PART 5

SECURITY ENTITLEMENTS

Referred to in §554.8102, 554.8104

554.8501 Securities account — acquisition of security entitlement from securities intermediary.

1. *"Securities account"* means an account to which a financial asset is or may be credited in accordance with an agreement under which the person maintaining the account undertakes to treat the person for whom the account is maintained as entitled to exercise the rights that comprise the financial asset.

2. Except as otherwise provided in subsections 4 and 5, a person acquires a security entitlement if a securities intermediary:

a. indicates by book entry that a financial asset has been credited to the person's securities account;

b. receives a financial asset from the person or acquires a financial asset for the person and, in either case, accepts it for credit to the person's securities account; or

c. becomes obligated under other law, regulation, or rule to credit a financial asset to the person's securities account.

3. If a condition of subsection 2 has been met, a person has a security entitlement even though the securities intermediary does not itself hold the financial asset.

4. If a securities intermediary holds a financial asset for another person, and the financial asset is registered in the name of, payable to the order of, or specially indorsed to the other person, and has not been indorsed to the securities intermediary or in blank, the other person is treated as holding the financial asset directly rather than as having a security entitlement with respect to the financial asset.

5. Issuance of a security is not establishment of a security entitlement.

96 Acts, ch 1138, §48, 84

Referred to in §554.8102, 554.8104, 554.8502, 554.9102

554.8502 Assertion of adverse claim against entitlement holder.

An action based on an adverse claim to a financial asset, whether framed in conversion, replevin, constructive trust, equitable lien, or other theory, may not be asserted against a

person who acquires a security entitlement under section 554.8501 for value and without notice of the adverse claim.

96 Acts, ch 1138, §49, 84
Referred to in §554.8510

554.8503 Property interest of entitlement holder in financial asset held by securities intermediary.

1. To the extent necessary for a securities intermediary to satisfy all security entitlements with respect to a particular financial asset, all interests in that financial asset held by the securities intermediary are held by the securities intermediary for the entitlement holders, are not property of the securities intermediary, and are not subject to claims of creditors of the securities intermediary, except as otherwise provided in section 554.8511.

2. An entitlement holder's property interest with respect to a particular financial asset under subsection 1 is a pro rata property interest in all interests in that financial asset held by the securities intermediary, without regard to the time the entitlement holder acquired the security entitlement or the time the securities intermediary acquired the interest in that financial asset.

3. An entitlement holder's property interest with respect to a particular financial asset under subsection 1 may be enforced against the securities intermediary only by exercise of the entitlement holder's rights under sections 554.8505 through 554.8508.

4. *a.* An entitlement holder's property interest with respect to a particular financial asset under subsection 1 may be enforced against a purchaser of the financial asset or interest therein only if:

(1) insolvency proceedings have been initiated by or against the securities intermediary;

(2) the securities intermediary does not have sufficient interests in the financial asset to satisfy the security entitlements of all of its entitlement holders to that financial asset;

(3) the securities intermediary violated its obligations under section 554.8504 by transferring the financial asset or interest therein to the purchaser; and

(4) the purchaser is not protected under subsection 5.

b. The trustee or other liquidator, acting on behalf of all entitlement holders having security entitlements with respect to a particular financial asset, may recover the financial asset, or interest therein, from the purchaser. If the trustee or other liquidator elects not to pursue that right, an entitlement holder whose security entitlement remains unsatisfied has the right to recover its interest in the financial asset from the purchaser.

5. An action based on the entitlement holder's property interest with respect to a particular financial asset under subsection 1, whether framed in conversion, replevin, constructive trust, equitable lien, or other theory, may not be asserted against any purchaser of a financial asset or interest therein who gives value, obtains control, and does not act in collusion with the securities intermediary in violating the securities intermediary's obligations under section 554.8504.

96 Acts, ch 1138, §50, 84; 2012 Acts, ch 1023, §157
Referred to in §554.8104

554.8504 Duty of securities intermediary to maintain financial asset.

1. A securities intermediary shall promptly obtain and thereafter maintain a financial asset in a quantity corresponding to the aggregate of all security entitlements it has established in favor of its entitlement holders with respect to that financial asset. The securities intermediary may maintain those financial assets directly or through one or more other securities intermediaries.

2. Except to the extent otherwise agreed by its entitlement holder, a securities intermediary may not grant any security interests in a financial asset it is obligated to maintain pursuant to subsection 1.

3. A securities intermediary satisfies the duty in subsection 1 if:

a. the securities intermediary acts with respect to the duty as agreed upon by the entitlement holder and the securities intermediary; or

b. in the absence of agreement, the securities intermediary exercises due care in accordance with reasonable commercial standards to obtain and maintain the financial asset.

4. This section does not apply to a clearing corporation that is itself the obligor of an option or similar obligation to which its entitlement holders have security entitlements.

96 Acts, ch 1138, §51, 84
Referred to in §554.8503, 554.8509

554.8505 Duty of securities intermediary with respect to payments and distributions.

1. A securities intermediary shall take action to obtain a payment or distribution made by the issuer of a financial asset. A securities intermediary satisfies the duty if:

a. the securities intermediary acts with respect to the duty as agreed upon by the entitlement holder and the securities intermediary; or

b. in the absence of agreement, the securities intermediary exercises due care in accordance with reasonable commercial standards to attempt to obtain the payment or distribution.

2. A securities intermediary is obligated to its entitlement holder for a payment or distribution made by the issuer of a financial asset if the payment or distribution is received by the securities intermediary.

96 Acts, ch 1138, §52, 84
Referred to in §554.8503, 554.8509

554.8506 Duty of securities intermediary to exercise rights as directed by entitlement holder.

A securities intermediary shall exercise rights with respect to a financial asset if directed to do so by an entitlement holder. A securities intermediary satisfies the duty if:

1. the securities intermediary acts with respect to the duty as agreed upon by the entitlement holder and the securities intermediary; or

2. in the absence of agreement, the securities intermediary either places the entitlement holder in a position to exercise the rights directly or exercises due care in accordance with reasonable commercial standards to follow the direction of the entitlement holder.

96 Acts, ch 1138, §53, 84
Referred to in §554.8503, 554.8509

554.8507 Duty of securities intermediary to comply with entitlement order.

1. A securities intermediary shall comply with an entitlement order if the entitlement order is originated by the appropriate person, the securities intermediary has had reasonable opportunity to assure itself that the entitlement order is genuine and authorized, and the securities intermediary has had reasonable opportunity to comply with the entitlement order. A securities intermediary satisfies the duty if:

a. the securities intermediary acts with respect to the duty as agreed upon by the entitlement holder and the securities intermediary; or

b. in the absence of agreement, the securities intermediary exercises due care in accordance with reasonable commercial standards to comply with the entitlement order.

2. If a securities intermediary transfers a financial asset pursuant to an ineffective entitlement order, the securities intermediary shall reestablish a security entitlement in favor of the person entitled to it, and pay or credit any payments or distributions that the person did not receive as a result of the wrongful transfer. If the securities intermediary does not reestablish a security entitlement, the securities intermediary is liable to the entitlement holder for damages.

96 Acts, ch 1138, §54, 84
Referred to in §554.8503, 554.8509

554.8508 Duty of securities intermediary to change entitlement holder's position to other form of security holding.

A securities intermediary shall act at the direction of an entitlement holder to change a security entitlement into another available form of holding for which the entitlement holder is eligible, or to cause the financial asset to be transferred to a securities account of the

entitlement holder with another securities intermediary. A securities intermediary satisfies the duty if:

1. the securities intermediary acts as agreed upon by the entitlement holder and the securities intermediary; or

2. in the absence of agreement, the securities intermediary exercises due care in accordance with reasonable commercial standards to follow the direction of the entitlement holder.

96 Acts, ch 1138, §55, 84
Referred to in §554.8503, 554.8509

554.8509 Specification of duties of securities intermediary by other statute or regulation — manner of performance of duties of securities intermediary and exercise of rights of entitlement holder.

1. If the substance of a duty imposed upon a securities intermediary by sections 554.8504 through 554.8508 is the subject of other statute, regulation, or rule, compliance with that statute, regulation, or rule satisfies the duty.

2. To the extent that specific standards for the performance of the duties of a securities intermediary or the exercise of the rights of an entitlement holder are not specified by other statute, regulation, or rule or by agreement between the securities intermediary and entitlement holder, the securities intermediary shall perform its duties and the entitlement holder shall exercise its rights in a commercially reasonable manner.

3. The obligation of a securities intermediary to perform the duties imposed by sections 554.8504 through 554.8508 is subject to:

a. rights of the securities intermediary arising out of a security interest under a security agreement with the entitlement holder or otherwise; and

b. rights of the securities intermediary under other law, regulation, rule, or agreement to withhold performance of its duties as a result of unfulfilled obligations of the entitlement holder to the securities intermediary.

4. Sections 554.8504 through 554.8508 do not require a securities intermediary to take any action that is prohibited by other statute, regulation, or rule.

96 Acts, ch 1138, §56, 84

554.8510 Rights of purchaser of security entitlement from entitlement holder.

1. In a case not covered by the priority rules in Article 9 or the rules stated in subsection 3, an action based on an adverse claim to a financial asset or security entitlement, whether framed in conversion, replevin, constructive trust, equitable lien, or other theory, may not be asserted against a person who purchases a security entitlement, or an interest therein, from an entitlement holder if the purchaser gives value, does not have notice of the adverse claim, and obtains control.

2. If an adverse claim could not have been asserted against an entitlement holder under section 554.8502, the adverse claim cannot be asserted against a person who purchases a security entitlement, or an interest therein, from the entitlement holder.

3. In a case not covered by the priority rules in Article 9, a purchaser for value of a security entitlement, or an interest therein, who obtains control has priority over a purchaser of a security entitlement, or an interest therein, who does not obtain control. Except as otherwise provided in subsection 4, purchasers who have control rank according to priority in time of:

a. the purchaser's becoming the person for whom the securities account, in which the security entitlement is carried, is maintained, if the purchaser obtained control under section 554.8106, subsection 4, paragraph "*a*";

b. the securities intermediary's agreement to comply with the purchaser's entitlement orders with respect to security entitlements carried or to be carried in the securities account in which the security entitlement is carried, if the purchaser obtained control under section 554.8106, subsection 4, paragraph "*b*";

c. if the purchaser obtained control through another person under section 554.8106, subsection 4, paragraph "*c*", the time on which priority would be based under this subsection if the other person were the secured party; or

4. A securities intermediary as purchaser has priority over a conflicting purchaser who has control unless otherwise agreed by the securities intermediary.

96 Acts, ch 1138, §57, 84; 2000 Acts, ch 1149, §154, 187

554.8511 Priority among security interests and entitlement holders.

1. Except as otherwise provided in subsections 2 and 3, if a securities intermediary does not have sufficient interests in a particular financial asset to satisfy both its obligations to entitlement holders who have security entitlements to that financial asset and its obligation to a creditor of the securities intermediary who has a security interest in that financial asset, the claims of entitlement holders, other than the creditor, have priority over the claim of the creditor.

2. A claim of a creditor of a securities intermediary who has a security interest in a financial asset held by a securities intermediary has priority over claims of the securities intermediary's entitlement holders who have security entitlements with respect to that financial asset if the creditor has control over the financial asset.

3. If a clearing corporation does not have sufficient financial assets to satisfy both its obligations to entitlement holders who have security entitlements with respect to a financial asset and its obligation to a creditor of the clearing corporation who has a security interest in that financial asset, the claim of the creditor has priority over the claims of entitlement holders.

96 Acts, ch 1138, §58, 84

Referred to in §554.8503

ARTICLE 9

SECURED TRANSACTIONS

Referred to in §173.14B, 321.45, 321.50, 501A.603, 554.1201, 554.2401, 554.2402, 554.2403, 554.2503, 554.3102, 554.3605, 554.4210, 554.5114, 554.5116, 554.5118, 554.7209, 554.8105, 554.8510, 554.13303, 554.13309, 570.1, 570A.3, 570A.4, 571.1B, 571.3, 579A.2, 579B.3, 579B.4, 581.2A, 581.3, 684.8, 717.4

PART 1

GENERAL PROVISIONS

SUBPART A

SHORT TITLE, DEFINITIONS, AND GENERAL CONCEPTS

554.9101 Short title.

This Article may be cited as Uniform Commercial Code — Secured Transactions.

2000 Acts, ch 1149, §1, 185, 187

554.9102 Definitions and index of definitions.

1. *Article 9 definitions.* In this Article:

a. "Accession" means goods that are physically united with other goods in such a manner that the identity of the original goods is not lost.

b. "Account", except as used in *"account for"*, means a right to payment of a monetary obligation, whether or not earned by performance, for property that has been or is to be sold, leased, licensed, assigned, or otherwise disposed of; for services rendered or to be rendered; for a policy of insurance issued or to be issued; for a secondary obligation incurred or to be incurred; for energy provided or to be provided; for the use or hire of a vessel under a charter or other contract; arising out of the use of a credit or charge card or information contained on or for use with the card; or as winnings in a lottery or other game of chance operated or sponsored by a state, governmental unit of a state, or person licensed or authorized to operate the game by a state or governmental unit of a state. The term includes health care insurance receivables. The term does not include rights to payment evidenced by chattel paper or an

instrument, commercial tort claims, deposit accounts, investment property, letter-of-credit rights or letters of credit, or rights to payment for money or funds advanced or sold, other than rights arising out of the use of a credit or charge card or information contained on or for use with the card.

c. "Account debtor" means a person obligated on an account, chattel paper, or general intangible. The term does not include persons obligated to pay a negotiable instrument, even if the instrument constitutes part of chattel paper.

d. "Accounting", except as used in "*accounting for*", means a record:

(1) authenticated by a secured party;

(2) indicating the aggregate unpaid secured obligations as of a date not more than thirty-five days earlier or thirty-five days later than the date of the record; and

(3) identifying the components of the obligations in reasonable detail.

e. "Agricultural lien" means an interest, other than a security interest, in farm products:

(1) which secures payment or performance of an obligation for:

(a) goods or services furnished in connection with a debtor's farming operation; or

(b) rent on real property leased by a debtor in connection with its farming operation;

(2) which is created by statute in favor of a person that:

(a) in the ordinary course of its business furnished goods or services to a debtor in connection with a debtor's farming operation; or

(b) leased real property to a debtor in connection with the debtor's farming operation; and

(3) whose effectiveness does not depend on the person's possession of the personal property.

f. "As-extracted collateral" means:

(1) oil, gas, or other minerals that are subject to a security interest that:

(a) is created by a debtor having an interest in the minerals before extraction; and

(b) attaches to the minerals as extracted; or

(2) accounts arising out of the sale at the wellhead or minehead of oil, gas, or other minerals in which the debtor had an interest before extraction.

g. "Authenticate" means:

(1) to sign; or

(2) with present intent to adopt or accept a record, to attach to or logically associate with the record an electronic sound, symbol, or process.

h. "Bank" means an organization that is engaged in the business of banking. The term includes savings banks, savings and loan associations, credit unions, and trust companies.

i. "Cash proceeds" means proceeds that are money, checks, deposit accounts, or the like.

j. "Certificate of title" means a certificate of title with respect to which a statute provides for the security interest in question to be indicated on the certificate as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral. The term includes another record maintained as an alternative to a certificate of title by the governmental unit that issues certificates of title if a statute permits the security interest in question to be indicated on the record as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral.

k. "Chattel paper" means a record or records that evidence both a monetary obligation and a security interest in specific goods, a security interest in specific goods and software used in the goods, a security interest in specific goods and license of software used in the goods, a lease of specific goods, or a lease of specific goods and license of software used in the goods. In this paragraph, "*monetary obligation*" means a monetary obligation secured by the goods or owed under a lease of the goods and includes a monetary obligation with respect to software used in the goods. The term does not include charters or other contracts involving the use or hire of a vessel or records that evidence a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card. If a transaction is evidenced by records that include an instrument or series of instruments, the group of records taken together constitutes chattel paper.

l. "Collateral" means the property subject to a security interest or agricultural lien. The term includes:

(1) proceeds to which a security interest attaches;

(2) accounts, chattel paper, payment intangibles, and promissory notes that have been sold; and

(3) goods that are the subject of a consignment.

m. "*Commercial tort claim*" means a claim arising in tort with respect to which:

(1) the claimant is an organization; or

(2) the claimant is an individual and the claim:

(a) arose in the course of the claimant's business or profession; and

(b) does not include damages arising out of personal injury to or the death of an individual.

n. "*Commodity account*" means an account maintained by a commodity intermediary in which a commodity contract is carried for a commodity customer.

o. "*Commodity contract*" means a commodity futures contract, an option on a commodity futures contract, a commodity option, or another contract if the contract or option is:

(1) traded on or subject to the rules of a board of trade that has been designated as a contract market for such a contract pursuant to federal commodities laws; or

(2) traded on a foreign commodity board of trade, exchange, or market, and is carried on the books of a commodity intermediary for a commodity customer.

p. "*Commodity customer*" means a person for which a commodity intermediary carries a commodity contract on its books.

q. "*Commodity intermediary*" means a person that:

(1) is registered as a futures commission merchant under federal commodities law; or

(2) in the ordinary course of its business provides clearance or settlement services for a board of trade that has been designated as a contract market pursuant to federal commodities law.

r. "*Communicate*" means:

(1) to send a written or other tangible record;

(2) to transmit a record by any means agreed upon by the persons sending and receiving the record; or

(3) in the case of transmission of a record to or by a filing office, to transmit a record by any means prescribed by filing-office rule.

s. "*Consignee*" means a merchant to which goods are delivered in a consignment.

t. "*Consignment*" means a transaction, regardless of its form, in which a person delivers goods to a merchant for the purpose of sale and:

(1) the merchant:

(a) deals in goods of that kind under a name other than the name of the person making delivery;

(b) is not an auctioneer; and

(c) is not generally known by its creditors to be substantially engaged in selling the goods of others;

(2) with respect to each delivery, the aggregate value of the goods is one thousand dollars or more at the time of delivery;

(3) the goods are not consumer goods immediately before delivery; and

(4) the transaction does not create a security interest that secures an obligation.

u. "*Consignor*" means a person that delivers goods to a consignee in a consignment.

v. "*Consumer debtor*" means a debtor in a consumer transaction.

w. "*Consumer goods*" means goods that are used or bought for use primarily for personal, family, or household purposes.

x. "*Consumer-goods transaction*" means a consumer transaction in which:

(1) an individual incurs an obligation primarily for personal, family, or household purposes; and

(2) a security interest in consumer goods secures the obligation.

y. "*Consumer obligor*" means an obligor who is an individual and who incurred the obligation as part of a transaction entered into primarily for personal, family, or household purposes.

z. "*Consumer transaction*" means a transaction in which an individual incurs an obligation primarily for personal, family, or household purposes; a security interest secures

the obligation; and the collateral is held or acquired primarily for personal, family, or household purposes. The term includes consumer-goods transactions.

aa. *"Continuation statement"* means an amendment of a financing statement which:

(1) identifies, by its file number, the initial financing statement to which it relates; and

(2) indicates that it is a continuation statement for, or that it is filed to continue the effectiveness of, the identified financing statement.

ab. *"Debtor"* means:

(1) a person having an interest, other than a security interest or other lien, in the collateral, whether or not the person is an obligor;

(2) a seller of accounts, chattel paper, payment intangibles, or promissory notes; or

(3) a consignee.

ac. *"Deposit account"* means a demand, time, savings, passbook, or similar account maintained with a bank. The term does not include investment property or accounts evidenced by an instrument.

ad. *"Document"* means a document of title or a receipt of the type described in section 554.7201, subsection 2.

ae. *"Electronic chattel paper"* means chattel paper evidenced by a record or records consisting of information stored in an electronic medium.

af. *"Encumbrance"* means a right, other than an ownership interest, in real property. The term includes mortgages and other liens on real property.

ag. *"Equipment"* means goods other than inventory, farm products, or consumer goods.

ah. *"Farm products"* means goods, other than standing timber, with respect to which the debtor is engaged in a farming operation and which are:

(1) crops grown, growing, or to be grown, including:

(a) crops produced on trees, vines, and bushes; and

(b) aquatic goods produced in aquacultural operations;

(2) livestock, born or unborn, including aquatic goods produced in aquacultural operations;

(3) supplies used or produced in a farming operation; or

(4) products of crops or livestock in their unmanufactured states.

ai. *"Farming operation"* means raising, cultivating, propagating, fattening, grazing, or any other farming, livestock, or aquacultural operation.

aj. *"File number"* means the number assigned to an initial financing statement pursuant to section 554.9519, subsection 1.

ak. *"Filing office"* means an office designated in section 554.9501 as the place to file a financing statement.

al. *"Filing-office rule"* means a rule adopted pursuant to section 554.9526.

am. *"Financing statement"* means a record or records composed of an initial financing statement and any filed record relating to the initial financing statement.

an. *"Fixture filing"* means the filing of a financing statement covering goods that are or are to become fixtures and satisfying section 554.9502, subsections 1 and 2. The term includes the filing of a financing statement covering goods of a transmitting utility which are or are to become fixtures.

ao. *"Fixtures"* means goods that have become so related to particular real property that an interest in them arises under real property law.

ap. *"General intangible"* means any personal property, including things in action, other than accounts, chattel paper, commercial tort claims, deposit accounts, documents, goods, instruments, investment property, letter-of-credit rights, letters of credit, money, and oil, gas, or other minerals before extraction. The term includes payment intangibles and software.

aq. Reserved.

ar. *"Goods"* means all things that are movable when a security interest attaches. The term includes fixtures; standing timber that is to be cut and removed under a conveyance or contract for sale; the unborn young of animals; crops grown, growing, or to be grown, even if the crops are produced on trees, vines, or bushes; and manufactured homes. The term also includes a computer program embedded in goods and any supporting information provided in connection with a transaction relating to the program if the program is associated with the

goods in such a manner that it customarily is considered part of the goods, or by becoming the owner of the goods, a person acquires a right to use the program in connection with the goods. The term does not include a computer program embedded in goods that consist solely of the medium in which the program is embedded. The term also does not include accounts, chattel paper, commercial tort claims, deposit accounts, documents, general intangibles, instruments, investment property, letter-of-credit rights, letters of credit, money, or oil, gas, or other minerals before extraction.

as. *"Governmental unit"* means a subdivision, agency, department, county, parish, municipality, or other unit of the government of the United States, a state, or a foreign country. The term includes an organization having a separate corporate existence if the organization is eligible to issue debt on which interest is exempt from income taxation under the laws of the United States.

at. *"Health care insurance receivable"* means an interest in or claim under a policy of insurance which is a right to payment of a monetary obligation for health care goods or services provided.

au. *"Instrument"* means a negotiable instrument or any other writing that evidences a right to the payment of a monetary obligation, is not itself a security agreement or lease, and is of a type that in ordinary course of business is transferred by delivery with any necessary indorsement or assignment. The term does not include investment property, letters of credit, or writings that evidence a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card.

av. *"Inventory"* means goods, other than farm products, which:

(1) are leased by a person as lessor;

(2) are held by a person for sale or lease or to be furnished under a contract of service;

(3) are furnished by a person under a contract of service; or

(4) consist of raw materials, work in process, or materials used or consumed in a business.

aw. *"Investment property"* means a security, whether certificated or uncertificated, security entitlement, securities account, commodity contract, or commodity account.

ax. *"Jurisdiction of organization"*, with respect to a registered organization, means the jurisdiction under whose law the organization is formed or organized.

ay. *"Letter-of-credit right"* means a right to payment or performance under a letter of credit, whether or not the beneficiary has demanded or is at the time entitled to demand payment or performance. The term does not include the right of a beneficiary to demand payment or performance under a letter of credit.

az. *"Lien creditor"* means:

(1) a creditor that has acquired a lien on the property involved by attachment, levy, or the like;

(2) an assignee for benefit of creditors from the time of assignment;

(3) a trustee in bankruptcy from the date of the filing of the petition; or

(4) a receiver in equity from the time of appointment.

ba. *"Manufactured home"* means a structure, transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width or forty body feet or more in length, or, when erected on site, is three hundred twenty or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained therein. The term includes any structure that meets all of the requirements of this paragraph except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the United States secretary of housing and urban development and complies with the standards established under Title 42 of the United States Code.

bb. *"Manufactured-home transaction"* means a secured transaction:

(1) that creates a purchase-money security interest in a manufactured home, other than a manufactured home held as inventory; or

(2) in which a manufactured home, other than a manufactured home held as inventory, is the primary collateral.

bc. *"Mortgage"* means a consensual interest in real property, including fixtures, which secures payment or performance of an obligation.

bd. *"New debtor"* means a person that becomes bound as debtor under section 554.9203, subsection 4, by a security agreement previously entered into by another person.

be. *"New value"* means money; money's worth in property, services, or new credit; or release by a transferee of an interest in property previously transferred to the transferee. The term does not include an obligation substituted for another obligation.

bf. *"Noncash proceeds"* means proceeds other than cash proceeds.

bg. *"Obligor"* means a person that, with respect to an obligation secured by a security interest in or an agricultural lien on the collateral, owes payment or other performance of the obligation, has provided property other than the collateral to secure payment or other performance of the obligation, or is otherwise accountable in whole or in part for payment or other performance of the obligation. The term does not include issuers or nominated persons under a letter of credit.

bh. *"Original debtor"*, except as used in section 554.9310, subsection 3, means a person that, as debtor, entered into a security agreement to which a new debtor has become bound under section 554.9203, subsection 4.

bi. *"Payment intangible"* means a general intangible under which the account debtor's principal obligation is a monetary obligation.

bj. *"Person related to"*, with respect to an individual, means:

(1) the spouse of the individual;

(2) a brother, brother-in-law, sister, or sister-in-law of the individual;

(3) an ancestor or lineal descendant of the individual or the individual's spouse; or

(4) any other relative, by blood or marriage, of the individual or the individual's spouse who shares the same home with the individual.

bk. *"Person related to"*, with respect to an organization, means:

(1) a person directly or indirectly controlling, controlled by, or under common control with the organization;

(2) an officer or director of, or a person performing similar functions with respect to, the organization;

(3) an officer or director of, or a person performing similar functions with respect to, a person described in subparagraph (1);

(4) the spouse of an individual described in subparagraph (1), (2), or (3); or

(5) an individual who is related by blood or marriage to an individual described in subparagraph (1), (2), (3), or (4) and shares the same home with the individual.

bl. *"Proceeds"*, except as used in section 554.9609, subsection 2, means the following property:

(1) whatever is acquired upon the sale, lease, license, exchange, or other disposition of collateral;

(2) whatever is collected on, or distributed on account of, collateral;

(3) rights arising out of collateral;

(4) to the extent of the value of collateral, claims arising out of the loss, nonconformity, or interference with the use of, defects or infringement of rights in, or damage to, the collateral; or

(5) to the extent of the value of collateral and to the extent payable to the debtor or the secured party, insurance payable by reason of the loss or nonconformity of, defects or infringement of rights in, or damage to, the collateral.

bm. *"Promissory note"* means an instrument that evidences a promise to pay a monetary obligation, does not evidence an order to pay, and does not contain an acknowledgment by a bank that the bank has received for deposit a sum of money or funds.

bn. *"Proposal"* means a record authenticated by a secured party which includes the terms on which the secured party is willing to accept collateral in full or partial satisfaction of the obligation it secures pursuant to sections 554.9620, 554.9621, and 554.9622.

bo. *"Public-finance transaction"* means a secured transaction in connection with which:

(1) debt securities are issued;

(2) all or a portion of the securities issued have an initial stated maturity of at least twenty years; and

(3) the debtor, obligor, secured party, account debtor or other person obligated on collateral, assignor or assignee of a secured obligation, or assignor or assignee of a security interest is a state or a governmental unit of a state.

bp. "Public organic record" means a record that is available to the public for inspection and is:

(1) a record consisting of the record initially filed with or issued by a state or the United States to form or organize an organization and any record filed with or issued by the state or the United States which amends or restates the initial record;

(2) an organic record of a business trust consisting of the record initially filed with a state and any record filed with the state which amends or restates the initial record, if a statute of the state governing business trusts requires that the record be filed with the state; or

(3) a record consisting of legislation enacted by the legislature of a state or the Congress of the United States which forms or organizes an organization, any record amending the legislation, and any record filed with or issued by the state or the United States which amends or restates the name of the organization.

bq. "Pursuant to commitment", with respect to an advance made or other value given by a secured party, means pursuant to the secured party's obligation, whether or not a subsequent event of default or other event not within the secured party's control has relieved or may relieve the secured party from its obligation.

br. "Record", except as used in *"for record"*, *"of record"*, *"record or legal title"*, and *"record owner"*, means information that is inscribed on a tangible medium or which is stored in an electronic or other medium and is retrievable in perceivable form.

bs. "Registered organization" means an organization formed or organized solely under the law of a single state or the United States by the filing of a public organic record with, the issuance of a public organic record by, or the enactment of legislation by the state or the United States. The term includes a business trust that is formed under the law of a single state if a statute of the state governing business trusts requires that the business trust's organic record be filed with the state.

bt. "Secondary obligor" means an obligor to the extent that:

(1) the obligor's obligation is secondary; or

(2) the obligor has a right of recourse with respect to an obligation secured by collateral against the debtor, another obligor, or property of either.

bu. "Secured party" means:

(1) a person in whose favor a security interest is created or provided for under a security agreement, whether or not any obligation to be secured is outstanding;

(2) a person that holds an agricultural lien;

(3) a consignor;

(4) a person to which accounts, chattel paper, payment intangibles, or promissory notes have been sold;

(5) a trustee, indenture trustee, agent, collateral agent, or other representative in whose favor a security interest or agricultural lien is created or provided for; or

(6) a person that holds a security interest arising under section 554.2401, 554.2505, 554.2711, subsection 3, section 554.4210, 554.5118, or 554.13508, subsection 5.

bv. "Security agreement" means an agreement that creates or provides for a security interest.

bw. "Send", in connection with a record or notification, means:

(1) to deposit in the mail, deliver for transmission, or transmit by any other usual means of communication, with postage or cost of transmission provided for, addressed to any address reasonable under the circumstances; or

(2) to cause the record or notification to be received within the time that it would have been received if properly sent under subparagraph (1).

bx. "Software" means a computer program and any supporting information provided in connection with a transaction relating to the program. The term does not include a computer program that is included in the definition of goods.

by. *"State"* means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

bz. *"Supporting obligation"* means a letter-of-credit right or secondary obligation that supports the payment or performance of an account, chattel paper, a document, a general intangible, an instrument, or investment property.

ca. *"Tangible chattel paper"* means chattel paper evidenced by a record or records consisting of information that is inscribed on a tangible medium.

cb. *"Termination statement"* means an amendment of a financing statement which:

(1) identifies, by its file number, the initial financing statement to which it relates; and

(2) indicates either that it is a termination statement or that the identified financing statement is no longer effective.

cc. *"Transmitting utility"* means a person primarily engaged in the business of:

(1) operating a railroad, subway, street railway, or trolley bus;

(2) transmitting communications electrically, electromagnetically, or by light;

(3) transmitting goods by pipeline or sewer; or

(4) transmitting or producing and transmitting electricity, steam, gas, or water.

2. *Definitions in other Articles.* The following definitions in other Articles apply to this Article:

a. "Applicant" .....Section 554.5102
b. "Beneficiary" .....Section 554.5102
c. "Broker".....Section 554.8102
d. "Certificated security" .....Section 554.8102
e. "Check".....Section 554.3104
f. "Clearing corporation".....Section 554.8102
g. "Contract for sale" .....Section 554.2106
h. "Control" .....Section 554.7106
i. "Customer".....Section 554.4104
j. "Entitlement holder".....Section 554.8102
k. "Financial asset" .....Section 554.8102
l. "Holder in due course" .....Section 554.3302
m. "Issuer" (with respect to a letter of credit or letter-of-credit right) .....Section 554.5102
n. "Issuer" (with respect to a security) .....Section 554.8201
o. "Issuer" (with respect to documents of title).....Section 554.7102
p. "Lease".....Section 554.13103
q. "Lease agreement".....Section 554.13103
r. "Lease contract".....Section 554.13103
s. "Leasehold interest".....Section 554.13103
t. "Lessee".....Section 554.13103
u. "Lessee in ordinary course of business".....Section 554.13103
v. "Lessor" .....Section 554.13103
w. "Lessor's residual interest" .....Section 554.13103
x. "Letter of credit" .....Section 554.5102
y. "Merchant" .....Section 554.2104
z. "Negotiable instrument".....Section 554.3104
aa. "Nominated person" .....Section 554.5102
ab. "Note" .....Section 554.3104
ac. "Proceeds of a letter of credit".....Section 554.5114
ad. "Prove" .....Section 554.3103
ae. "Sale".....Section 554.2106
af. "Securities account" .....Section 554.8501
ag. "Securities intermediary".....Section 554.8102

ah. "Security" .....Section 554.8102
ai. "Security certificate".....Section 554.8102
aj. "Security entitlement" .....Section 554.8102
ak. "Uncertificated security".....Section 554.8102

3. *Article 1 definitions and principles.* Article 1 contains general definitions and principles of construction and interpretation applicable throughout this Article.

4. *Federal Food Security Act.* For purposes of the Federal Food Security Act, 7 U.S.C. §1631, written notice shall be considered to be received by the person to whom it was delivered if the notice is delivered in hand to the person, or mailed by certified or registered mail with the proper postage and properly addressed to the person to whom it was sent. The refusal of a person to whom a notice is so mailed to accept delivery of the notice shall be considered receipt.

2000 Acts, ch 1149, §2, 185, 187; 2007 Acts, ch 30, §45, 46, 65; 2007 Acts, ch 41, §30; 2012 Acts, ch 1023, §147; 2012 Acts, ch 1052, §1 – 3, 37; 2013 Acts, ch 30, §152
Referred to in §203.12A, 203C.12A, 554.2103, 554.8103, 554.9109, 554.13103, 554B.1, 570.1, 570A.3, 571.1B, 581.2A, 716.11

554.9103 Purchase-money security interest — application of payments — burden of establishing.

1. *Definitions.* In this section:

a. "purchase-money collateral" means goods or software that secures a purchase-money obligation incurred with respect to that collateral; and

b. "purchase-money obligation" means an obligation of an obligor incurred as all or part of the price of the collateral or for value given to enable the debtor to acquire rights in or the use of the collateral if the value is in fact so used.

2. *Purchase-money security interest in goods.* A security interest in goods is a purchase-money security interest:

a. to the extent that the goods are purchase-money collateral with respect to that security interest;

b. if the security interest is in inventory that is or was purchase-money collateral, also to the extent that the security interest secures a purchase-money obligation incurred with respect to other inventory in which the secured party holds or held a purchase-money security interest; and

c. also to the extent that the security interest secures a purchase-money obligation incurred with respect to software in which the secured party holds or held a purchase-money security interest.

3. *Purchase-money security interest in software.* A security interest in software is a purchase-money security interest to the extent that the security interest also secures a purchase-money obligation incurred with respect to goods in which the secured party holds or held a purchase-money security interest if:

a. the debtor acquired its interest in the software in an integrated transaction in which it acquired an interest in the goods; and

b. the debtor acquired its interest in the software for the principal purpose of using the software in the goods.

4. *Consignor's inventory purchase-money security interest.* The security interest of a consignor in goods that are the subject of a consignment is a purchase-money security interest in inventory.

5. *Application of payment in nonconsumer-goods transaction.* In a transaction other than a consumer-goods transaction, if the extent to which a security interest is a purchase-money security interest depends on the application of a payment to a particular obligation, the payment must be applied:

a. in accordance with any reasonable method of application to which the parties agree;

b. in the absence of the parties' agreement to a reasonable method, in accordance with any intention of the obligor manifested at or before the time of payment; or

c. in the absence of an agreement to a reasonable method and a timely manifestation of the obligor's intention, in the following order:

(1) to obligations that are not secured; and

(2) if more than one obligation is secured, to obligations secured by purchase-money security interests in the order in which those obligations were incurred.

6. *No loss of status of purchase-money security interest in nonconsumer-goods transaction.* In a transaction other than a consumer-goods transaction, a purchase-money security interest does not lose its status as such, even if:

a. the purchase-money collateral also secures an obligation that is not a purchase-money obligation;

b. collateral that is not purchase-money collateral also secures the purchase-money obligation; or

c. the purchase-money obligation has been renewed, refinanced, consolidated, or restructured.

7. *Burden of proof in nonconsumer-goods transaction.* In a transaction other than a consumer-goods transaction, a secured party claiming a purchase-money security interest has the burden of establishing the extent to which the security interest is a purchase-money security interest.

8. *Nonconsumer-goods transactions — no inference.* The limitation of the rules in subsections 5, 6, and 7 to transactions other than consumer-goods transactions is intended to leave to the court the determination of the proper rules in consumer-goods transactions. The court may not infer from that limitation the nature of the proper rule in consumer-goods transactions and may continue to apply established approaches.

2000 Acts, ch 1149, §3, 185, 187
Referred to in §322.21

554.9104 Control of deposit account.

1. *Requirements for control.* A secured party has control of a deposit account if:

a. the secured party is the bank with which the deposit account is maintained;

b. the debtor, secured party, and bank have agreed in an authenticated record that the bank will comply with instructions originated by the secured party directing disposition of the funds in the deposit account without further consent by the debtor; or

c. the secured party becomes the bank's customer with respect to the deposit account.

2. *Debtor's right to direct disposition.* A secured party that has satisfied subsection 1 has control, even if the debtor retains the right to direct the disposition of funds from the deposit account.

2000 Acts, ch 1149, §4, 185, 187
Referred to in §554.9203, 554.9207, 554.9208, 554.9314, 554.9327, 554.9340, 554.9342, 554.9601, 554.9607

554.9105 Control of electronic chattel paper.

1. *General rule: control of electronic chattel paper.* A secured party has control of electronic chattel paper if a system employed for evidencing the transfer of interests in the chattel paper reliably establishes the secured party as the person to which the chattel paper was assigned.

2. *Specific facts giving control.* A system satisfies subsection 1 if the record or records comprising the chattel paper are created, stored, and assigned in such a manner that:

a. a single authoritative copy of the record or records exists which is unique, identifiable and, except as otherwise provided in paragraphs *"d"*, *"e"*, and *"f"*, unalterable;

b. the authoritative copy identifies the secured party as the assignee of the record or records;

c. the authoritative copy is communicated to and maintained by the secured party or its designated custodian;

d. copies or amendments that add or change an identified assignee of the authoritative copy can be made only with the consent of the secured party;

e. each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy; and

f. any amendment of the authoritative copy is readily identifiable as an authorized or unauthorized revision.

2000 Acts, ch 1149, §5, 185, 187; 2012 Acts, ch 1052, §4, 37
Referred to in §554.9203, 554.9207, 554.9208, 554.9314, 554.9330, 554.9601

554.9106 Control of investment property.

1. *Control under section 554.8106.* A person has control of a certificated security, uncertificated security, or security entitlement as provided in section 554.8106.

2. *Control of commodity contract.* A secured party has control of a commodity contract if:

a. the secured party is the commodity intermediary with which the commodity contract is carried; or

b. the commodity customer, secured party, and commodity intermediary have agreed that the commodity intermediary will apply any value distributed on account of the commodity contract as directed by the secured party without further consent by the commodity customer.

3. *Effect of control of securities account or commodity account.* A secured party having control of all security entitlements or commodity contracts carried in a securities account or commodity account has control over the securities account or commodity account.

2000 Acts, ch 1149, §6, 185, 187
Referred to in §554.9203, 554.9207, 554.9208, 554.9314, 554.9328, 554.9601

554.9107 Control of letter-of-credit right.

A secured party has control of a letter-of-credit right to the extent of any right to payment or performance by the issuer or any nominated person if the issuer or nominated person has consented to an assignment of proceeds of the letter of credit under section 554.5114, subsection 3, or otherwise applicable law or practice.

2000 Acts, ch 1149, §7, 185, 187
Referred to in §554.9203, 554.9207, 554.9208, 554.9314, 554.9329, 554.9601

554.9108 Sufficiency of description.

1. *Sufficiency of description.* Except as otherwise provided in subsections 3, 4, and 5, a description of personal or real property is sufficient, whether or not it is specific, if it reasonably identifies what is described.

2. *Examples of reasonable identification.* Except as otherwise provided in subsection 4, a description of collateral reasonably identifies the collateral if it identifies the collateral by:

a. specific listing;

b. category;

c. except as otherwise provided in subsection 5, a type of collateral defined in this chapter;

d. quantity;

e. computational or allocational formula or procedure; or

f. except as otherwise provided in subsection 3, any other method, if the identity of the collateral is objectively determinable.

3. *Supergeneric description not sufficient.* A description of collateral as "all the debtor's assets" or "all the debtor's personal property" or using words of similar import does not reasonably identify the collateral.

4. *Investment property.* Except as otherwise provided in subsection 5, a description of a security entitlement, securities account, or commodity account is sufficient if it describes:

a. the collateral by those terms or as investment property; or

b. the underlying financial asset or commodity contract.

5. *When description by type insufficient.* A description only by type of collateral defined in this chapter is an insufficient description of:

a. a commercial tort claim; or

b. in a consumer transaction, consumer goods, a security entitlement, a securities account, or a commodity account.

2000 Acts, ch 1149, §8, 185, 187
Referred to in §554.9504

SUBPART B

APPLICABILITY OF ARTICLE

554.9109 Scope.

1. *General scope of Article.* Except as otherwise provided in subsections 3 and 4, this Article applies to:

a. a transaction, regardless of its form, that creates a security interest in personal property or fixtures by contract;

b. an agricultural lien;

c. a sale of accounts, chattel paper, payment intangibles, or promissory notes;

d. a consignment;

e. a security interest arising under section 554.2401, 554.2505, 554.2711, subsection 3, or section 554.13508, subsection 5, as provided in section 554.9110; and

f. a security interest arising under section 554.4210 or 554.5118.

2. *Security interest in secured obligation.* The application of this Article to a security interest in a secured obligation is not affected by the fact that the obligation is itself secured by a transaction or interest to which this Article does not apply.

3. *Extent to which Article does not apply.* This Article does not apply to the extent that:

a. a statute, regulation, or treaty of the United States preempts this Article;

b. another statute of this state expressly governs the creation, perfection, priority, or enforcement of a security interest created by this state or a governmental unit of this state;

c. a statute of another state, a foreign country, or a governmental unit of another state or a foreign country, other than a statute generally applicable to security interests, expressly governs creation, perfection, priority, or enforcement of a security interest created by the state, country, or governmental unit; or

d. the rights of a transferee beneficiary or nominated person under a letter of credit are independent and superior under section 554.5114.

4. *Inapplicability of Article.* This Article does not apply to:

a. a landlord's lien, other than an agricultural lien;

b. a lien, other than an agricultural lien, given by statute or other rule of law for services or materials, but section 554.9333 applies with respect to priority of the lien;

c. an assignment of a claim for wages, salary, or other compensation of an employee;

d. a sale of accounts, chattel paper, payment intangibles, or promissory notes as part of a sale of the business out of which they arose;

e. an assignment of accounts, chattel paper, payment intangibles, or promissory notes which is for the purpose of collection only;

f. an assignment of a right to payment under a contract to an assignee that is also obligated to perform under the contract;

g. an assignment of a single account, payment intangible, or promissory note to an assignee in full or partial satisfaction of a preexisting indebtedness;

h. a transfer of an interest in or an assignment of a claim under a policy of insurance, other than an assignment by or to a health care provider of a health care insurance receivable and any subsequent assignment of the right to payment, but sections 554.9315 and 554.9322 apply with respect to proceeds and priorities in proceeds;

i. an assignment of a right represented by a judgment, other than a judgment taken on a right to payment that was collateral;

j. a right of recoupment or setoff, but:

(1) section 554.9340 applies with respect to the effectiveness of rights of recoupment or setoff against deposit accounts; and

(2) section 554.9404 applies with respect to defenses or claims of an account debtor;

k. the creation or transfer of an interest in or lien on real property, including a lease or rents thereunder, except to the extent that provision is made for:

(1) liens on real property in sections 554.9203 and 554.9308;

(2) fixtures in section 554.9334;

(3) fixture filings in sections 554.9501, 554.9502, 554.9512, 554.9516, and 554.9519; and

(4) security agreements covering personal and real property in section 554.9604;

l. an assignment of a claim arising in tort, other than a commercial tort claim, but sections 554.9315 and 554.9322 apply with respect to proceeds and priorities in proceeds;

m. an assignment of a deposit account in a consumer transaction, but sections 554.9315 and 554.9322 apply with respect to proceeds and priorities in proceeds;

n. a transfer, other than a transfer pursuant to chapter 419, by this state or a governmental unit within this state in connection with a public-finance transaction or a transaction that would be a public-finance transaction but for failure to meet the criterion set forth in section 554.9102, subsection 1, paragraph *"bo"*, subparagraph (2); or

o. an assignment of a claim or right to receive any of the following:

(1) compensation for injuries or sickness as provided in 26 U.S.C. §104(a)(1) or (2).

(2) benefits under a special needs trust as provided in 42 U.S.C. §1396p(d)(4).

2000 Acts, ch 1149, §9, 185, 187; 2002 Acts, ch 1119, §88
Referred to in §554.13303, 579B.3

554.9110 Security interests arising under Article 2 or 13.

A security interest arising under section 554.2401, 554.2505, 554.2711, subsection 3, or section 554.13508, subsection 5, is subject to this Article. However, until the debtor obtains possession of the goods:

1. the security interest is enforceable, even if section 554.9203, subsection 2, paragraph *"c"*, has not been satisfied;

2. filing is not required to perfect the security interest;

3. the rights of the secured party after default by the debtor are governed by Article 2 or 13; and

4. the security interest has priority over a conflicting security interest created by the debtor.

2000 Acts, ch 1149, §10, 185, 187
Referred to in §554.9109, 554.9203, 554.9322

554.9111 Applicability of bulk transfer laws. Repealed by 94 Acts, ch 1121, §17, 18.

554.9112 through 554.9116 Repealed by 2000 Acts, ch 1149, §185, 187.

PART 2

EFFECTIVENESS OF SECURITY AGREEMENT — ATTACHMENT OF SECURITY INTEREST — RIGHTS OF PARTIES TO SECURITY AGREEMENT

SUBPART A

EFFECTIVENESS AND ATTACHMENT

554.9201 General effectiveness of security agreement.

1. *General effectiveness.* Except as otherwise provided in this chapter, a security agreement is effective according to its terms between the parties, against purchasers of the collateral, and against creditors.

2. *Applicable consumer laws.* A transaction subject to this Article is subject to any applicable rule of law which establishes a different rule for consumers, including as provided in chapter 537, or any other statute or regulation of this state that regulates the rates, charges, agreements, and practices for loans, credit sales, or other extensions of credit, and to any consumer protection statute or regulation.

3. *Other applicable law controls.* In case of conflict between this Article and a rule of law, statute, or regulation described in subsection 2, the rule of law, statute, or regulation

controls. Failure to comply with a statute or regulation described in subsection 2 has only the effect the statute or regulation specifies.

4. *Further deference to other applicable law.* This Article does not:

a. validate any rate, charge, agreement, or practice that violates a rule of law, statute, or regulation described in subsection 2; or

b. extend the application of the rule of law, statute, or regulation to a transaction not otherwise subject to it.

2000 Acts, ch 1149, §11, 185, 187

554.9202 Title to collateral immaterial.

Except as otherwise provided with respect to consignments or sales of accounts, chattel paper, payment intangibles, or promissory notes, the provisions of this Article with regard to rights and obligations apply whether title to collateral is in the secured party or the debtor.

2000 Acts, ch 1149, §12, 185, 187

554.9203 Attachment and enforceability of security interest — proceeds — supporting obligations — formal requisites.

1. *Attachment.* A security interest attaches to collateral when it becomes enforceable against the debtor with respect to the collateral, unless an agreement expressly postpones the time of attachment.

2. *Enforceability.* Except as otherwise provided in subsections 3 through 9, a security interest is enforceable against the debtor and third parties with respect to the collateral only if:

a. value has been given;

b. the debtor has rights in the collateral or the power to transfer rights in the collateral to a secured party; and

c. one of the following conditions is met:

(1) the debtor has authenticated a security agreement that provides a description of the collateral and, if the security interest covers timber to be cut, a description of the land concerned;

(2) the collateral is not a certificated security and is in the possession of the secured party under section 554.9313 pursuant to the debtor's security agreement;

(3) the collateral is a certificated security in registered form and the security certificate has been delivered to the secured party under section 554.8301 pursuant to the debtor's security agreement; or

(4) the collateral is deposit accounts, electronic chattel paper, investment property, letter-of-credit rights, or electronic documents, and the secured party has control under section 554.7106, 554.9104, 554.9105, 554.9106, or 554.9107 pursuant to the debtor's security agreement.

3. *Other UCC provisions.* Subsection 2 is subject to section 554.4210 on the security interest of a collecting bank, section 554.5118 on the security interest of a letter-of-credit issuer or nominated person, section 554.9110 on a security interest arising under Article 2 or 13, and section 554.9206 on security interests in investment property.

4. *When person becomes bound by another person's security agreement.* A person becomes bound as debtor by a security agreement entered into by another person if, by operation of law other than this Article or by contract:

a. the security agreement becomes effective to create a security interest in the person's property; or

b. the person becomes generally obligated for the obligations of the other person, including the obligation secured under the security agreement, and acquires or succeeds to all or substantially all of the assets of the other person.

5. *Effect of new debtor becoming bound.* If a new debtor becomes bound as debtor by a security agreement entered into by another person:

a. the agreement satisfies subsection 2, paragraph "*c*", with respect to existing or after-acquired property of the new debtor to the extent the property is described in the agreement; and

b. another agreement is not necessary to make a security interest in the property enforceable.

6. *Proceeds and supporting obligations.* The attachment of a security interest in collateral gives the secured party the rights to proceeds provided by section 554.9315 and is also attachment of a security interest in a supporting obligation for the collateral.

7. *Lien securing right to payment.* The attachment of a security interest in a right to payment or performance secured by a security interest or other lien on personal or real property is also attachment of a security interest in the security interest, mortgage, or other lien.

8. *Security entitlement carried in securities account.* The attachment of a security interest in a securities account is also attachment of a security interest in the security entitlements carried in the securities account.

9. *Commodity contracts carried in commodity account.* The attachment of a security interest in a commodity account is also attachment of a security interest in the commodity contracts carried in the commodity account.

2000 Acts, ch 1149, §13, 185, 187; 2007 Acts, ch 30, §45, 46, 66

Referred to in §554.4210, 554.5118, 554.9102, 554.9109, 554.9110, 554.9316, 554.9317, 554.9508

Sufficiency of description, see §554.9108

Effectiveness of financing statement if new debtor bound, see §554.9508

554.9204 After-acquired property — future advances.

1. *After-acquired collateral.* Except as otherwise provided in subsection 2, a security agreement may create or provide for a security interest in after-acquired collateral.

2. *When after-acquired property clause not effective.* A security interest does not attach under a term constituting an after-acquired property clause to:

a. consumer goods, other than an accession when given as additional security, unless the debtor acquires rights in them within ten days after the secured party gives value; or

b. a commercial tort claim.

3. *Future advances and other value.* A security agreement may provide that collateral secures, or that accounts, chattel paper, payment intangibles, or promissory notes are sold in connection with, future advances or other value, whether or not the advances or value are given pursuant to commitment.

2000 Acts, ch 1149, §14, 185, 187

Accessions, see §554.9335

554.9205 Use or disposition of collateral permissible.

1. *When security interest not invalid or fraudulent.* A security interest is not invalid or fraudulent against creditors solely because:

a. the debtor has the right or ability to:

(1) use, commingle, or dispose of all or part of the collateral, including returned or repossessed goods;

(2) collect, compromise, enforce, or otherwise deal with collateral;

(3) accept the return of collateral or make repossessions; or

(4) use, commingle, or dispose of proceeds; or

b. the secured party fails to require the debtor to account for proceeds or replace collateral.

2. *Requirements of possession not relaxed.* This section does not relax the requirements of possession if attachment, perfection, or enforcement of a security interest depends upon possession of the collateral by the secured party.

2000 Acts, ch 1149, §15, 185, 187

Secured parties rights on disposition of collateral and in proceeds, see §554.9315

554.9206 Security interest arising in purchase or delivery of financial asset.

1. *Security interest when person buys through securities intermediary.* A security interest in favor of a securities intermediary attaches to a person's security entitlement if:

a. the person buys a financial asset through the securities intermediary in a transaction in which the person is obligated to pay the purchase price to the securities intermediary at the time of the purchase; and

b. the securities intermediary credits the financial asset to the buyer's securities account before the buyer pays the securities intermediary.

2. *Security interest secures obligation to pay for financial asset.* The security interest described in subsection 1 secures the person's obligation to pay for the financial asset.

3. *Security interest in payment against delivery transaction.* A security interest in favor of a person that delivers a certificated security or other financial asset represented by a writing attaches to the security or other financial asset if:

a. the security or other financial asset:

(1) in the ordinary course of business is transferred by delivery with any necessary indorsement or assignment; and

(2) is delivered under an agreement between persons in the business of dealing with such securities or financial assets; and

b. the agreement calls for delivery against payment.

4. *Security interest secures obligation to pay for delivery.* The security interest described in subsection 3 secures the obligation to make payment for the delivery.

2000 Acts, ch 1149, §16, 185, 187
Referred to in §554.9203, 554.9309

SUBPART B

RIGHTS AND DUTIES

554.9207 Rights and duties of secured party having possession or control of collateral.

1. *Duty of care when secured party in possession.* Except as otherwise provided in subsection 4, a secured party shall use reasonable care in the custody and preservation of collateral in the secured party's possession. In the case of chattel paper or an instrument, reasonable care includes taking necessary steps to preserve rights against prior parties unless otherwise agreed.

2. *Expenses, risks, duties, and rights when secured party in possession.* Except as otherwise provided in subsection 4, if a secured party has possession of collateral:

a. reasonable expenses, including the cost of insurance and payment of taxes or other charges, incurred in the custody, preservation, use, or operation of the collateral are chargeable to the debtor and are secured by the collateral;

b. the risk of accidental loss or damage is on the debtor to the extent of a deficiency in any effective insurance coverage;

c. the secured party shall keep the collateral identifiable, but fungible collateral may be commingled; and

d. the secured party may use or operate the collateral:

(1) for the purpose of preserving the collateral or its value;

(2) as permitted by an order of a court having competent jurisdiction; or

(3) except in the case of consumer goods, in the manner and to the extent agreed by the debtor.

3. *Duties and rights when secured party in possession or control.* Except as otherwise provided in subsection 4, a secured party having possession of collateral or control of collateral under section 554.7106, 554.9104, 554.9105, 554.9106, or 554.9107:

a. may hold as additional security any proceeds, except money or funds, received from the collateral;

b. shall apply money or funds received from the collateral to reduce the secured obligation, unless remitted to the debtor; and

c. may create a security interest in the collateral.

4. *Buyer of certain rights to payment.* If the secured party is a buyer of accounts, chattel paper, payment intangibles, or promissory notes or a consignor:

a. subsection 1 does not apply unless the secured party is entitled under an agreement:

(1) to charge back uncollected collateral; or

(2) otherwise to full or limited recourse against the debtor or a secondary obligor based

on the nonpayment or other default of an account debtor or other obligor on the collateral; and

b. subsections 2 and 3 do not apply.

2000 Acts, ch 1149, §17, 185, 187; 2007 Acts, ch 30, §45, 46, 67

Referred to in §554.9601, 554.9602

554.9208 Additional duties of secured party having control of collateral.

1. *Applicability of section.* This section applies to cases in which there is no outstanding secured obligation and the secured party is not committed to make advances, incur obligations, or otherwise give value.

2. *Duties of secured party after receiving demand from debtor.* Within ten days after receiving an authenticated demand by the debtor:

a. a secured party having control of a deposit account under section 554.9104, subsection 1, paragraph "*b*", shall send to the bank with which the deposit account is maintained an authenticated statement that releases the bank from any further obligation to comply with instructions originated by the secured party;

b. a secured party having control of a deposit account under section 554.9104, subsection 1, paragraph "*c*", shall:

(1) pay the debtor the balance on deposit in the deposit account; or

(2) transfer the balance on deposit into a deposit account in the debtor's name;

c. a secured party, other than a buyer, having control of electronic chattel paper under section 554.9105 shall:

(1) communicate the authoritative copy of the electronic chattel paper to the debtor or its designated custodian;

(2) if the debtor designates a custodian that is the designated custodian with which the authoritative copy of the electronic chattel paper is maintained for the secured party, communicate to the custodian an authenticated record releasing the designated custodian from any further obligation to comply with instructions originated by the secured party and instructing the custodian to comply with instructions originated by the debtor; and

(3) take appropriate action to enable the debtor or its designated custodian to make copies of or revisions to the authoritative copy which add or change an identified assignee of the authoritative copy without the consent of the secured party;

d. a secured party having control of investment property under section 554.8106, subsection 4, paragraph "*b*", or section 554.9106, subsection 2, shall send to the securities intermediary or commodity intermediary with which the security entitlement or commodity contract is maintained an authenticated record that releases the securities intermediary or commodity intermediary from any further obligation to comply with entitlement orders or directions originated by the secured party;

e. a secured party having control of a letter-of-credit right under section 554.9107 shall send to each person having an unfulfilled obligation to pay or deliver proceeds of the letter of credit to the secured party an authenticated release from any further obligation to pay or deliver proceeds of the letter of credit to the secured party; and

f. a secured party having control of an electronic document shall:

(1) give control of the electronic document to the debtor or its designated custodian;

(2) if the debtor designates a custodian that is the designated custodian with which the authoritative copy of the electronic document is maintained for the secured party, communicate to the custodian an authenticated record releasing the designated custodian from any further obligation to comply with instructions originated by the secured party and instructing the custodian to comply with instructions originated by the debtor; and

(3) take appropriate action to enable the debtor or its designated custodian to make copies of or revisions to the authoritative copy which add or change an identified assignee of the authoritative copy without the consent of the secured party.

2000 Acts, ch 1149, §18, 185, 187; 2007 Acts, ch 30, §45, 46, 68

Referred to in §554.9625

554.9209 Duties of secured party if account debtor has been notified of assignment.

1. *Applicability of section.* Except as otherwise provided in subsection 3, this section applies if:

a. there is no outstanding secured obligation; and

b. the secured party is not committed to make advances, incur obligations, or otherwise give value.

2. *Duties of secured party after receiving demand from debtor.* Within ten days after receiving an authenticated demand by the debtor, a secured party shall send to an account debtor that has received notification of an assignment to the secured party as assignee under section 554.9406, subsection 1, an authenticated record that releases the account debtor from any further obligation to the secured party.

3. *Inapplicability to sales.* This section does not apply to an assignment constituting the sale of an account, chattel paper, or payment intangible.

2000 Acts, ch 1149, §19, 187
Referred to in §554.9625

554.9210 Request for accounting — request regarding list of collateral or statement of account.

1. *Definitions.* In this section:

a. *"Request"* means a record of a type described in paragraph *"b"*, *"c"*, or *"d"*.

b. *"Request for an accounting"* means a record authenticated by a debtor requesting that the recipient provide an accounting of the unpaid obligations secured by collateral and reasonably identifying the transaction or relationship that is the subject of the request.

c. *"Request regarding a list of collateral"* means a record authenticated by a debtor requesting that the recipient approve or correct a list of what the debtor believes to be the collateral securing an obligation and reasonably identifying the transaction or relationship that is the subject of the request.

d. *"Request regarding a statement of account"* means a record authenticated by a debtor requesting that the recipient approve or correct a statement indicating what the debtor believes to be the aggregate amount of unpaid obligations secured by collateral as of a specified date and reasonably identifying the transaction or relationship that is the subject of the request.

2. *Duty to respond to requests.* Subject to subsections 3, 4, 5, and 6, a secured party, other than a buyer of accounts, chattel paper, payment intangibles, or promissory notes or a consignor, shall comply with a request within fourteen days after receipt:

a. in the case of a request for an accounting, by authenticating and sending to the debtor an accounting; and

b. in the case of a request regarding a list of collateral or a request regarding a statement of account, by authenticating and sending to the debtor an approval or correction.

3. *Request regarding list of collateral — statement concerning type of collateral.* A secured party that claims a security interest in all of a particular type of collateral owned by the debtor may comply with a request regarding a list of collateral by sending to the debtor an authenticated record including a statement to that effect within fourteen days after receipt.

4. *Request regarding list of collateral — no interest claimed.* A person that receives a request regarding a list of collateral, claims no interest in the collateral when it receives the request, and claimed an interest in the collateral at an earlier time shall comply with the request within fourteen days after receipt by sending to the debtor an authenticated record:

a. disclaiming any interest in the collateral; and

b. if known to the recipient, providing the name and mailing address of any assignee of or successor to the recipient's interest in the collateral.

5. *Request for accounting or regarding statement of account — no interest in obligation claimed.* A person that receives a request for an accounting or a request regarding a statement of account, claims no interest in the obligations when it receives the request, and claimed an interest in the obligations at an earlier time shall comply with the request within fourteen days after receipt by sending to the debtor an authenticated record:

a. disclaiming any interest in the obligations; and

b. if known to the recipient, providing the name and mailing address of any assignee of or successor to the recipient's interest in the obligations.

6. *Charges for responses.* A debtor is entitled without charge to one response to a request under this section during any six-month period. The secured party may require payment of a charge not exceeding twenty-five dollars for each additional response.

2000 Acts, ch 1149, §20, 187
Referred to in §554.9602, 554.9625

PART 3

PERFECTION AND PRIORITY

SUBPART A

LAW GOVERNING PERFECTION AND PRIORITY

554.9301 Law governing perfection and priority of security interests.

Except as otherwise provided in sections 554.9303, 554.9304, 554.9305, and 554.9306, the following rules determine the law governing perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral:

1. Except as otherwise provided in this section, while a debtor is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral.

2. While collateral is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a possessory security interest in that collateral.

3. Except as otherwise provided in subsection 4, while tangible negotiable documents, goods, instruments, money, or tangible chattel paper is located in a jurisdiction, the local law of that jurisdiction governs:

a. perfection of a security interest in the goods by filing a fixture filing;

b. perfection of a security interest in timber to be cut; and

c. the effect of perfection or nonperfection and the priority of a nonpossessory security interest in the collateral.

4. The local law of the jurisdiction in which the wellhead or minehead is located governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in as-extracted collateral.

2000 Acts, ch 1149, §21, 185, 187; 2007 Acts, ch 30, §45, 46, 69
Referred to in §554.1301, 554.9316

554.9302 Law governing perfection and priority of agricultural liens.

While farm products are located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of an agricultural lien on the farm products.

2000 Acts, ch 1149, §22, 185, 187
Referred to in §554.1301, 579A.2, 579B.3

554.9303 Law governing perfection and priority of security interests in goods covered by a certificate of title.

1. *Applicability of section.* This section applies to goods covered by a certificate of title, even if there is no other relationship between the jurisdiction under whose certificate of title the goods are covered and the goods or the debtor.

2. *When goods covered by certificate of title.* Goods become covered by a certificate of title when a valid application for the certificate of title and the applicable fee are delivered to the appropriate authority. Goods cease to be covered by a certificate of title at the earlier of the time the certificate of title ceases to be effective under the law of the issuing jurisdiction

or the time the goods become covered subsequently by a certificate of title issued by another jurisdiction.

3. *Applicable law.* The local law of the jurisdiction under whose certificate of title the goods are covered governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in goods covered by a certificate of title from the time the goods become covered by the certificate of title until the goods cease to be covered by the certificate of title.

2000 Acts, ch 1149, §23, 185, 187
Referred to in §321.50, 554.1301, 554.9301

554.9304 Law governing perfection and priority of security interests in deposit accounts.

1. *Law of bank's jurisdiction governs.* The local law of a bank's jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a deposit account maintained with that bank.

2. *Bank's jurisdiction.* The following rules determine a bank's jurisdiction for purposes of this part:

a. If an agreement between the bank and the debtor governing the deposit account expressly provides that a particular jurisdiction is the bank's jurisdiction for purposes of this part, this Article, or this chapter, that jurisdiction is the bank's jurisdiction.

b. If paragraph *"a"* does not apply and an agreement between the bank and its customer governing the deposit account expressly provides that the agreement is governed by the law of a particular jurisdiction, that jurisdiction is the bank's jurisdiction.

c. If neither paragraph *"a"* nor paragraph *"b"* applies and an agreement between the bank and its customer governing the deposit account expressly provides that the deposit account is maintained at an office in a particular jurisdiction, that jurisdiction is the bank's jurisdiction.

d. If none of the preceding paragraphs applies, the bank's jurisdiction is the jurisdiction in which the office identified in an account statement as the office serving the customer's account is located.

e. If none of the preceding paragraphs applies, the bank's jurisdiction is the jurisdiction in which the chief executive office of the bank is located.

2000 Acts, ch 1149, §24, 185, 187
Referred to in §554.1301, 554.9301

554.9305 Law governing perfection and priority of security interests in investment property.

1. *Governing law — general rules.* Except as otherwise provided in subsection 3, the following rules apply:

a. While a security certificate is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in the certificated security represented thereby.

b. The local law of the issuer's jurisdiction as specified in section 554.8110, subsection 4, governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in an uncertificated security.

c. The local law of the securities intermediary's jurisdiction as specified in section 554.8110, subsection 5, governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a security entitlement or securities account.

d. The local law of the commodity intermediary's jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a commodity contract or commodity account.

2. *Commodity intermediary's jurisdiction.* The following rules determine a commodity intermediary's jurisdiction for purposes of this part:

a. If an agreement between the commodity intermediary and commodity customer governing the commodity account expressly provides that a particular jurisdiction is the commodity intermediary's jurisdiction for purposes of this part, this Article, or this chapter, that jurisdiction is the commodity intermediary's jurisdiction.

b. If paragraph *"a"* does not apply and an agreement between the commodity

intermediary and commodity customer governing the commodity account expressly provides that the agreement is governed by the law of a particular jurisdiction, that jurisdiction is the commodity intermediary's jurisdiction.

c. If neither paragraph *"a"* nor paragraph *"b"* applies and an agreement between the commodity intermediary and commodity customer governing the commodity account expressly provides that the commodity account is maintained at an office in a particular jurisdiction, that jurisdiction is the commodity intermediary's jurisdiction.

d. If none of the preceding paragraphs applies, the commodity intermediary's jurisdiction is the jurisdiction in which the office identified in an account statement as the office serving the commodity customer's account is located.

e. If none of the preceding paragraphs applies, the commodity intermediary's jurisdiction is the jurisdiction in which the chief executive office of the commodity intermediary is located.

3. *When perfection governed by law of jurisdiction where debtor located.* The local law of the jurisdiction in which the debtor is located governs:

a. perfection of a security interest in investment property by filing;

b. automatic perfection of a security interest in investment property created by a broker or securities intermediary; and

c. automatic perfection of a security interest in a commodity contract or commodity account created by a commodity intermediary.

2000 Acts, ch 1149, §25, 185, 187
Referred to in §554.1301, 554.9301, 554.9316

554.9306 Law governing perfection and priority of security interests in letter-of-credit rights.

1. *Governing law — issuer's or nominated person's jurisdiction.* Subject to subsection 3, the local law of the issuer's jurisdiction or a nominated person's jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a letter-of-credit right if the issuer's jurisdiction or nominated person's jurisdiction is a state.

2. *Issuer's or nominated person's jurisdiction.* For purposes of this part, an issuer's jurisdiction or nominated person's jurisdiction is the jurisdiction whose law governs the liability of the issuer or nominated person with respect to the letter-of-credit right as provided in section 554.5116.

3. *When section not applicable.* This section does not apply to a security interest that is perfected only under section 554.9308, subsection 4.

2000 Acts, ch 1149, §26, 185, 187
Referred to in §554.1301, 554.9301

554.9307 Location of debtor.

1. *Place of business.* In this section, *"place of business"* means a place where a debtor conducts its affairs.

2. *Debtor's location — general rules.* Except as otherwise provided in this section, the following rules determine a debtor's location:

a. A debtor who is an individual is located at the individual's principal residence.

b. A debtor that is an organization and has only one place of business is located at its place of business.

c. A debtor that is an organization and has more than one place of business is located at its chief executive office.

3. *Limitation of applicability of subsection 2.* Subsection 2 applies only if a debtor's residence, place of business, or chief executive office, as applicable, is located in a jurisdiction whose law generally requires information concerning the existence of a nonpossessory security interest to be made generally available in a filing, recording, or registration system as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral. If subsection 2 does not apply, the debtor is located in the District of Columbia.

4. *Continuation of location — cessation of existence, etc.* A person that ceases to exist,

have a residence, or have a place of business continues to be located in the jurisdiction specified by subsections 2 and 3.

5. *Location of registered organization organized under state law.* A registered organization that is organized under the law of a state is located in that state.

6. *Location of registered organization organized under federal law — bank branches and agencies.* Except as otherwise provided in subsection 9, a registered organization that is organized under the law of the United States and a branch or agency of a bank that is not organized under the law of the United States or a state are located:

a. in the state that the law of the United States designates, if the law designates a state of location;

b. in the state that the registered organization, branch, or agency designates, if the law of the United States authorizes the registered organization, branch, or agency to designate its state of location, including by designating its main office, home office, or other comparable office; or

c. in the District of Columbia, if neither paragraph *"a"* nor paragraph *"b"* applies.

7. *Continuation of location — change in status of registered organization.* A registered organization continues to be located in the jurisdiction specified by subsection 5 or 6 notwithstanding:

a. the suspension, revocation, forfeiture, or lapse of the registered organization's status as such in its jurisdiction of organization; or

b. the dissolution, winding up, or cancellation of the existence of the registered organization.

8. *Location of United States.* The United States is located in the District of Columbia.

9. *Location of foreign bank branch or agency if licensed in only one state.* A branch or agency of a bank that is not organized under the law of the United States or a state is located in the state in which the branch or agency is licensed, if all branches and agencies of the bank are licensed in only one state.

10. *Location of foreign air carrier.* A foreign air carrier under the Federal Aviation Act of 1958, as amended, is located at the designated office of the agent upon which service of process may be made on behalf of the carrier.

11. *Section applies only to this part.* This section applies only for purposes of this part.

2000 Acts, ch 1149, §27, 185, 187; 2012 Acts, ch 1052, §5, 37

Referred to in §554.1301

SUBPART B

PERFECTION

554.9308 When security interest or agricultural lien is perfected — continuity of perfection.

1. *Perfection of security interest.* Except as otherwise provided in this section and section 554.9309, a security interest is perfected if it has attached and all of the applicable requirements for perfection in sections 554.9310, 554.9311, 554.9312, 554.9313, 554.9314, 554.9315, and 554.9316 have been satisfied. A security interest is perfected when it attaches if the applicable requirements are satisfied before the security interest attaches.

2. *Perfection of agricultural lien.* An agricultural lien is perfected if it has become effective and all of the applicable requirements for perfection in section 554.9310 have been satisfied. An agricultural lien is perfected when it becomes effective if the applicable requirements are satisfied before the agricultural lien becomes effective.

3. *Continuous perfection — perfection by different methods.* A security interest or agricultural lien is perfected continuously if it is originally perfected by one method under this Article and is later perfected by another method under this Article, without an intermediate period when it was unperfected.

4. *Supporting obligation.* Perfection of a security interest in collateral also perfects a security interest in a supporting obligation for the collateral.

5. *Lien securing right to payment.* Perfection of a security interest in a right to payment or performance also perfects a security interest in a security interest, mortgage, or other lien on personal or real property securing the right.

6. *Security entitlement carried in securities account.* Perfection of a security interest in a securities account also perfects a security interest in the security entitlements carried in the securities account.

7. *Commodity contract carried in commodity account.* Perfection of a security interest in a commodity account also perfects a security interest in the commodity contracts carried in the commodity account.

2000 Acts, ch 1149, §28, 185, 187
Referred to in §554.9109, 554.9306, 554.9310, 554.9312, 570.1, 570A.4, 571.3, 579A.2, 579B.4, 581.3, 717.4
Effectiveness, attachment, and enforceability of security interests, see §554.9201 – 554.9206

554.9309 Security interest perfected upon attachment.

The following security interests are perfected when they attach:

1. a purchase-money security interest in consumer goods, except as otherwise provided in section 554.9311, subsection 2, with respect to consumer goods that are subject to a statute or treaty described in section 554.9311, subsection 1;

2. an assignment of accounts or payment intangibles which does not by itself or in conjunction with other assignments to the same assignee transfer a significant part of the assignor's outstanding accounts or payment intangibles;

3. a sale of a payment intangible;

4. a sale of a promissory note;

5. a security interest created by the assignment of a health care insurance receivable to the provider of the health care goods or services;

6. a security interest arising under section 554.2401, 554.2505, 554.2711, subsection 3, or section 554.13508, subsection 5, until the debtor obtains possession of the collateral;

7. a security interest of a collecting bank arising under section 554.4210;

8. a security interest of an issuer or nominated person arising under section 554.5118;

9. a security interest arising in the delivery of a financial asset under section 554.9206, subsection 3;

10. a security interest in investment property created by a broker or securities intermediary;

11. a security interest in a commodity contract or a commodity account created by a commodity intermediary;

12. an assignment for the benefit of all creditors of the transferor and subsequent transfers by the assignee thereunder; and

13. a security interest created by an assignment of a beneficial interest in a decedent's estate.

2000 Acts, ch 1149, §29, 185, 187
Referred to in §554.9308, 554.9310, 554.9323
Attachment and enforceability of security interests, see §554.9203 – 554.9206

554.9310 When filing required to perfect security interest or agricultural lien — security interests and agricultural liens to which filing provisions do not apply.

1. *General rule — perfection by filing.* Except as otherwise provided in subsection 2 and section 554.9312, subsection 2, a financing statement must be filed to perfect all security interests and agricultural liens.

2. *Exceptions — filing not necessary.* The filing of a financing statement is not necessary to perfect a security interest:

a. that is perfected under section 554.9308, subsection 4, 5, 6, or 7;

b. that is perfected under section 554.9309 when it attaches;

c. in property subject to a statute, regulation, or treaty described in section 554.9311, subsection 1;

d. in goods in possession of a bailee which is perfected under section 554.9312, subsection 4, paragraph "*a*" or "*b*";

e. in certificated securities, documents, goods, or instruments which is perfected without filing, control, or possession under section 554.9312, subsection 5, 6, or 7;

f. in collateral in the secured party's possession under section 554.9313;

g. in a certificated security which is perfected by delivery of the security certificate to the secured party under section 554.9313;

h. in deposit accounts, electronic chattel paper, electronic documents, investment property, or letter-of-credit rights which is perfected by control under section 554.9314;

i. in proceeds which is perfected under section 554.9315; or

j. that is perfected under section 554.9316.

3. *Assignment of perfected security interest.* If a secured party assigns a perfected security interest or agricultural lien, a filing under this Article is not required to continue the perfected status of the security interest against creditors of and transferees from the original debtor.

2000 Acts, ch 1149, §30, 185, 187; 2007 Acts, ch 30, §45, 46, 70
Referred to in §554.9102, 554.9308, 554.9311, 717.4

554.9311 Perfection of security interests in property subject to certain statutes, regulations, and treaties.

1. *Security interest subject to other law.* Except as otherwise provided in subsection 4, the filing of a financing statement is not necessary or effective to perfect a security interest in property subject to:

a. a statute, regulation, or treaty of the United States whose requirements for a security interest's obtaining priority over the rights of a lien creditor with respect to the property preempt section 554.9310, subsection 1;

b. any certificate-of-title statute, including as provided in chapter 321, covering automobiles, trailers, mobile homes, boats, farm tractors, or the like, which provides for a security interest to be indicated on a certificate of title as a condition or result of perfection; or

c. a statute of another jurisdiction which provides for a security interest to be indicated on a certificate of title as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the property.

2. *Compliance with other law.* Compliance with the requirements of a statute, regulation, or treaty described in subsection 1 for obtaining priority over the rights of a lien creditor is equivalent to the filing of a financing statement under this Article. Except as otherwise provided in subsection 4 and sections 554.9313 and 554.9316, subsections 4 and 5, for goods covered by a certificate of title, a security interest in property subject to a statute, regulation, or treaty described in subsection 1 may be perfected only by compliance with those requirements, and a security interest so perfected remains perfected notwithstanding a change in the use or transfer of possession of the collateral.

3. *Duration and renewal of perfection.* Except as otherwise provided in subsection 4 and section 554.9316, subsections 4 and 5, duration and renewal of perfection of a security interest perfected by compliance with the requirements prescribed by a statute, regulation, or treaty described in subsection 1 are governed by the statute, regulation, or treaty. In other respects, the security interest is subject to this Article.

4. *Inapplicability to certain inventory.* During any period in which collateral subject to a statute specified in subsection 1, paragraph *"b"* is inventory held for sale or lease by a person or leased by that person as lessor and that person is in the business of selling goods of that kind, this section does not apply to a security interest in that collateral created by that person.

2000 Acts, ch 1149, §31, 185, 187; 2012 Acts, ch 1052, §6, 37
Referred to in §554.9308, 554.9309, 554.9310, 554.9316, 554.9334, 554.9335, 554.9337, 554.9505, 554.9611, 554.9621

554.9312 Perfection of security interests in chattel paper, deposit accounts, documents, goods covered by documents, instruments, investment property, letter-of-credit rights, and

money — perfection by permissive filing — temporary perfection without filing or transfer of possession.

1. *Perfection by filing permitted.* A security interest in chattel paper, negotiable documents, instruments, or investment property may be perfected by filing.

2. *Control or possession of certain collateral.* Except as otherwise provided in section 554.9315, subsections 3 and 4, for proceeds:

a. a security interest in a deposit account may be perfected only by control under section 554.9314;

b. and except as otherwise provided in section 554.9308, subsection 4, a security interest in a letter-of-credit right may be perfected only by control under section 554.9314; and

c. a security interest in money may be perfected only by the secured party's taking possession under section 554.9313.

3. *Goods covered by negotiable document.* While goods are in the possession of a bailee that has issued a negotiable document covering the goods:

a. a security interest in the goods may be perfected by perfecting a security interest in the document; and

b. a security interest perfected in the document has priority over any security interest that becomes perfected in the goods by another method during that time.

4. *Goods covered by nonnegotiable document.* While goods are in the possession of a bailee that has issued a nonnegotiable document covering the goods, a security interest in the goods may be perfected by:

a. issuance of a document in the name of the secured party;

b. the bailee's receipt of notification of the secured party's interest; or

c. filing as to the goods.

5. *Temporary perfection — new value.* A security interest in certificated securities, negotiable documents, or instruments is perfected without filing or the taking of possession or control for a period of twenty days from the time it attaches to the extent that it arises for new value given under an authenticated security agreement.

6. *Temporary perfection — goods or documents made available to debtor.* A perfected security interest in a negotiable document or goods in possession of a bailee, other than one that has issued a negotiable document for the goods, remains perfected for twenty days without filing if the secured party makes available to the debtor the goods or documents representing the goods for the purpose of:

a. ultimate sale or exchange; or

b. loading, unloading, storing, shipping, transshipping, manufacturing, processing, or otherwise dealing with them in a manner preliminary to their sale or exchange.

7. *Temporary perfection — delivery of security certificate or instrument to debtor.* A perfected security interest in a certificated security or instrument remains perfected for twenty days without filing if the secured party delivers the security certificate or instrument to the debtor for the purpose of:

a. ultimate sale or exchange; or

b. presentation, collection, enforcement, renewal, or registration of transfer.

8. *Expiration of temporary perfection.* After the twenty-day period specified in subsection 5, 6, or 7 expires, perfection depends upon compliance with this Article.

2000 Acts, ch 1149, §32, 185, 187; 2007 Acts, ch 30, §45, 46, 71

Referred to in §554.9308, 554.9310, 554.9323, 554.9324

554.9313 When possession by or delivery to secured party perfects security interest without filing.

1. *Perfection by possession or delivery.* Except as otherwise provided in subsection 2, a secured party may perfect a security interest in tangible negotiable documents, goods, instruments, money, or tangible chattel paper by taking possession of the collateral. A secured party may perfect a security interest in certificated securities by taking delivery of the certificated securities under section 554.8301.

2. *Goods covered by certificate of title.* With respect to goods covered by a certificate of title issued by this state, a secured party may perfect a security interest in the goods by taking

possession of the goods only in the circumstances described in section 554.9316, subsection 4.

3. *Collateral in possession of person other than debtor.* With respect to collateral other than certificated securities and goods covered by a document, a secured party takes possession of collateral in the possession of a person other than the debtor, the secured party, or a lessee of the collateral from the debtor in the ordinary course of the debtor's business, when:

a. the person in possession authenticates a record acknowledging that it holds possession of the collateral for the secured party's benefit; or

b. the person takes possession of the collateral after having authenticated a record acknowledging that it will hold possession of collateral for the secured party's benefit.

4. *Time of perfection by possession — continuation of perfection.* If perfection of a security interest depends upon possession of the collateral by a secured party, perfection occurs no earlier than the time the secured party takes possession and continues only while the secured party retains possession.

5. *Time of perfection by delivery — continuation of perfection.* A security interest in a certificated security in registered form is perfected by delivery when delivery of the certificated security occurs under section 554.8301 and remains perfected by delivery until the debtor obtains possession of the security certificate.

6. *Acknowledgment not required.* A person in possession of collateral is not required to acknowledge that it holds possession for a secured party's benefit.

7. *Effectiveness of acknowledgment — no duties or confirmation.* If a person acknowledges that it holds possession for the secured party's benefit:

a. the acknowledgment is effective under subsection 3 or section 554.8301, subsection 1, even if the acknowledgment violates the rights of a debtor; and

b. unless the person otherwise agrees or law other than this Article otherwise provides, the person does not owe any duty to the secured party and is not required to confirm the acknowledgment to another person.

8. *Secured party's delivery to person other than debtor.* A secured party having possession of collateral does not relinquish possession by delivering the collateral to a person other than the debtor or a lessee of the collateral from the debtor in the ordinary course of the debtor's business if the person was instructed before the delivery or is instructed contemporaneously with the delivery:

a. to hold possession of the collateral for the secured party's benefit; or

b. to redeliver the collateral to the secured party.

9. *Effect of delivery under subsection 8 — no duties or confirmation.* A secured party does not relinquish possession, even if a delivery under subsection 8 violates the rights of a debtor. A person to which collateral is delivered under subsection 8 does not owe any duty to the secured party and is not required to confirm the delivery to another person unless the person otherwise agrees or law other than this Article otherwise provides.

2000 Acts, ch 1149, §33, 185, 187; 2007 Acts, ch 30, §45, 46, 72

Referred to in §554.9203, 554.9308, 554.9310, 554.9311, 554.9312, 554.9316, 554.9320, 554.9328

Rights and duties of secured party having possession or control of collateral, §554.9207, 554.9208

554.9314 Perfection by control.

1. *Perfection by control.* A security interest in investment property, deposit accounts, letter-of-credit rights, electronic chattel paper, or electronic documents may be perfected by control of the collateral under section 554.7106, 554.9104, 554.9105, 554.9106, or 554.9107.

2. *Specified collateral — time of perfection by control — continuation of perfection.* A security interest in deposit accounts, electronic chattel paper, letter-of-credit rights, or electronic documents is perfected by control under section 554.7106, 554.9104, 554.9105, or 554.9107 when the secured party obtains control and remains perfected by control only while the secured party retains control.

3. *Investment property — time of perfection by control — continuation of perfection.* A security interest in investment property is perfected by control under section 554.9106 from the time the secured party obtains control and remains perfected by control until:

a. the secured party does not have control; and

b. one of the following occurs:

(1) if the collateral is a certificated security, the debtor has or acquires possession of the security certificate;

(2) if the collateral is an uncertificated security, the issuer has registered or registers the debtor as the registered owner; or

(3) if the collateral is a security entitlement, the debtor is or becomes the entitlement holder.

2000 Acts, ch 1149, §34, 185, 187; 2007 Acts, ch 30, §45, 46, 73
Referred to in §554.9308, 554.9310, 554.9312, 554.9327, 554.9328, 554.9329

554.9315 Secured party's rights on disposition of collateral and in proceeds.

1. *Disposition of collateral — continuation of security interest or agricultural lien — proceeds.* Except as otherwise provided in this Article and in section 554.2403, subsection 2:

a. a security interest or agricultural lien continues in collateral notwithstanding sale, lease, license, exchange, or other disposition thereof unless the secured party authorized the disposition free of the security interest or agricultural lien; and

b. a security interest attaches to any identifiable proceeds of collateral.

2. *When commingled proceeds identifiable.* Proceeds that are commingled with other property are identifiable proceeds:

a. if the proceeds are goods, to the extent provided by section 554.9336; and

b. if the proceeds are not goods, to the extent that the secured party identifies the proceeds by a method of tracing, including application of equitable principles, that is permitted under law other than this Article with respect to commingled property of the type involved.

3. *Perfection of security interest in proceeds.* A security interest in proceeds is a perfected security interest if the security interest in the original collateral was perfected.

4. *Continuation of perfection.* A perfected security interest in proceeds becomes unperfected on the twenty-first day after the security interest attaches to the proceeds unless:

a. the following conditions are satisfied:

(1) a filed financing statement covers the original collateral;

(2) the proceeds are collateral in which a security interest may be perfected by filing in the office in which the financing statement has been filed; and

(3) the proceeds are not acquired with cash proceeds;

b. the proceeds are identifiable cash proceeds; or

c. the security interest in the proceeds is perfected other than under subsection 3 when the security interest attaches to the proceeds or within twenty days thereafter.

5. *When perfected security interest in proceeds becomes unperfected.* If a filed financing statement covers the original collateral, a security interest in proceeds which remains perfected under subsection 4, paragraph *"a"*, becomes unperfected at the later of:

a. when the effectiveness of the filed financing statement lapses under section 554.9515 or is terminated under section 554.9513; or

b. the twenty-first day after the security interest attaches to the proceeds.

2000 Acts, ch 1149, §35, 185, 187
Referred to in §554.9109, 554.9203, 554.9308, 554.9310, 554.9312, 554.9509, 554.9607

554.9316 Effect of change in governing law.

1. *General rule — effect on perfection of change in governing law.* A security interest perfected pursuant to the law of the jurisdiction designated in section 554.9301, subsection 1, or section 554.9305, subsection 3, remains perfected until the earliest of:

a. the time perfection would have ceased under the law of that jurisdiction;

b. the expiration of four months after a change of the debtor's location to another jurisdiction; or

c. the expiration of one year after a transfer of collateral to a person that thereby becomes a debtor and is located in another jurisdiction.

2. *Security interest perfected or unperfected under law of new jurisdiction.* If a security

interest described in subsection 1 becomes perfected under the law of the other jurisdiction before the earliest time or event described in that subsection, it remains perfected thereafter. If the security interest does not become perfected under the law of the other jurisdiction before the earliest time or event, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

3. *Possessory security interest in collateral moved to new jurisdiction.* A possessory security interest in collateral, other than goods covered by a certificate of title and as-extracted collateral consisting of goods, remains continuously perfected if:

a. the collateral is located in one jurisdiction and subject to a security interest perfected under the law of that jurisdiction;

b. thereafter the collateral is brought into another jurisdiction; and

c. upon entry into the other jurisdiction, the security interest is perfected under the law of the other jurisdiction.

4. *Goods covered by certificate of title from this state.* Except as otherwise provided in subsection 5, a security interest in goods covered by a certificate of title which is perfected by any method under the law of another jurisdiction when the goods become covered by a certificate of title from this state remains perfected until the security interest would have become unperfected under the law of the other jurisdiction had the goods not become so covered.

5. *When subsection 4 security interest becomes unperfected against purchasers.* A security interest described in subsection 4 becomes unperfected as against a purchaser of the goods for value and is deemed never to have been perfected as against a purchaser of the goods for value if the applicable requirements for perfection under section 554.9311, subsection 2, or section 554.9313 are not satisfied before the earlier of:

a. the time the security interest would have become unperfected under the law of the other jurisdiction had the goods not become covered by a certificate of title from this state; or

b. the expiration of four months after the goods had become so covered.

6. *Change in jurisdiction of bank, issuer, nominated person, securities intermediary, or commodity intermediary.* A security interest in deposit accounts, letter-of-credit rights, or investment property which is perfected under the law of the bank's jurisdiction, the issuer's jurisdiction, a nominated person's jurisdiction, the securities intermediary's jurisdiction, or the commodity intermediary's jurisdiction, as applicable, remains perfected until the earlier of:

a. the time the security interest would have become unperfected under the law of that jurisdiction; or

b. the expiration of four months after a change of the applicable jurisdiction to another jurisdiction.

7. *Subsection 6 security interest perfected or unperfected under law of new jurisdiction.* If a security interest described in subsection 6 becomes perfected under the law of the other jurisdiction before the earlier of the time or the end of the period described in that subsection, it remains perfected thereafter. If the security interest does not become perfected under the law of the other jurisdiction before the earlier of that time or the end of that period, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

8. *Effect on filed financing statement of change in governing law.* The following rules apply to collateral to which a security interest attaches within four months after the debtor changes its location to another jurisdiction:

a. A financing statement filed before the change pursuant to the law of the jurisdiction designated in section 554.9301, subsection 1, or section 554.9305, subsection 3, is effective to perfect a security interest in the collateral if the financing statement would have been effective to perfect a security interest in the collateral had the debtor not changed its location.

b. If a security interest perfected by a financing statement that is effective under paragraph "*a*" becomes perfected under the law of the other jurisdiction before the earlier of the time the financing statement would have become ineffective under the law of the jurisdiction designated in section 554.9301, subsection 1, or section 554.9305, subsection 3, or the expiration of the four-month period, it remains perfected thereafter. If the security

interest does not become perfected under the law of the other jurisdiction before the earlier time or event, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

9. *Effect of change in governing law on financing statement filed against original debtor.* If a financing statement naming an original debtor is filed pursuant to the law of the jurisdiction designated in section 554.9301, subsection 1, or section 554.9305, subsection 3, and the new debtor is located in another jurisdiction, the following rules apply:

a. The financing statement is effective to perfect a security interest in collateral acquired by the new debtor before, and within four months after, the new debtor becomes bound under section 554.9203, subsection 4, if the financing statement would have been effective to perfect a security interest in the collateral had the collateral been acquired by the original debtor.

b. A security interest perfected by the financing statement and which becomes perfected under the law of the other jurisdiction before the earlier of the time the financing statement would have become ineffective under the law of the jurisdiction designated in section 554.9301, subsection 1, or section 554.9305, subsection 3, or the expiration of the four-month period remains perfected thereafter. A security interest that is perfected by the financing statement but which does not become perfected under the law of the other jurisdiction before the earlier time or event becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

2000 Acts, ch 1149, §36, 185, 187; 2012 Acts, ch 1052, §7, 33, 37
Referred to in §554.9308, 554.9310, 554.9311, 554.9313, 554.9320, 554.9326

SUBPART C

PRIORITY

554.9317 Interests that take priority over or take free of security interest or agricultural lien.

1. *Conflicting security interests and rights of lien creditors.* A security interest or agricultural lien is subordinate to the rights of:

a. a person entitled to priority under section 554.9322; and

b. except as otherwise provided in subsection 5, a person that becomes a lien creditor before the earlier of the time:

(1) The security interest or agricultural lien is perfected; or

(2) One of the conditions specified in section 554.9203, subsection 2, paragraph "*c*" is met and a financing statement covering the collateral is filed.

2. *Buyers that receive delivery.* Except as otherwise provided in subsection 5, a buyer, other than a secured party, of tangible chattel paper, tangible documents, goods, instruments, or a certificated security takes free of a security interest or agricultural lien if the buyer gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

3. *Lessees that receive delivery.* Except as otherwise provided in subsection 5, a lessee of goods takes free of a security interest or agricultural lien if the lessee gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

4. *Licensees and buyers of certain collateral.* A licensee of a general intangible or a buyer, other than a secured party, of collateral other than tangible chattel paper, tangible documents, goods, instruments, or a certificated security takes free of a security interest if the licensee or buyer gives value without knowledge of the security interest and before it is perfected.

5. *Purchase-money security interest.* Except as otherwise provided in sections 554.9320 and 554.9321, if a person files a financing statement with respect to a purchase-money security interest before or within twenty days after the debtor receives delivery of the collateral, the security interest takes priority over the rights of a buyer, lessee, or lien creditor which arise between the time the security interest attaches and the time of filing.

2000 Acts, ch 1149, §37, 185, 187; 2007 Acts, ch 30, §45, 46, 74; 2012 Acts, ch 1052, §8, 37
Referred to in §554.13307

554.9318 No interest retained in right to payment that is sold — rights and title of seller of account or chattel paper with respect to creditors and purchasers.

1. *Seller retains no interest.* A debtor that has sold an account, chattel paper, payment intangible, or promissory note does not retain a legal or equitable interest in the collateral sold.

2. *Deemed rights of debtor if buyer's security interest unperfected.* For purposes of determining the rights of creditors of, and purchasers for value of an account or chattel paper from, a debtor that has sold an account or chattel paper, while the buyer's security interest is unperfected, the debtor is deemed to have rights and title to the account or chattel paper identical to those the debtor sold.

2000 Acts, ch 1149, §38, 185, 187

554.9319 Rights and title of consignee with respect to creditors and purchasers.

1. *Consignee has consignor's rights.* Except as otherwise provided in subsection 2, for purposes of determining the rights of creditors of, and purchasers for value of goods from, a consignee, while the goods are in the possession of the consignee, the consignee is deemed to have rights and title to the goods identical to those the consignor had or had power to transfer.

2. *Applicability of other law.* For purposes of determining the rights of a creditor of a consignee, law other than this Article determines the rights and title of a consignee while goods are in the consignee's possession if, under this part, a perfected security interest held by the consignor would have priority over the rights of the creditor.

2000 Acts, ch 1149, §39, 187

554.9320 Buyer of goods.

1. *Buyer in ordinary course of business.* Except as otherwise provided in subsection 5, a buyer in ordinary course of business, other than a person buying farm products from a person engaged in farming operations, takes free of a security interest created by the buyer's seller, even if the security interest is perfected and the buyer knows of its existence.

2. *Buyer of consumer goods.* Except as otherwise provided in subsection 5, a buyer of goods from a person who used or bought the goods for use primarily for personal, family, or household purposes takes free of a security interest, even if perfected, if the buyer buys:

a. without knowledge of the security interest;

b. for value;

c. primarily for the buyer's personal, family, or household purposes; and

d. before the filing of a financing statement covering the goods.

3. *Effectiveness of filing for subsection 2.* To the extent that it affects the priority of a security interest over a buyer of goods under subsection 2, the period of effectiveness of a filing made in the jurisdiction in which the seller is located is governed by section 554.9316, subsections 1 and 2.

4. *Buyer in ordinary course of business at wellhead or minehead.* A buyer in ordinary course of business buying oil, gas, or other minerals at the wellhead or minehead or after extraction takes free of an interest arising out of an encumbrance.

5. *Possessory security interest not affected.* Subsections 1 and 2 do not affect a security interest in goods in the possession of the secured party under section 554.9313.

2000 Acts, ch 1149, §40, 187

Referred to in §554.7209, 554.7503, 554.9317

554.9321 Licensee of general intangible and lessee of goods in ordinary course of business.

1. *Licensee in ordinary course of business.* In this section, *"licensee in ordinary course of business"* means a person that becomes a licensee of a general intangible in good faith, without knowledge that the license violates the rights of another person in the general intangible, and in the ordinary course from a person in the business of licensing general intangibles of that kind. A person becomes a licensee in the ordinary course if the license to

the person comports with the usual or customary practices in the kind of business in which the licensor is engaged or with the licensor's own usual or customary practices.

2. *Rights of licensee in ordinary course of business.* A licensee in ordinary course of business takes its rights under a nonexclusive license free of a security interest in the general intangible created by the licensor, even if the security interest is perfected and the licensee knows of its existence.

3. *Rights of lessee in ordinary course of business.* A lessee in ordinary course of business takes its leasehold interest free of a security interest in the goods created by the lessor, even if the security interest is perfected and the lessee knows of its existence.

2000 Acts, ch 1149, §41, 187

Referred to in §554.7209, 554.7503, 554.9317, 554.13307

554.9322 Priorities among conflicting security interests in and agricultural liens on same collateral.

1. *General priority rules.* Except as otherwise provided in this section, priority among conflicting security interests and agricultural liens in the same collateral is determined according to the following rules:

a. Conflicting perfected security interests and agricultural liens rank according to priority in time of filing or perfection. Priority dates from the earlier of the time a filing covering the collateral is first made or the security interest or agricultural lien is first perfected, if there is no period thereafter when there is neither filing nor perfection.

b. A perfected security interest or agricultural lien has priority over a conflicting unperfected security interest or agricultural lien.

c. The first security interest or agricultural lien to attach or become effective has priority if conflicting security interests and agricultural liens are unperfected.

2. *Time of perfection — proceeds and supporting obligations.* For the purposes of subsection 1, paragraph "*a*":

a. the time of filing or perfection as to a security interest in collateral is also the time of filing or perfection as to a security interest in proceeds; and

b. the time of filing or perfection as to a security interest in collateral supported by a supporting obligation is also the time of filing or perfection as to a security interest in the supporting obligation.

3. *Special priority rules — proceeds and supporting obligations.* Except as otherwise provided in subsection 6, a security interest in collateral which qualifies for priority over a conflicting security interest under section 554.9327, 554.9328, 554.9329, 554.9330, or 554.9331 also has priority over a conflicting security interest in:

a. any supporting obligation for the collateral; and

b. proceeds of the collateral if:

(1) the security interest in proceeds is perfected;

(2) the proceeds are cash proceeds or of the same type as the collateral; and

(3) in the case of proceeds that are proceeds of proceeds, all intervening proceeds are cash proceeds, proceeds of the same type as the collateral, or an account relating to the collateral.

4. *First-to-file priority rule for certain collateral.* Subject to subsection 5 and except as otherwise provided in subsection 6, if a security interest in chattel paper, deposit accounts, negotiable documents, instruments, investment property, or letter-of-credit rights is perfected by a method other than filing, conflicting perfected security interests in proceeds of the collateral rank according to priority in time of filing.

5. *Applicability of subsection 4.* Subsection 4 applies only if the proceeds of the collateral are not cash proceeds, chattel paper, negotiable documents, instruments, investment property, or letter-of-credit rights.

6. *Limitations on subsections 1 through 5.* Subsections 1 through 5 are subject to:

a. subsection 7 and the other provisions of this part;

b. section 554.4210 with respect to a security interest of a collecting bank;

c. section 554.5118 with respect to a security interest of an issuer or nominated person; and

d. section 554.9110 with respect to a security interest arising under Article 2 or 13.

7. *Priority under agricultural lien statute.* A perfected agricultural lien on collateral has priority over a conflicting security interest in or agricultural lien on the same collateral if the statute creating the agricultural lien so provides.

2000 Acts, ch 1149, §42, 187

Referred to in §203.12A, 203C.12A, 554.9109, 554.9317, 554.9323, 554.9324, 554.9325, 554.9328, 554.9330, 570A.5, 571.3A, 579A.2, 579B.4, 581.2

554.9323 Future advances.

1. *When priority based on time of advance.* Except as otherwise provided in subsection 3, for purposes of determining the priority of a perfected security interest under section 554.9322, subsection 1, paragraph *"a"*, perfection of the security interest dates from the time an advance is made to the extent that the security interest secures an advance that:

a. is made while the security interest is perfected only:

(1) under section 554.9309 when it attaches; or

(2) temporarily under section 554.9312, subsection 5, 6, or 7; and

b. is not made pursuant to a commitment entered into before or while the security interest is perfected by a method other than under section 554.9309 or 554.9312, subsection 5, 6, or 7.

2. *Lien creditor.* Except as otherwise provided in subsection 3, a security interest is subordinate to the rights of a person that becomes a lien creditor to the extent that the security interest secures an advance made more than forty-five days after the person becomes a lien creditor unless the advance is made:

a. without knowledge of the lien; or

b. pursuant to a commitment entered into without knowledge of the lien.

3. *Buyer of receivables.* Subsections 1 and 2 do not apply to a security interest held by a secured party that is a buyer of accounts, chattel paper, payment intangibles, or promissory notes or a consignor.

4. *Buyer of goods.* Except as otherwise provided in subsection 5, a buyer of goods other than a buyer in ordinary course of business takes free of a security interest to the extent that it secures advances made after the earlier of:

a. the time the secured party acquires knowledge of the buyer's purchase; or

b. forty-five days after the purchase.

5. *Advances made pursuant to commitment — priority of buyer of goods.* Subsection 4 does not apply if the advance is made pursuant to a commitment entered into without knowledge of the buyer's purchase and before the expiration of the forty-five-day period.

6. *Lessee of goods.* Except as otherwise provided in subsection 7, a lessee of goods, other than a lessee in ordinary course of business, takes the leasehold interest free of a security interest to the extent that it secures advances made after the earlier of:

a. the time the secured party acquires knowledge of the lease; or

b. forty-five days after the lease contract becomes enforceable.

7. *Advances made pursuant to commitment — priority of lessee of goods.* Subsection 6 does not apply if the advance is made pursuant to a commitment entered into without knowledge of the lease and before the expiration of the forty-five-day period.

2000 Acts, ch 1149, §43, 187

Referred to in §554.9328, 554.13307

554.9324 Priority of purchase-money security interests.

1. *General rule — purchase-money priority.* Except as otherwise provided in subsection 7, a perfected purchase-money security interest in goods other than inventory or livestock has priority over a conflicting security interest in the same goods, and, except as otherwise provided in section 554.9327, a perfected security interest in its identifiable proceeds also has priority, if the purchase-money security interest is perfected when the debtor receives possession of the collateral or within twenty days thereafter.

2. *Inventory purchase-money priority.* Subject to subsection 3 and except as otherwise provided in subsection 7, a perfected purchase-money security interest in inventory has priority over a conflicting security interest in the same inventory, has priority over a conflicting security interest in chattel paper or an instrument constituting proceeds of the inventory and in proceeds of the chattel paper, if so provided in section 554.9330, and, except

as otherwise provided in section 554.9327, also has priority in identifiable cash proceeds of the inventory to the extent the identifiable cash proceeds are received on or before the delivery of the inventory to a buyer, if:

a. the purchase-money security interest is perfected when the debtor receives possession of the inventory;

b. the purchase-money secured party sends an authenticated notification to the holder of the conflicting security interest;

c. the holder of the conflicting security interest receives the notification within five years before the debtor receives possession of the inventory; and

d. the notification states that the person sending the notification has or expects to acquire a purchase-money security interest in inventory of the debtor and describes the inventory.

3. *Holders of conflicting inventory security interests to be notified.* Subsection 2, paragraphs *"b"* through *"d"*, apply only if the holder of the conflicting security interest had filed a financing statement covering the same types of inventory:

a. if the purchase-money security interest is perfected by filing, before the date of the filing; or

b. if the purchase-money security interest is temporarily perfected without filing or possession under section 554.9312, subsection 6, before the beginning of the twenty-day period thereunder.

4. *Livestock purchase-money priority.* Subject to subsection 5 and except as otherwise provided in subsection 7, a perfected purchase-money security interest in livestock that are farm products has priority over a conflicting security interest in the same livestock, and, except as otherwise provided in section 554.9327, a perfected security interest in their identifiable proceeds and identifiable products in their unmanufactured states also has priority, if:

a. the purchase-money security interest is perfected when the debtor receives possession of the livestock;

b. the purchase-money secured party sends an authenticated notification to the holder of the conflicting security interest;

c. the holder of the conflicting security interest receives the notification within six months before the debtor receives possession of the livestock; and

d. the notification states that the person sending the notification has or expects to acquire a purchase-money security interest in livestock of the debtor and describes the livestock.

5. *Holders of conflicting livestock security interests to be notified.* Subsection 4, paragraphs *"b"* through *"d"*, apply only if the holder of the conflicting security interest had filed a financing statement covering the same types of livestock:

a. if the purchase-money security interest is perfected by filing, before the date of the filing; or

b. if the purchase-money security interest is temporarily perfected without filing or possession under section 554.9312, subsection 6, before the beginning of the twenty-day period thereunder.

6. *Software purchase-money priority.* Except as otherwise provided in subsection 7, a perfected purchase-money security interest in software has priority over a conflicting security interest in the same collateral, and, except as otherwise provided in section 554.9327, a perfected security interest in its identifiable proceeds also has priority, to the extent that the purchase-money security interest in the goods in which the software was acquired for use has priority in the goods and proceeds of the goods under this section.

7. *Conflicting purchase-money security interests.* If more than one security interest qualifies for priority in the same collateral under subsection 1, 2, 4, or 6:

a. a security interest securing an obligation incurred as all or part of the price of the collateral has priority over a security interest securing an obligation incurred for value given to enable the debtor to acquire rights in or the use of collateral; and

b. in all other cases, section 554.9322, subsection 1, applies to the qualifying security interests.

2000 Acts, ch 1149, §44, 187

Referred to in §554.9325

554.9325 Priority of security interests in transferred collateral.

1. *Subordination of security interest in transferred collateral.* Except as otherwise provided in subsection 2, a security interest created by a debtor is subordinate to a security interest in the same collateral created by another person if:

a. the debtor acquired the collateral subject to the security interest created by the other person;

b. the security interest created by the other person was perfected when the debtor acquired the collateral; and

c. there is no period thereafter when the security interest is unperfected.

2. *Limitation of subsection 1 subordination.* Subsection 1 subordinates a security interest only if the security interest:

a. otherwise would have priority solely under section 554.9322, subsection 1, or section 554.9324; or

b. arose solely under section 554.2711, subsection 3, or section 554.13508, subsection 5.

2000 Acts, ch 1149, §45, 187

554.9326 Priority of security interests created by new debtor.

1. *Subordination of security interest created by new debtor.* Subject to subsection 2, a security interest that is created by a new debtor in collateral in which the new debtor has or acquires rights and is perfected solely by a filed financing statement that would be ineffective to perfect the security interest but for the application of section 554.9316, subsection 9, paragraph "*a*", or section 554.9508 is subordinate to a security interest in the same collateral which is perfected other than by such a filed financing statement.

2. *Priority under other provisions — multiple original debtors.* The other provisions of this part determine the priority among conflicting security interests in the same collateral perfected by filed financing statements described in subsection 1. However, if the security agreements to which a new debtor became bound as debtor were not entered into by the same original debtor, the conflicting security interests rank according to priority in time of the new debtor's having become bound.

2000 Acts, ch 1149, §46, 187; 2012 Acts, ch 1052, §9, 37

554.9327 Priority of security interests in deposit account.

The following rules govern priority among conflicting security interests in the same deposit account:

1. A security interest held by a secured party having control of the deposit account under section 554.9104 has priority over a conflicting security interest held by a secured party that does not have control.

2. Except as otherwise provided in subsections 3 and 4, security interests perfected by control under section 554.9314 rank according to priority in time of obtaining control.

3. Except as otherwise provided in subsection 4, a security interest held by the bank with which the deposit account is maintained has priority over a conflicting security interest held by another secured party.

4. A security interest perfected by control under section 554.9104, subsection 1, paragraph "*c*", has priority over a security interest held by the bank with which the deposit account is maintained.

2000 Acts, ch 1149, §47, 187

Referred to in §554.9322, 554.9324, 554.9330

554.9328 Priority of security interests in investment property.

The following rules govern priority among conflicting security interests in the same investment property:

1. A security interest held by a secured party having control of investment property under section 554.9106 has priority over a security interest held by a secured party that does not have control of the investment property.

2. Except as otherwise provided in subsections 3 and 4, conflicting security interests held

by secured parties each of which has control under section 554.9106 rank according to priority in time of:

a. if the collateral is a security, obtaining control;

b. if the collateral is a security entitlement carried in a securities account and:

(1) if the secured party obtained control under section 554.8106, subsection 4, paragraph *"a"*, the secured party's becoming the person for which the securities account is maintained;

(2) if the secured party obtained control under section 554.8106, subsection 4, paragraph *"b"*, the securities intermediary's agreement to comply with the secured party's entitlement orders with respect to security entitlements carried or to be carried in the securities account; or

(3) if the secured party obtained control through another person under section 554.8106, subsection 4, paragraph *"c"*, the time on which priority would be based under this subsection if the other person were the secured party; or

c. if the collateral is a commodity contract carried with a commodity intermediary, the satisfaction of the requirement for control specified in section 554.9106, subsection 2, paragraph *"b"*, with respect to commodity contracts carried or to be carried with the commodity intermediary.

3. A security interest held by a securities intermediary in a security entitlement or a securities account maintained with the securities intermediary has priority over a conflicting security interest held by another secured party.

4. A security interest held by a commodity intermediary in a commodity contract or a commodity account maintained with the commodity intermediary has priority over a conflicting security interest held by another secured party.

5. A security interest in a certificated security in registered form which is perfected by taking delivery under section 554.9313, subsection 1, and not by control under section 554.9314 has priority over a conflicting security interest perfected by a method other than control.

6. Conflicting security interests created by a broker, securities intermediary, or commodity intermediary which are perfected without control under section 554.9106 rank equally.

7. In all other cases, priority among conflicting security interests in investment property is governed by sections 554.9322 and 554.9323.

2000 Acts, ch 1149, §48, 187
Referred to in §554.9322

554.9329 Priority of security interests in letter-of-credit right.

The following rules govern priority among conflicting security interests in the same letter-of-credit right:

1. A security interest held by a secured party having control of the letter-of-credit right under section 554.9107 has priority to the extent of its control over a conflicting security interest held by a secured party that does not have control.

2. Security interests perfected by control under section 554.9314 rank according to priority in time of obtaining control.

2000 Acts, ch 1149, §49, 187
Referred to in §554.9322

554.9330 Priority of purchaser of chattel paper or instrument.

1. *Purchaser's priority — security interest claimed merely as proceeds.* A purchaser of chattel paper has priority over a security interest in the chattel paper which is claimed merely as proceeds of inventory subject to a security interest if:

a. in good faith and in the ordinary course of the purchaser's business, the purchaser gives new value and takes possession of the chattel paper or obtains control of the chattel paper under section 554.9105; and

b. the chattel paper does not indicate that it has been assigned to an identified assignee other than the purchaser.

2. *Purchaser's priority — other security interests.* A purchaser of chattel paper has priority over a security interest in the chattel paper which is claimed other than merely as

proceeds of inventory subject to a security interest if the purchaser gives new value and takes possession of the chattel paper or obtains control of the chattel paper under section 554.9105 in good faith, in the ordinary course of the purchaser's business, and without knowledge that the purchase violates the rights of the secured party.

3. *Chattel paper purchaser's priority in proceeds.* Except as otherwise provided in section 554.9327, a purchaser having priority in chattel paper under subsection 1 or 2 also has priority in proceeds of the chattel paper to the extent that:

a. section 554.9322 provides for priority in the proceeds; or

b. the proceeds consist of the specific goods covered by the chattel paper or cash proceeds of the specific goods, even if the purchaser's security interest in the proceeds is unperfected.

4. *Instrument purchaser's priority.* Except as otherwise provided in section 554.9331, subsection 1, a purchaser of an instrument has priority over a security interest in the instrument perfected by a method other than possession if the purchaser gives value and takes possession of the instrument in good faith and without knowledge that the purchase violates the rights of the secured party.

5. *Holder of purchase-money security interest gives new value.* For purposes of subsections 1 and 2, the holder of a purchase-money security interest in inventory gives new value for chattel paper constituting proceeds of the inventory.

6. *Indication of assignment gives knowledge.* For purposes of subsections 2 and 4, if chattel paper or an instrument indicates that it has been assigned to an identified secured party other than the purchaser, a purchaser of the chattel paper or instrument has knowledge that the purchase violates the rights of the secured party.

2000 Acts, ch 1149, §50, 187
Referred to in §554.9322, 554.9324, 554D.118

554.9331 Priority of rights of purchasers of instruments, documents, and securities under other articles — priority of interests in financial assets and security entitlements under Article 8.

1. *Rights under Articles 3, 7, and 8 not limited.* This Article does not limit the rights of a holder in due course of a negotiable instrument, a holder to which a negotiable document of title has been duly negotiated, or a protected purchaser of a security. These holders or purchasers take priority over an earlier security interest, even if perfected, to the extent provided in Articles 3, 7, and 8.

2. *Protection under Article 8.* This Article does not limit the rights of or impose liability on a person to the extent that the person is protected against the assertion of a claim under Article 8.

3. *Filing not notice.* Filing under this Article does not constitute notice of a claim or defense to the holders, or purchasers, or persons described in subsections 1 and 2.

2000 Acts, ch 1149, §51, 187
Referred to in §554.9322, 554.9330

554.9332 Transfer of money — transfer of funds from deposit account.

1. *Transferee of money.* A transferee of money takes the money free of a security interest unless the transferee acts in collusion with the debtor in violating the rights of the secured party.

2. *Transferee of funds from deposit account.* A transferee of funds from a deposit account takes the funds free of a security interest in the deposit account unless the transferee acts in collusion with the debtor in violating the rights of the secured party.

2000 Acts, ch 1149, §52, 187

554.9333 Priority of certain liens arising by operation of law.

1. *Possessory lien.* In this section, "*possessory lien*" means an interest, other than a security interest or an agricultural lien:

a. which secures payment or performance of an obligation for services or materials furnished with respect to goods by a person in the ordinary course of the person's business;

b. which is created by statute or rule of law in favor of the person; and

c. whose effectiveness depends on the person's possession of the goods.

2. *Priority of possessory lien.* A possessory lien on goods has priority over a security interest in the goods unless the lien is created by a statute that expressly provides otherwise.

2000 Acts, ch 1149, §53, 187
Referred to in §554.9109

554.9334 Priority of security interests in fixtures and crops.

1. *Security interest in fixtures under this Article.* A security interest under this Article may be created in goods that are fixtures or may continue in goods that become fixtures. A security interest does not exist under this Article in ordinary building materials incorporated into an improvement on land.

2. *Security interest in fixtures under real property law.* This Article does not prevent creation of an encumbrance upon fixtures under real property law.

3. *General rule — subordination of security interest in fixtures.* In cases not governed by subsections 4 through 8, a security interest in fixtures is subordinate to a conflicting interest of an encumbrancer or owner of the related real property other than the debtor.

4. *Fixtures purchase-money priority.* Except as otherwise provided in subsection 8, a perfected security interest in fixtures has priority over a conflicting interest of an encumbrancer or owner of the real property if the debtor has an interest of record in or is in possession of the real property and:

a. the security interest is a purchase-money security interest;

b. the interest of the encumbrancer or owner arises before the goods become fixtures; and

c. the security interest is perfected by a fixture filing before the goods become fixtures or within twenty days thereafter.

5. *Priority of security interest in fixtures over interests in real property.* A perfected security interest in fixtures has priority over a conflicting interest of an encumbrancer or owner of the real property if:

a. the debtor has an interest of record in the real property or is in possession of the real property and the security interest:

(1) is perfected by a fixture filing before the interest of the encumbrancer or owner is of record; and

(2) has priority over any conflicting interest of a predecessor in title of the encumbrancer or owner;

b. before the goods become fixtures, the security interest is perfected by any method permitted by this Article and the fixtures are readily removable:

(1) factory or office machines;

(2) equipment that is not primarily used or leased for use in the operation of the real property; or

(3) replacements of domestic appliances that are consumer goods;

c. the conflicting interest is a lien on the real property obtained by legal or equitable proceedings after the security interest was perfected by any method permitted by this Article; or

d. the security interest is:

(1) created in a manufactured home in a manufactured-home transaction; and

(2) perfected pursuant to a statute described in section 554.9311, subsection 1, paragraph *"b"*.

6. *Priority based on consent, disclaimer, or right to remove.* A security interest in fixtures, whether or not perfected, has priority over a conflicting interest of an encumbrancer or owner of the real property if:

a. the encumbrancer or owner has, in an authenticated record, consented to the security interest or disclaimed an interest in the goods as fixtures; or

b. the debtor has a right to remove the goods as against the encumbrancer or owner.

7. *Continuation of subsection 6, paragraph "b", priority.* The priority of the security interest under subsection 6, paragraph *"b"*, continues for a reasonable time if the debtor's right to remove the goods as against the encumbrancer or owner terminates.

8. *Priority of construction mortgage.* A mortgage is a construction mortgage to the extent that it secures an obligation incurred for the construction of an improvement on

land, including the acquisition cost of the land, if a recorded record of the mortgage so indicates. Except as otherwise provided in subsections 5 and 6, a security interest in fixtures is subordinate to a construction mortgage if a record of the mortgage is recorded before the goods become fixtures and the goods become fixtures before the completion of the construction. A mortgage has this priority to the same extent as a construction mortgage to the extent that it is given to refinance a construction mortgage.

9. *Priority of security interest in crops.* Except as provided in subsection 10, a perfected security interest in crops growing on real property has priority over a conflicting interest of an encumbrancer or owner of the real property if the debtor has an interest of record in or is in possession of the real property.

10. *Agricultural liens prevail.* The provisions of this Article regarding agricultural liens prevail over any inconsistent provisions of subsection 9.

2000 Acts, ch 1149, §54, 187

Referred to in §554.9109

554.9335 Accessions.

1. *Creation of security interest in accession.* A security interest may be created in an accession and continues in collateral that becomes an accession.

2. *Perfection of security interest.* If a security interest is perfected when the collateral becomes an accession, the security interest remains perfected in the collateral.

3. *Priority of security interest.* Except as otherwise provided in subsection 4, the other provisions of this part determine the priority of a security interest in an accession.

4. *Compliance with certificate-of-title statute.* A security interest in an accession is subordinate to a security interest in the whole which is perfected by compliance with the requirements of a certificate-of-title statute under section 554.9311, subsection 2.

5. *Removal of accession after default.* After default, subject to part 6, a secured party may remove an accession from other goods if the security interest in the accession has priority over the claims of every person having an interest in the whole.

6. *Reimbursement following removal.* A secured party that removes an accession from other goods under subsection 5 shall promptly reimburse any holder of a security interest or other lien on, or owner of, the whole or of the other goods, other than the debtor, for the cost of repair of any physical injury to the whole or the other goods. The secured party need not reimburse the holder or owner for any diminution in value of the whole or the other goods caused by the absence of the accession removed or by any necessity for replacing it. A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate assurance for the performance of the obligation to reimburse.

2000 Acts, ch 1149, §55, 187

554.9336 Commingled goods.

1. *Commingled goods.* In this section, *"commingled goods"* means goods that are physically united with other goods in such a manner that their identity is lost in a product or mass.

2. *No security interest in commingled goods as such.* A security interest does not exist in commingled goods as such. However, a security interest may attach to a product or mass that results when goods become commingled goods.

3. *Attachment of security interest to product or mass.* If collateral becomes commingled goods, a security interest attaches to the product or mass.

4. *Perfection of security interest.* If a security interest in collateral is perfected before the collateral becomes commingled goods, the security interest that attaches to the product or mass under subsection 3 is perfected.

5. *Priority of security interest.* Except as otherwise provided in subsection 6, the other provisions of this part determine the priority of a security interest that attaches to the product or mass under subsection 3.

6. *Conflicting security interests in product or mass.* If more than one security interest attaches to the product or mass under subsection 3, the following rules determine priority:

a. A security interest that is perfected under subsection 4 has priority over a security interest that is unperfected at the time the collateral becomes commingled goods.

b. If more than one security interest is perfected under subsection 4, the security interests rank equally in proportion to the value of the collateral at the time it became commingled goods.

2000 Acts, ch 1149, §56, 187
Referred to in §554.9315

554.9337 Priority of security interests in goods covered by certificate of title.

If, while a security interest in goods is perfected by any method under the law of another jurisdiction, this state issues a certificate of title that does not show that the goods are subject to the security interest or contain a statement that they may be subject to security interests not shown on the certificate:

1. a buyer of the goods, other than a person in the business of selling goods of that kind, takes free of the security interest if the buyer gives value and receives delivery of the goods after issuance of the certificate and without knowledge of the security interest; and

2. the security interest is subordinate to a conflicting security interest in the goods that attaches, and is perfected under section 554.9311, subsection 2, after issuance of the certificate and without the conflicting secured party's knowledge of the security interest.

2000 Acts, ch 1149, §57, 187

554.9338 Priority of security interest or agricultural lien perfected by filed financing statement providing certain incorrect information.

If a security interest or agricultural lien is perfected by a filed financing statement providing information described in section 554.9516, subsection 2, paragraph *"e"*, which is incorrect at the time the financing statement is filed:

1. the security interest or agricultural lien is subordinate to a conflicting perfected security interest in the collateral to the extent that the holder of the conflicting security interest gives value in reasonable reliance upon the incorrect information; and

2. a purchaser, other than a secured party, of the collateral takes free of the security interest or agricultural lien to the extent that, in reasonable reliance upon the incorrect information, the purchaser gives value and, in the case of tangible chattel paper, tangible documents, goods, instruments, or a security certificate, receives delivery of the collateral.

2000 Acts, ch 1149, §58, 187; 2007 Acts, ch 30, §45, 46, 75
Referred to in §554.9520

554.9339 Priority subject to subordination.

This Article does not preclude subordination by agreement by a person entitled to priority.

2000 Acts, ch 1149, §59, 187

SUBPART D

RIGHTS OF BANK

554.9340 Effectiveness of right of recoupment or setoff against deposit account.

1. *Exercise of recoupment or setoff.* Except as otherwise provided in subsection 3, a bank with which a deposit account is maintained may exercise any right of recoupment or setoff against a secured party that holds a security interest in the deposit account.

2. *Recoupment or setoff not affected by security interest.* Except as otherwise provided in subsection 3, the application of this Article to a security interest in a deposit account does not affect a right of recoupment or setoff of the secured party as to a deposit account maintained with the secured party.

3. *When setoff ineffective.* The exercise by a bank of a setoff against a deposit account is ineffective against a secured party that holds a security interest in the deposit account which

is perfected by control under section 554.9104, subsection 1, paragraph *"c"*, if the setoff is based on a claim against the debtor.

2000 Acts, ch 1149, §60, 187

Referred to in §554.9109, 554.9341

554.9341 Bank's rights and duties with respect to deposit account.

Except as otherwise provided in section 554.9340, subsection 3, and unless the bank otherwise agrees in an authenticated record, a bank's rights and duties with respect to a deposit account maintained with the bank are not terminated, suspended, or modified by:

1. the creation, attachment, or perfection of a security interest in the deposit account;
2. the bank's knowledge of the security interest; or
3. the bank's receipt of instructions from the secured party.

2000 Acts, ch 1149, §61, 187

554.9342 Bank's right to refuse to enter into or disclose existence of control agreement.

This Article does not require a bank to enter into an agreement of the kind described in section 554.9104, subsection 1, paragraph *"b"*, even if its customer so requests or directs. A bank that has entered into such an agreement is not required to confirm the existence of the agreement to another person unless requested to do so by its customer.

2000 Acts, ch 1149, §62, 187

PART 4

RIGHTS OF THIRD PARTIES

554.9401 Alienability of debtor's rights.

1. *Other law governs alienability — exceptions.* Except as otherwise provided in subsection 2 and sections 554.9406, 554.9407, 554.9408, and 554.9409, whether a debtor's rights in collateral may be voluntarily or involuntarily transferred is governed by law other than this Article.

2. *Agreement does not prevent transfer.* An agreement between the debtor and secured party which prohibits a transfer of the debtor's rights in collateral or makes the transfer a default does not prevent the transfer from taking effect.

2000 Acts, ch 1149, §63, 185, 187

554.9402 Secured party not obligated on contract of debtor or in tort.

The existence of a security interest, agricultural lien, or authority given to a debtor to dispose of or use collateral, without more, does not subject a secured party to liability in contract or tort for the debtor's acts or omissions.

2000 Acts, ch 1149, §64, 185, 187

554.9403 Agreement not to assert defenses against assignee.

1. *Value.* In this section, *"value"* has the meaning provided in section 554.3303, subsection 1.

2. *Agreement not to assert claim or defense.* Except as otherwise provided in this section, an agreement between an account debtor and an assignor not to assert against an assignee any claim or defense that the account debtor may have against the assignor is enforceable by an assignee that takes an assignment:

a. for value;

b. in good faith;

c. without notice of a claim of a property or possessory right to the property assigned; and

d. without notice of a defense or claim in recoupment of the type that may be asserted against a person entitled to enforce a negotiable instrument under section 554.3305, subsection 1.

3. *When subsection 2 not applicable.* Subsection 2 does not apply to defenses of a type

that may be asserted against a holder in due course of a negotiable instrument under section 554.3305, subsection 2.

4. *Omission of required statement in consumer transaction.* In a consumer transaction, if a record evidences the account debtor's obligation, law other than this Article requires that the record include a statement to the effect that the rights of an assignee are subject to claims or defenses that the account debtor could assert against the original obligee, and the record does not include such a statement:

a. the record has the same effect as if the record included such a statement; and

b. the account debtor may assert against an assignee those claims and defenses that would have been available if the record included such a statement.

5. *Rule for individual under other law.* This section is subject to law other than this Article which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

6. *Other law not displaced.* Except as otherwise provided in subsection 4, this section does not displace law other than this Article which gives effect to an agreement by an account debtor not to assert a claim or defense against an assignee.

2000 Acts, ch 1149, §65, 185, 187

554.9404 Rights acquired by assignee — claims and defenses against assignee.

1. *Assignee's rights subject to terms, claims, and defenses — exceptions.* Unless an account debtor has made an enforceable agreement not to assert defenses or claims, and subject to subsections 2 through 5, the rights of an assignee are subject to:

a. all terms of the agreement between the account debtor and assignor and any defense or claim in recoupment arising from the transaction that gave rise to the contract; and

b. any other defense or claim of the account debtor against the assignor which accrues before the account debtor receives a notification of the assignment authenticated by the assignor or the assignee.

2. *Account debtor's claim reduces amount owed to assignee.* Subject to subsection 3 and except as otherwise provided in subsection 4, the claim of an account debtor against an assignor may be asserted against an assignee under subsection 1 only to reduce the amount the account debtor owes.

3. *Rule for individual under other law.* This section is subject to law other than this Article which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

4. *Omission of required statement in consumer transaction.* In a consumer transaction, if a record evidences the account debtor's obligation, law other than this Article requires that the record include a statement to the effect that the account debtor's recovery against an assignee with respect to claims and defenses against the assignor may not exceed amounts paid by the account debtor under the record, and the record does not include such a statement, the extent to which a claim of an account debtor against the assignor may be asserted against an assignee is determined as if the record included such a statement.

5. *Inapplicability to health care insurance receivable.* This section does not apply to an assignment of a health care insurance receivable.

2000 Acts, ch 1149, §66, 185, 187

Referred to in §539.1, 539.2, 539.3, 554.9109

554.9405 Modification of assigned contract.

1. *Effect of modification on assignee.* A modification of or substitution for an assigned contract is effective against an assignee if made in good faith. The assignee acquires corresponding rights under the modified or substituted contract. The assignment may provide that the modification or substitution is a breach of contract by the assignor. This subsection is subject to subsections 2 through 4.

2. *Applicability of subsection 1.* Subsection 1 applies to the extent that:

a. the right to payment or a part thereof under an assigned contract has not been fully earned by performance; or

b. the right to payment or a part thereof has been fully earned by performance and the

account debtor has not received notification of the assignment under section 554.9406, subsection 1.

3. *Rule for individual under other law.* This section is subject to law other than this Article which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

4. *Inapplicability to health care insurance receivable.* This section does not apply to an assignment of a health care insurance receivable.

2000 Acts, ch 1149, §67, 185, 187
Referred to in §539.1, 539.2, 539.3

554.9406 Discharge of account debtor — notification of assignment — identification and proof of assignment — restrictions on assignment of accounts, chattel paper, payment intangibles, and promissory notes ineffective.

1. *Discharge of account debtor — effect of notification.* Subject to subsections 2 through 9, an account debtor on an account, chattel paper, or a payment intangible may discharge its obligation by paying the assignor until, but not after, the account debtor receives a notification, authenticated by the assignor or the assignee, that the amount due or to become due has been assigned and that payment is to be made to the assignee. After receipt of the notification, the account debtor may discharge its obligation by paying the assignee and may not discharge the obligation by paying the assignor.

2. *When notification ineffective.* Subject to subsection 8, notification is ineffective under subsection 1:

a. if it does not reasonably identify the rights assigned;

b. to the extent that an agreement between an account debtor and a seller of a payment intangible limits the account debtor's duty to pay a person other than the seller and the limitation is effective under law other than this Article; or

c. at the option of an account debtor, if the notification notifies the account debtor to make less than the full amount of any installment or other periodic payment to the assignee, even if:

(1) only a portion of the account, chattel paper, or payment intangible has been assigned to that assignee;

(2) a portion has been assigned to another assignee; or

(3) the account debtor knows that the assignment to that assignee is limited.

3. *Proof of assignment.* Subject to subsection 8, if requested by the account debtor, an assignee shall seasonably furnish reasonable proof that the assignment has been made. Unless the assignee complies, the account debtor may discharge its obligation by paying the assignor, even if the account debtor has received a notification under subsection 1.

4. *Term restricting assignment generally ineffective.* Except as otherwise provided in subsection 5 and sections 554.9407 and 554.13303, and subject to subsection 8, a term in an agreement between an account debtor and an assignor or in a promissory note is ineffective to the extent that it:

a. prohibits, restricts, or requires the consent of the account debtor or person obligated on the promissory note to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in, the account, chattel paper, payment intangible, or promissory note; or

b. provides that the assignment or transfer or the creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the account, chattel paper, payment intangible, or promissory note.

5. *Inapplicability of subsection 4 to certain sales.* Subsection 4 does not apply to the sale of a payment intangible or promissory note, other than a sale pursuant to a disposition under section 554.9610 or an acceptance of collateral under section 554.9620.

6. *Legal restrictions on assignment generally ineffective.* Except as otherwise provided in sections 554.9407 and 554.13303 and subject to subsections 8 and 9, a rule of law, statute, or regulation that prohibits, restricts, or requires the consent of a government, governmental body or official, or account debtor to the assignment or transfer of, or creation of a security

interest in, an account or chattel paper is ineffective to the extent that the rule of law, statute, or regulation:

a. prohibits, restricts, or requires the consent of the government, governmental body or official, or account debtor to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in the account or chattel paper; or

b. provides that the assignment or transfer or the creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the account or chattel paper.

7. *Subsection 2, paragraph "c", not waivable.* Subject to subsection 8, an account debtor may not waive or vary its option under subsection 2, paragraph *"c"*.

8. *Rule for individual under other law.* This section is subject to law other than this Article which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

9. *Inapplicability to health care insurance receivable.* This section does not apply to an assignment of a health care insurance receivable.

10. *Section prevails over specified inconsistent law.* This section prevails over any inconsistent provision of an existing or future statute, rule, or regulation of this state unless the provision is contained in a statute of this state, refers expressly to this section, and states that the provision prevails over this section.

2000 Acts, ch 1149, §68, 185, 187; 2012 Acts, ch 1052, §10, 37

Referred to in §554.2210, 554.9209, 554.9401, 554.9405, 627.13

554.9407 Restrictions on creation or enforcement of security interest in leasehold interest or in lessor's residual interest.

1. *Term restricting assignment generally ineffective.* Except as otherwise provided in subsection 2, a term in a lease agreement is ineffective to the extent that it:

a. prohibits, restricts, or requires the consent of a party to the lease to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in, an interest of a party under the lease contract or in the lessor's residual interest in the goods; or

b. provides that the assignment or transfer or the creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the lease.

2. *Effectiveness of certain terms.* Except as otherwise provided in section 554.13303, subsection 7, a term described in subsection 1, paragraph *"b"*, is effective to the extent that there is:

a. a transfer by the lessee of the lessee's right of possession or use of the goods in violation of the term; or

b. a delegation of a material performance of either party to the lease contract in violation of the term.

3. *Security interest not material impairment.* The creation, attachment, perfection, or enforcement of a security interest in the lessor's interest under the lease contract or the lessor's residual interest in the goods is not a transfer that materially impairs the lessee's prospect of obtaining return performance or materially changes the duty of or materially increases the burden or risk imposed on the lessee within the purview of section 554.13303, subsection 3, unless, and then only to the extent that, enforcement actually results in a delegation of material performance of the lessor.

2000 Acts, ch 1149, §69, 185, 187

Referred to in §554.9401, 554.9406, 554.13303

554.9408 Restrictions on assignment of promissory notes, health care insurance receivables, and certain general intangibles ineffective.

1. *Term restricting assignment generally ineffective.* Except as otherwise provided in subsection 2, a term in a promissory note or in an agreement between an account debtor and a debtor which relates to a health care insurance receivable or a general intangible,

including a contract, permit, license, or franchise, and which term prohibits, restricts, or requires the consent of the person obligated on the promissory note or the account debtor to, the assignment or transfer of, or creation, attachment, or perfection of a security interest in, the promissory note, health care insurance receivable, or general intangible, is ineffective to the extent that the term:

a. would impair the creation, attachment, or perfection of a security interest; or

b. provides that the assignment or transfer or the creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the promissory note, health care insurance receivable, or general intangible.

2. *Applicability of subsection 1 to sales of certain rights to payment.* Subsection 1 applies to a security interest in a payment intangible or promissory note only if the security interest arises out of a sale of the payment intangible or promissory note, other than a sale pursuant to a disposition under section 554.9610 or an acceptance of collateral under section 554.9620.

3. *Legal restrictions on assignment generally ineffective.* A rule of law, statute, or regulation that prohibits, restricts, or requires the consent of a government, governmental body or official, person obligated on a promissory note, or account debtor to the assignment or transfer of, or creation of a security interest in, a promissory note, health care insurance receivable, or general intangible, including a contract, permit, license, or franchise between an account debtor and a debtor, is ineffective to the extent that the rule of law, statute, or regulation:

a. would impair the creation, attachment, or perfection of a security interest; or

b. provides that the assignment or transfer or the creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the promissory note, health care insurance receivable, or general intangible.

4. *Limitation on ineffectiveness under subsections 1 and 3.* To the extent that a term in a promissory note or in an agreement between an account debtor and a debtor which relates to a health care insurance receivable or general intangible or a rule of law, statute, or regulation described in subsection 3 would be effective under law other than this Article but is ineffective under subsection 1 or 3, the creation, attachment, or perfection of a security interest in the promissory note, health care insurance receivable, or general intangible:

a. is not enforceable against the person obligated on the promissory note or the account debtor;

b. does not impose a duty or obligation on the person obligated on the promissory note or the account debtor;

c. does not require the person obligated on the promissory note or the account debtor to recognize the security interest, pay or render performance to the secured party, or accept payment or performance from the secured party;

d. does not entitle the secured party to use or assign the debtor's rights under the promissory note, health care insurance receivable, or general intangible, including any related information or materials furnished to the debtor in the transaction giving rise to the promissory note, health care insurance receivable, or general intangible;

e. does not entitle the secured party to use, assign, possess, or have access to any trade secrets or confidential information of the person obligated on the promissory note or the account debtor; and

f. does not entitle the secured party to enforce the security interest in the promissory note, health care insurance receivable, or general intangible.

5. *Section prevails over specified inconsistent law.* This section prevails over any inconsistent provision of an existing or future statute, rule, or regulation of this state unless the provision is contained in a statute of this state, refers expressly to this section, and states that the provision prevails over this section.

2000 Acts, ch 1149, §70, 185, 187; 2012 Acts, ch 1052, §11, 37

Referred to in §554.9401, 627.13

554.9409 Restrictions on assignment of letter-of-credit rights ineffective.

1. *Term or law restricting assignment generally ineffective.* A term in a letter of credit or a rule of law, statute, regulation, custom, or practice applicable to the letter of credit which prohibits, restricts, or requires the consent of an applicant, issuer, or nominated person to a beneficiary's assignment of or creation of a security interest in a letter-of-credit right is ineffective to the extent that the term or rule of law, statute, regulation, custom, or practice:

a. would impair the creation, attachment, or perfection of a security interest in the letter-of-credit right; or

b. provides that the assignment or the creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the letter-of-credit right.

2. *Limitation on ineffectiveness under subsection 1.* To the extent that a term in a letter of credit is ineffective under subsection 1 but would be effective under law other than this Article or a custom or practice applicable to the letter of credit, to the transfer of a right to draw or otherwise demand performance under the letter of credit, or to the assignment of a right to proceeds of the letter of credit, the creation, attachment, or perfection of a security interest in the letter-of-credit right:

a. is not enforceable against the applicant, issuer, nominated person, or transferee beneficiary;

b. imposes no duties or obligations on the applicant, issuer, nominated person, or transferee beneficiary; and

c. does not require the applicant, issuer, nominated person, or transferee beneficiary to recognize the security interest, pay or render performance to the secured party, or accept payment or other performance from the secured party.

2000 Acts, ch 1149, §71, 187
Referred to in §554.9401

PART 5

FILING

Referred to in §331.602, 331.609, 554.9805, 554.9806, 570A.4, 571.3, 581.3

SUBPART A

FILING OFFICE — CONTENTS AND EFFECTIVENESS OF FINANCING STATEMENT

554.9501 Filing office.

1. *Filing offices.* Except as otherwise provided in subsection 2, if the local law of this state governs perfection of a security interest or agricultural lien, the office in which to file a financing statement to perfect the security interest or agricultural lien is:

a. the office designated for the filing or recording of a record of a mortgage on the related real property, if:

(1) the collateral is as-extracted collateral or timber to be cut; or

(2) the financing statement is filed as a fixture filing and the collateral is goods that are or are to become fixtures; or

b. the office of the secretary of state in all other cases, including a case in which the collateral is goods that are or are to become fixtures and the financing statement is not filed as a fixture filing.

2. *Filing office for transmitting utilities.* The office in which to file a financing statement to perfect a security interest in collateral, including fixtures, of a transmitting utility is the

office of the secretary of state. The financing statement also constitutes a fixture filing as to the collateral indicated in the financing statement which is or is to become fixtures.

2000 Acts, ch 1149, §72, 185, 187

Referred to in §554.9102, 554.9109, 554.9502, 554.9512, 554.9516, 554.9519, 554.9522, 554.9806, 554.9807, 554B.1
What constitutes filing, §554.9516
Duties and operation of filing office, §554.9519 – 554.9527

554.9502 Contents of financing statement — record of mortgage as financing statement — time of filing financing statement.

1. *Sufficiency of financing statement.* Subject to subsection 2, a financing statement is sufficient only if it:

a. provides the name of the debtor;

b. provides the name of the secured party or a representative of the secured party; and

c. indicates the collateral covered by the financing statement.

2. *Real-property-related financing statements.* Except as otherwise provided in section 554.9501, subsection 2, to be sufficient, a financing statement that covers as-extracted collateral or timber to be cut, or which is filed as a fixture filing and covers goods that are or are to become fixtures, must satisfy subsection 1 and also:

a. indicate that it covers this type of collateral;

b. indicate that it is to be filed for record in the real property records;

c. provide a description of the real property to which the collateral is related sufficient to give constructive notice of a mortgage under the law of this state if the description were contained in a record of the mortgage of the real property; and

d. if the debtor does not have an interest of record in the real property, provide the name of a record owner.

3. *Record of mortgage as financing statement.* A record of a mortgage is effective, from the date of recording, as a financing statement filed as a fixture filing or as a financing statement covering as-extracted collateral or timber to be cut only if:

a. the record indicates the goods or accounts that it covers;

b. the goods are or are to become fixtures related to the real property described in the record or the collateral is related to the real property described in the record and is as-extracted collateral or timber to be cut;

c. the record satisfies the requirements for a financing statement in this section, but

(1) the record need not indicate that it is to be filed in the real property records; and

(2) the record sufficiently provides the name of a debtor who is an individual if it provides the individual name of the debtor or the surname and first personal name of the debtor, even if the debtor is an individual to whom section 554.9503, subsection 1, paragraph *"d"* applies; and

d. the record is duly recorded.

4. *Filing before security agreement or attachment.* A financing statement may be filed before a security agreement is made or a security interest otherwise attaches.

2000 Acts, ch 1149, §73, 185, 187; 2012 Acts, ch 1052, §12, 37; 2014 Acts, ch 1092, §124

Referred to in §554.9102, 554.9109, 554.9512, 554.9514, 554.9515, 554.9520, 554.9525, 554.13309, 570A.4, 571.3, 579A.2, 579B.4, 581.3

554.9503 Name of debtor and secured party.

1. *Sufficiency of debtor's name.* A financing statement sufficiently provides the name of the debtor:

a. except as otherwise provided in paragraph *"c"*, if the debtor is a registered organization or if the collateral is held in a trust that is a registered organization, only if the financing statement provides the name that is stated to be the registered organization's name on the public organic record most recently filed with or issued or enacted by the registered organization's jurisdiction of organization which purports to state, amend, or restate the registered organization's name;

b. subject to subsection 6, if the collateral is being administered by the personal representative of a decedent, only if the financing statement provides, as the name of the debtor, the name of the decedent and, in a separate part of the financing statement, indicates that the collateral is being administered by a personal representative;

c. if the collateral is held in a trust that is not a registered organization, only if the financing statement:

(1) provides as the name of the debtor:

(a) if the organic record of the trust specifies a name for the trust, the name specified; or

(b) if the organic record of the trust does not specify a name for the trust, the name of the settlor or testator; and

(2) in a separate part of the financing statement:

(a) if the name is provided in accordance with subparagraph (1), subparagraph division (a), indicates that the collateral is held in a trust; or

(b) if the name is provided in accordance with subparagraph (1), subparagraph division (b), provides additional information sufficient to distinguish the trust from other trusts having one or more of the same settlors or the same testator and indicates that the collateral is held in a trust, unless the additional information so indicates;

d. subject to subsection 7, if the debtor is an individual to whom this state has issued a driver's license under chapter 321 that has not expired, only if the financing statement provides the name of the individual which is indicated on the driver's license;

e. if the debtor is an individual to whom paragraph *"d"* does not apply, only if the financing statement provides the individual name of the debtor or the surname and first personal name of the debtor; and

f. in other cases:

(1) if the debtor has a name, only if the financing statement provides the organizational name of the debtor; and

(2) if the debtor does not have a name, only if it provides the names of the partners, members, associates, or other persons comprising the debtor, in a manner that each name provided would be sufficient if the person named were the debtor.

2. *Additional debtor-related information.* A financing statement that provides the name of the debtor in accordance with subsection 1 is not rendered ineffective by the absence of:

a. a trade name or other name of the debtor; or

b. unless required under subsection 1, paragraph *"f"*, subparagraph (2), names of partners, members, associates, or other persons comprising the debtor.

3. *Debtor's trade name insufficient.* A financing statement that provides only the debtor's trade name does not sufficiently provide the name of the debtor.

4. *Representative capacity.* Failure to indicate the representative capacity of a secured party or representative of a secured party does not affect the sufficiency of a financing statement.

5. *Multiple debtors and secured parties.* A financing statement may provide the name of more than one debtor and the name of more than one secured party.

6. *Name of decedent.* The name of the decedent indicated on the order appointing the personal representative of the decedent issued by the court having jurisdiction over the collateral is sufficient as the "name of the decedent" under subsection 1, paragraph *"b"*.

7. *Multiple driver's licenses.* If this state has issued to an individual more than one driver's license under chapter 321 of a kind described in subsection 1, paragraph *"d"*, the one that was issued most recently is the one to which subsection 1, paragraph *"d"* refers.

8. *Definition.* In this section, the *"name of the settlor or testator"* means:

a. if the settlor is a registered organization, the name that is stated to be the settlor's name on the public organic record most recently filed with or issued or enacted by the settlor's jurisdiction of organization which purports to state, amend, or restate the settlor's name; or

b. in other cases, the name of the settlor or testator indicated in the trust's organic record.

2000 Acts, ch 1149, §74, 185, 187; 2012 Acts, ch 1052, §13 – 15, 37

Referred to in §554.9502, 554.9506, 554.9507, 554.9805

554.9504 Indication of collateral.

A financing statement sufficiently indicates the collateral that it covers if the financing statement provides:

1. a description of the collateral pursuant to section 554.9108; or

2. an indication that the financing statement covers all assets or all personal property.
2000 Acts, ch 1149, §75, 185, 187

554.9505 Filing and compliance with other statutes and treaties for consignments, leases, other bailments, and other transactions.

1. *Use of terms other than debtor and secured party.* A consignor, lessor, or other bailor of goods, a licensor, or a buyer of a payment intangible or promissory note may file a financing statement, or may comply with a statute or treaty described in section 554.9311, subsection 1, using the terms "consignor", "consignee", "lessor", "lessee", "bailor", "bailee", "licensor", "licensee", "owner", "registered owner", "buyer", "seller", or words of similar import, instead of the terms "secured party" and "debtor".

2. *Effect of financing statement under subsection 1.* This part applies to the filing of a financing statement under subsection 1 and, as appropriate, to compliance that is equivalent to filing a financing statement under section 554.9311, subsection 2, but the filing or compliance is not of itself a factor in determining whether the collateral secures an obligation. If it is determined for another reason that the collateral secures an obligation, a security interest held by the consignor, lessor, bailor, licensor, owner, or buyer which attaches to the collateral is perfected by the filing or compliance.
2000 Acts, ch 1149, §76, 185, 187

554.9506 Effect of errors or omissions.

1. *Minor errors and omissions.* A financing statement substantially satisfying the requirements of this part is effective, even if it has minor errors or omissions, unless the errors or omissions make the financing statement seriously misleading.

2. *Financing statement seriously misleading.* Except as otherwise provided in subsection 3, a financing statement that fails sufficiently to provide the name of the debtor in accordance with section 554.9503, subsection 1, is seriously misleading.

3. *Financing statement not seriously misleading.* If a search of the records of the filing office under the debtor's correct name, using the filing office's standard search logic, if any, would disclose a financing statement that fails sufficiently to provide the name of the debtor in accordance with section 554.9503, subsection 1, the name provided does not make the financing statement seriously misleading.

4. *Debtor's correct name.* For purposes of section 554.9508, subsection 2, the *"debtor's correct name"* in subsection 3 means the correct name of the new debtor.
2000 Acts, ch 1149, §77, 185, 187
Referred to in §554.9507, 554.9508

554.9507 Effect of certain events on effectiveness of financing statement.

1. *Disposition.* A filed financing statement remains effective with respect to collateral that is sold, exchanged, leased, licensed, or otherwise disposed of and in which a security interest or agricultural lien continues, even if the secured party knows of or consents to the disposition.

2. *Information becoming seriously misleading.* Except as otherwise provided in subsection 3 and section 554.9508, a financing statement is not rendered ineffective if, after the financing statement is filed, the information provided in the financing statement becomes seriously misleading under section 554.9506.

3. *Change in debtor's name.* If the name that a filed financing statement provides for a debtor becomes insufficient as the name of the debtor under section 554.9503, subsection 1, so that the financing statement becomes seriously misleading under section 554.9506:

a. the financing statement is effective to perfect a security interest in collateral acquired by the debtor before, or within four months after, the filed financing statement becomes seriously misleading; and

b. the financing statement is not effective to perfect a security interest in collateral acquired by the debtor more than four months after the filed financing statement becomes seriously misleading, unless an amendment to the financing statement which renders the

financing statement not seriously misleading is filed within four months after the financing statement became seriously misleading.

2000 Acts, ch 1149, §78, 185, 187; 2012 Acts, ch 1052, §16, 37
Referred to in §554.9508

554.9508 Effectiveness of financing statement if new debtor becomes bound by security agreement.

1. *Financing statement naming original debtor.* Except as otherwise provided in this section, a filed financing statement naming an original debtor is effective to perfect a security interest in collateral in which a new debtor has or acquires rights to the extent that the financing statement would have been effective had the original debtor acquired rights in the collateral.

2. *Financing statement becoming seriously misleading.* If the difference between the name of the original debtor and that of the new debtor causes a filed financing statement that is effective under subsection 1 to be seriously misleading under section 554.9506:

a. the financing statement is effective to perfect a security interest in collateral acquired by the new debtor before, and within four months after, the new debtor becomes bound under section 554.9203, subsection 4; and

b. the financing statement is not effective to perfect a security interest in collateral acquired by the new debtor more than four months after the new debtor becomes bound under section 554.9203, subsection 4, unless an initial financing statement providing the name of the new debtor is filed before the expiration of that time.

3. *When section not applicable.* This section does not apply to collateral as to which a filed financing statement remains effective against the new debtor under section 554.9507, subsection 1.

2000 Acts, ch 1149, §79, 187
Referred to in §554.9326, 554.9506, 554.9507

554.9509 Persons entitled to file a record.

1. *Person entitled to file record.* A person may file an initial financing statement, amendment that adds collateral covered by a financing statement, or amendment that adds a debtor to a financing statement only if:

a. the debtor authorizes the filing in an authenticated record or pursuant to subsection 2 or 3; or

b. the person holds an agricultural lien that has become effective at the time of filing and the financing statement covers only collateral in which the person holds an agricultural lien.

2. *Security agreement as authorization.* By authenticating or becoming bound as debtor by a security agreement, a debtor or new debtor authorizes the filing of an initial financing statement, and an amendment, covering:

a. the collateral described in the security agreement; and

b. property that becomes collateral under section 554.9315, subsection 1, paragraph *"b"*, whether or not the security agreement expressly covers proceeds.

3. *Acquisition of collateral as authorization.* By acquiring collateral in which a security interest or agricultural lien continues under section 554.9315, subsection 1, paragraph *"a"*, a debtor authorizes the filing of an initial financing statement, and an amendment, covering the collateral and property that becomes collateral under section 554.9315, subsection 1, paragraph *"b"*.

4. *Person entitled to file certain amendments.* A person may file an amendment other than an amendment that adds collateral covered by a financing statement or an amendment that adds a debtor to a financing statement only if:

a. the secured party of record authorizes the filing; or

b. the amendment is a termination statement for a financing statement as to which the secured party of record has failed to file or send a termination statement as required by section 554.9513, subsection 1 or 3, the debtor authorizes the filing, and the termination statement indicates that the debtor authorized it to be filed.

5. *Multiple secured parties of record.* If there is more than one secured party of record for

a financing statement, each secured party of record may authorize the filing of an amendment under subsection 4.

2000 Acts, ch 1149, §80, 187
Referred to in §554.9510, 554.9512, 554.9518, 554.9625

554.9510 Effectiveness of filed record.

1. *Filed record effective if authorized.* A filed record is effective only to the extent that it was filed by a person that may file it under section 554.9509.

2. *Authorization by one secured party of record.* A record authorized by one secured party of record does not affect the financing statement with respect to another secured party of record.

3. *Continuation statement not timely filed.* A continuation statement that is not filed within the six-month period prescribed by section 554.9515, subsection 4, is ineffective.

2000 Acts, ch 1149, §81, 187
Referred to in §554.9513, 554.9515

554.9511 Secured party of record.

1. *Secured party of record.* A secured party of record with respect to a financing statement is a person whose name is provided as the name of the secured party or a representative of the secured party in an initial financing statement that has been filed. If an initial financing statement is filed under section 554.9514, subsection 1, the assignee named in the initial financing statement is the secured party of record with respect to the financing statement.

2. *Amendment naming secured party of record.* If an amendment of a financing statement which provides the name of a person as a secured party or a representative of a secured party is filed, the person named in the amendment is a secured party of record. If an amendment is filed under section 554.9514, subsection 2, the assignee named in the amendment is a secured party of record.

3. *Amendment deleting secured party of record.* A person remains a secured party of record until the filing of an amendment of the financing statement which deletes the person.

2000 Acts, ch 1149, §82, 187

554.9512 Amendment of financing statement.

1. *Amendment of information in financing statement.* Subject to section 554.9509, a person may add or delete collateral covered by, continue or terminate the effectiveness of, or, subject to subsection 5, otherwise amend the information provided in, a financing statement by filing an amendment that:

a. identifies, by its file number, the initial financing statement to which the amendment relates; and

b. if the amendment relates to an initial financing statement filed or recorded in a filing office described in section 554.9501, subsection 1, paragraph *"a"*, provides the date and time that the initial financing statement was filed or recorded and the information specified in section 554.9502, subsection 2.

2. *Period of effectiveness not affected.* Except as otherwise provided in section 554.9515, the filing of an amendment does not extend the period of effectiveness of the financing statement.

3. *Effectiveness of amendment adding collateral.* A financing statement that is amended by an amendment that adds collateral is effective as to the added collateral only from the date of the filing of the amendment.

4. *Effectiveness of amendment adding debtor.* A financing statement that is amended by an amendment that adds a debtor is effective as to the added debtor only from the date of the filing of the amendment.

5. *Certain amendments ineffective.* An amendment is ineffective to the extent it:

a. purports to delete all debtors and fails to provide the name of a debtor to be covered by the financing statement; or

b. purports to delete all secured parties of record and fails to provide the name of a new secured party of record.

2000 Acts, ch 1149, §83, 187
Referred to in §554.9109, 554.9516

554.9513 Termination statement.

1. *Consumer goods.* A secured party shall cause the secured party of record for a financing statement to file a termination statement for the financing statement if the financing statement covers consumer goods and:

a. there is no obligation secured by the collateral covered by the financing statement and no commitment to make an advance, incur an obligation, or otherwise give value; or

b. the debtor did not authorize the filing of the initial financing statement.

2. *Time for compliance with subsection 1.* To comply with subsection 1, a secured party shall cause the secured party of record to file the termination statement:

a. within one month after there is no obligation secured by the collateral covered by the financing statement and no commitment to make an advance, incur an obligation, or otherwise give value; or

b. if earlier, within twenty days after the secured party receives an authenticated demand from a debtor.

3. *Other collateral.* In cases not governed by subsection 1, within twenty days after a secured party receives an authenticated demand from a debtor, the secured party shall cause the secured party of record for a financing statement to send to the debtor a termination statement for the financing statement or file the termination statement in the filing office if:

a. except in the case of a financing statement covering accounts or chattel paper that has been sold or goods that are the subject of a consignment, there is no obligation secured by the collateral covered by the financing statement and no commitment to make an advance, incur an obligation, or otherwise give value;

b. the financing statement covers accounts or chattel paper that has been sold but as to which the account debtor or other person obligated has discharged its obligation;

c. the financing statement covers goods that were the subject of a consignment to the debtor but are not in the debtor's possession; or

d. the debtor did not authorize the filing of the initial financing statement.

4. *Effect of filing termination statement.* Except as otherwise provided in section 554.9510, upon the filing of a termination statement with the filing office, the financing statement to which the termination statement relates ceases to be effective. Except as otherwise provided in section 554.9510, for purposes of section 554.9519, subsection 7, section 554.9522, subsection 1, and section 554.9523, subsection 3, the filing with the filing office of a termination statement relating to a financing statement that indicates that the debtor is a transmitting utility also causes the effectiveness of the financing statement to lapse.

2000 Acts, ch 1149, §84, 187
Referred to in §554.9315, 554.9509, 554.9625
Remedies for secured party's failure to comply with Article; §554.9625

554.9514 Assignment of powers of secured party of record.

1. *Assignment reflected on initial financing statement.* Except as otherwise provided in subsection 3, an initial financing statement may reflect an assignment of all of the secured party's power to authorize an amendment to the financing statement by providing the name and mailing address of the assignee as the name and address of the secured party.

2. *Assignment of filed financing statement.* Except as otherwise provided in subsection 3, a secured party of record may assign of record all or part of its power to authorize an amendment to a financing statement by filing in the filing office an amendment of the financing statement which:

a. identifies, by its file number, the initial financing statement to which it relates;

b. provides the name of the assignor; and

c. provides the name and mailing address of the assignee.

3. *Assignment of record of mortgage.* An assignment of record of a security interest in a

fixture covered by a record of a mortgage which is effective as a financing statement filed as a fixture filing under section 554.9502, subsection 3, may be made only by an assignment of record of the mortgage in the manner provided by law of this state other than this chapter.

2000 Acts, ch 1149, §85, 187

Referred to in §554.9511, 554.9516, 554.9519

554.9515 Duration and effectiveness of financing statement — effect of lapsed financing statement.

1. *Five-year effectiveness.* Except as otherwise provided in subsections 2, 5, 6, and 7, a filed financing statement is effective for a period of five years after the date of filing.

2. *Public-finance or manufactured-home transaction.* Except as otherwise provided in subsections 5, 6, and 7, an initial financing statement filed in connection with a public-finance transaction or manufactured-home transaction is effective for a period of thirty years after the date of filing if it indicates that it is filed in connection with a public-finance transaction or manufactured-home transaction.

3. *Lapse and continuation of financing statement.* The effectiveness of a filed financing statement lapses on the expiration of the period of its effectiveness unless before the lapse a continuation statement is filed pursuant to subsection 4. Upon lapse, a financing statement ceases to be effective and any security interest or agricultural lien that was perfected by the financing statement becomes unperfected, unless the security interest is perfected otherwise. If the security interest or agricultural lien becomes unperfected upon lapse, it is deemed never to have been perfected as against a purchaser of the collateral for value.

4. *When continuation statement may be filed.* A continuation statement may be filed only within six months before the expiration of the five-year period specified in subsection 1 or the thirty-year period specified in subsection 2, whichever is applicable.

5. *Effect of filing continuation statement.* Except as otherwise provided in section 554.9510, upon timely filing of a continuation statement, the effectiveness of the initial financing statement continues for a period of five years commencing on the day on which the financing statement would have become ineffective in the absence of the filing. Upon the expiration of the five-year period, the financing statement lapses in the same manner as provided in subsection 3, unless, before the lapse, another continuation statement is filed pursuant to subsection 4. Succeeding continuation statements may be filed in the same manner to continue the effectiveness of the initial financing statement.

6. *Transmitting utility financing statement.* If a debtor is a transmitting utility and a filed initial financing statement so indicates, the financing statement is effective until a termination statement is filed.

7. *Record of mortgage as financing statement.* A record of a mortgage that is effective as a financing statement filed as a fixture filing under section 554.9502, subsection 3, remains effective as a financing statement filed as a fixture filing until the mortgage is released or satisfied of record or its effectiveness otherwise terminates as to the real property.

2000 Acts, ch 1149, §86, 187; 2012 Acts, ch 1052, §17, 37

Referred to in §554.9315, 554.9510, 554.9512, 554.9516, 554.9519, 554.9522, 554.9523, 554.9806, 570.1, 579B.4

554.9516 What constitutes filing — effectiveness of filing.

1. *What constitutes filing.* Except as otherwise provided in subsection 2, communication of a record to a filing office and tender of the filing fee or acceptance of the record by the filing office constitutes filing.

2. *Refusal to accept record — filing does not occur.* Filing does not occur with respect to a record that a filing office refuses to accept because:

a. the record is not communicated by a method or medium of communication authorized by the filing office;

b. an amount equal to or greater than the applicable filing fee is not tendered;

c. the filing office is unable to index the record because:

(1) in the case of an initial financing statement, the record does not provide a name for the debtor;

(2) in the case of an amendment or information statement, the record:

(a) does not identify the initial financing statement as required by section 554.9512 or 554.9518, as applicable; or

(b) identifies an initial financing statement whose effectiveness has lapsed under section 554.9515;

(3) in the case of an initial financing statement that provides the name of a debtor identified as an individual or an amendment that provides a name of a debtor identified as an individual which was not previously provided in the financing statement to which the record relates, the record does not identify the debtor's surname; or

(4) in the case of a record filed or recorded in the filing office described in section 554.9501, subsection 1, paragraph *"a"*, the record does not provide a sufficient description of the real property to which it relates;

d. in the case of an initial financing statement or an amendment that adds a secured party of record, the record does not provide a name and mailing address for the secured party of record;

e. in the case of an initial financing statement or an amendment that provides a name of a debtor which was not previously provided in the financing statement to which the amendment relates, the record does not:

(1) provide a mailing address for the debtor; or

(2) indicate whether the name provided as the name of the debtor is the name of an individual or an organization;

f. in the case of an assignment reflected in an initial financing statement under section 554.9514, subsection 1, or an amendment filed under section 554.9514, subsection 2, the record does not provide a name and mailing address for the assignee; or

g. in the case of a continuation statement, the record is not filed within the six-month period prescribed by section 554.9515, subsection 4.

3. *Rules applicable to subsection 2.* For purposes of subsection 2:

a. a record does not provide information if the filing office is unable to read or decipher the information; and

b. a record that does not indicate that it is an amendment or identify an initial financing statement to which it relates, as required by section 554.9512, 554.9514, or 554.9518, is an initial financing statement.

4. *Refusal to accept record — record effective as filed record.* A record that is communicated to the filing office with tender of the filing fee, but which the filing office refuses to accept for a reason other than one set forth in subsection 2, is effective as a filed record except as against a purchaser of the collateral which gives value in reasonable reliance upon the absence of the record from the files.

2000 Acts, ch 1149, §87, 187; 2012 Acts, ch 1052, §18 – 20, 37

Referred to in §554.9109, 554.9338, 554.9520, 554.9521, 570A.4, 571.3, 579A.2, 579B.4, 581.3

Acceptance and refusal of record, see also §554.9520

554.9517 Effect of indexing errors.

The failure of the filing office to index a record correctly does not affect the effectiveness of the filed record.

2000 Acts, ch 1149, §88, 187

554.9518 Claim concerning inaccurate or wrongfully filed record.

1. *Statement with respect to record indexed under person's name.* A person may file in the filing office an information statement with respect to a record indexed there under the person's name if the person believes that the record is inaccurate or was wrongfully filed.

2. *Contents of statement under subsection 1.* An information statement under subsection 1 must:

a. identify the record to which it relates by the file number assigned to the initial financing statement to which the record relates;

b. indicate that it is an information statement; and

c. provide the basis for the person's belief that the record is inaccurate and indicate the

manner in which the person believes the record should be amended to cure any inaccuracy or provide the basis for the person's belief that the record was wrongfully filed.

3. *Statement by secured party of record.* A person may file in the filing office an information statement with respect to a record filed there if the person is a secured party of record with respect to the financing statement to which the record relates and believes that the person that filed the record was not entitled to do so under section 554.9509, subsection 4.

4. *Contents of statement under subsection 3.* An information statement under subsection 3 must:

a. identify the record to which it relates by the file number assigned to the initial financing statement to which the record relates;

b. indicate that it is an information statement; and

c. provide the basis for the person's belief that the person that filed the record was not entitled to do so under section 554.9509, subsection 4.

5. *Record not affected by information statement.* The filing of an information statement does not affect the effectiveness of an initial financing statement or other filed record.

2000 Acts, ch 1149, §89, 187; 2012 Acts, ch 1052, §21, 37

Referred to in §554.9516

Remedies for secured party's noncompliance with Article; §554.9625

SUBPART B

DUTIES AND OPERATION OF FILING OFFICE

554.9519 Numbering, maintaining, and indexing records — communicating information provided in records.

1. *Filing office duties.* For each record filed in a filing office, the filing office shall:

a. assign a unique number to the filed record;

b. create a record that bears the number assigned to the filed record and the date and time of filing;

c. maintain the filed record for public inspection; and

d. index the filed record in accordance with subsections 3, 4, and 5.

2. *File number.* A file number assigned after January 1, 2002, must include a digit that:

a. is mathematically derived from or related to the other digits of the file number; and

b. aids the filing office in determining whether a number communicated as the file number includes a single-digit or transpositional error.

3. *Indexing — general.* Except as otherwise provided in subsections 4 and 5, the filing office shall:

a. index an initial financing statement according to the name of the debtor and index all filed records relating to the initial financing statement in a manner that associates with one another an initial financing statement and all filed records relating to the initial financing statement; and

b. index a record that provides a name of a debtor which was not previously provided in the financing statement to which the record relates also according to the name that was not previously provided.

4. *Indexing — real-property-related financing statement.* If a financing statement is filed as a fixture filing or covers as-extracted collateral or timber to be cut, it must be filed for record and the filing office shall index it:

a. under the names of the debtor and of each owner of record shown on the financing statement as if they were the mortgagors under a mortgage of the real property described; and

b. to the extent that the law of this state provides for indexing of records of mortgages under the name of the mortgagee, under the name of the secured party as if the secured party were the mortgagee thereunder, or, if indexing is by description, as if the financing statement were a record of a mortgage of the real property described.

5. *Indexing — real-property-related assignment.* If a financing statement is filed as a

fixture filing or covers as-extracted collateral or timber to be cut, the filing office shall index an assignment filed under section 554.9514, subsection 1, or an amendment filed under section 554.9514, subsection 2:

a. under the name of the assignor as grantor; and

b. to the extent that the law of this state provides for indexing a record of the assignment of a mortgage under the name of the assignee, under the name of the assignee.

6. *Retrieval and association capability.* The filing office shall maintain a capability:

a. to retrieve a record by the name of the debtor and:

(1) if the filing office is described in section 554.9501, subsection 1, paragraph *"a"*, by the file number assigned to the initial financing statement to which the record relates and the date and time that the record was filed or recorded; or

(2) if the filing office is described in section 554.9501, subsection 1, paragraph *"b"*, by the file number assigned to the initial financing statement to which the record relates; and

b. to associate and retrieve with one another an initial financing statement and each filed record relating to the initial financing statement.

7. *Removal of debtor's name.* The filing office may not remove a debtor's name from the index until one year after the effectiveness of a financing statement naming the debtor lapses under section 554.9515 with respect to all secured parties of record.

8. *Timeliness of filing office performance.* The filing office shall perform the acts required by subsections 1 through 5 at the time and in the manner prescribed by filing-office rule, but not later than two business days after the filing office receives the record in question.

2000 Acts, ch 1149, §90, 187

Referred to in §331.609, 554.9102, 554.9109, 554.9513, 554.9523

554.9520 Acceptance and refusal to accept record.

1. *Mandatory refusal to accept record.* A filing office shall refuse to accept a record for filing for a reason set forth in section 554.9516, subsection 2, and may refuse to accept a record for filing only for a reason set forth in section 554.9516, subsection 2.

2. *Communication concerning refusal.* If a filing office refuses to accept a record for filing, it shall communicate to the person that presented the record the fact of and reason for the refusal and the date and time the record would have been filed had the filing office accepted it. The communication must be made at the time and in the manner prescribed by filing-office rule but in no event more than two business days after the filing office receives the record.

3. *When filed financing statement effective.* A filed financing statement satisfying section 554.9502, subsections 1 and 2, is effective, even if the filing office is required to refuse to accept it for filing under subsection 1. However, section 554.9338 applies to a filed financing statement providing information described in section 554.9516, subsection 2, paragraph *"e"*, which is incorrect at the time the financing statement is filed.

4. *Separate application to multiple debtors.* If a record communicated to a filing office provides information that relates to more than one debtor, this part applies as to each debtor separately.

2000 Acts, ch 1149, §91, 187

554.9521 Uniform form of written financing statement and amendment.

1. *Initial financing statement form.* A filing office that accepts written records may not refuse to accept a written initial financing statement in a form and format approved by the secretary of state by rule adopted pursuant to chapter 17A except for a reason set forth in section 554.9516, subsection 2. The forms shall be consistent with those set forth in the final official text of the 1999 revisions to Article 9 of the Uniform Commercial Code promulgated by the American law institute and the national conference of commissioners on uniform state laws.

2. *Amendment form.* A filing office that accepts written records may not refuse to accept a written amendment in a form and format approved by the secretary of state by rule adopted pursuant to chapter 17A except for a reason set forth in section 554.9516, subsection 2. The forms shall be consistent with those set forth in the final official text of the 1999 revisions to

Article 9 of the Uniform Commercial Code promulgated by the American law institute and the national conference of commissioners on uniform state laws.

2000 Acts, ch 1149, §92, 187; 2002 Acts, ch 1119, §89

554.9522 Maintenance and destruction of records.

1. *Post-lapse maintenance and retrieval of information.* The filing office shall maintain a record of the information provided in a filed financing statement for at least one year after the effectiveness of the financing statement has lapsed under section 554.9515 with respect to all secured parties of record. The record must be retrievable by using the name of the debtor and:

a. if the record was filed or recorded in the filing office described in section 554.9501, subsection 1, paragraph *"a"*, by using the file number assigned to the initial financing statement to which the record relates and the date and time that the record was filed or recorded; or

b. if the record was filed in the filing office described in section 554.9501, subsection 1, paragraph *"b"*, by using the file number assigned to the initial financing statement to which the record relates.

2. *Destruction of written records.* Except to the extent that a statute governing disposition of public records provides otherwise, the filing office immediately may destroy any written record evidencing a financing statement. However, if the filing office destroys a written record, it shall maintain another record of the financing statement which complies with subsection 1.

2000 Acts, ch 1149, §93, 187

Referred to in §554.9513, 554.9523

554.9523 Information from filing office — sale or license of records.

1. *Acknowledgment of filing written record.* If a person that files a written record requests an acknowledgment of the filing, the filing office shall send to the person an image of the record showing the number assigned to the record pursuant to section 554.9519, subsection 1, paragraph *"a"*, and the date and time of the filing of the record. However, if the person furnishes a copy of the record to the filing office, the filing office may instead:

a. note upon the copy the number assigned to the record pursuant to section 554.9519, subsection 1, paragraph *"a"*, and the date and time of the filing of the record; and

b. send the copy to the person.

2. *Acknowledgment of filing other record.* If a person files a record other than a written record, the filing office shall communicate to the person an acknowledgment that provides:

a. the information in the record;

b. the number assigned to the record pursuant to section 554.9519, subsection 1, paragraph *"a"*; and

c. the date and time of the filing of the record.

3. *Communication of requested information.* The filing office shall communicate or otherwise make available in a record the following information to any person that requests it:

a. whether there is on file on a date and time specified by the filing office, but not a date earlier than three business days before the filing office receives the request, any financing statement that:

(1) designates a particular debtor or, if the request so states, designates a particular debtor at the address specified in the request;

(2) has not lapsed under section 554.9515 with respect to all secured parties of record; and

(3) if the request so states, has lapsed under section 554.9515 and a record of which is maintained by the filing office under section 554.9522, subsection 1;

b. the date and time of filing of each financing statement; and

c. the information provided in each financing statement.

4. *Medium for communicating information.* In complying with its duty under subsection 3, the filing office may communicate information in any medium. However, if requested,

the filing office shall communicate information by issuing a record that can be admitted into evidence in the courts of this state without extrinsic evidence of its authenticity.

5. *Timeliness of filing office performance.* The filing office shall perform the acts required by subsections 1 through 4 at the time and in the manner prescribed by filing-office rule, but not later than two business days after the filing office receives the request.

6. *Public availability of records.* At least weekly, the filing office shall offer to sell or license to the public on a nonexclusive basis, in bulk, copies of all records filed in it under this part, in every medium from time to time available to the filing office, as provided in chapter 22.

2000 Acts, ch 1149, §94, 187
Referred to in §554.9513

554.9524 Delay by filing office.

Delay by the filing office beyond a time limit prescribed by this part is excused if:

1. the delay is caused by interruption of communication or computer facilities, war, emergency conditions, failure of equipment, or other circumstances beyond control of the filing office; and

2. the filing office exercises reasonable diligence under the circumstances.

2000 Acts, ch 1149, §95, 187

554.9525 Fees.

1. *Initial financing statement or other record — general rule.* Except as otherwise provided in subsections 3 and 4, fees for services rendered by the filing office under this part must be set by rules adopted by the secretary of state's office for services for that office. The rule must set the fees for filing and indexing a record under this part on the following basis:

a. if a record presented for filing is communicated to the filing office in writing and consists of more than two pages, the fee for filing and indexing the record must be at least twice the amount of the fee for a record communicated in writing that consists of one or two pages; and

b. if the record is communicated by another medium authorized by the secretary of state's office, the fee must be no more than half the amount of the fee for a record communicated in writing that consists of one or two pages.

2. *Number of names.* The number of names required to be indexed does not affect the amount of the fee in subsection 1.

3. *Response to information request.* A rule adopted pursuant to subsection 1 must set the fee for responding to a request for information from the filing office, including for communicating whether there is on file any financing statement naming a particular debtor. However, if the filing office is in the county, the board of supervisors for the county may adopt an ordinance or resolution setting the fee for responding to a request for the information. A fee for responding to a request communicated in writing must be not less than twice the amount of the fee for responding to a request communicated by another medium authorized by the office of secretary of state or the board of supervisors for the filing office where its filing office is located.

4. *Record of mortgage.* This section does not require a fee with respect to a record of a mortgage which is effective as a financing statement filed as a fixture filing or as a financing statement covering as-extracted collateral or timber to be cut under section 554.9502, subsection 3. However, the recording and satisfaction fees that otherwise would be applicable to the record of the mortgage apply.

2000 Acts, ch 1149, §96, 187; 2001 Acts, ch 176, §75; 2002 Acts, ch 1119, §90, 91

554.9526 Filing-office rules.

1. *Adoption of filing-office rules.* The office of secretary of state shall adopt and publish rules to implement this Article. The filing-office rules must be:

a. consistent with this Article; and

b. adopted and published in accordance with chapter 17A.

2. *Harmonization of rules.* To keep the filing-office rules and practices of the filing

office in harmony with the rules and practices of filing offices in other jurisdictions that enact substantially this part, and to keep the technology used by the filing office compatible with the technology used by filing offices in other jurisdictions that enact substantially this part, the office of secretary of state, so far as is consistent with the purposes, policies, and provisions of this Article, in adopting, amending, and repealing filing-office rules, shall:

a. consult with filing offices in other jurisdictions that enact substantially this part; and

b. consult the most recent version of the Model Rules promulgated by the international association of corporate administrators or any successor organization; and

c. take into consideration the rules and practices of, and the technology used by, filing offices in other jurisdictions that enact substantially this part.

2000 Acts, ch 1149, §97, 187

Referred to in §554.9102

554.9527 Duty to report.

The office of secretary of state shall report annually on or before December 31 to the governor on the operation of the filing office. The report must contain a statement of the extent to which:

1. the filing-office rules are not in harmony with the rules of filing offices in other jurisdictions that enact substantially this part and the reasons for these variations; and

2. the filing-office rules are not in harmony with the most recent version of the Model Rules promulgated by the international association of corporate administrators, or any successor organization, and the reasons for these variations.

2000 Acts, ch 1149, §98, 187

PART 6

DEFAULT

Referred to in §203.12A, 203C.12A, 321.47, 461A.6, 537.5103, 570A.6, 571.5, 579A.3, 579B.5, 581.4

SUBPART A

DEFAULT AND ENFORCEMENT OF SECURITY INTEREST

554.9601 Rights after default — judicial enforcement — consignor or buyer of accounts, chattel paper, payment intangibles, or promissory notes.

1. *Rights of secured party after default.* After default, a secured party has the rights provided in this part and, except as otherwise provided in section 554.9602, those provided by agreement of the parties. A secured party:

a. may reduce a claim to judgment, foreclose, or otherwise enforce the claim, security interest, or agricultural lien by any available judicial procedure; and

b. if the collateral is documents, may proceed either as to the documents or as to the goods they cover.

2. *Rights and duties of secured party in possession or control.* A secured party in possession of collateral or control of collateral under section 554.7106, 554.9104, 554.9105, 554.9106, or 554.9107 has the rights and duties provided in section 554.9207.

3. *Rights cumulative — simultaneous exercise.* The rights under subsections 1 and 2 are cumulative and may be exercised simultaneously.

4. *Rights of debtor and obligor.* Except as otherwise provided in subsection 7 and section 554.9605, after default, a debtor and an obligor have the rights provided in this part and by agreement of the parties.

5. *Lien of levy after judgment.* If a secured party has reduced its claim to judgment, the lien of any levy that may be made upon the collateral by virtue of an execution based upon the judgment relates back to the earliest of:

a. the date of perfection of the security interest or agricultural lien in the collateral;

b. the date of filing a financing statement covering the collateral; or

c. any date specified in a statute under which the agricultural lien was created.

6. *Execution sale.* A sale pursuant to an execution is a foreclosure of the security interest or agricultural lien by judicial procedure within the meaning of this section. A secured party may purchase at the sale and thereafter hold the collateral free of any other requirements of this Article.

7. *Consignor or buyer of certain rights to payment.* Except as otherwise provided in section 554.9607, subsection 3, this part imposes no duties upon a secured party that is a consignor or is a buyer of accounts, chattel paper, payment intangibles, or promissory notes.

2000 Acts, ch 1149, §99, 187; 2007 Acts, ch 30, §45, 46, 76

554.9602 Waiver and variance of rights and duties.

Except as otherwise provided in section 554.9624, to the extent that they give rights to a debtor or obligor and impose duties on a secured party, the debtor or obligor may not waive or vary the rules stated in the following listed sections:

1. section 554.9207, subsection 2, paragraph "*d*", subparagraph (3), which deals with use and operation of the collateral by the secured party;

2. section 554.9210, which deals with requests for an accounting and requests concerning a list of collateral and statement of account;

3. section 554.9607, subsection 3, which deals with collection and enforcement as to collateral;

4. section 554.9608, subsection 1, and section 554.9615, subsection 3, to the extent that they deal with application or payment of noncash proceeds of collection, enforcement, or disposition;

5. section 554.9608, subsection 1, and section 554.9615, subsection 4, to the extent that they require accounting for or payment of surplus proceeds of collateral;

6. section 554.9609 to the extent that it imposes upon a secured party that takes possession of collateral without judicial process the duty to do so without breach of the peace;

7. section 554.9610, subsection 2, and sections 554.9611, 554.9613, and 554.9614, which deal with disposition of collateral;

8. section 554.9615, subsection 6, which deals with calculation of a deficiency or surplus when a disposition is made to the secured party, a person related to the secured party, or a secondary obligor;

9. section 554.9616, which deals with explanation of the calculation of a surplus or deficiency;

10. sections 554.9620, 554.9621, and 554.9622, which deal with acceptance of collateral in satisfaction of obligation;

11. section 554.9623, which deals with redemption of collateral;

12. section 554.9624, which deals with permissible waivers; and

13. sections 554.9625 and 554.9626, which deal with the secured party's liability for failure to comply with this Article.

2000 Acts, ch 1149, §100, 187; 2002 Acts, ch 1119, §92

Referred to in §554.9601, 554.9603

554.9603 Agreement on standards concerning rights and duties.

1. *Agreed standards.* The parties may determine by agreement the standards measuring the fulfillment of the rights of a debtor or obligor and the duties of a secured party under a rule stated in section 554.9602 if the standards are not manifestly unreasonable.

2. *Agreed standards inapplicable to breach of peace.* Subsection 1 does not apply to the duty under section 554.9609 to refrain from breaching the peace.

2000 Acts, ch 1149, §101, 187

554.9604 Procedure if security agreement covers real property or fixtures.

1. *Enforcement — personal and real property.* If a security agreement covers both personal and real property, a secured party may proceed:

a. under this part as to the personal property without prejudicing any rights with respect to the real property; or

b. as to both the personal property and the real property in accordance with the rights with respect to the real property, in which case the other provisions of this part do not apply.

2. *Enforcement — fixtures.* Subject to subsection 3, if a security agreement covers goods that are or become fixtures, a secured party may proceed:

a. under this part; or

b. in accordance with the rights with respect to real property, in which case the other provisions of this part do not apply.

3. *Removal of fixtures.* Subject to the other provisions of this part, if a secured party holding a security interest in fixtures has priority over all owners and encumbrancers of the real property, the secured party, after default, may remove the collateral from the real property.

4. *Injury caused by removal.* A secured party that removes collateral shall promptly reimburse any encumbrancer or owner of the real property, other than the debtor, for the cost of repair of any physical injury caused by the removal. The secured party need not reimburse the encumbrancer or owner for any diminution in value of the real property caused by the absence of the goods removed or by any necessity of replacing them. A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate assurance for the performance of the obligation to reimburse.

2000 Acts, ch 1149, §102, 187

Referred to in §554.9109

554.9605 Unknown debtor or secondary obligor.

A secured party does not owe a duty based on its status as secured party:

1. to a person that is a debtor or obligor, unless the secured party knows:

a. that the person is a debtor or obligor;

b. the identity of the person; and

c. how to communicate with the person; or

2. to a secured party or lienholder that has filed a financing statement against a person, unless the secured party knows:

a. that the person is a debtor; and

b. the identity of the person.

2000 Acts, ch 1149, §103, 187

Referred to in §554.9601

Liability limitations; see §554.9628

554.9606 Time of default for agricultural lien.

For purposes of this part, a default occurs in connection with an agricultural lien at the time the secured party becomes entitled to enforce the lien in accordance with the statute under which it was created.

2000 Acts, ch 1149, §104, 187

554.9607 Collection and enforcement by secured party.

1. *Collection and enforcement generally.* If so agreed, and in any event after default, a secured party:

a. may notify an account debtor or other person obligated on collateral to make payment or otherwise render performance to or for the benefit of the secured party;

b. may take any proceeds to which the secured party is entitled under section 554.9315;

c. may enforce the obligations of an account debtor or other person obligated on collateral and exercise the rights of the debtor with respect to the obligation of the account debtor or other person obligated on collateral to make payment or otherwise render performance to the debtor, and with respect to any property that secures the obligations of the account debtor or other person obligated on the collateral;

d. if it holds a security interest in a deposit account perfected by control under section 554.9104, subsection 1, paragraph *"a"*, may apply the balance of the deposit account to the obligation secured by the deposit account; and

e. if it holds a security interest in a deposit account perfected by control under section

554.9104, subsection 1, paragraph *"b"* or *"c"*, may instruct the bank to pay the balance of the deposit account to or for the benefit of the secured party.

2. *Nonjudicial enforcement of mortgage.* If necessary to enable a secured party to exercise under subsection 1, paragraph *"c"*, the right of a debtor to enforce a mortgage nonjudicially, the secured party may record in the office in which a record of the mortgage is recorded:

a. a copy of the security agreement that creates or provides for a security interest in the obligation secured by the mortgage; and

b. the secured party's sworn affidavit in recordable form stating that:

(1) a default has occurred with respect to the obligation secured by the mortgage; and

(2) the secured party is entitled to enforce the mortgage nonjudicially.

3. *Commercially reasonable collection and enforcement.* A secured party shall proceed in a commercially reasonable manner if the secured party:

a. undertakes to collect from or enforce an obligation of an account debtor or other person obligated on collateral; and

b. is entitled to charge back uncollected collateral or otherwise to full or limited recourse against the debtor or a secondary obligor.

4. *Expenses of collection and enforcement.* A secured party may deduct from the collections made pursuant to subsection 3 reasonable expenses of collection and enforcement, including reasonable attorney's fees and legal expenses incurred by the secured party.

5. *Duties to secured party not affected.* This section does not determine whether an account debtor, bank, or other person obligated on collateral owes a duty to a secured party.

2000 Acts, ch 1149, §105, 187; 2012 Acts, ch 1052, §22, 37

Referred to in §554.9601, 554.9602, 554.9608, 554.9623

554.9608 Application of proceeds of collection or enforcement — liability for deficiency and right to surplus.

1. *Application of proceeds, surplus, and deficiency if obligation secured.* If a security interest or agricultural lien secures payment or performance of an obligation, the following rules apply:

a. a secured party shall apply or pay over for application the cash proceeds of collection or enforcement under section 554.9607 in the following order to:

(1) the reasonable expenses of collection and enforcement and, to the extent provided for by agreement and not prohibited by law, reasonable attorney's fees and legal expenses incurred by the secured party;

(2) the satisfaction of obligations secured by the security interest or agricultural lien under which the collection or enforcement is made; and

(3) the satisfaction of obligations secured by any subordinate security interest in or other lien on the collateral subject to the security interest or agricultural lien under which the collection or enforcement is made if the secured party receives an authenticated demand for proceeds before distribution of the proceeds is completed.

b. if requested by a secured party, a holder of a subordinate security interest or other lien shall furnish reasonable proof of the interest or lien within a reasonable time. Unless the holder complies, the secured party need not comply with the holder's demand under paragraph *"a"*, subparagraph (3).

c. a secured party need not apply or pay over for application noncash proceeds of collection and enforcement under section 554.9607 unless the failure to do so would be commercially unreasonable. A secured party that applies or pays over for application noncash proceeds shall do so in a commercially reasonable manner.

d. a secured party shall account to and pay a debtor for any surplus, and the obligor is liable for any deficiency.

2. *No surplus or deficiency in sales of certain rights to payment.* If the underlying

transaction is a sale of accounts, chattel paper, payment intangibles, or promissory notes, the debtor is not entitled to any surplus, and the obligor is not liable for any deficiency.

2000 Acts, ch 1149, §106, 187
Referred to in §554.9602

554.9609 Secured party's right to take possession after default.

1. *Possession — rendering equipment unusable — disposition on debtor's premises.* After default, a secured party:

a. may take possession of the collateral; and

b. without removal, may render equipment unusable and dispose of collateral on a debtor's premises under section 554.9610.

2. *Judicial and nonjudicial process.* A secured party may proceed under subsection 1:

a. pursuant to judicial process; or

b. without judicial process, if it proceeds without breach of the peace.

3. *Assembly of collateral.* If so agreed, and in any event after default, a secured party may require the debtor to assemble the collateral and make it available to the secured party at a place to be designated by the secured party which is reasonably convenient to both parties.

2000 Acts, ch 1149, §107, 187
Referred to in §554.9102, 554.9602, 554.9603

554.9610 Disposition of collateral after default.

1. *Disposition after default.* After default, a secured party may sell, lease, license, or otherwise dispose of any or all of the collateral in its present condition or following any commercially reasonable preparation or processing.

2. *Commercially reasonable disposition.* Every aspect of a disposition of collateral, including the method, manner, time, place, and other terms, must be commercially reasonable. If commercially reasonable, a secured party may dispose of collateral by public or private proceedings, by one or more contracts, as a unit or in parcels, and at any time and place and on any terms.

3. *Purchase by secured party.* A secured party may purchase collateral:

a. at a public disposition; or

b. at a private disposition only if the collateral is of a kind that is customarily sold on a recognized market or the subject of widely distributed standard price quotations.

4. *Warranties on disposition.* A contract for sale, lease, license, or other disposition includes the warranties relating to title, possession, quiet enjoyment, and the like which by operation of law accompany a voluntary disposition of property of the kind subject to the contract.

5. *Disclaimer of warranties.* A secured party may disclaim or modify warranties under subsection 4:

a. in a manner that would be effective to disclaim or modify the warranties in a voluntary disposition of property of the kind subject to the contract of disposition; or

b. by communicating to the purchaser a record evidencing the contract for disposition and including an express disclaimer or modification of the warranties.

6. *Record sufficient to disclaim warranties.* A record is sufficient to disclaim warranties under subsection 5 if it indicates "There is no warranty relating to title, possession, quiet enjoyment, or the like in this disposition" or uses words of similar import.

2000 Acts, ch 1149, §108, 187
Referred to in §554.9406, 554.9408, 554.9602, 554.9609, 554.9611, 554.9615, 554.9616, 554.9618, 554.9620, 554.9623

554.9611 Notification before disposition of collateral.

1. *Notification date.* In this section, "*notification date*" means the earlier of the dates on which:

a. a secured party sends to the debtor and any secondary obligor an authenticated notification of disposition; or

b. the debtor and any secondary obligor waive the right to notification.

2. *Notification of disposition required.* Except as otherwise provided in subsection 4, a

secured party that disposes of collateral under section 554.9610 shall send to the persons specified in subsection 3 a reasonable authenticated notification of disposition.

3. *Persons to be notified.* To comply with subsection 2, the secured party shall send an authenticated notification of disposition to:

a. the debtor;

b. any secondary obligor; and

c. if the collateral is other than consumer goods:

(1) any other person from which the secured party has received, before the notification date, an authenticated notification of a claim of an interest in the collateral;

(2) any other secured party or lienholder that, ten days before the notification date, held a security interest in or other lien on the collateral perfected by the filing of a financing statement that:

(a) identified the collateral;

(b) was indexed under the debtor's name as of that date; and

(c) was filed in the office in which to file a financing statement against the debtor covering the collateral as of that date; and

(3) any other secured party that, ten days before the notification date, held a security interest in the collateral perfected by compliance with a statute, regulation, or treaty described in section 554.9311, subsection 1.

4. *Subsection 2 inapplicable — perishable collateral — recognized market.* Subsection 2 does not apply if the collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market.

5. *Compliance with subsection 3, paragraph "c", subparagraph (2).* A secured party complies with the requirement for notification prescribed by subsection 3, paragraph "*c*", subparagraph (2), if:

a. not later than twenty days or earlier than thirty days before the notification date, the secured party requests, in a commercially reasonable manner, information concerning financing statements indexed under the debtor's name in the office indicated in subsection 3, paragraph "*c*", subparagraph (2); and

b. before the notification date, the secured party:

(1) did not receive a response to the request for information; or

(2) received a response to the request for information and sent an authenticated notification of disposition to each secured party or other lienholder named in that response whose financing statement covered the collateral.

2000 Acts, ch 1149, §109, 187

Referred to in §554.9602, 554.9624

554.9612 Timeliness of notification before disposition of collateral.

1. *Reasonable time is question of fact.* Except as otherwise provided in subsection 2, whether a notification is sent within a reasonable time is a question of fact.

2. *Ten-day period sufficient in nonconsumer transaction.* In a transaction other than a consumer transaction, a notification of disposition sent after default and ten days or more before the earliest time of disposition set forth in the notification is sent within a reasonable time before the disposition.

2000 Acts, ch 1149, §110, 187

554.9613 Contents and form of notification before disposition of collateral — general.

Except in a consumer-goods transaction, the following rules apply:

1. The contents of a notification of disposition are sufficient if the notification:

a. describes the debtor and the secured party;

b. describes the collateral that is the subject of the intended disposition;

c. states the method of intended disposition;

d. states that the debtor is entitled to an accounting of the unpaid indebtedness and states the charge, if any, for an accounting; and

e. states the time and place of a public disposition or the time after which any other disposition is to be made.

2. Whether the contents of a notification that lacks any of the information specified in subsection 1 are nevertheless sufficient is a question of fact.

3. The contents of a notification providing substantially the information specified in subsection 1 are sufficient, even if the notification includes:

a. information not specified by that subsection; or

b. minor errors that are not seriously misleading.

4. A particular phrasing of the notification is not required.

5. The following form of notification and the form appearing in section 554.9614, subsection 3, when completed, each provides sufficient information:

NOTIFICATION OF DISPOSITION
OF COLLATERAL

To: [name of debtor, obligor, or other person to which the notification is sent]

From: [name, address, and telephone number of secured party]

Name of Debtor(s): [include only if debtor(s) are not an addressee]

[for a public disposition:]

We will sell [or lease or license, as applicable] the [describe collateral] [to the highest qualified bidder] in public as follows:

Day and Date: .....

Time: .....

Place: .....

[for a private disposition:]

We will sell [or lease or license, as applicable] the [describe collateral] privately sometime after [day and date].

You are entitled to an accounting of the unpaid indebtedness secured by the property that we intend to sell [or lease or license, as applicable] [for a charge of ..... dollars]. You may request an accounting by calling us at [telephone number].

2000 Acts, ch 1149, §111, 187
Referred to in §554.9602, 554.9614

554.9614 Contents and form of notification before disposition of collateral — consumer-goods transaction.

In a consumer-goods transaction, the following rules apply:

1. A notification of disposition must provide the following information:

a. the information specified in section 554.9613, subsection 1;

b. a description of any liability for a deficiency of the person to which the notification is sent;

c. a telephone number from which the amount that must be paid to the secured party to redeem the collateral under section 554.9623 is available; and

d. a telephone number or mailing address from which additional information concerning the disposition and the obligation secured is available.

2. A particular phrasing of the notification is not required.

3. The following form of notification, when completed, provides sufficient information:

[name and address of secured party]

[date]

NOTICE OF OUR PLAN TO SELL PROPERTY

[name and address of any obligor who is also a debtor]

Subject: [identification of transaction]

We have your [describe collateral], because you broke promises in our agreement.

[for a public disposition:]

We will sell [describe collateral] at public sale. A sale could include a lease or license. The sale will be held as follows:

Date: .....
Time: .....
Place: .....
You may attend the sale and bring bidders if you want.
[for a private disposition:]
We will sell [describe collateral] at private sale sometime after [date]. A sale could include a lease or license.
The money that we get from the sale (after paying our costs) will reduce the amount you owe. If we get less money than you owe, you [will or will not, as applicable] still owe us the difference. If we get more money than you owe, you will get the extra money, unless we must pay it to someone else.
You can get the property back at any time before we sell it by paying us the full amount you owe (not just the past due payments), including our expenses. To learn the exact amount you must pay, call us at [telephone number].
If you want us to explain to you in writing how we have figured the amount that you owe us, you may call us at [telephone number] [or write us at [secured party's address]] and request a written explanation. [We will charge you ..... for the explanation if we sent you another written explanation of the amount you owe us within the last six months.]
If you need more information about the sale call us at [telephone number] [or write us at [secured party's address]].
We are sending this notice to the following other people who have an interest in [describe collateral] or who owe money under your agreement:
[names of all other debtors and obligors, if any]

4. A notification in the form of subsection 3 is sufficient, even if additional information appears at the end of the form.

5. A notification in the form of subsection 3 is sufficient, even if it includes errors in information not required by subsection 1, unless the error is misleading with respect to rights arising under this Article.

6. If a notification under this section is not in the form of subsection 3, law other than this Article determines the effect of including information not required by subsection 1.

2000 Acts, ch 1149, §112, 187
Referred to in §554.9602, 554.9613

554.9615 Application of proceeds of disposition — liability for deficiency and right to surplus.

1. *Application of proceeds.* A secured party shall apply or pay over for application the cash proceeds of disposition under section 554.9610 in the following order to:

a. the reasonable expenses of retaking, holding, preparing for disposition, processing, and disposing, and, to the extent provided for by agreement and not prohibited by law, reasonable attorney's fees and legal expenses incurred by the secured party;

b. the satisfaction of obligations secured by the security interest or agricultural lien under which the disposition is made;

c. the satisfaction of obligations secured by any subordinate security interest in or other subordinate lien on the collateral if:

(1) the secured party receives from the holder of the subordinate security interest or other lien an authenticated demand for proceeds before distribution of the proceeds is completed; and

(2) in a case in which a consignor has an interest in the collateral, the subordinate security interest or other lien is senior to the interest of the consignor; and

d. a secured party that is a consignor of the collateral if the secured party receives from

the consignor an authenticated demand for proceeds before distribution of the proceeds is completed.

2. *Proof of subordinate interest.* If requested by a secured party, a holder of a subordinate security interest or other lien shall furnish reasonable proof of the interest or lien within a reasonable time. Unless the holder does so, the secured party need not comply with the holder's demand under subsection 1, paragraph "*c*".

3. *Application of noncash proceeds.* A secured party need not apply or pay over for application noncash proceeds of disposition under section 554.9610 unless the failure to do so would be commercially unreasonable. A secured party that applies or pays over for application noncash proceeds shall do so in a commercially reasonable manner.

4. *Surplus or deficiency if obligation secured.* If the security interest under which a disposition is made secures payment or performance of an obligation, after making the payments and applications required by subsection 1 and permitted by subsection 3:

a. unless subsection 1, paragraph "*d*", requires the secured party to apply or pay over cash proceeds to a consignor, the secured party shall account to and pay a debtor for any surplus; and

b. the obligor is liable for any deficiency.

5. *No surplus or deficiency in sales of certain rights to payment.* If the underlying transaction is a sale of accounts, chattel paper, payment intangibles, or promissory notes:

a. the debtor is not entitled to any surplus; and

b. the obligor is not liable for any deficiency.

6. *Calculation of surplus or deficiency in disposition to person related to secured party.* The surplus or deficiency following a disposition is calculated based on the amount of proceeds that would have been realized in a disposition complying with this part to a transferee other than the secured party, a person related to the secured party, or a secondary obligor if:

a. the transferee in the disposition is the secured party, a person related to the secured party, or a secondary obligor; and

b. the amount of proceeds of the disposition is significantly below the range of proceeds that a complying disposition to a person other than the secured party, a person related to the secured party, or a secondary obligor would have brought.

7. *Cash proceeds received by junior secured party.* A secured party that receives cash proceeds of a disposition in good faith and without knowledge that the receipt violates the rights of the holder of a security interest or other lien that is not subordinate to the security interest or agricultural lien under which the disposition is made:

a. takes the cash proceeds free of the security interest or other lien;

b. is not obligated to apply the proceeds of the disposition to the satisfaction of obligations secured by the security interest or other lien; and

c. is not obligated to account to or pay the holder of the security interest or other lien for any surplus.

2000 Acts, ch 1149, §113, 187
Referred to in §554.9602, 554.9616, 554.9623, 554.9626

554.9616 Explanation of calculation of surplus or deficiency.

1. *Definitions.* In this section:

a. "*Explanation*" means a writing that:

(1) states the amount of the surplus or deficiency;

(2) provides an explanation in accordance with subsection 3 of how the secured party calculated the surplus or deficiency;

(3) states, if applicable, that future debits, credits, charges, including additional credit service charges or interest, rebates, and expenses may affect the amount of the surplus or deficiency; and

(4) provides a telephone number or mailing address from which additional information concerning the transaction is available.

b. "*Request*" means a record:

(1) authenticated by a debtor or consumer obligor;

(2) requesting that the recipient provide an explanation; and

(3) sent after disposition of the collateral under section 554.9610.

2. *Explanation of calculation.* In a consumer-goods transaction in which the debtor is entitled to a surplus or a consumer obligor is liable for a deficiency under section 554.9615, the secured party shall:

a. send an explanation to the debtor or consumer obligor, as applicable, after the disposition and:

(1) before or when the secured party accounts to the debtor and pays any surplus or first makes written demand on the consumer obligor after the disposition for payment of the deficiency; and

(2) within fourteen days after receipt of a request; or

b. in the case of a consumer obligor who is liable for a deficiency, within fourteen days after receipt of a request, send to the consumer obligor a record waiving the secured party's right to a deficiency.

3. *Required information.* To comply with subsection 1, paragraph "*a*", subparagraph (2), a writing must provide the following information in the following order:

a. the aggregate amount of obligations secured by the security interest under which the disposition was made, and, if the amount reflects a rebate of unearned interest or credit service charge, an indication of that fact, calculated as of a specified date:

(1) if the secured party takes or receives possession of the collateral after default, not more than thirty-five days before the secured party takes or receives possession; or

(2) if the secured party takes or receives possession of the collateral before default or does not take possession of the collateral, not more than thirty-five days before the disposition;

b. the amount of proceeds of the disposition;

c. the aggregate amount of the obligations after deducting the amount of proceeds;

d. the amount, in the aggregate or by type, and types of expenses, including expenses of retaking, holding, preparing for disposition, processing, and disposing of the collateral, and attorney's fees secured by the collateral which are known to the secured party and relate to the current disposition;

e. the amount, in the aggregate or by type, and types of credits, including rebates of interest or credit service charges, to which the obligor is known to be entitled and which are not reflected in the amount in paragraph "*a*"; and

f. the amount of the surplus or deficiency.

4. *Substantial compliance.* A particular phrasing of the explanation is not required. An explanation complying substantially with the requirements of subsection 1 is sufficient, even if it includes minor errors that are not seriously misleading.

5. *Charges for responses.* A debtor or consumer obligor is entitled without charge to one response to a request under this section during any six-month period in which the secured party did not send to the debtor or consumer obligor an explanation pursuant to subsection 2, paragraph "*a*". The secured party may require payment of a charge not exceeding twenty-five dollars for each additional response.

2000 Acts, ch 1149, §114, 187

Referred to in §554.9602, 554.9625, 554.9628

Remedies for secured party's failure to comply with Article; §554.9625

554.9617 Rights of transferee of collateral.

1. *Effects of disposition.* A secured party's disposition of collateral after default:

a. transfers to a transferee for value all of the debtor's rights in the collateral;

b. discharges the security interest under which the disposition is made; and

c. discharges any subordinate security interest or other subordinate lien.

2. *Rights of good-faith transferee.* A transferee that acts in good faith takes free of the rights and interests described in subsection 1, even if the secured party fails to comply with this Article or the requirements of any judicial proceeding.

3. *Rights of other transferee.* If a transferee does not take free of the rights and interests described in subsection 1, the transferee takes the collateral subject to:

a. the debtor's rights in the collateral;

b. the security interest or agricultural lien under which the disposition is made; and

c. any other security interest or other lien.

2000 Acts, ch 1149, §115, 187

554.9618 Rights and duties of certain secondary obligors.

1. *Rights and duties of secondary obligor.* A secondary obligor acquires the rights and becomes obligated to perform the duties of the secured party after the secondary obligor:

a. receives an assignment of a secured obligation from the secured party;

b. receives a transfer of collateral from the secured party and agrees to accept the rights and assume the duties of the secured party; or

c. is subrogated to the rights of a secured party with respect to collateral.

2. *Effect of assignment, transfer, or subrogation.* An assignment, transfer, or subrogation described in subsection 1:

a. is not a disposition of collateral under section 554.9610; and

b. relieves the secured party of further duties under this Article.

2000 Acts, ch 1149, §116, 187

554.9619 Transfer of record or legal title.

1. *Transfer statement.* In this section, *"transfer statement"* means a record authenticated by a secured party stating:

a. that the debtor has defaulted in connection with an obligation secured by specified collateral;

b. that the secured party has exercised its post-default remedies with respect to the collateral;

c. that, by reason of the exercise, a transferee has acquired the rights of the debtor in the collateral; and

d. the name and mailing address of the secured party, debtor, and transferee.

2. *Effect of transfer statement.* A transfer statement entitles the transferee to the transfer of record of all rights of the debtor in the collateral specified in the statement in any official filing, recording, registration, or certificate-of-title system covering the collateral. If a transfer statement is presented with the applicable fee and request form to the official or office responsible for maintaining the system, the official or office shall:

a. accept the transfer statement;

b. promptly amend its records to reflect the transfer; and

c. if applicable, issue a new appropriate certificate of title in the name of the transferee.

3. *Transfer not a disposition — no relief of secured party's duties.* A transfer of the record or legal title to collateral to a secured party under subsection 2 or otherwise is not of itself a disposition of collateral under this Article and does not of itself relieve the secured party of its duties under this Article.

2000 Acts, ch 1149, §117, 187

Transfer of title or interest in vehicles, §321.45 – 321.52A

554.9620 Acceptance of collateral in full or partial satisfaction of obligation — compulsory disposition of collateral.

1. *Conditions to acceptance in satisfaction.* Except as otherwise provided in subsection 7, a secured party may accept collateral in full or partial satisfaction of the obligation it secures only if:

a. the debtor consents to the acceptance under subsection 3;

b. the secured party does not receive, within the time set forth in subsection 4, a notification of objection to the proposal authenticated by:

(1) a person to which the secured party was required to send a proposal under section 554.9621; or

(2) any other person, other than the debtor, holding an interest in the collateral subordinate to the security interest that is the subject of the proposal;

c. if the collateral is consumer goods, the collateral is not in the possession of the debtor when the debtor consents to the acceptance; and

d. subsection 5 does not require the secured party to dispose of the collateral or the debtor waives the requirement pursuant to section 554.9624.

2. *Purported acceptance ineffective.* A purported or apparent acceptance of collateral under this section is ineffective unless:

a. the secured party consents to the acceptance in an authenticated record or sends a proposal to the debtor; and

b. the conditions of subsection 1 are met.

3. *Debtor's consent.* For purposes of this section:

a. a debtor consents to an acceptance of collateral in partial satisfaction of the obligation it secures only if the debtor agrees to the terms of the acceptance in a record authenticated after default; and

b. a debtor consents to an acceptance of collateral in full satisfaction of the obligation it secures only if the debtor agrees to the terms of the acceptance in a record authenticated after default or the secured party:

(1) sends to the debtor after default a proposal that is unconditional or subject only to a condition that collateral not in the possession of the secured party be preserved or maintained;

(2) in the proposal, proposes to accept collateral in full satisfaction of the obligation it secures; and

(3) does not receive a notification of objection authenticated by the debtor within twenty days after the proposal is sent.

4. *Effectiveness of notification.* To be effective under subsection 1, paragraph "*b*", a notification of objection must be received by the secured party:

a. in the case of a person to which the proposal was sent pursuant to section 554.9621, within twenty days after notification was sent to that person; and

b. in other cases:

(1) within twenty days after the last notification was sent pursuant to section 554.9621; or

(2) if a notification was not sent, before the debtor consents to the acceptance under subsection 3.

5. *Mandatory disposition of consumer goods.* A secured party that has taken possession of collateral shall dispose of the collateral pursuant to section 554.9610 within the time specified in subsection 6 if:

a. sixty percent of the cash price has been paid in the case of a purchase-money security interest in consumer goods; or

b. sixty percent of the principal amount of the obligation secured has been paid in the case of a non-purchase-money security interest in consumer goods.

6. *Compliance with mandatory disposition requirement.* To comply with subsection 5, the secured party shall dispose of the collateral:

a. within ninety days after taking possession; or

b. within any longer period to which the debtor and all secondary obligors have agreed in an agreement to that effect entered into and authenticated after default.

7. *No partial satisfaction in consumer transaction.* In a consumer transaction, a secured party may not accept collateral in partial satisfaction of the obligation it secures.

2000 Acts, ch 1149, §118, 187

Referred to in §554.9102, 554.9406, 554.9408, 554.9602, 554.9624

554.9621 Notification of proposal to accept collateral.

1. *Persons to which proposal to be sent.* A secured party that desires to accept collateral in full or partial satisfaction of the obligation it secures shall send its proposal to:

a. any person from which the secured party has received, before the debtor consented to the acceptance, an authenticated notification of a claim of an interest in the collateral;

b. any other secured party or lienholder that, ten days before the debtor consented to the acceptance, held a security interest in or other lien on the collateral perfected by the filing of a financing statement that:

(1) identified the collateral;

(2) was indexed under the debtor's name as of that date; and

(3) was filed in the office or offices in which to file a financing statement against the debtor covering the collateral as of that date; and

c. any other secured party that, ten days before the debtor consented to the acceptance, held a security interest in the collateral perfected by compliance with a statute, regulation, or treaty described in section 554.9311, subsection 1.

2. *Proposal to be sent to secondary obligor in partial satisfaction.* A secured party that desires to accept collateral in partial satisfaction of the obligation it secures shall send its proposal to any secondary obligor in addition to the persons described in subsection 1.

2000 Acts, ch 1149, §119, 187
Referred to in §554.9102, 554.9602, 554.9620

554.9622 Effect of acceptance of collateral.

1. *Effect of acceptance.* A secured party's acceptance of collateral in full or partial satisfaction of the obligation it secures:

a. discharges the obligation to the extent consented to by the debtor;

b. transfers to the secured party all of a debtor's rights in the collateral;

c. discharges the security interest or agricultural lien that is the subject of the debtor's consent and any subordinate security interest or other subordinate lien; and

d. terminates any other subordinate interest.

2. *Discharge of subordinate interest notwithstanding noncompliance.* A subordinate interest is discharged or terminated under subsection 1, even if the secured party fails to comply with this Article.

2000 Acts, ch 1149, §120, 187
Referred to in §554.9102, 554.9602, 554.9623

554.9623 Right to redeem collateral.

1. *Persons that may redeem.* A debtor, any secondary obligor, or any other secured party or lienholder may redeem collateral.

2. *Requirements for redemption.* To redeem collateral, a person shall tender:

a. fulfillment of all obligations secured by the collateral; and

b. the reasonable expenses and attorney's fees described in section 554.9615, subsection 1, paragraph *"a"*.

3. *When redemption may occur.* A redemption may occur at any time before a secured party:

a. has collected collateral under section 554.9607;

b. has disposed of collateral or entered into a contract for its disposition under section 554.9610; or

c. has accepted collateral in full or partial satisfaction of the obligation it secures under section 554.9622.

2000 Acts, ch 1149, §121, 187
Referred to in §554.9602, 554.9614, 554.9624

554.9624 Waiver.

1. *Waiver of disposition notification.* A debtor or secondary obligor may waive the right to notification of disposition of collateral under section 554.9611 only by an agreement to that effect entered into and authenticated after default.

2. *Waiver of mandatory disposition.* A debtor may waive the right to require disposition of collateral under section 554.9620, subsection 5, only by an agreement to that effect entered into and authenticated after default.

3. *Waiver of redemption right.* Except in a consumer-goods transaction, a debtor or secondary obligor may waive the right to redeem collateral under section 554.9623 only by an agreement to that effect entered into and authenticated after default.

2000 Acts, ch 1149, §122, 187
Referred to in §554.9602, 554.9620

SUBPART B

NONCOMPLIANCE WITH ARTICLE

554.9625 Remedies for secured party's failure to comply with Article.

1. *Judicial orders concerning noncompliance.* If it is established that a secured party is not proceeding in accordance with this Article, a court may order or restrain collection, enforcement, or disposition of collateral on appropriate terms and conditions.

2. *Damages for noncompliance.* Subject to subsections 3, 4, and 6, a person is liable for damages in the amount of any loss caused by a failure to comply with this Article. Loss caused by a failure to comply may include loss resulting from the debtor's inability to obtain, or increased costs of, alternative financing.

3. *Persons entitled to recover damages — statutory damages if collateral is consumer goods.* Except as otherwise provided in section 554.9628:

a. a person that, at the time of the failure, was a debtor, was an obligor, or held a security interest in or other lien on the collateral may recover damages under subsection 2 for its loss; and

b. if the collateral is consumer goods, a person that was a debtor or a secondary obligor at the time a secured party failed to comply with this part may recover for that failure in any event an amount not less than the credit service charge plus ten percent of the principal amount of the obligation or the time-price differential plus ten percent of the cash price.

4. *Recovery when deficiency eliminated or reduced.* A debtor whose deficiency is eliminated under section 554.9626 may recover damages for the loss of any surplus. However, a debtor or secondary obligor whose deficiency is eliminated or reduced under section 554.9626 may not otherwise recover under subsection 2 for noncompliance with the provisions of this part relating to collection, enforcement, disposition, or acceptance.

5. *Statutory damages — noncompliance with specified provisions.* In addition to any damages recoverable under subsection 2, the debtor, consumer obligor, or person named as a debtor in a filed record, as applicable, may recover five hundred dollars in each case from a person that:

a. fails to comply with section 554.9208;

b. fails to comply with section 554.9209;

c. files a record that the person is not entitled to file under section 554.9509, subsection 1;

d. fails to cause the secured party of record to file or send a termination statement as required by section 554.9513, subsection 1 or 3;

e. fails to comply with section 554.9616, subsection 2, paragraph *"a"*, and whose failure is part of a pattern, or consistent with a practice, of noncompliance; or

f. fails to comply with section 554.9616, subsection 2, paragraph *"b"*.

6. *Statutory damages — noncompliance with section 554.9210.* A debtor or consumer obligor may recover damages under subsection 2 and, in addition, five hundred dollars in each case from a person that, without reasonable cause, fails to comply with a request under section 554.9210. A recipient of a request under section 554.9210 which never claimed an interest in the collateral or obligations that are the subject of a request under that section has a reasonable excuse for failure to comply with the request within the meaning of this subsection.

7. *Limitation of security interest — noncompliance with section 554.9210.* If a secured party fails to comply with a request regarding a list of collateral or a statement of account under section 554.9210, the secured party may claim a security interest only as shown in the list or statement included in the request as against a person that is reasonably misled by the failure.

2000 Acts, ch 1149, §123, 187; 2012 Acts, ch 1052, §23, 37
Referred to in §554.9602, 554.9628

554.9626 Action in which deficiency or surplus is in issue.

1. *Applicable rules if amount of deficiency or surplus in issue.* In an action arising from

a transaction, other than a consumer transaction, in which the amount of a deficiency or surplus is in issue, the following rules apply:

a. a secured party need not prove compliance with the provisions of this part relating to collection, enforcement, disposition, or acceptance unless the debtor or a secondary obligor places the secured party's compliance in issue.

b. if the secured party's compliance is placed in issue, the secured party has the burden of establishing that the collection, enforcement, disposition, or acceptance was conducted in accordance with this part.

c. except as otherwise provided in section 554.9628, if a secured party fails to prove that the collection, enforcement, disposition, or acceptance was conducted in accordance with the provisions of this part relating to collection, enforcement, disposition, or acceptance, the liability of a debtor or a secondary obligor for a deficiency is limited to an amount by which the sum of the secured obligation, expenses, and attorney's fees exceeds the greater of:

(1) the proceeds of the collection, enforcement, disposition, or acceptance; or

(2) the amount of proceeds that would have been realized had the noncomplying secured party proceeded in accordance with the provisions of this part relating to collection, enforcement, disposition, or acceptance.

d. for purposes of paragraph "*c*", subparagraph (2), the amount of proceeds that would have been realized is equal to the sum of the secured obligation, expenses, and attorney's fees unless the secured party proves that the amount is less than that sum.

e. if a deficiency or surplus is calculated under section 554.9615, subsection 6, the debtor or obligor has the burden of establishing that the amount of proceeds of the disposition is significantly below the range of prices that a complying disposition to a person other than the secured party, a person related to the secured party, or a secondary obligor would have brought.

2. *Nonconsumer transactions — no inference.* The limitation of the rules in subsection 1 to transactions other than consumer transactions is intended to leave to the court the determination of the proper rules in consumer transactions. The court may not infer from that limitation the nature of the proper rule in consumer transactions and may continue to apply established approaches.

2000 Acts, ch 1149, §124, 187
Referred to in §554.9602, 554.9625

554.9627 Determination of whether conduct was commercially reasonable.

1. *Greater amount obtainable under other circumstances — no preclusion of commercial reasonableness.* The fact that a greater amount could have been obtained by a collection, enforcement, disposition, or acceptance at a different time or in a different method from that selected by the secured party is not of itself sufficient to preclude the secured party from establishing that the collection, enforcement, disposition, or acceptance was made in a commercially reasonable manner.

2. *Dispositions that are commercially reasonable.* A disposition of collateral is made in a commercially reasonable manner if the disposition is made:

a. in the usual manner on any recognized market;

b. at the price current in any recognized market at the time of the disposition; or

c. otherwise in conformity with reasonable commercial practices among dealers in the type of property that was the subject of the disposition.

3. *Approval by court or on behalf of creditors.* A collection, enforcement, disposition, or acceptance is commercially reasonable if it has been approved:

a. in a judicial proceeding;

b. by a bona fide creditors' committee;

c. by a representative of creditors; or

d. by an assignee for the benefit of creditors.

4. *Approval under subsection 3 not necessary — absence of approval has no effect.* Approval under subsection 3 need not be obtained, and lack of approval does

not mean that the collection, enforcement, disposition, or acceptance is not commercially reasonable.

2000 Acts, ch 1149, §125, 187

554.9628 Nonliability and limitation on liability of secured party — liability of secondary obligor.

1. *Limitation of liability of secured party for noncompliance with article.* Unless a secured party knows that a person is a debtor or obligor, knows the identity of the person, and knows how to communicate with the person:

a. the secured party is not liable to the person, or to a secured party or lienholder that has filed a financing statement against the person, for failure to comply with this Article; and

b. the secured party's failure to comply with this Article does not affect the liability of the person for a deficiency.

2. *Limitation of liability based on status as secured party.* A secured party is not liable because of its status as secured party:

a. to a person that is a debtor or obligor, unless the secured party knows:

(1) that the person is a debtor or obligor;

(2) the identity of the person; and

(3) how to communicate with the person; or

b. to a secured party or lienholder that has filed a financing statement against a person, unless the secured party knows:

(1) that the person is a debtor; and

(2) the identity of the person.

3. *Limitation of liability if reasonable belief that transaction not a consumer-goods transaction or consumer transaction.* A secured party is not liable to any person, and a person's liability for a deficiency is not affected, because of any act or omission arising out of the secured party's reasonable belief that a transaction is not a consumer-goods transaction or a consumer transaction or that goods are not consumer goods, if the secured party's belief is based on its reasonable reliance on:

a. a debtor's representation concerning the purpose for which collateral was to be used, acquired, or held; or

b. an obligor's representation concerning the purpose for which a secured obligation was incurred.

4. *Limitation of liability for statutory damages.* A secured party is not liable to any person under section 554.9625, subsection 3, paragraph *"b"*, for its failure to comply with section 554.9616.

5. *Limitation of multiple liability for statutory damages.* A secured party is not liable under section 554.9625, subsection 3, paragraph *"b"*, more than once with respect to any one secured obligation.

2000 Acts, ch 1149, §126, 187

Referred to in §554.9625, 554.9626

PART 7

2001 TRANSITION

554.9701 through 554.9710 Repealed by 2012 Acts, ch 1052, §34, 37.

PART 8

2013 TRANSITION

554.9801 Effective date.

The amendments to this Article, as enacted in 2012 Acts, ch. 1052, take effect on July 1, 2013.

2012 Acts, ch 1052, §24, 37; 2014 Acts, ch 1026, §143
For future repeal of this section effective July 1, 2019, see 2012 Acts, ch 1052, §35

554.9802 Savings clause.

1. *Pre-effective-date transactions or liens.* Except as otherwise provided in this part, 2012 Acts, ch. 1052, applies to a transaction or lien within its scope, even if the transaction or lien was entered into or created before July 1, 2013.

2. *Pre-effective-date proceedings.* 2012 Acts, ch. 1052, does not affect an action, case, or proceeding commenced before July 1, 2013.

2012 Acts, ch 1052, §25, 37; 2014 Acts, ch 1026, §143
For future repeal of this section effective July 1, 2019, see 2012 Acts, ch 1052, §35

554.9803 Security interest perfected before effective date.

1. *Continuing perfection: perfection requirements satisfied.* A security interest that is a perfected security interest immediately before July 1, 2013, is a perfected security interest under this Article, as amended by 2012 Acts, ch. 1052, if on July 1, 2013, the applicable requirements for attachment and perfection under this Article, as amended by 2012 Acts, ch. 1052, are satisfied without further action.

2. *Continuing perfection: perfection requirements not satisfied.* Except as otherwise provided in section 554.9805, if immediately before July 1, 2013, a security interest is a perfected security interest, but the applicable requirements for perfection under this Article, as amended by 2012 Acts, ch. 1052, are not satisfied on July 1, 2013, the security interest remains perfected thereafter only if the applicable requirements for perfection under this Article, as amended by 2012 Acts, ch. 1052, are satisfied within one year after July 1, 2013.

2012 Acts, ch 1052, §26, 37; 2014 Acts, ch 1026, §143
For future repeal of this section effective July 1, 2019, see 2012 Acts, ch 1052, §35

554.9804 Security interest unperfected before effective date.

A security interest that is an unperfected security interest immediately before July 1, 2013, becomes a perfected security interest:

1. without further action, on July 1, 2013, if the applicable requirements for perfection under this Article, as amended by 2012 Acts, ch. 1052, are satisfied before or on July 1, 2013; or

2. when the applicable requirements for perfection are satisfied if the requirements are satisfied after July 1, 2013.

2012 Acts, ch 1052, §27, 37; 2014 Acts, ch 1026, §143
For future repeal of this section effective July 1, 2019, see 2012 Acts, ch 1052, §35

554.9805 Effectiveness of action taken before effective date.

1. *Pre-effective-date filing effective.* The filing of a financing statement before July 1, 2013, is effective to perfect a security interest to the extent the filing would satisfy the applicable requirements for perfection under this Article, as amended by 2012 Acts, ch. 1052.

2. *When pre-effective-date filing becomes ineffective.* 2012 Acts, ch. 1052, does not render ineffective an effective financing statement that, before July 1, 2013, is filed and satisfies the applicable requirements for perfection under the law of the jurisdiction governing perfection as provided in this Article, as it existed before July 1, 2013. However, except as otherwise provided in subsections 3 and 4 and section 554.9806, the financing statement ceases to be effective:

a. if the financing statement is filed in this state, at the time the financing statement would have ceased to be effective had 2012 Acts, ch. 1052, not taken effect; or

b. if the financing statement is filed in another jurisdiction, at the earlier of:

(1) the time the financing statement would have ceased to be effective under the law of that jurisdiction; or

(2) June 30, 2018.

3. *Continuation statement.* The filing of a continuation statement on or after July 1, 2013, does not continue the effectiveness of a financing statement filed before July 1, 2013. However, upon the timely filing of a continuation statement on or after July 1, 2013, and in accordance with the law of the jurisdiction governing perfection as provided in this Article, as amended by 2012 Acts, ch. 1052, the effectiveness of a financing statement filed in the same office in that jurisdiction before July 1, 2013, continues for the period provided by the law of that jurisdiction.

4. *Application of subsection 2, paragraph "b", subparagraph (2) to transmitting utility financing statement.* Subsection 2, paragraph "*b*", subparagraph (2) applies to a financing statement that, before July 1, 2013, is filed against a transmitting utility and satisfies the applicable requirements for perfection under the law of the jurisdiction governing perfection as provided in this Article, as it existed before July 1, 2013, only to the extent that this Article, as amended by 2012 Acts, ch. 1052, provides that the law of a jurisdiction other than the jurisdiction in which the financing statement is filed governs perfection of a security interest in collateral covered by the financing statement.

5. *Application of part 5.* A financing statement that includes a financing statement filed before July 1, 2013, and a continuation statement filed on or after July 1, 2013, is effective only to the extent that the financing statement satisfies the requirements of part 5, as amended by 2012 Acts, ch. 1052, for an initial financing statement. A financing statement that indicates that the debtor is a decedent's estate indicates that the collateral is being administered by a personal representative within the meaning of section 554.9503, subsection 1, paragraph "*b*", as amended by 2012 Acts, ch. 1052. A financing statement that indicates that the debtor is a trust or is a trustee acting with respect to property held in trust indicates that the collateral is held in a trust within the meaning of section 554.9503, subsection 1, paragraph "*c*", as amended by 2012 Acts, ch. 1052.

2012 Acts, ch 1052, §28, 37; 2014 Acts, ch 1026, §143; 2017 Acts, ch 54, §68

Referred to in §554.9803, 554.9807

For future repeal of this section effective July 1, 2019, see 2012 Acts, ch 1052, §35

554.9806 When initial financing statement suffices to continue effectiveness of financing statement.

1. *Initial financing statement in lieu of continuation statement.* The filing of an initial financing statement in the office specified in section 554.9501 continues the effectiveness of a financing statement filed before July 1, 2013, if:

a. the filing of an initial financing statement in that office would be effective to perfect a security interest under this Article, as amended by 2012 Acts, ch. 1052;

b. the pre-effective-date financing statement was filed in an office in another state; and

c. the initial financing statement satisfies subsection 3.

2. *Period of continued effectiveness.* The filing of an initial financing statement under subsection 1 continues the effectiveness of the pre-effective-date financing statement:

a. if the initial financing statement is filed before July 1, 2013, for the period provided in section 554.9515, as it existed before July 1, 2013, with respect to an initial financing statement; and

b. if the initial financing statement is filed on or after July 1, 2013, for the period provided in section 554.9515, as amended by 2012 Acts, ch. 1052, with respect to an initial financing statement.

3. *Requirements for initial financing statement under subsection 1.* To be effective for purposes of subsection 1, an initial financing statement must:

a. satisfy the requirements of part 5, as amended by 2012 Acts, ch. 1052, for an initial financing statement;

b. identify the pre-effective-date financing statement by indicating the office in which the financing statement was filed and providing the dates of filing and file numbers, if any, of the

financing statement and of the most recent continuation statement filed with respect to the financing statement; and

c. indicate that the pre-effective-date financing statement remains effective.

2012 Acts, ch 1052, §29, 37; 2014 Acts, ch 1026, §143; 2017 Acts, ch 54, §69

Referred to in §554.9805, 554.9807

For future repeal of this section effective July 1, 2019, see 2012 Acts, ch 1052, §35

554.9807 Amendment of pre-effective-date financing statement.

1. *"Pre-effective-date financing statement".* In this section, *"pre-effective-date financing statement"* means a financing statement filed before July 1, 2013.

2. *Applicable law.* On or after July 1, 2013, a person may add or delete collateral covered by, continue or terminate the effectiveness of, or otherwise amend the information provided in, a pre-effective-date financing statement only in accordance with the law of the jurisdiction governing perfection as provided in this Article, as amended by 2012 Acts, ch. 1052. However, the effectiveness of a pre-effective-date financing statement also may be terminated in accordance with the law of the jurisdiction in which the financing statement is filed.

3. *Method of amending: general rule.* Except as otherwise provided in subsection 4, if the law of this state governs perfection of a security interest, the information in a pre-effective-date financing statement may be amended on or after July 1, 2013, only if:

a. the pre-effective-date financing statement and an amendment are filed in the office specified in section 554.9501;

b. an amendment is filed in the office specified in section 554.9501 concurrently with, or after the filing in that office of, an initial financing statement that satisfies section 554.9806, subsection 3; or

c. an initial financing statement that provides the information as amended and satisfies section 554.9806, subsection 3, is filed in the office specified in section 554.9501.

4. *Method of amending: continuation.* If the law of this state governs perfection of a security interest, the effectiveness of a pre-effective-date financing statement may be continued only under section 554.9805, subsections 3 and 5, or section 554.9806.

5. *Method of amending: additional termination rule.* Whether or not the law of this state governs perfection of a security interest, the effectiveness of a pre-effective-date financing statement filed in this state may be terminated on or after July 1, 2013, by filing a termination statement in the office in which the pre-effective-date financing statement is filed, unless an initial financing statement that satisfies section 554.9806, subsection 3, has been filed in the office specified by the law of the jurisdiction governing perfection as provided in this Article, as amended by 2012 Acts, ch. 1052, as the office in which to file a financing statement.

2012 Acts, ch 1052, §30, 37; 2014 Acts, ch 1026, §143

For future repeal of this section effective July 1, 2019, see 2012 Acts, ch 1052, §35

554.9808 Person entitled to file initial financing statement or continuation statement.

A person may file an initial financing statement or a continuation statement under this part if:

1. the secured party of record authorizes the filing; and

2. the filing is necessary under this part:

a. to continue the effectiveness of a financing statement filed before July 1, 2013; or

b. to perfect or continue the perfection of a security interest.

2012 Acts, ch 1052, §31, 37

For future repeal of this section effective July 1, 2019, see 2012 Acts, ch 1052, §35

554.9809 Priority.

2012 Acts, ch. 1052, determines the priority of conflicting claims to collateral. However, if the relative priorities of the claims were established before July 1, 2013, this Article, as it existed before July 1, 2013, determines priority.

2012 Acts, ch 1052, §32, 37; 2014 Acts, ch 1026, §143

For future repeal of this section effective July 1, 2019, see 2012 Acts, ch 1052, §35

ARTICLE 10
EFFECTIVE DATE AND REPEALER

Referred to in §554.11102

554.10101 Effective date.

1. Except as otherwise provided in Article 11 of this chapter, this chapter shall take effect and be in force on and after July 4, 1966. It applies to transactions entered into and events occurring after that date.

2. Transactions validly entered into before the effective date specified in this section and the rights, duties and interests flowing from them remain valid thereafter and may be terminated, completed, consummated or enforced as required or permitted by any statute or other law amended or repealed by this chapter as though such repeal or amendment had not occurred.

[C24, 27, 31, 35, 39, §**10006;** C46, 50, 54, 58, 62, §554.78; C66, 71, 73, 75, 77, 79, 81, §554.10101]

2018 Acts, ch 1041, §127
Referred to in §554.11102
Code editor directive applied

554.10102 Reserved.

554.10103 General repealer.

Except as provided in section 554.7103, all Acts and parts of Acts inconsistent with this chapter are hereby repealed.

[C66, 71, 73, 75, 77, 79, 81, §554.10103]

2009 Acts, ch 133, §171; 2015 Acts, ch 29, §101
Referred to in §554.11102

554.10104 Laws not repealed. Repealed by 2007 Acts, ch 30, §44 – 46. See §554.7103.

554.10105 Secretary of state exempted from personal liability.

1. The secretary of state, the secretary's employees or agents, are hereby exempted from all personal liability as a result of errors or omissions in the performance of any duty required by the Uniform Commercial Code, as provided in this chapter, except in cases of willful negligence.

2. In the event of such error or omission the state of Iowa shall be liable in respect to such claims in the same manner, and to the same extent as a private individual under like circumstances.

3. Immunity of the state from suit and liability in such case is waived to the extent provided in chapter 669 and said chapter shall govern the extent of liability and the practice and procedure necessary to establish any liability of the state.

[C66, 71, 73, 75, 77, 79, 81, §554.10105]

2004 Acts, ch 1086, §91; 2018 Acts, ch 1041, §127
Referred to in §554.11102
Code editor directive applied

ARTICLE 11
EFFECTIVE DATE OF 1974 AMENDMENTS

Referred to in §554.10101

554.11101 Effective date.

Division 2 of 1974 Iowa Acts, ch. 1249, §9 to 72, the Iowa amendments to the Uniform Commercial Code pertaining primarily to security interests, and related amendments, shall become effective at 12:01 a.m. on January 1, 1975.

[C75, 77, 79, 81, §554.11101]

2009 Acts, ch 41, §163; 2014 Acts, ch 1026, §143

554.11102 Preservation of old transition provision.

The provisions of Article 10 of this chapter, sections 554.10101, 554.10103, and 554.10105, shall continue to apply to this chapter as amended and for this purpose this chapter prior to amendment and this chapter as amended shall be considered one continuous statute.

[C75, 77, 79, 81, §554.11102]

2009 Acts, ch 41, §164

554.11103 Transition to this chapter as amended — general rule.

Transactions validly entered into after July 4, 1966, and before January 1, 1975, which were subject to the provisions of this chapter prior to amendment and which would be subject to this chapter as amended if they had been entered into on or after January 1, 1975, and the rights, duties and interests flowing from such transactions remain valid after January 1, 1975, and may be terminated, completed, consummated or enforced as required or permitted by this chapter as amended. Security interests arising out of such transactions which are perfected on January 1, 1975, shall remain perfected until they lapse or are terminated as provided in this chapter as amended, and may be continued as permitted by this chapter as amended.

[C75, 77, 79, 81, §554.11103]

2003 Acts, ch 108, §104

554.11104 Transition provision on change of requirement of filing.

A security interest for the perfection of which filing or the taking of possession was required under this chapter prior to amendment and which attached prior to January 1, 1975, but was not perfected shall be deemed perfected on January 1, 1975, if this chapter as amended permits perfection without filing or the taking of possession, or authorizes filing in the office or offices where a prior ineffective filing was made.

[C75, 77, 79, 81, §554.11104]

554.11105 Transition provision on change of place of filing. Repealed by 2000 Acts, ch 1149, §186, 187.

554.11106 Reserved.

554.11107 Transition provisions as to priorities.

Except as otherwise provided in this Article, this chapter prior to amendment shall apply to any questions of priority if the positions of the parties were fixed prior to January 1, 1975. In other cases questions of priority shall be determined by this chapter as amended.

[C75, 77, 79, 81, §554.11107]

554.11108 Presumption that rule of law continues unchanged.

Unless a change in law has clearly been made, the provisions of this chapter as amended shall be deemed declaratory of the meaning of this chapter prior to amendment.

[C75, 77, 79, 81, §554.11108]

2000 Acts, ch 1149, §155, 187

554.11109 Effect of official comments.

To the extent that they are consistent with the Iowa statutory text, the 1972 Official Comments to the 1972 Official Text of the Uniform Commercial Code are evidence of legislative intent as to the meaning of this chapter as amended by 1974 Iowa Acts, ch.1249. However, prior drafts of the Official Text and Comments may not be used to ascertain legislative intent.

[C75, 77, 79, 81, §554.11109]

2016 Acts, ch 1073, §160

ARTICLE 12

FUNDS TRANSFERS

Referred to in §554.3102, 554.4104, 554.5116

Provisions codified in this Article have been designated as Article 4A by the National Conference of Commissioners on Uniform State Laws
For uniform state laws, see chapter 5 of the Code

PART 1

SUBJECT MATTER AND DEFINITIONS

554.12101 Short title.

This Article shall be known and may be cited as Uniform Commercial Code — Funds Transfers.

92 Acts, ch 1146, §1

554.12102 Subject matter.

Except as otherwise provided in section 554.12108, this Article applies to funds transfers defined in section 554.12104.

92 Acts, ch 1146, §2

554.12103 Payment order — definitions.

In this Article unless the context otherwise requires:

1. *a.* *"Payment order"* means an instruction of a sender to a receiving bank, transmitted orally, electronically, or in writing, to pay, or to cause another bank to pay, a fixed or determinable amount of money to a beneficiary if all of the following apply:

(1) The instruction does not state a condition to payment to the beneficiary other than time of payment.

(2) The receiving bank is to be reimbursed by debiting an account of, or otherwise receiving payment from, the sender.

(3) The instruction is transmitted by the sender directly to the receiving bank or to an agent, funds-transfer system, or communication system for transmittal to the receiving bank.

b. A payment order instructing more than one payment to be made to a beneficiary is a separate payment order with respect to each payment.

c. A payment order is issued when it is sent to the receiving bank.

2. *"Beneficiary"* means the person to be paid by the beneficiary's bank.

3. *"Beneficiary's bank"* means the bank identified in a payment order in which an account of the beneficiary is to be credited pursuant to the order or which otherwise is to make payment to the beneficiary if the order does not provide for payment to an account.

4. *"Receiving bank"* means the bank to which the sender's instruction is addressed.

5. *"Sender"* means the person giving the instruction to the receiving bank.

92 Acts, ch 1146, §3
Referred to in §554.12105

554.12104 Funds transfer — definitions.

In this Article unless the context otherwise requires:

1. *"Funds transfer"* means the series of transactions, beginning with the originator's payment order, made for the purpose of making payment to the beneficiary of the order. The term includes any payment order issued by the originator's bank or an intermediary bank intended to carry out the originator's payment order. A funds transfer is completed by acceptance by the beneficiary's bank of a payment order for the benefit of the beneficiary of the originator's payment order.

2. *"Intermediary bank"* means a receiving bank other than the originator's bank or the beneficiary's bank.

3. *"Originator"* means the sender of the first payment order in a funds transfer.

4. *"Originator's bank"* means the receiving bank to which the payment order of the originator is issued if the originator is not a bank, or the originator if the originator is a bank.

92 Acts, ch 1146, §4

Referred to in §554.12102, 554.12105

554.12105 Other definitions.

1. In this Article unless the context otherwise requires:

a. "Authorized account" means a deposit account of a customer in a bank designated by the customer as a source of payment of payment orders issued by the customer to the bank. If a customer does not so designate an account, any account of the customer is an authorized account if payment of a payment order from that account is not inconsistent with a restriction on the use of that account.

b. "Bank" means a person engaged in the business of banking and includes a savings bank, savings and loan association, credit union, and trust company. A branch or separate office of a bank is a separate bank for purposes of this Article.

c. "Customer" means a person, including a bank, having an account with a bank or from whom a bank has agreed to receive payment orders.

d. "Funds-transfer business day" of a receiving bank means the part of a day during which the receiving bank is open for the receipt, processing, and transmittal of payment orders, and cancellations and amendments of payment orders.

e. "Funds-transfer system" means a wire transfer network, automated clearing house, or other communication system of a clearing house or other association of banks through which a payment order by a bank may be transmitted to the bank to which the order is addressed.

f. Reserved.

g. "Prove" with respect to a fact means to meet the burden of establishing the fact as defined in section 554.1201, subsection 2, paragraph *"h"*.

2. Other definitions applying to this Article and the sections in which they appear are:

a. "Acceptance" ..... Section 554.12209
b. "Beneficiary" ..... Section 554.12103
c. "Beneficiary's bank" ..... Section 554.12103
d. "Executed" ..... Section 554.12301
e. "Execution date" ..... Section 554.12301
f. "Funds transfer" ..... Section 554.12104
g. "Funds-transfer system rule" ..... Section 554.12501
h. "Governing law" ..... Section 554.12507
i. "Intermediary bank" ..... Section 554.12104
j. "Originator" ..... Section 554.12104
k. "Originator's bank" ..... Section 554.12104
l. "Payment by beneficiary's bank to beneficiary" ..... Section 554.12405
m. "Payment by originator to beneficiary" ..... Section 554.12406
n. "Payment by sender to receiving bank" ..... Section 554.12403
o. "Payment date" ..... Section 554.12401
p. "Payment order" ..... Section 554.12103
q. "Receiving bank" ..... Section 554.12103
r. "Security procedure" ..... Section 554.12201
s. "Sender" ..... Section 554.12103

3. The following definitions in Article 4 apply to this Article:

a. "Clearing house" ..... Section 554.4104
b. "Item" ..... Section 554.4104
c. "Suspends payments" ..... Section 554.4104

4. In addition, Article 1 contains general definitions and principles of construction and interpretation applicable throughout this Article.

92 Acts, ch 1146, §5; 2000 Acts, ch 1058, §49; 2007 Acts, ch 41, §31, 32; 2012 Acts, ch 1023, §157

554.12106 Time payment order is received.

1. The time of receipt of a payment order or communication canceling or amending a payment order is determined by the rules applicable to receipt of a notice stated in section 554.1202. A receiving bank may establish a cut-off time or times on a funds-transfer business day for the receipt and processing of payment orders, and communications canceling or amending payment orders. Different cut-off times may apply to payment orders, cancellations, or amendments, or to different categories of payment orders, cancellations, or amendments. A cut-off time may apply to senders generally, or different cut-off times may apply to different senders or categories of payment orders. If a payment order or communication canceling or amending a payment order is received after the close of a funds-transfer business day or after the appropriate cut-off time on a funds-transfer business day, the receiving bank may treat the payment order or communication as received at the opening of the next funds-transfer business day.

2. Unless otherwise provided, if this Article refers to an execution date or payment date or states a day on which a receiving bank is required to take action, and the date or day does not fall on a funds-transfer business day, the next day that is a funds-transfer business day is treated as the date or day stated.

92 Acts, ch 1146, §6; 2007 Acts, ch 41, §33

554.12107 Federal reserve regulations and operating circulars.

Regulations of the board of governors of the federal reserve system and operating circulars of the federal reserve banks as of July 1, 1991, supersede any inconsistent provision of this article to the extent of the inconsistency.

92 Acts, ch 1146, §7

554.12108 Relationship to Electronic Fund Transfer Act.

1. Except as provided in subsection 2, this Article does not apply to a funds transfer any part of which is governed by the Electronic Fund Transfer Act of 1978, 15 U.S.C. §1693 et seq.

2. This Article applies to a funds transfer that is a remittance transfer as defined in the Electronic Fund Transfer Act, 15 U.S.C. §1693o-1, unless the remittance transfer is an electronic fund transfer as defined in the Electronic Fund Transfer Act, 15 U.S.C. §1693a.

3. In a funds transfer to which this Article applies, in the event of an inconsistency between an applicable provision of this Article and an applicable provision of the Electronic Fund Transfer Act, the provision of the Electronic Fund Transfer Act governs to the extent of the inconsistency.

92 Acts, ch 1146, §8; 2013 Acts, ch 73, §1, 2

Referred to in §554.12102

PART 2

ISSUE AND ACCEPTANCE OF PAYMENT ORDER

554.12201 Security procedure.

"Security procedure" means a procedure established by agreement between a customer and a receiving bank for the purpose of verifying that a payment order or communication amending or canceling a payment order is that of the customer, or detecting error in the transmission or the content of the payment order or communication. A security procedure may require the use of algorithms or other codes, identifying words or numbers, encryption, callback procedures, or similar security devices. Comparison of a signature on a payment

order or communication with an authorized specimen signature of the customer is not by itself a security procedure.

92 Acts, ch 1146, §9
Referred to in §554.12105

554.12202 Authorized and verified payment orders.

1. A payment order received by the receiving bank is the authorized order of the person identified as sender if that person authorized the order or is otherwise bound by it under the law of agency.

2. If a bank and its customer have agreed that the authenticity of payment orders issued to the bank in the name of the customer as sender will be verified pursuant to a security procedure, a payment order received by the receiving bank is effective as the order of the customer, whether or not authorized, if the security procedure is a commercially reasonable method of providing security against unauthorized payment orders, and the bank proves that it accepted the payment order in good faith and in compliance with the security procedure and any written agreement or instruction of the customer restricting acceptance of payment orders issued in the name of the customer. The bank is not required to follow an instruction that violates a written agreement with the customer or notice of which is not received at a time and in a manner affording the bank a reasonable opportunity to act on it before the payment order is accepted.

3. Commercial reasonableness of a security procedure is a question of law to be determined by considering the wishes of the customer expressed to the bank, the circumstances of the customer known to the bank, including the size, type, and frequency of payment orders normally issued by the customer to the bank, alternative security procedures offered to the customer, and security procedures in general use by customers and receiving banks similarly situated. A security procedure is deemed to be commercially reasonable if the security procedure was chosen by the customer after the bank offered, and the customer refused, a security procedure that was commercially reasonable for that customer, and the customer expressly agreed in writing to be bound by any payment order, whether or not authorized, issued in the customer's name and accepted by the bank in compliance with the security procedure chosen by the customer.

4. The term *"sender"* in this Article includes the customer in whose name a payment order is issued if the order is the authorized order of the customer under subsection 1, or it is effective as the order of the customer under subsection 2.

5. This section applies to amendments and cancellations of payment orders in the same manner it applies to payment orders.

6. Except as provided in this section and section 554.12203, rights and obligations arising under this section or section 554.12203 may not be varied by agreement.

92 Acts, ch 1146, §10
Referred to in §554.12203, 554.12204

554.12203 Unenforceability of certain verified payment orders.

If an accepted payment order is not an authorized order of a customer identified as sender pursuant to section 554.12202, subsection 1, but is effective as an order of the customer pursuant to section 554.12202, subsection 2, the following rules apply:

1. By express written agreement, the receiving bank may limit the extent to which it is entitled to enforce or retain payment of the payment order.

2. The receiving bank is not entitled to enforce or retain payment of the payment order if the customer proves that the order was not caused, directly or indirectly, by a person entrusted at any time with the authority to act for the customer with respect to payment orders or the security procedure, or who obtained access to transmitting facilities of the customer or who obtained, from a source controlled by the customer and without authority of the receiving bank, information facilitating breach of the security procedure, regardless of how the information was obtained or whether the customer was at fault. Information includes any access device, computer software, or similar items.

3. This section applies to amendments of payment orders in the same manner it applies to payment orders.

92 Acts, ch 1146, §11
Referred to in §554.12202, 554.12204

554.12204 Refund of payment and duty of customer to report with respect to unauthorized payment order.

1. If a receiving bank accepts a payment order issued in the name of its customer as sender which is not authorized and not effective as the order of the customer under section 554.12202, or which is not enforceable, in whole or in part, against the customer under section 554.12203, the bank shall refund any payment related to the payment order received from the customer to the extent the bank is not entitled to enforce payment and shall pay interest on the refundable amount calculated from the date the bank received payment to the date of the refund. However, the customer is not entitled to interest from the bank on the amount to be refunded if the customer fails to exercise ordinary care to determine that the order was not authorized by the customer and to notify the bank of the relevant facts within a reasonable time not exceeding ninety days after the date the customer received notification from the bank that the order was accepted or that the customer's account was debited with respect to the order. The bank is not entitled to any recovery from the customer as a result of a failure by the customer to give notification as stated in this section.

2. Reasonable time under subsection 1 may be fixed by agreement as provided in section 554.1302, subsection 2, but the obligation of a receiving bank to refund payment as stated in subsection 1 may not otherwise be varied by agreement.

92 Acts, ch 1146, §12; 2007 Acts, ch 41, §34
Referred to in §554.12402

554.12205 Erroneous payment orders.

1. If an accepted payment order was transmitted pursuant to a security procedure for the detection of error and the payment order (i) erroneously instructed payment to a beneficiary not intended by the sender, (ii) erroneously instructed payment in an amount greater than the amount intended by the sender, or (iii) was an erroneously transmitted duplicate of a payment order previously sent by the sender, the following rules apply:

a. If the sender proves that the sender or a person acting on behalf of the sender pursuant to section 554.12206 complied with the security procedure and that the error would have been detected if the receiving bank had also complied, the sender is not obligated to pay the order to the extent stated in subsections 2 and 3.

b. If the funds transfer is completed on the basis of an erroneous payment order described in (i) or (iii) of subsection 1, the sender is not obligated to pay the order and the receiving bank is entitled to recover from the beneficiary any amount paid to the beneficiary to the extent allowed by the law governing mistake and restitution.

c. If the funds transfer is completed on the basis of a payment order described in (ii) of subsection 1, the sender is not obligated to pay the order to the extent the amount received by the beneficiary is greater than the amount intended by the sender. In that case, the receiving bank is entitled to recover from the beneficiary the excess amount received to the extent allowed by the law governing mistake and restitution.

2. If the sender of an erroneous payment order described in subsection 1 is not obligated to pay all or part of the order, and the sender receives notification from the receiving bank that the order was accepted by the bank or that the sender's account was debited with respect to the order, the sender has a duty to exercise ordinary care, on the basis of information available to the sender, to discover the error with respect to the order and to advise the bank of the relevant facts within a reasonable time, not exceeding ninety days, after the bank's notification was received by the sender. If the bank proves that the sender failed to perform this duty, the sender is liable to the bank for the loss the bank proves it incurred as a result of the failure, not to exceed the amount of the sender's order.

3. This section applies to amendments to payment orders in the same manner it applies to payment orders.

92 Acts, ch 1146, §13
Referred to in §554.12402

554.12206 Transmission of payment order through funds-transfer or other communication system.

If a payment order addressed to a receiving bank is transmitted to a funds-transfer system or other third-party communication system for transmittal to the bank, the system is deemed to be an agent of the sender for the purpose of transmitting the payment order to the bank. If there is a discrepancy between the terms of the payment order transmitted to the system by the sender and the terms of the payment order transmitted by the system to the bank, the terms of the payment order of the sender are deemed to be those transmitted by the system. This section does not apply to a funds-transfer system of the federal reserve banks.

This section applies to cancellations and amendments of payment orders in the same manner it applies to payment orders.

92 Acts, ch 1146, §14
Referred to in §554.12205

554.12207 Misdescription of beneficiary.

1. Subject to subsection 2, if, in a payment order received by the beneficiary's bank, the name, bank account number, or other identification of the beneficiary refers to a nonexistent or unidentifiable person or account, no person has rights as a beneficiary of the order and acceptance of the order cannot occur.

2. If a payment order received by the beneficiary's bank identifies the beneficiary both by name and by an identifying or bank account number and the name and number identify different persons, the following rules apply:

a. Except as otherwise provided in subsection 3, if the beneficiary's bank does not know that the name and number refer to different persons, it may rely on the number as the proper identification of the beneficiary of the order. The beneficiary's bank need not determine whether the name and number refer to the same person.

b. If the beneficiary's bank pays the person identified by name or knows that the name and number identify different persons, no person has rights as beneficiary except the person paid by the beneficiary's bank if that person was entitled to receive payment from the originator of the funds transfer. If no person has rights as beneficiary, acceptance of the order cannot occur.

3. If a payment order described in subsection 2 is accepted, the originator's payment order described the beneficiary inconsistently by name and number, and the beneficiary's bank pays the person identified by number as permitted by subsection 2, paragraph *"a"*, the following rules apply:

a. If the originator is a bank, the originator shall pay the originator's order.

b. If the originator is not a bank and proves that the person identified by number was not entitled to receive payment from the originator, the originator is not obligated to pay the originator's order unless the originator's bank proves that the originator had notice, before acceptance by the originator's bank of the originator's order, that payment of a payment order issued by the originator might be made by the beneficiary's bank on the basis of an identifying or bank account number even if it identifies a person different from the named beneficiary. Proof of notice may be made by any admissible evidence. The originator's bank satisfies the burden of proof if it proves that the originator signed a writing stating the information to which the notice relates before the payment order was accepted.

4. In a case governed by subsection 2, paragraph *"a"*, if the beneficiary's bank rightfully pays the person identified by number and that person was not entitled to receive payment from the originator, the amount paid may be recovered from that person to the extent allowed by the law governing mistake and restitution as follows:

a. If the originator is obligated to pay its payment order as stated in subsection 3, the originator has the right to recover.

b. If the originator is not a bank and is not obligated to pay its payment order, the originator's bank has the right to recover.

92 Acts, ch 1146, §15
Referred to in §554.12402

554.12208 Misdescription of intermediary bank or beneficiary's bank.

1. This subsection applies to a payment order identifying an intermediary bank or the beneficiary's bank only by an identifying number.

a. The receiving bank may rely on the number as the proper identification of the intermediary or beneficiary's bank and need not determine whether the number identifies a bank.

b. The sender shall compensate the receiving bank for any loss and expenses incurred by the receiving bank as a result of the receiving bank's reliance on the number in executing or attempting to execute the order.

2. This subsection applies to a payment order identifying an intermediary bank or the beneficiary's bank both by name and an identifying number if the name and number identify different persons.

a. If the sender is a bank, the receiving bank may rely on the number as the proper identification of the intermediary or beneficiary's bank if the receiving bank, when it executes the sender's order, does not know that the name and number identify different persons. The receiving bank need not determine whether the name and number refer to the same person or whether the number refers to a bank. The sender shall compensate the receiving bank for any loss and expenses incurred by the receiving bank as a result of the receiving bank's reliance on the number in executing or attempting to execute the order.

b. If the sender is not a bank and the receiving bank proves that the sender, before the payment order was accepted, had notice that the receiving bank might rely on the number as the proper identification of the intermediary or beneficiary's bank even if it identifies a person different from the bank identified by name, the rights and obligations of the sender and the receiving bank are governed by paragraph "*a*", as though the sender were a bank. Proof of notice may be made by any admissible evidence. The receiving bank satisfies the burden of proof if it proves that the sender, before the payment order was accepted, signed a writing stating the information to which the notice relates.

c. Regardless of whether the sender is a bank, the receiving bank may rely on the name as the proper identification of the intermediary or beneficiary's bank if the receiving bank, at the time the receiving bank executes the sender's order, does not know that the name and number identify different persons. The receiving bank need not determine whether the name and number refer to the same person.

d. If the receiving bank knows that the name and number identify different persons, reliance on either the name or the number in executing the sender's payment order is a breach of the obligation stated in section 554.12302, subsection 1, paragraph "*a*".

92 Acts, ch 1146, §16

554.12209 Acceptance of payment order.

1. Subject to subsection 4, a receiving bank other than the beneficiary's bank accepts a payment order when it executes the order.

2. Subject to subsections 3 and 4, a beneficiary's bank accepts a payment order at the earliest of the following times:

a. When the bank pays the beneficiary as stated in section 554.12405, subsection 1 or 2, or notifies the beneficiary of receipt of the order or that the account of the beneficiary has been credited with respect to the order, unless the notice indicates that the bank is rejecting the order or that funds with respect to the order may not be withdrawn or used until receipt of payment from the sender of the order;

b. When the bank receives payment of the entire amount of the sender's order pursuant to section 554.12403, subsection 1, paragraph "*a*" or "*b*"; or

c. The opening of the next funds-transfer business day of the bank following the payment date of the order if, at that time, the amount of the sender's order is fully covered by a

withdrawable credit balance in an authorized account of the sender or the bank has otherwise received full payment from the sender, unless the order was rejected before that time or is rejected within one hour after that time, or one hour after the opening of the next business day of the sender following the payment date if the time is later. If notice of rejection is received by the sender after the payment date and the authorized account of the sender does not bear interest, the bank shall pay interest to the sender on the amount of the order for the number of days elapsing after the payment date to the day the sender receives notice or learns that the order was not accepted, counting the day that notice is received as an elapsed day. If the withdrawable credit balance during that period falls below the amount of the order, the amount of interest payable is reduced accordingly.

3. Acceptance of a payment order cannot occur before the order is received by the receiving bank. Acceptance does not occur under subsection 2, paragraph *"b"* or *"c"*, if the beneficiary of the payment order does not have an account with the receiving bank, the account has been closed, or the receiving bank is not permitted by law to receive credits for the beneficiary's account.

4. A payment order issued to the originator's bank cannot be accepted until the payment date if the bank is the beneficiary's bank, or the execution date if the bank is not the beneficiary's bank. If the originator's bank executes the originator's payment order before the execution date or pays the beneficiary of the originator's payment order before the payment date and the payment order is subsequently canceled pursuant to section 554.12211, subsection 2, the bank may recover from the beneficiary any payment received to the extent allowed by the law governing mistake and restitution.

92 Acts, ch 1146, §17
Referred to in §554.12105, 554.12212, 554.12302

554.12210 Rejection of payment order.

1. A payment order is rejected by the receiving bank by a notice of rejection transmitted to the sender orally, electronically, or in writing. A notice of rejection need not use any particular words and is sufficient if the notice indicates that the receiving bank is rejecting the order or will not execute or pay the order. Rejection is effective when the notice is given if transmission is by a means that is reasonable under the circumstances. If notice of rejection is given by a means that is not reasonable, rejection is effective when the notice is received. If an agreement of the sender and receiving bank establishes the means to be used to reject a payment order, any means complying with the agreement is reasonable and any means not complying is not reasonable unless no significant delay in receipt of the notice resulted from the use of the noncomplying means.

2. This subsection applies if a receiving bank other than the beneficiary's bank fails to execute a payment order despite the existence on the execution date of a withdrawable credit balance in an authorized account of the sender sufficient to cover the order. If the sender does not receive notice of rejection of the order on the execution date and the authorized account of the sender does not bear interest, the bank shall pay interest to the sender on the amount of the order for the number of days elapsing after the execution date to the earlier of the day the order is canceled pursuant to section 554.12211, subsection 4, or the day the sender receives notice or learns that the order was not executed, counting the final day of the period as an elapsed day. If the withdrawable credit balance during that period falls below the amount of the order, the amount of interest is reduced accordingly.

3. If a receiving bank suspends payments, all unaccepted payment orders issued to the receiving bank are deemed rejected at the time the bank suspends payments.

4. Acceptance of a payment order precludes a later rejection of the order. Rejection of a payment order precludes a later acceptance of the order.

92 Acts, ch 1146, §18

554.12211 Cancellation and amendment of payment order.

1. A communication of the sender of a payment order canceling or amending the order may be transmitted to the receiving bank orally, electronically, or in writing. If a security procedure is in effect between the sender and the receiving bank, the communication is not

effective to cancel or amend the order unless the communication is verified pursuant to the security procedure or the bank agrees to the cancellation or amendment.

2. Subject to subsection 1, a communication by the sender canceling or amending a payment order is effective to cancel or amend the order if notice of the communication is received at a time and in a manner affording the receiving bank a reasonable opportunity to act on the communication before the bank accepts the payment order.

3. After a payment order has been accepted, cancellation or amendment of the order is not effective unless the receiving bank agrees or a funds-transfer system rule allows cancellation or amendment without agreement of the bank.

a. With respect to a payment order accepted by a receiving bank other than the beneficiary's bank, cancellation or amendment is not effective unless a conforming cancellation or amendment of the payment order issued by the receiving bank is also made.

b. With respect to a payment order accepted by the beneficiary's bank, cancellation or amendment is not effective unless the order was issued in execution of an unauthorized payment order, or because of a mistake by a sender in the funds transfer which resulted in the issuance of a payment order that is a duplicate of a payment order previously issued by the sender, that orders payment to a beneficiary not entitled to receive payment from the originator, or that orders payment in an amount greater than the amount the beneficiary was entitled to receive from the originator. If the payment order is canceled or amended, the beneficiary's bank is entitled to recover from the beneficiary any amount paid to the beneficiary to the extent allowed by the law governing mistake and restitution.

4. An unaccepted payment order is canceled by operation of law at the close of the fifth funds-transfer business day of the receiving bank after the execution date or payment date of the order.

5. A canceled payment order cannot be accepted. If an accepted payment order is canceled, the acceptance is nullified and no person has any right or obligation based on the acceptance. Amendment of a payment order is deemed to be cancellation of the original order at the time of amendment and issuance of a new payment order in the amended form at the same time.

6. Unless otherwise provided in an agreement of the parties or in a funds-transfer system rule, if the receiving bank, after accepting a payment order, agrees to cancellation or amendment of the order by the sender or is bound by a funds-transfer system rule allowing cancellation or amendment without the bank's agreement, the sender, whether or not cancellation or amendment is effective, is liable to the bank for any loss and expenses, including reasonable attorney's fees, incurred by the bank as a result of the cancellation or amendment or attempted cancellation or amendment.

7. A payment order is not revoked by the death or legal incapacity of the sender unless the receiving bank knows of the death or of an adjudication of incapacity by a court of competent jurisdiction and has reasonable opportunity to act before acceptance of the order.

8. A funds-transfer system rule is not effective to the extent it conflicts with subsection 3, paragraph *"b"*.

92 Acts, ch 1146, §19

Referred to in §554.12209, 554.12210, 554.12404, 554.12406

554.12212 Liability and duty of receiving bank regarding unaccepted payment order.

If a receiving bank fails to accept a payment order that it is obligated by express agreement to accept, the bank is liable for breach of the agreement to the extent provided in the agreement or in this Article, but does not otherwise have any duty to accept a payment order or, before acceptance, to take any action, or refrain from taking action, with respect to the order except as provided in this Article or by express agreement. Liability based on acceptance arises only when acceptance occurs as stated in section 554.12209, and liability is limited to that provided in this Article. A receiving bank is not the agent of the sender or beneficiary of the payment order it accepts, or of any other party to the funds transfer, and the bank owes no duty to any party to the funds transfer except as provided in this Article or by express agreement.

92 Acts, ch 1146, §20

PART 3

EXECUTION OF SENDER'S PAYMENT ORDER BY RECEIVING BANK

554.12301 Execution and execution date.

1. A payment order is executed by the receiving bank when the receiving bank issues a payment order intended to carry out the payment order received by the bank. A payment order received by the beneficiary's bank can be accepted but cannot be executed.

2. *"Execution date"* of a payment order means the day on which the receiving bank may properly issue a payment order in execution of the sender's order. The execution date may be determined by instruction of the sender but cannot be earlier than the day the order is received and, unless otherwise determined, is the day the order is received. If the sender's instruction states a payment date, the execution date is the payment date or an earlier date on which execution is reasonably necessary to allow payment to the beneficiary on the payment date.

92 Acts, ch 1146, §21
Referred to in §554.12105

554.12302 Obligations of receiving bank in execution of payment order.

1. Except as provided in subsections 2 through 4, if the receiving bank accepts a payment order pursuant to section 554.12209, subsection 1, the bank has the following obligations in executing the order:

a. The receiving bank is obligated to issue, on the execution date, a payment order complying with the sender's order and to follow the sender's instructions concerning any intermediary bank or funds-transfer system to be used in carrying out the funds transfer, or the means by which payment orders are to be transmitted in the funds transfer. If the originator's bank issues a payment order to an intermediary bank, the originator's bank shall instruct the intermediary bank according to the instruction of the originator. An intermediary bank in the funds transfer is similarly bound by an instruction given to it by the sender of the payment order it accepts.

b. If the sender's instruction states that the funds transfer is to be carried out telephonically or by wire transfer or otherwise indicates that the funds transfer is to be carried out by the most expeditious means, the receiving bank is obligated to transmit its payment order by the most expeditious available means, and to instruct any intermediary bank accordingly. If a sender's instruction states a payment date, the receiving bank shall transmit the receiving bank's payment order at a time and by means reasonably necessary to allow payment to the beneficiary on the payment date or as soon thereafter as is feasible.

2. Unless otherwise instructed, a receiving bank executing a payment order may use any funds-transfer system if use of that system is reasonable under the circumstances, and issue a payment order to the beneficiary's bank or to an intermediary bank through which a payment order conforming to the sender's order can expeditiously be issued to the beneficiary's bank if the receiving bank exercises ordinary care in the selection of the intermediary bank. A receiving bank is not required to follow an instruction of the sender designating a funds-transfer system to be used in carrying out the funds transfer if the receiving bank, in good faith, determines that it is not feasible to follow the instruction or that following the instruction would unduly delay completion of the funds transfer.

3. Unless subsection 1, paragraph *"b"*, applies or the receiving bank is otherwise instructed, the receiving bank may execute a payment order by transmitting the receiving bank's payment order by first class mail or by any means reasonable under the circumstances. If the receiving bank is instructed to execute the sender's order by transmitting the receiving bank's payment order by a particular means, the receiving bank may issue the payment order by the means stated or by any means as expeditious as the means stated.

4. Unless instructed by the sender, the receiving bank may not obtain payment of its charges for services and expenses in connection with the execution of the sender's order by issuing a payment order in an amount equal to the amount of the sender's order less the

amount of the charges, and may not instruct a subsequent receiving bank to obtain payment of its charges in the same manner.

92 Acts, ch 1146, §22
Referred to in §554.12208, 554.12305, 554.12402

554.12303 Erroneous execution of payment order.

1. A receiving bank that executes the payment order of the sender by issuing a payment order in an amount greater than the amount of the sender's order, or that issues a payment order in execution of the sender's order and then issues a duplicate order, is entitled to payment of the amount of the sender's order under section 554.12402, subsection 3, if the provisions of that subsection are otherwise satisfied. The bank is entitled to recover from the beneficiary of the erroneous order the excess payment received to the extent allowed by the law governing mistake and restitution.

2. A receiving bank that executes the payment order of the sender by issuing a payment order in an amount less than the amount of the sender's order is entitled to payment of the amount of the sender's order under section 554.12402, subsection 3, if the provisions of that subsection are otherwise satisfied and the bank corrects the error by issuing an additional payment order for the benefit of the beneficiary of the sender's order. If the error is not corrected, the issuer of the erroneous order is entitled to receive or retain payment from the sender of the order only to the extent of the amount of the erroneous order. This subsection does not apply if the receiving bank executes the sender's payment order by issuing a payment order in an amount less than the amount of the sender's order for the purpose of obtaining payment of the receiving bank's charges for services and expenses pursuant to instruction of the sender.

3. If a receiving bank executes the payment order of the sender by issuing a payment order to a beneficiary different from the beneficiary of the sender's order and the funds transfer is completed on the basis of that error, the sender of the payment order that was erroneously executed and all previous senders in the funds transfer are not obligated to pay the payment orders they issued. The issuer of the erroneous order is entitled to recover from the beneficiary of the payment order issued the payment received to the extent allowed by the law governing mistake and restitution.

92 Acts, ch 1146, §23
Referred to in §554.12304, 554.12402

554.12304 Duty of sender to report erroneously executed payment order.

If the sender of a payment order that is erroneously executed as stated in section 554.12303 receives notification from the receiving bank that the order was executed or that the sender's account was debited with respect to the order, the sender has a duty to exercise ordinary care to determine, on the basis of information available to the sender, that the order was erroneously executed and to notify the bank of the relevant facts within a reasonable time not exceeding ninety days after the notification from the bank is received by the sender. If the sender fails to perform that duty, the bank is not obligated to pay interest on any amount refundable to the sender under section 554.12402, subsection 4, for the period before the bank learns of the execution error. The bank is not entitled to any recovery from the sender as a result of the failure by the sender to perform the duty stated in this section.

92 Acts, ch 1146, §24
Referred to in §554.12402

554.12305 Liability for late or improper execution or failure to execute payment order.

1. If a funds transfer is completed, but execution of a payment order by the receiving bank in breach of section 554.12302 results in delay in payment to the beneficiary, the bank is obligated to pay interest to either the originator or the beneficiary of the funds transfer for the period of delay caused by the improper execution. Except as provided in subsection 3, additional damages are not recoverable.

2. If execution of a payment order by a receiving bank in breach of section 554.12302 results in noncompletion of the funds transfer, failure to use an intermediary bank designated by the originator, or issuance of a payment order that does not comply with the terms of

the payment order of the originator, the bank is liable to the originator for the originator's expenses in the funds transfer and for incidental expenses and interest losses, to the extent not covered by subsection 1, resulting from the improper execution. Except as provided in subsection 3, additional damages are not recoverable.

3. In addition to the amounts payable under subsections 1 and 2, damages, including consequential damages, are recoverable to the extent provided in an express written agreement of the receiving bank.

4. If a receiving bank fails to execute a payment order that the receiving bank was obligated by express agreement to execute, the receiving bank is liable to the sender for the sender's expenses in the transaction and for incidental expenses and interest losses resulting from the failure to execute. Additional damages, including consequential damages, are recoverable to the extent provided in an express written agreement of the receiving bank, but are not otherwise recoverable.

5. Reasonable attorney's fees are recoverable if demand for compensation under subsection 1 or 2 is made and refused before an action is brought on the claim. If a claim is made for breach of an agreement under subsection 4 and the agreement does not provide for damages, reasonable attorney's fees are recoverable if demand for compensation under subsection 4 is made and refused before an action is brought on the claim.

6. Except as stated in this section, the liability of a receiving bank under subsections 1 and 2 may not be varied by agreement.

92 Acts, ch 1146, §25

PART 4

PAYMENT

554.12401 Payment date.

"Payment date" of a payment order means the day on which the amount of the order is payable to the beneficiary by the beneficiary's bank. The payment date may be determined by instruction of the sender but cannot be earlier than the day the order is received by the beneficiary's bank and, unless otherwise determined, is the day the order is received by the beneficiary's bank.

92 Acts, ch 1146, §26

Referred to in §554.12105

554.12402 Obligation of sender to pay receiving bank.

1. This section is subject to sections 554.12205 and 554.12207.

2. With respect to a payment order issued to the beneficiary's bank, acceptance of the order by the bank obligates the sender to pay the bank the amount of the order, but payment is not due until the payment date of the order.

3. This subsection is subject to subsection 5 and to section 554.12303. With respect to a payment order issued to a receiving bank other than the beneficiary's bank, acceptance of the order by the receiving bank obligates the sender to pay the bank the amount of the sender's order. Payment by the sender is not due until the execution date of the sender's order. The obligation of the sender to pay the sender's payment order is excused if the funds transfer is not completed by acceptance by the beneficiary's bank of the payment order instructing payment to the beneficiary of the sender's payment order.

4. If the sender of a payment order pays the order and was not obligated to pay all or part of the amount paid, the bank receiving payment shall refund payment to the extent the sender was not obligated to pay. Except as provided in sections 554.12204 and 554.12304, interest is payable on the refundable amount from the date of payment.

5. If a funds transfer is not completed as stated in subsection 3 and an intermediary bank is obligated to refund payment as stated in subsection 4 but is unable to do so because the intermediary bank is not permitted by applicable law or because the bank suspends payments, a sender in the funds transfer that executed a payment order in compliance with an instruction, as stated in section 554.12302, subsection 1, paragraph *"a"*, to route the

funds transfer through the intermediary bank is entitled to receive or retain payment from the sender of the payment order that it accepted. The first sender in the funds transfer that issued an instruction requiring routing through that intermediary bank is subrogated to the right of the bank that paid the intermediary bank to refund as stated in subsection 4.

6. The right of the sender of a payment order to be excused from the obligation to pay the order as stated in subsection 3 or to receive refund under subsection 4 may not be varied by agreement.

92 Acts, ch 1146, §27
Referred to in §554.12303, 554.12304, 554.12403, 554.12405

554.12403 Payment by sender to receiving bank.

1. Payment of the sender's obligation under section 554.12402 to pay the receiving bank occurs as follows:

a. If the sender is a bank, payment occurs when the receiving bank receives final settlement of the obligation through a federal reserve bank or through a funds-transfer system.

b. If the sender is a bank and the sender credited an account of the receiving bank with the sender, or caused an account of the receiving bank in another bank to be credited, payment occurs when the credit is withdrawn or, if not withdrawn, at midnight of the day on which the credit is withdrawable and the receiving bank knows of that fact.

c. If the receiving bank debits an account of the sender with the receiving bank, payment occurs when the debit is made to the extent the debit is covered by a withdrawable credit balance in the account.

2. *a.* If the sender and receiving bank are members of a funds-transfer system that nets obligations multilaterally among participants, the receiving bank receives final settlement when settlement is complete in accordance with the rules of the system.

b. The obligation of the sender to pay the amount of a payment order transmitted through the funds-transfer system may be satisfied, to the extent permitted by the rules of the system, by setting off and applying against the sender's obligation the right of the sender to receive payment from the receiving bank of the amount of any other payment order transmitted to the sender by the receiving bank through the funds-transfer system.

c. The aggregate balance of obligations owed by each sender to each receiving bank in the funds-transfer system may be satisfied, to the extent permitted by the rules of the system, by setting off and applying against that balance the aggregate balance of obligations owed to the sender by other members of the system. The aggregate balance is determined after the right of setoff stated in paragraph *"b"* has been exercised.

3. If two banks transmit payment orders to each other under an agreement that settlement of the obligations of each bank to the other under section 554.12402 will be made at the end of the day or other period, the total amount owed with respect to all orders transmitted by one bank shall be set off against the total amount owed with respect to all orders transmitted by the other bank. To the extent of the setoff, each bank has made payment to the other.

4. In a case not covered by subsection 1, the time when payment of the sender's obligation occurs under section 554.12402, subsection 2 or 3, is governed by applicable principles of law that determine when an obligation is satisfied.

92 Acts, ch 1146, §28; 2010 Acts, ch 1061, §73
Referred to in §554.12105, 554.12209

554.12404 Obligation of beneficiary's bank to pay and give notice to beneficiary.

1. Subject to sections 554.12211, subsection 5, and 554.12405, subsections 4 and 5, if a beneficiary's bank accepts a payment order, the beneficiary bank shall pay the amount of the order to the beneficiary of the order. Payment is due on the payment date of the order, but if acceptance occurs on the payment date after the close of the funds-transfer business day of the beneficiary's bank, payment is due on the next funds-transfer business day. If the beneficiary's bank refuses to pay upon demand by the beneficiary and receipt of notice of particular circumstances that will give rise to consequential damages as a result of nonpayment, the beneficiary may recover damages resulting from the refusal to pay to the

extent the beneficiary's bank had notice of the damages, unless the beneficiary's bank proves that it did not pay because of a reasonable doubt concerning the right of the beneficiary to payment.

2. If a payment order accepted by the beneficiary's bank instructs payment to an account of the beneficiary, the bank shall notify the beneficiary of receipt of the order before midnight of the next funds-transfer business day following the payment date. If the payment order does not instruct payment to an account of the beneficiary, the beneficiary's bank is required to notify the beneficiary only if notice is required by the order. Notice may be given by first class mail or any other means reasonable in the circumstances. If the beneficiary's bank fails to give the required notice, the bank shall pay interest to the beneficiary on the amount of the payment order from the day notice should have been given until the day the beneficiary learned of receipt of the payment order by the beneficiary's bank. No other damages are recoverable. Reasonable attorney's fees are also recoverable if demand for interest is made and refused before an action is brought on the claim.

3. The right of a beneficiary to receive payment and damages as stated in subsection 1 may not be varied by agreement or a funds-transfer system rule. The right of a beneficiary to be notified as stated in subsection 2 may be varied by agreement of the beneficiary or by a funds-transfer system rule if the beneficiary is notified of the rule before initiation of the funds transfer.

92 Acts, ch 1146, §29
Referred to in §554.12405, 554.12406, 554.12501

554.12405 Payment by beneficiary's bank to beneficiary.

1. If the beneficiary's bank credits an account of the beneficiary of a payment order, payment of the beneficiary's bank's obligation under section 554.12404, subsection 1, occurs when and to the extent the beneficiary is notified of the right to withdraw the credit, the bank lawfully applies the credit to a debt of the beneficiary, or funds with respect to the order are otherwise made available to the beneficiary by the beneficiary's bank.

2. If the beneficiary's bank does not credit an account of the beneficiary of a payment order, the time when payment of the beneficiary's bank's obligation under section 554.12404, subsection 1, occurs is governed by principles of law that determine when an obligation is satisfied.

3. Except as stated in subsections 4 and 5, if the beneficiary's bank pays the beneficiary of a payment order under a condition to payment or agreement of the beneficiary giving the beneficiary's bank the right to recover payment from the beneficiary if the bank does not receive payment of the order, the condition to payment or agreement is not enforceable.

4. A funds-transfer system rule may provide that payments made to beneficiaries of funds transfers made through the system are provisional until receipt of payment by the beneficiary's bank of the payment order the beneficiary's bank accepted. A beneficiary's bank that makes a payment that is provisional under the rule is entitled to refund from the beneficiary if the rule requires that both the beneficiary and the originator be given notice of the provisional nature of the payment before the funds transfer is initiated, the beneficiary, the beneficiary's bank and the originator's bank agreed to be bound by the rule, and the beneficiary's bank did not receive payment of the payment order that the beneficiary's bank accepted. If the beneficiary is obligated to refund payment to the beneficiary's bank, acceptance of the payment order by the beneficiary's bank is nullified and no payment by the originator of the funds transfer to the beneficiary occurs under section 554.12406.

5. This subsection applies to a funds transfer that includes a payment order transmitted over a funds-transfer system that nets obligations multilaterally among participants, and has in effect a loss-sharing agreement among participants for the purpose of providing funds necessary to complete settlement of the obligations of one or more participants that do not meet their settlement obligations. If the beneficiary's bank in the funds transfer accepts a payment order and the system fails to complete settlement pursuant to the system's rules with respect to any payment order in the funds transfer, the acceptance by the beneficiary's bank is nullified and no person has any right or obligation based on the acceptance, the beneficiary's bank is entitled to recover payment from the beneficiary, payment by the

originator to the beneficiary does not occur under section 554.12406, and subject to section 554.12402, subsection 5, each sender in the funds transfer is excused from its obligation to pay its payment order under section 554.12402, subsection 3, because the funds transfer has not been completed.

92 Acts, ch 1146, §30
Referred to in §554.12105, 554.12209, 554.12404, 554.12406, 554.12501

554.12406 Payment by originator to beneficiary — discharge of underlying obligation.

1. Subject to section 554.12211, subsection 5, and section 554.12405, subsections 4 and 5, the originator of a funds transfer pays the beneficiary of the originator's payment order at the time a payment order for the benefit of the beneficiary is accepted by the beneficiary's bank in the funds transfer and in an amount equal to the amount of the order accepted by the beneficiary's bank, but not more than the amount of the originator's order.

2. If payment under subsection 1 is made to satisfy an obligation, the obligation is discharged to the same extent discharge would result from payment to the beneficiary of the same amount in money, unless the payment under subsection 1 was made by a means prohibited by the contract of the beneficiary with respect to the obligation, the beneficiary, within a reasonable time after receiving notice of receipt of the order by the beneficiary's bank, notified the originator of the beneficiary's refusal of the payment, funds with respect to the order were not withdrawn by the beneficiary or applied to a debt of the beneficiary, or the beneficiary would suffer a loss that could reasonably have been avoided if payment had been made by a means complying with the contract. If payment by the originator does not result in discharge under this section, the originator is subrogated to the rights of the beneficiary to receive payment from the beneficiary's bank under section 554.12404, subsection 1.

3. For the purpose of determining whether discharge of an obligation occurs under subsection 2, if the beneficiary's bank accepts a payment order in an amount equal to the amount of the originator's payment order less charges of one or more receiving banks in the funds transfer, payment to the beneficiary is deemed to be in the amount of the originator's order unless upon demand by the beneficiary the originator does not pay the beneficiary the amount of the deducted charges.

4. Rights of the originator or of the beneficiary of a funds transfer under this section may be varied only by agreement of the originator and the beneficiary.

92 Acts, ch 1146, §31
Referred to in §554.4213, 554.12105, 554.12405

PART 5

MISCELLANEOUS PROVISIONS

554.12501 Variation by agreement and effect of funds-transfer system rule.

1. Except as otherwise provided in this Article, the rights and obligations of a party to a funds transfer may be varied by agreement of the affected party.

2. *"Funds-transfer system rule"* means a rule of an association of banks governing transmission of payment orders by means of a funds-transfer system of the association or rights and obligations with respect to those orders, or to the extent the rule governs rights and obligations between banks that are parties to a funds transfer in which a federal reserve bank, acting as an intermediary bank, sends a payment order to the beneficiary's bank. Except as otherwise provided in this Article, a funds-transfer system rule governing rights and obligations between participating banks using the system may be effective even if the rule conflicts with this Article and indirectly affects another party to the funds transfer who does not consent to the rule. A funds-transfer system rule may also govern the rights and obligations of parties other than participating banks using the system to the extent stated in section 554.12404, subsection 3, section 554.12405, subsection 4, and section 554.12507, subsection 3.

92 Acts, ch 1146, §32
Referred to in §554.12105

554.12502 Creditor process served on receiving bank — setoff by beneficiary's bank.

1. As used in this section, *"creditor process"* means levy, attachment, garnishment, notice of lien, sequestration, or similar process issued by or on behalf of a creditor or other claimant with respect to an account.

2. This subsection applies to the creditor process with respect to an authorized account of the sender of a payment order if the creditor process is served on the receiving bank. For the purpose of determining the rights of the parties with respect to the creditor process, if the receiving bank accepts the payment order, the balance in the authorized account is deemed to be reduced by the amount of the payment order to the extent the bank did not otherwise receive payment of the order, unless the creditor process is served at a time and in a manner affording the bank a reasonable opportunity to act on it before the bank accepts the payment order.

3. If a beneficiary's bank has received a payment order for payment to the beneficiary's account in the bank, the following rules apply:

a. The beneficiary's bank may credit the beneficiary's account. The amount credited may be set off against an obligation owed by the beneficiary to the bank or may be applied to satisfy a creditor process served on the bank with respect to the account.

b. The beneficiary's bank may credit the beneficiary's account and allow withdrawal of the amount credited unless a creditor process with respect to the account is served at a time and in a manner affording the beneficiary's bank a reasonable opportunity to act to prevent withdrawal.

c. If a creditor process with respect to the beneficiary's account has been served and the beneficiary's bank has had a reasonable opportunity to act on it, the beneficiary's bank may not reject the payment order except for a reason unrelated to the service of process.

4. Creditor process with respect to a payment by the originator to the beneficiary pursuant to a funds transfer may be served only on the beneficiary's bank with respect to the debt owed by that bank to the beneficiary. Any other bank served with the creditor process is not required to act with respect to the process.

92 Acts, ch 1146, §33

554.12503 Injunction or restraining order with respect to funds transfer.

For proper cause and in compliance with applicable law, a court may restrain a person from issuing a payment order to initiate a funds transfer, an originator's bank from executing the payment order of the originator, or the beneficiary's bank from releasing funds to the beneficiary or the beneficiary from withdrawing the funds. A court may not otherwise restrain a person from issuing a payment order, paying or receiving payment of a payment order, or otherwise acting with respect to a funds transfer.

92 Acts, ch 1146, §34

554.12504 Order in which items and payment orders may be charged to account — order of withdrawals from account.

1. If a receiving bank has received more than one payment order of the sender or one or more payment orders and other items that are payable from the sender's account, the bank may charge the sender's account with respect to the various orders and items in any sequence.

2. In determining whether a credit to an account has been withdrawn by the holder of the account or applied to a debt of the holder of the account, credits first made to the account are first withdrawn or applied.

92 Acts, ch 1146, §35

554.12505 Preclusion of objection to debit of customer's account.

If a receiving bank has received payment from the receiving bank's customer with respect to a payment order issued in the name of the customer as sender and accepted by the receiving bank, and the customer received notification reasonably identifying the order, the customer is precluded from asserting that the receiving bank is not entitled to retain the payment unless

the customer notifies the receiving bank of the customer's objection to the payment within one year after the notification was received by the customer.

92 Acts, ch 1146, §36

554.12506 Rate of interest.

1. If, under this Article, a receiving bank is to pay interest with respect to a payment order issued to the bank, the amount payable may be determined by agreement of the sender and receiving bank, or by a funds-transfer system rule if the payment order is transmitted through a funds-transfer system.

2. If the amount of interest is not determined by an agreement or rule as stated in subsection 1, the amount is calculated by multiplying the applicable federal funds rate by the amount on which interest is payable, and then multiplying the product by the number of days for which interest is payable. The applicable federal funds rate is the average of the federal funds rates published by the federal reserve bank of New York for each of the days for which interest is payable divided by three hundred sixty. The federal funds rate for any day on which a published rate is not available is the same as the published rate for the next preceding day for which there is a published rate. If a receiving bank that accepted a payment order is required to refund payment to the sender of the order because the funds transfer was not completed, but the failure to complete was not due to any fault by the receiving bank, the interest payable is reduced by a percentage equal to the reserve requirement on deposits of the receiving bank.

92 Acts, ch 1146, §37

554.12507 Choice of law.

1. The following rules apply unless the affected parties otherwise agree or subsection 3 applies:

a. The rights and obligations between the sender of a payment order and the receiving bank are governed by the law of the jurisdiction in which the receiving bank is located.

b. The rights and obligations between the beneficiary's bank and the beneficiary are governed by the law of the jurisdiction in which the beneficiary's bank is located.

c. The issue of when payment is made pursuant to a funds transfer by the originator to the beneficiary is governed by the law of the jurisdiction in which the beneficiary's bank is located.

2. If the parties described in each paragraph of subsection 1 have made an agreement selecting the law of a particular jurisdiction to govern rights and obligations between each other, the law of that jurisdiction governs those rights and obligations, whether or not the payment order or the funds transfer bears a reasonable relation to that jurisdiction.

3. *a.* A funds-transfer system rule may select the law of a particular jurisdiction to govern:

(1) the rights and obligations between participating banks with respect to payment orders transmitted or processed through the system, or

(2) the rights and obligations of some or all parties to a funds transfer any part of which is carried out by means of the system.

b. A choice of law made pursuant to paragraph *"a"*, subparagraph (1), is binding on participating banks. A choice of law made pursuant to paragraph *"a"*, subparagraph (2), is binding on the originator, other sender, or a receiving bank having notice that the funds-transfer system might be used in the funds transfer and of the choice of law by the system when the originator, other sender, or receiving bank issued or accepted a payment order. The beneficiary of a funds transfer is bound by the choice of law if, when the funds transfer is initiated, the beneficiary has notice that the funds-transfer system might be used in the funds transfer and of the choice of law by the system. The law of a jurisdiction selected pursuant to this subsection may govern, whether or not that law bears a reasonable relation to the matter in issue.

4. In the event of inconsistency between an agreement under subsection 2 and a choice-of-law rule under subsection 3, the agreement under subsection 2 prevails.

5. If a funds transfer is made by use of more than one funds-transfer system and there is inconsistency between choice-of-law rules of the systems, the matter in issue is governed by

the law of the selected jurisdiction that has the most significant relationship to the matter in issue.

92 Acts, ch 1146, §38; 2013 Acts, ch 30, §153
Referred to in §554.1301, 554.12105, 554.12501

ARTICLE 13

LEASES

Referred to in §554.1201, 554.7509, 554.9110, 554.9203, 554.9322, 554D.104

Provisions codified in this Article have been designated as Article 2A by the National Conference of Commissioners on Uniform State Laws
For uniform state laws, see chapter 5 of the Code

PART 1

GENERAL PROVISIONS

554.13101 Short title.

This Article shall be known and may be cited as the Uniform Commercial Code — Leases.
94 Acts, ch 1052, §5

554.13102 Scope.

This Article applies to any transaction, regardless of form, that creates a lease.
94 Acts, ch 1052, §6

554.13103 Definitions and index of definitions.

1. In this Article unless the context otherwise requires:

a. *"Buyer in ordinary course of business"* means a person who in good faith and without knowledge that the sale to the person is in violation of the ownership rights or security interest or leasehold interest of a third party in the goods, buys in ordinary course from a person in the business of selling goods of that kind but does not include a pawnbroker. *"Buying"* may be for cash or by exchange of other property or on secured or unsecured credit and includes acquiring goods or documents of title under a preexisting contract for sale but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

b. *"Cancellation"* occurs when either party puts an end to the lease contract for default by the other party.

c. *"Commercial unit"* means such a unit of goods as by commercial usage is a single whole for purposes of lease and division of which materially impairs its character or value on the market or in use. A commercial unit may be a single article, as a machine, or a set of articles, as a suite of furniture or a line of machinery, or a quantity, as a gross or carload, or any other unit treated in use or in the relevant market as a single whole.

d. *"Conforming"* goods or performance under a lease contract means goods or performance that are in accordance with the obligations under the lease contract.

e. *"Consumer lease"* means a lease that a lessor regularly engaged in the business of leasing or selling makes to a lessee who is an individual and who takes under the lease primarily for a personal, family, or household purpose, if the total payments to be made under the lease contract, excluding payments for options to renew or buy, do not exceed the dollar amount designated in section 537.1301, subsection 14.

f. *"Fault"* means wrongful act, omission, breach, or default.

g. *"Finance lease"* means a lease with respect to which:

(1) the lessor does not select, manufacture, or supply the goods;

(2) the lessor acquires the goods or the right to possession and use of the goods in connection with the lease; and

(3) one of the following occurs:

(a) the lessee receives a copy of the contract by which the lessor acquired the goods or the right to possession and use of the goods before signing the lease contract;

(b) the lessee's approval of the contract by which the lessor acquired the goods or the right to possession and use of the goods is a condition to effectiveness of the lease contract;

(c) the lessee, before signing the lease contract, receives an accurate and complete statement designating the promises and warranties, and any disclaimers of warranties, limitations or modifications of remedies, or liquidated damages, including those of a third party, such as the manufacturer of the goods, provided to the lessor by the person supplying the goods in connection with or as part of the contract by which the lessor acquired the goods or the right to possession and use of the goods; or

(d) if the lease is not a consumer lease, the lessor, before the lessee signs the lease contract, informs the lessee in writing of the identity of the person supplying the goods to the lessor, unless the lessee has selected that person and directed the lessor to acquire the goods or the right to possession and use of the goods from that person; that the lessee is entitled under this Article to the promises and warranties, including those of any third party, provided to the lessor by the person supplying the goods in connection with or as part of the contract by which the lessor acquired the goods or the right to possession and use of the goods; and that the lessee may communicate with the person supplying the goods to the lessor and receive an accurate and complete statement of those promises and warranties, including any disclaimers and limitations of them or of remedies.

h. "Goods" means all things that are movable at the time of identification to the lease contract, or are fixtures (section 554.13309), but the term does not include money, documents, instruments, accounts, chattel paper, general intangibles, or minerals or the like, including oil and gas, before extraction. The term also includes the unborn young of animals.

i. "Installment lease contract" means a lease contract that authorizes or requires the delivery of goods in separate lots to be separately accepted, even though the lease contract contains a clause "each delivery is a separate lease" or its equivalent.

j. "Lease" means a transfer of the right to possession and use of goods for a term in return for consideration, but a sale, including a sale on approval or a sale or return, or retention or creation of a security interest is not a lease. Unless the context clearly indicates otherwise, the term includes a sublease.

k. "Lease agreement" means the bargain, with respect to the lease, of the lessor and the lessee in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance as provided in this Article. Unless the context clearly indicates otherwise, the term includes a sublease agreement.

l. "Lease contract" means the total legal obligation that results from the lease agreement as affected by this Article and any other applicable rules of law. Unless the context clearly indicates otherwise, the term includes a sublease contract.

m. "Leasehold interest" means the interest of the lessor or the lessee under a lease contract.

n. "Lessee" means a person who acquires the right to possession and use of goods under a lease. Unless the context clearly indicates otherwise, the term includes a sublessee.

o. "Lessee in ordinary course of business" means a person who in good faith and without knowledge that the lease to the person is in violation of the ownership rights or security interest or leasehold interest of a third party in the goods, leases in ordinary course from a person in the business of selling or leasing goods of that kind but does not include a pawnbroker. *"Leasing"* may be for cash or by exchange of other property or on secured or unsecured credit and includes acquiring goods or documents of title under a preexisting lease contract but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

p. "Lessor" means a person who transfers the right to possession and use of goods under a lease. Unless the context clearly indicates otherwise, the term includes a sublessor.

q. "Lessor's residual interest" means the lessor's interest in the goods after expiration, termination, or cancellation of the lease contract.

r. *"Lien"* means a charge against or interest in goods to secure payment of a debt or performance of an obligation, but the term does not include a security interest.

s. *"Lot"* means a parcel or a single article that is the subject matter of a separate lease or delivery, whether or not it is sufficient to perform the lease contract.

t. *"Merchant lessee"* means a lessee that is a merchant with respect to goods of the kind subject to the lease.

u. *"Present value"* means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain. The discount is determined by the interest rate specified by the parties if the rate was not manifestly unreasonable at the time the transaction was entered into; otherwise, the discount is determined by a commercially reasonable rate that takes into account the facts and circumstances of each case at the time the transaction was entered into.

v. *"Purchase"* includes taking by sale, lease, mortgage, security interest, pledge, gift, or any other voluntary transaction creating an interest in goods.

w. *"Sublease"* means a lease of goods the right to possession and use of which was acquired by the lessor as a lessee under an existing lease.

x. *"Supplier"* means a person from whom a lessor buys or leases goods to be leased under a finance lease.

y. *"Supply contract"* means a contract under which a lessor buys or leases goods to be leased.

z. *"Termination"* occurs when either party pursuant to a power created by agreement or law puts an end to the lease contract otherwise than for default.

2. Other definitions applying to this Article and the sections in which they appear are:

a. "Accessions" ..... Section 554.13310, subsection 1

b. "Construction mortgage" ..... Section 554.13309, subsection 1, paragraph *"d"*

c. "Encumbrance" ..... Section 554.13309, subsection 1, paragraph *"e"*

d. "Fixtures" ..... Section 554.13309, subsection 1, paragraph *"a"*

e. "Fixture filing" ..... Section 554.13309, subsection 1, paragraph *"b"*

f. "Purchase money lease" ..... Section 554.13309, subsection 1, paragraph *"c"*

3. The following definitions in other Articles apply to this Article:

a. "Account" ..... Section 554.9102, subsection 1, paragraph *"b"*

b. "Between merchants" ..... Section 554.2104, subsection 3

c. "Buyer" ..... Section 554.2103, subsection 1, paragraph *"a"*

d. "Chattel paper" ..... Section 554.9102, subsection 1, paragraph *"k"*

e. "Consumer goods" ..... Section 554.9102, subsection 1, paragraph *"w"*

f. "Document" ..... Section 554.9102,

		subsection 1, paragraph *"ad"*
g.	"Entrusting"	Section 554.2403, subsection 3
h.	"General intangible"	Section 554.9102, subsection 1, paragraph *"ap"*
i.	"Good faith"	Section 554.1201
j.	"Instrument"	Section 554.9102, subsection 1, paragraph *"au"*
k.	"Merchant"	Section 554.2104, subsection 1
l.	"Mortgage"	Section 554.9102, subsection 1, paragraph *"bc"*
m.	"Pursuant to commitment"	Section 554.9102, subsection 1, paragraph *"bq"*
n.	"Receipt"	Section 554.2103, subsection 1, paragraph *"c"*
o.	"Sale"	Section 554.2106, subsection 1
p.	"Sale on approval"	Section 554.2326
q.	"Sale or return"	Section 554.2326
r.	"Seller"	Section 554.2103, subsection 1, paragraph *"d"*

4. In addition, Article 1 contains general definitions and principles of construction and interpretation applicable throughout this Article.

94 Acts, ch 1052, §7; 2000 Acts, ch 1149, §156, 187; 2007 Acts, ch 30, §45, 46, 77; 2008 Acts, ch 1032, §81; 2012 Acts, ch 1023, §157; 2013 Acts, ch 30, §154

Referred to in §554.7102, 554.9102

554.13104 Leases subject to other law.

1. A lease, although subject to this Article, is also subject to any applicable:

a. certificate of title or registration statute of this state (including as provided in chapters 321 and 462A);

b. certificate of title statute of another jurisdiction (section 554.13105); or

c. consumer protection statute of this state, or final consumer protection decision of a court of this state existing on July 1, 1994.

2. In case of conflict between this Article, other than sections 554.13105, 554.13304, subsection 3, and 554.13305, subsection 3, and a statute or decision referred to in subsection 1, the statute or decision controls.

3. Failure to comply with an applicable law has only the effect specified therein.

94 Acts, ch 1052, §8

554.13105 Territorial application of Article to goods covered by certificate of title.

Subject to the provisions of sections 554.13304, subsection 3, and 554.13305, subsection 3, with respect to goods covered by a certificate of title issued under a statute of this state or of another jurisdiction, compliance and the effect of compliance or noncompliance with a certificate of title statute are governed by the law (including the conflict of laws rules) of the jurisdiction issuing the certificate until the earlier of surrender of the certificate, or

four months after the goods are removed from that jurisdiction and thereafter until a new certificate of title is issued by another jurisdiction.

94 Acts, ch 1052, §9; 2013 Acts, ch 30, §261
Referred to in §554.1301, 554.13104

554.13106 Limitation on power of parties to consumer lease to choose applicable law and judicial forum.

1. If the law chosen by the parties to a consumer lease is that of a jurisdiction other than a jurisdiction in which the lessee resides at the time the lease agreement becomes enforceable or within thirty days thereafter or in which the goods are to be used, the choice is not enforceable.

2. If the judicial forum chosen by the parties to a consumer lease is a forum that would not otherwise have jurisdiction over the lessee, the choice is not enforceable.

94 Acts, ch 1052, §10
Referred to in §554.1301

554.13107 Waiver or renunciation of claim or right after default.

Any claim or right arising out of an alleged default or breach of warranty may be discharged in whole or in part without consideration by a written waiver or renunciation signed and delivered by the aggrieved party.

94 Acts, ch 1052, §11

554.13108 Unconscionability.

1. If the court as a matter of law finds a lease contract or any clause of a lease contract to have been unconscionable at the time it was made the court may refuse to enforce the lease contract, or it may enforce the remainder of the lease contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result.

2. With respect to a consumer lease, if the court as a matter of law finds that a lease contract or any clause of a lease contract has been induced by unconscionable conduct or that unconscionable conduct has occurred in the collection of a claim arising from a lease contract, the court may grant appropriate relief.

3. Before making a finding of unconscionability under subsection 1 or 2, the court, on its own motion or that of a party, shall afford the parties a reasonable opportunity to present evidence as to the setting, purpose, and effect of the lease contract or clause thereof, or of the conduct.

4. In an action in which the lessee claims unconscionability with respect to a consumer lease:

a. If the court finds unconscionability under subsection 1 or 2, the court shall award reasonable attorney's fees to the lessee.

b. If the court does not find unconscionability and the lessee claiming unconscionability has brought or maintained an action that the lessee knew to be groundless, the court shall award reasonable attorney's fees to the party against whom the claim is made.

c. In determining attorney's fees, the amount of the recovery on behalf of the claimant under subsections 1 and 2 is not controlling.

94 Acts, ch 1052, §12

554.13109 Option to accelerate at will.

1. A term providing that one party or the party's successor in interest may accelerate payment or performance or require collateral or additional collateral "at will" or "when the party deems the party insecure" or in words of similar import must be construed to mean that the party has power to do so only if the party in good faith believes that the prospect of payment or performance is impaired.

2. With respect to a consumer lease, the burden of establishing good faith under subsection 1 is on the party who exercised the power; otherwise the burden of establishing lack of good faith is on the party against whom the power has been exercised.

94 Acts, ch 1052, §13

PART 2

FORMATION AND CONSTRUCTION OF LEASE CONTRACT

554.13201 Statute of frauds.

1. A lease contract is not enforceable by way of action or defense unless:

a. the total payments to be made under the lease contract, excluding payments for options to renew or buy, are less than one thousand dollars; or

b. there is a writing, signed by the party against whom enforcement is sought or by that party's authorized agent, sufficient to indicate that a lease contract has been made between the parties and to describe the goods leased and the lease term.

2. Any description of leased goods or of the lease term is sufficient and satisfies subsection 1, paragraph *"b"*, whether or not it is specific, if it reasonably identifies what is described.

3. A writing is not insufficient because it omits or incorrectly states a term agreed upon, but the lease contract is not enforceable under subsection 1, paragraph *"b"*, beyond the lease term and the quantity of goods shown in the writing.

4. A lease contract that does not satisfy the requirements of subsection 1, but which is valid in other respects, is enforceable:

a. if the goods are to be specially manufactured or obtained for the lessee and are not suitable for lease or sale to others in the ordinary course of the lessor's business, and the lessor, before notice of repudiation is received and under circumstances that reasonably indicate that the goods are for the lessee, has made either a substantial beginning of their manufacture or commitments for their procurement;

b. if the party against whom enforcement is sought admits in that party's pleading, testimony or otherwise in court that a lease contract was made, but the lease contract is not enforceable under this provision beyond the quantity of goods admitted; or

c. with respect to goods that have been received and accepted by the lessee.

5. The lease term under a lease contract referred to in subsection 4 is:

a. if there is a writing signed by the party against whom enforcement is sought or by that party's authorized agent specifying the lease term, the term so specified;

b. if the party against whom enforcement is sought admits in that party's pleading, testimony, or otherwise in court a lease term, the term so admitted; or

c. a reasonable lease term.

94 Acts, ch 1052, §14

554.13202 Final written expression — parol or extrinsic evidence.

Terms with respect to which the confirmatory memoranda of the parties agree or which are otherwise set forth in a writing intended by the parties as a final expression of their agreement with respect to such terms as are included therein may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement but may be explained or supplemented:

1. by course of dealing or usage of trade or by course of performance; and

2. by evidence of consistent additional terms unless the court finds the writing to have been intended also as a complete and exclusive statement of the terms of the agreement.

94 Acts, ch 1052, §15

Referred to in §554.13214

554.13203 Seals inoperative.

The affixing of a seal to a writing evidencing a lease contract or an offer to enter into a lease contract does not render the writing a sealed instrument and the law with respect to sealed instruments does not apply to the lease contract or offer.

94 Acts, ch 1052, §16

554.13204 Formation in general.

1. A lease contract may be made in any manner sufficient to show agreement, including conduct by both parties which recognizes the existence of a lease contract.

2. An agreement sufficient to constitute a lease contract may be found although the moment of its making is undetermined.

3. Although one or more terms are left open, a lease contract does not fail for indefiniteness if the parties have intended to make a lease contract and there is a reasonably certain basis for giving an appropriate remedy.

94 Acts, ch 1052, §17

554.13205 Firm offers.

An offer by a merchant to lease goods to or from another person in a signed writing that by its terms gives assurance it will be held open is not revocable, for lack of consideration, during the time stated or, if no time is stated, for a reasonable time, but in no event may the period of irrevocability exceed three months. Any such term of assurance on a form supplied by the offeree must be separately signed by the offeror.

94 Acts, ch 1052, §18

554.13206 Offer and acceptance in formation of lease contract.

1. Unless otherwise unambiguously indicated by the language or circumstances, an offer to make a lease contract must be construed as inviting acceptance in any manner and by any medium reasonable in the circumstances.

2. If the beginning of a requested performance is a reasonable mode of acceptance, an offeror who is not notified of acceptance within a reasonable time may treat the offer as having lapsed before acceptance.

94 Acts, ch 1052, §19

554.13207 Course of performance or practical construction. Repealed by 2007 Acts, ch 41, §61. See §554.1303.

554.13208 Modification, rescission, and waiver.

1. An agreement modifying a lease contract needs no consideration to be binding.

2. A signed lease agreement that excludes modification or rescission except by a signed writing may not be otherwise modified or rescinded, but, except as between merchants, such a requirement on a form supplied by a merchant must be separately signed by the other party.

3. Although an attempt at modification or rescission does not satisfy the requirements of subsection 2, it may operate as a waiver.

4. A party who has made a waiver affecting an executory portion of a lease contract may retract the waiver by reasonable notification received by the other party that strict performance will be required of any term waived, unless the retraction would be unjust in view of a material change of position in reliance on the waiver.

94 Acts, ch 1052, §21

554.13209 Lessee under finance lease as beneficiary of supply contract.

1. The benefit of a supplier's promises to the lessor under the supply contract and of all warranties, whether express or implied, including those of any third party provided in connection with or as part of the supply contract, extends to the lessee to the extent of the lessee's leasehold interest under a finance lease related to the supply contract, but is subject to the terms of the warranty and of the supply contract and all defenses or claims arising therefrom.

2. The extension of the benefit of a supplier's promises and of warranties to the lessee under subsection 1 does not:

a. modify the rights and obligations of the parties to the supply contract, whether arising therefrom or otherwise, or

b. impose any duty or liability under the supply contract on the lessee.

3. Any modification or rescission of the supply contract by the supplier and the lessor is

effective between the supplier and the lessee unless, before the modification or rescission, the supplier has received notice that the lessee has entered into a finance lease related to the supply contract. If the modification or rescission is effective between the supplier and the lessee, the lessor is deemed to have assumed, in addition to the obligations of the lessor to the lessee under the lease contract, promises of the supplier to the lessor and warranties that were so modified or rescinded as they existed and were available to the lessee before modification or rescission.

4. In addition to the extension of the benefit of the supplier's promises and of warranties to the lessee under subsection 1, the lessee retains all rights that the lessee may have against the supplier which arise from an agreement between the lessee and the supplier or under other law.

94 Acts, ch 1052, §22; 2013 Acts, ch 30, §155

554.13210 Express warranties.

1. Express warranties by the lessor are created as follows:

a. Any affirmation of fact or promise made by the lessor to the lessee which relates to the goods and becomes part of the basis of the bargain creates an express warranty that the goods will conform to the affirmation or promise.

b. Any description of the goods which is made part of the basis of the bargain creates an express warranty that the goods will conform to the description.

c. Any sample or model that is made part of the basis of the bargain creates an express warranty that the whole of the goods will conform to the sample or model.

2. It is not necessary to the creation of an express warranty that the lessor use formal words, such as "warrant" or "guarantee", or that the lessor have a specific intention to make a warranty, but an affirmation merely of the value of the goods or a statement purporting to be merely the lessor's opinion or commendation of the goods does not create a warranty.

94 Acts, ch 1052, §23

554.13211 Warranties against interference and against infringement — lessee's obligation against infringement.

1. There is in a lease contract a warranty that for the lease term no person holds a claim to or interest in the goods that arose from an act or omission of the lessor, other than a claim by way of infringement or the like, which will interfere with the lessee's enjoyment of its leasehold interest.

2. Except in a finance lease, there is in a lease contract by a lessor who is a merchant regularly dealing in goods of the kind a warranty that the goods are delivered free of the rightful claim of any person by way of infringement or the like.

3. A lessee who furnishes specifications to a lessor or a supplier shall hold the lessor and the supplier harmless against any claim by way of infringement or the like that arises out of compliance with the specifications.

94 Acts, ch 1052, §24

Referred to in §554.13214, 554.13516

554.13212 Implied warranty of merchantability.

1. Except in a finance lease, a warranty that the goods will be merchantable is implied in a lease contract if the lessor is a merchant with respect to goods of that kind.

2. Goods to be merchantable must be at least such as

a. pass without objection in the trade under the description in the lease agreement;

b. in the case of fungible goods, are of fair average quality within the description;

c. are fit for the ordinary purposes for which goods of that type are used;

d. run, within the variation permitted by the lease agreement, of even kind, quality, and quantity within each unit and among all units involved;

e. are adequately contained, packaged, and labeled as the lease agreement may require; and

f. conform to any promises or affirmations of fact made on the container or label.

3. Other implied warranties may arise from course of dealing or usage of trade.
94 Acts, ch 1052, §25

554.13213 Implied warranty of fitness for particular purpose.
Except in a finance lease, if the lessor at the time the lease contract is made has reason to know of any particular purpose for which the goods are required and that the lessee is relying on the lessor's skill or judgment to select or furnish suitable goods, there is in the lease contract an implied warranty that the goods will be fit for that purpose.
94 Acts, ch 1052, §26

554.13214 Exclusion or modification of warranties.
1. Words or conduct relevant to the creation of an express warranty and words or conduct tending to negate or limit a warranty must be construed wherever reasonable as consistent with each other; but, subject to the provisions of section 554.13202 on parol or extrinsic evidence, negation or limitation is inoperative to the extent that the construction is unreasonable.
2. Subject to subsection 3, to exclude or modify the implied warranty of merchantability or any part of it the language must mention "merchantability", be by a writing, and be conspicuous. Subject to subsection 3, to exclude or modify any implied warranty of fitness the exclusion must be by a writing and be conspicuous. Language to exclude all implied warranties of fitness is sufficient if it is in writing, is conspicuous and states, for example, "There is no warranty that the goods will be fit for a particular purpose".
3. Notwithstanding subsection 2, but subject to subsection 4,
a. unless the circumstances indicate otherwise, all implied warranties are excluded by expressions like "as is", or "with all faults", or by other language that in common understanding calls the lessee's attention to the exclusion of warranties and makes plain that there is no implied warranty, if in writing and conspicuous;
b. if the lessee before entering into the lease contract has examined the goods or the sample or model as fully as desired or has refused to examine the goods, there is no implied warranty with regard to defects that an examination ought in the circumstances to have revealed; and
c. an implied warranty may also be excluded or modified by course of dealing, course of performance, or usage of trade.
4. To exclude or modify a warranty against interference or against infringement (section 554.13211) or any part of it, the language must be specific, be by a writing, and be conspicuous, unless the circumstances, including course of performance, course of dealing, or usage of trade, give the lessee reason to know that the goods are being leased subject to a claim or interest of any person.
94 Acts, ch 1052, §27

554.13215 Cumulation and conflict of warranties express or implied.
Warranties, whether express or implied, must be construed as consistent with each other and as cumulative, but if that construction is unreasonable, the intention of the parties determines which warranty is dominant. In ascertaining that intention the following rules apply:
1. Exact or technical specifications displace an inconsistent sample or model or general language of description.
2. A sample from an existing bulk displaces inconsistent general language of description.
3. Express warranties displace inconsistent implied warranties other than an implied warranty of fitness for a particular purpose.
94 Acts, ch 1052, §28

554.13216 Third-party beneficiaries of express and implied warranties.
A warranty to or for the benefit of a lessee under this Article, whether express or implied, extends to any person who may reasonably be expected to use, consume, or be affected by the goods and who is injured by breach of the warranty. The operation of this section may

not be excluded, modified, or limited with respect to injury to the person of an individual to whom the warranty extends, but an exclusion, modification, or limitation of the warranty, including any with respect to rights and remedies, effective against the lessee is also effective against the beneficiary designated under this section.

94 Acts, ch 1052, §29

554.13217 Identification.

Identification of goods as goods to which a lease contract refers may be made at any time and in any manner explicitly agreed to by the parties. In the absence of explicit agreement, identification occurs:

1. when the lease contract is made if the lease contract is for a lease of goods that are existing and identified;

2. when the goods are shipped, marked, or otherwise designated by the lessor as goods to which the lease contract refers, if the lease contract is for a lease of goods that are not existing and identified; or

3. when the young are conceived, if the lease contract is for a lease of unborn young of animals.

94 Acts, ch 1052, §30

Referred to in §554.13522

554.13218 Insurance and proceeds.

1. A lessee obtains an insurable interest when existing goods are identified to the lease contract even though the goods identified are nonconforming and the lessee has an option to reject them.

2. If a lessee has an insurable interest only by reason of the lessor's identification of the goods, the lessor, until default or insolvency or notification to the lessee that identification is final, may substitute other goods for those identified.

3. Notwithstanding a lessee's insurable interest under subsections 1 and 2, the lessor retains an insurable interest until an option to buy has been exercised by the lessee and risk of loss has passed to the lessee.

4. Nothing in this section impairs any insurable interest recognized under any other statute or rule of law.

5. The parties by agreement may determine that one or more parties have an obligation to obtain and pay for insurance covering the goods and by agreement may determine the beneficiary of the proceeds of the insurance.

94 Acts, ch 1052, §31

554.13219 Risk of loss.

1. Except in the case of a finance lease, risk of loss is retained by the lessor and does not pass to the lessee. In the case of a finance lease, risk of loss passes to the lessee.

2. Subject to the provisions of this Article on the effect of default on risk of loss (section 554.13220), if risk of loss is to pass to the lessee and the time of passage is not stated, the following rules apply:

a. If the lease contract requires or authorizes the goods to be shipped by carrier

(1) and it does not require delivery at a particular destination, the risk of loss passes to the lessee when the goods are duly delivered to the carrier; but

(2) if it does require delivery at a particular destination and the goods are there duly tendered while in the possession of the carrier, the risk of loss passes to the lessee when the goods are there duly so tendered as to enable the lessee to take delivery.

b. If the goods are held by a bailee to be delivered without being moved, the risk of loss passes to the lessee on acknowledgment by the bailee of the lessee's right to possession of the goods.

c. In any case not within paragraph "*a*" or "*b*", the risk of loss passes to the lessee on the lessee's receipt of the goods if the lessor, or, in the case of a finance lease, the supplier, is a merchant; otherwise the risk passes to the lessee on tender of delivery.

94 Acts, ch 1052, §32

Referred to in §554.13221, 554.13529

554.13220 Effect of default on risk of loss.

1. Where risk of loss is to pass to the lessee and the time of passage is not stated:

a. If a tender or delivery of goods so fails to conform to the lease contract as to give a right of rejection, the risk of their loss remains with the lessor, or, in the case of a finance lease, the supplier, until cure or acceptance.

b. If the lessee rightfully revokes acceptance, the lessee, to the extent of any deficiency in the lessee's effective insurance coverage, may treat the risk of loss as having remained with the lessor from the beginning.

2. Whether or not risk of loss is to pass to the lessee, if the lessee as to conforming goods already identified to a lease contract repudiates or is otherwise in default under the lease contract, the lessor, or, in the case of a finance lease, the supplier, to the extent of any deficiency in the lessor's or supplier's effective insurance coverage may treat the risk of loss as resting on the lessee for a commercially reasonable time.

94 Acts, ch 1052, §33
Referred to in §554.13219

554.13221 Casualty to identified goods.

If a lease contract requires goods identified when the lease contract is made, and the goods suffer casualty without fault of the lessee, the lessor or the supplier before delivery, or the goods suffer casualty before risk of loss passes to the lessee pursuant to the lease agreement or section 554.13219, then:

1. if the loss is total, the lease contract is avoided; and

2. if the loss is partial or the goods have so deteriorated as to no longer conform to the lease contract, the lessee may nevertheless demand inspection and at the lessee's option either treat the lease contract as avoided or, except in a finance lease that is not a consumer lease, accept the goods with due allowance from the rent payable for the balance of the lease term for the deterioration or the deficiency in quantity but without further right against the lessor.

94 Acts, ch 1052, §34

PART 3

EFFECT OF LEASE CONTRACT

554.13301 Enforceability of lease contract.

Except as otherwise provided in this Article, a lease contract is effective and enforceable according to its terms between the parties, against purchasers of the goods and against creditors of the parties.

94 Acts, ch 1052, §35

554.13302 Title to and possession of goods.

Except as otherwise provided in this Article, each provision of this Article applies whether the lessor or a third party has title to the goods, and whether the lessor, the lessee, or a third party has possession of the goods, notwithstanding any statute or rule of law that possession or the absence of possession is fraudulent.

94 Acts, ch 1052, §36

554.13303 Alienability of party's interest under lease contract or of lessor's residual interest in goods — delegation of performance — transfer of rights.

1. As used in this section, *"creation of a security interest"* includes the sale of a lease contract that is subject to Article 9, Secured Transactions, by reason of section 554.9109, subsection 1, paragraph "c".

2. Except as provided in subsection 3 and section 554.9407, a provision in a lease agreement which prohibits the voluntary or involuntary transfer, including a transfer by sale, sublease, creation or enforcement of a security interest, or attachment, levy, or other judicial process, of an interest of a party under the lease contract or of the lessor's residual interest in the goods, or makes such a transfer an event of default, gives rise to the rights

and remedies provided in subsection 4, but a transfer that is prohibited or is an event of default under the lease agreement is otherwise effective.

3. A provision in a lease agreement which prohibits a transfer of a right to damages for default with respect to the whole lease contract or of a right to payment arising out of the transferor's due performance of the transferor's entire obligation, or makes such a transfer an event of default, is not enforceable, and such a transfer is not a transfer that materially impairs the prospect of obtaining return performance by, materially changes the duty of, or materially increases the burden or risk imposed on, the other party to the lease contract within the purview of subsection 4.

4. Subject to subsection 3 and section 554.9407:

a. if a transfer is made which is made an event of default under a lease agreement, the party to the lease contract not making the transfer, unless that party waives the default or otherwise agrees, has the rights and remedies described in section 554.13501, subsection 2;

b. if paragraph *"a"* is not applicable and if a transfer is made that is prohibited under a lease agreement or materially impairs the prospect of obtaining return performance by, materially changes the duty of, or materially increases the burden or risk imposed on, the other party to the lease contract, unless the party not making the transfer agrees at any time to the transfer in the lease contract or otherwise, then, except as limited by contract, the transferor is liable to the party not making the transfer for damages caused by the transfer to the extent that the damages could not reasonably be prevented by the party not making the transfer and a court having jurisdiction may grant other appropriate relief, including cancellation of the lease contract or an injunction against the transfer.

5. A transfer of "the lease" or of "all my rights under the lease", or a transfer in similar general terms, is a transfer of rights and, unless the language or the circumstances, as in a transfer for security, indicate the contrary, the transfer is a delegation of duties by the transferor to the transferee. Acceptance by the transferee constitutes a promise by the transferee to perform those duties. The promise is enforceable by either the transferor or the other party to the lease contract.

6. Unless otherwise agreed by the lessor and the lessee, a delegation of performance does not relieve the transferor as against the other party of any duty to perform or of any liability for default.

7. In a consumer lease, to prohibit the transfer of an interest of a party under the lease contract or to make a transfer an event of default, the language must be specific, by a writing, and conspicuous.

94 Acts, ch 1052, §37; 2000 Acts, ch 1149, §157, 187; 2013 Acts, ch 30, §261
Referred to in §554.9406, 554.9407, 554.13304, 554.13305

554.13304 Subsequent lease of goods by lessor.

1. Subject to section 554.13303, a subsequent lessee from a lessor of goods under an existing lease contract obtains, to the extent of the leasehold interest transferred, the leasehold interest in the goods that the lessor had or had power to transfer, and except as provided in subsection 2 and section 554.13527, subsection 4, takes subject to the existing lease contract. A lessor with voidable title has power to transfer a good leasehold interest to a good faith subsequent lessee for value, but only to the extent set forth in the preceding sentence. If goods have been delivered under a transaction of purchase, the lessor has that power even though:

a. the lessor's transferor was deceived as to the identity of the lessor;

b. the delivery was in exchange for a check which is later dishonored;

c. it was agreed that the transaction was to be a "cash sale"; or

d. the delivery was procured through fraud punishable as larcenous under the criminal law.

2. A subsequent lessee in the ordinary course of business from a lessor who is a merchant dealing in goods of that kind to whom the goods were entrusted by the existing lessee of that lessor before the interest of the subsequent lessee became enforceable against that lessor obtains, to the extent of the leasehold interest transferred, all of that lessor's and the existing lessee's rights to the goods, and takes free of the existing lease contract.

3. A subsequent lessee from the lessor of goods that are subject to an existing lease contract and are covered by a certificate of title issued under a statute of this state or of another jurisdiction takes no greater rights than those provided both by this section and by the certificate of title statute.

94 Acts, ch 1052, §38
Referred to in §554.7209, 554.7503, 554.13104, 554.13105

554.13305 Sale or sublease of goods by lessee.

1. Subject to the provisions of section 554.13303, a buyer or sublessee from the lessee of goods under an existing lease contract obtains, to the extent of the interest transferred, the leasehold interest in the goods that the lessee had or had power to transfer, and except as provided in subsection 2 and section 554.13511, subsection 4, takes subject to the existing lease contract. A lessee with a voidable leasehold interest has power to transfer a good leasehold interest to a good faith buyer for value or a good faith sublessee for value, but only to the extent set forth in the preceding sentence. When goods have been delivered under a transaction of lease the lessee has that power even though:

a. the lessor was deceived as to the identity of the lessee;

b. the delivery was in exchange for a check which is later dishonored; or

c. the delivery was procured through fraud punishable as larcenous under the criminal law.

2. A buyer in the ordinary course of business or a sublessee in the ordinary course of business from a lessee who is a merchant dealing in goods of that kind to whom the goods were entrusted by the lessor obtains, to the extent of the interest transferred, all of the lessor's and lessee's rights to the goods, and takes free of the existing lease contract.

3. A buyer or sublessee from the lessee of goods that are subject to an existing lease contract and are covered by a certificate of title issued under a statute of this state or of another jurisdiction takes no greater rights than those provided both by this section and by the certificate of title statute.

94 Acts, ch 1052, §39
Referred to in §554.7209, 554.7503, 554.13104, 554.13105

554.13306 Priority of certain liens arising by operation of law.

If a person in the ordinary course of the person's business furnishes services or materials with respect to goods subject to a lease contract, a lien upon those goods in the possession of that person given by statute or rule of law for those materials or services takes priority over any interest of the lessor or lessee under the lease contract or this Article unless the lien is created by statute and the statute provides otherwise or unless the lien is created by rule of law and the rule of law provides otherwise.

94 Acts, ch 1052, §40
Referred to in §554.13307

554.13307 Priority of liens arising by attachment or levy on, security interests in, and other claims to goods.

1. Except as otherwise provided in section 554.13306, a creditor of a lessee takes subject to the lease contract.

2. Except as otherwise provided in subsection 3 and in sections 554.13306 and 554.13308, a creditor of a lessor takes subject to the lease contract unless the creditor holds a lien that attached to the goods before the lease contract became enforceable.

3. Except as otherwise provided in sections 554.9317, 554.9321, and 554.9323, a lessee takes a leasehold interest subject to a security interest held by a creditor of the lessor.

94 Acts, ch 1052, §41; 2000 Acts, ch 1149, §158, 187

554.13308 Special rights of creditors.

1. A creditor of a lessor in possession of goods subject to a lease contract may treat the lease contract as void if as against the creditor retention of possession by the lessor is fraudulent under any statute or rule of law, but retention of possession in good faith and

current course of trade by the lessor for a commercially reasonable time after the lease contract becomes enforceable is not fraudulent.

2. Nothing in this Article impairs the rights of creditors of a lessor if the lease contract becomes enforceable, not in current course of trade but in satisfaction of or as security for a preexisting claim for money, security, or the like, and is made under circumstances which under any statute or rule of law apart from this Article would constitute the transaction a fraudulent transfer or voidable preference.

3. A creditor of a seller may treat a sale or an identification of goods to a contract for sale as void if as against the creditor retention of possession by the seller is fraudulent under any statute or rule of law, but retention of possession of the goods pursuant to a lease contract entered into by the seller as lessee and the buyer as lessor in connection with the sale or identification of the goods is not fraudulent if the buyer bought for value and in good faith.

94 Acts, ch 1052, §42; 2013 Acts, ch 30, §261

Referred to in §554.7504, 554.13307

554.13309 Lessor's and lessee's rights when goods become fixtures.

1. In this section:

a. goods are "*fixtures*" when they become so related to particular real estate that an interest in them arises under real estate law;

b. a "*fixture filing*" is the filing, in the office where a record of a mortgage on the real estate would be filed or recorded, of a financing statement covering goods that are or are to become fixtures and conforming to the requirements of section 554.9502, subsections 1 and 2;

c. a lease is a "*purchase money lease*" unless the lessee has possession or use of the goods or the right to possession or use of the goods before the lease agreement is enforceable;

d. a mortgage is a "*construction mortgage*" to the extent it secures an obligation incurred for the construction of an improvement on land including the acquisition cost of the land, if the recorded writing so indicates; and

e. "*encumbrance*" includes real estate mortgages and other liens on real estate and all other rights in real estate that are not ownership interests.

2. Under this Article a lease may be of goods that are fixtures or may continue in goods that become fixtures, but no lease exists under this Article of ordinary building materials incorporated into an improvement on land.

3. This Article does not prevent creation of a lease of fixtures pursuant to real estate law.

4. The perfected interest of a lessor of fixtures has priority over a conflicting interest of an encumbrancer or owner of the real estate if:

a. the lease is a purchase money lease, the conflicting interest of the encumbrancer or owner arises before the goods become fixtures, the interest of the lessor is perfected by a fixture filing before the goods become fixtures or within ten days thereafter, and the lessee has an interest of record in the real estate or is in possession of the real estate; or

b. the interest of the lessor is perfected by a fixture filing before the interest of the encumbrancer or owner is of record, the lessor's interest has priority over any conflicting interest of a predecessor in title of the encumbrancer or owner, and the lessee has an interest of record in the real estate or is in possession of the real estate.

5. The interest of a lessor of fixtures, whether or not perfected, has priority over the conflicting interest of an encumbrancer or owner of the real estate if:

a. the fixtures are readily removable factory or office machines, readily removable equipment that is not primarily used or leased for use in the operation of the real estate, or readily removable replacements of domestic appliances that are goods subject to a consumer lease, and before the goods become fixtures the lease contract is enforceable; or

b. the conflicting interest is a lien on the real estate obtained by legal or equitable proceedings after the lease contract is enforceable; or

c. the encumbrancer or owner has consented in writing to the lease or has disclaimed an interest in the goods as fixtures; or

d. the lessee has a right to remove the goods as against the encumbrancer or owner. If the lessee's right to remove terminates, the priority of the interest of the lessor continues for a reasonable time.

6. Notwithstanding subsection 4, paragraph *"a"*, but otherwise subject to subsections 4 and 5, the interest of a lessor of fixtures, including the lessor's residual interest, is subordinate to the conflicting interest of an encumbrancer of the real estate under a construction mortgage recorded before the goods become fixtures if the goods become fixtures before the completion of the construction. To the extent given to refinance a construction mortgage, the conflicting interest of an encumbrancer of the real estate under a mortgage has this priority to the same extent as the encumbrancer of the real estate under the construction mortgage.

7. In cases not within subsections 1 through 6, priority between the interest of a lessor of fixtures, including the lessor's residual interest, and the conflicting interest of an encumbrancer or owner of the real estate who is not the lessee is determined by the priority rules governing conflicting interests in real estate.

8. If the interest of a lessor of fixtures, including the lessor's residual interest, has priority over all conflicting interests of all owners and encumbrancers of the real estate, the lessor or the lessee may on default, expiration, termination, or cancellation of the lease agreement but subject to the lease agreement and this Article, or if necessary to enforce other rights and remedies of the lessor or lessee under this Article, remove the goods from the real estate, free and clear of all conflicting interests of all owners and encumbrancers of the real estate, but the lessor or lessee must reimburse any encumbrancer or owner of the real estate who is not the lessee and who has not otherwise agreed for the cost of repair of any physical injury, but not for any diminution in value of the real estate caused by the absence of the goods removed or by any necessity of replacing them. A person entitled to reimbursement may refuse permission to remove until the party seeking removal gives adequate security for the performance of this obligation.

9. Even though the lease agreement does not create a security interest, the interest of a lessor of fixtures, including the lessor's residual interest, is perfected by filing a financing statement as a fixture filing for leased goods that are or are to become fixtures in accordance with the relevant provisions of the Article on Secured Transactions (Article 9).

94 Acts, ch 1052, §43; 2000 Acts, ch 1149, §159, 187; 2008 Acts, ch 1032, §82; 2013 Acts, ch 30, §261

Referred to in §554.13103

554.13310 Lessor's and lessee's rights when goods become accessions.

1. Goods are *"accessions"* when they are installed in or affixed to other goods.

2. The interest of a lessor or a lessee under a lease contract entered into before the goods became accessions is superior to all interests in the whole except as stated in subsection 4.

3. The interest of a lessor or a lessee under a lease contract entered into at the time or after the goods became accessions is superior to all subsequently acquired interests in the whole except as stated in subsection 4 but is subordinate to interests in the whole existing at the time the lease contract was made unless the holders of such interests in the whole have in writing consented to the lease or disclaimed an interest in the goods as part of the whole.

4. The interest of a lessor or a lessee under a lease contract described in subsection 2 or 3 is subordinate to the interest of

a. a buyer in the ordinary course of business or a lessee in the ordinary course of business of any interest in the whole acquired after the goods became accessions; or

b. a creditor with a security interest in the whole perfected before the lease contract was made to the extent that the creditor makes subsequent advances without knowledge of the lease contract.

5. When under subsections 2 or 3 and 4 a lessor or a lessee of accessions holds an interest that is superior to all interests in the whole, the lessor or the lessee may on default, expiration, termination, or cancellation of the lease contract by the other party but subject to the provisions of the lease contract and this Article, or if necessary to enforce the lessor's or lessee's other rights and remedies under this Article, remove the goods from the whole, free and clear of all interests in the whole, but the lessor or lessee must reimburse any holder of an interest in the whole who is not the lessee and who has not otherwise agreed for the cost of repair of any physical injury but not for any diminution in value of the whole caused by the absence of the goods removed or by any necessity for replacing them. A person entitled

to reimbursement may refuse permission to remove until the party seeking removal gives adequate security for the performance of this obligation.

94 Acts, ch 1052, §44; 2013 Acts, ch 30, §261
Referred to in §554.13103

554.13311 Priority subject to subordination.

Nothing in this Article prevents subordination by agreement by any person entitled to priority.

94 Acts, ch 1052, §45

PART 4

PERFORMANCE OF LEASE CONTRACT — REPUDIATED, SUBSTITUTED, AND EXCUSED

554.13401 Insecurity — adequate assurance of performance.

1. A lease contract imposes an obligation on each party that the other's expectation of receiving due performance will not be impaired.

2. If reasonable grounds for insecurity arise with respect to the performance of either party, the insecure party may demand in writing adequate assurance of due performance. Until the insecure party receives that assurance, if commercially reasonable the insecure party may suspend any performance for which the insecure party has not already received the agreed return.

3. A repudiation of the lease contract occurs if assurance of due performance adequate under the circumstances of the particular case is not provided to the insecure party within a reasonable time, not to exceed thirty days after receipt of a demand by the other party.

4. Between merchants, the reasonableness of grounds for insecurity and the adequacy of any assurance offered must be determined according to commercial standards.

5. Acceptance of any nonconforming delivery or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance.

94 Acts, ch 1052, §46
Referred to in §554.13402, 554.13403

554.13402 Anticipatory repudiation.

If either party repudiates a lease contract with respect to a performance not yet due under the lease contract, the loss of which performance will substantially impair the value of the lease contract to the other, the aggrieved party may:

1. for a commercially reasonable time, await retraction of repudiation and performance by the repudiating party;

2. make demand pursuant to section 554.13401 and await assurance of future performance adequate under the circumstances of the particular case; or

3. resort to any right or remedy upon default under the lease contract or this Article, even though the aggrieved party has notified the repudiating party that the aggrieved party would await the repudiating party's performance and assurance and has urged retraction. In addition, whether or not the aggrieved party is pursuing one of the foregoing remedies, the aggrieved party may suspend performance or, if the aggrieved party is the lessor, proceed in accordance with the provisions of this Article on the lessor's right to identify goods to the lease contract notwithstanding default or to salvage unfinished goods (section 554.13524).

94 Acts, ch 1052, §47
Referred to in §554.13508

554.13403 Retraction of anticipatory repudiation.

1. Until the repudiating party's next performance is due, the repudiating party can retract the repudiation unless, since the repudiation, the aggrieved party has canceled the lease

contract or materially changed the aggrieved party's position or otherwise indicated that the aggrieved party considers the repudiation final.

2. Retraction may be by any method that clearly indicates to the aggrieved party that the repudiating party intends to perform under the lease contract and includes any assurance demanded under section 554.13401.

3. Retraction reinstates a repudiating party's rights under a lease contract with due excuse and allowance to the aggrieved party for any delay occasioned by the repudiation.

94 Acts, ch 1052, §48

554.13404 Substituted performance.

1. If without fault of the lessee, the lessor and the supplier, the agreed berthing, loading, or unloading facilities fail or the agreed type of carrier becomes unavailable or the agreed manner of delivery otherwise becomes commercially impracticable, but a commercially reasonable substitute is available, the substitute performance must be tendered and accepted.

2. If the agreed means or manner of payment fails because of domestic or foreign governmental regulation:

a. the lessor may withhold or stop delivery or cause the supplier to withhold or stop delivery unless the lessee provides a means or manner of payment that is commercially a substantial equivalent; and

b. if delivery has already been taken, payment by the means or in the manner provided by the regulation discharges the lessee's obligation unless the regulation is discriminatory, oppressive, or predatory.

94 Acts, ch 1052, §49
Referred to in §554.13405

554.13405 Excused performance.

Subject to section 554.13404 on substituted performance, the following rules apply:

1. Delay in delivery or nondelivery in whole or in part by a lessor or a supplier who complies with subsections 2 and 3 is not a default under the lease contract if performance as agreed has been made impracticable by the occurrence of a contingency the nonoccurrence of which was a basic assumption on which the lease contract was made or by compliance in good faith with any applicable foreign or domestic governmental regulation or order, whether or not the regulation or order later proves to be invalid.

2. If the causes mentioned in subsection 1 affect only part of the lessor's or the supplier's capacity to perform, the lessor or supplier shall allocate production and deliveries among the lessor's or supplier's customers but at the lessor's or supplier's option may include regular customers not then under contract for sale or lease as well as the lessor's or supplier's own requirements for further manufacture. The lessor or supplier may so allocate in any manner that is fair and reasonable.

3. The lessor seasonably shall notify the lessee and in the case of a finance lease the supplier seasonably shall notify the lessor and the lessee, if known, that there will be delay or nondelivery and, if allocation is required under subsection 2, of the estimated quota thus made available for the lessee.

94 Acts, ch 1052, §50
Referred to in §554.13406

554.13406 Procedure on excused performance.

1. If the lessee receives notification of a material or indefinite delay or an allocation justified under section 554.13405, the lessee may by written notification to the lessor as to any goods involved, and with respect to all of the goods if under an installment lease contract the value of the whole lease contract is substantially impaired (section 554.13510):

a. terminate the lease contract (section 554.13505, subsection 2); or

b. except in a finance lease that is not a consumer lease, modify the lease contract by accepting the available quota in substitution, with due allowance from the rent payable for the balance of the lease term for the deficiency but without further right against the lessor.

2. If, after receipt of a notification from the lessor under section 554.13405, the lessee fails

so to modify the lease agreement within a reasonable time not exceeding thirty days, the lease contract lapses with respect to any deliveries affected.

94 Acts, ch 1052, §51

554.13407 Irrevocable promises — finance leases.

1. In the case of a finance lease that is not a consumer lease the lessee's promises under the lease contract become irrevocable and independent upon the lessee's acceptance of the goods.

2. A promise that has become irrevocable and independent under subsection 1:

a. is effective and enforceable between the parties, and by or against third parties including assignees of the parties, and

b. is not subject to cancellation, termination, modification, repudiation, excuse, or substitution without the consent of the party to whom the promise runs.

3. This section does not affect the validity under any other law of a covenant in any lease contract making the lessee's promises irrevocable and independent upon the lessee's acceptance of the goods.

94 Acts, ch 1052, §52

Referred to in §554.13508

PART 5

DEFAULT

SUBPART A

IN GENERAL

554.13501 Default — procedure.

1. Whether the lessor or the lessee is in default under a lease contract is determined by the lease agreement and this Article.

2. If the lessor or the lessee is in default under the lease contract, the party seeking enforcement has rights and remedies as provided in this Article and, except as limited by this Article, as provided in the lease agreement.

3. If the lessor or the lessee is in default under the lease contract, the party seeking enforcement may reduce the party's claim to judgment, or otherwise enforce the lease contract by self-help or any available judicial procedure or nonjudicial procedure, including administrative proceeding, arbitration, or the like, in accordance with this Article.

4. Except as otherwise provided in section 554.1305, subsection 1, or this Article or the lease agreement, the rights and remedies referred to in subsections 2 and 3 are cumulative.

5. If the lease agreement covers both real property and goods, the party seeking enforcement may proceed under this part as to the goods, or under other applicable law as to both the real property and the goods in accordance with that party's rights and remedies in respect of the real property, in which case this part does not apply.

94 Acts, ch 1052, §53; 2007 Acts, ch 41, §35; 2017 Acts, ch 54, §70

Referred to in §554.13303

554.13502 Notice after default.

Except as otherwise provided in this Article or the lease agreement, the lessor or lessee in default under the lease contract is not entitled to notice of default or notice of enforcement from the other party to the lease agreement.

94 Acts, ch 1052, §54

554.13503 Modification or impairment of rights and remedies.

1. Except as otherwise provided in this Article, the lease agreement may include rights and remedies for default in addition to or in substitution for those provided in this Article and may limit or alter the measure of damages recoverable under this Article.

2. Resort to a remedy provided under this Article or in the lease agreement is optional unless the remedy is expressly agreed to be exclusive. If circumstances cause an exclusive or limited remedy to fail of its essential purpose, or provision for an exclusive remedy is unconscionable, remedy may be had as provided in this Article.

3. Consequential damages may be liquidated under section 554.13504, or may otherwise be limited, altered, or excluded unless the limitation, alteration, or exclusion is unconscionable. Limitation, alteration, or exclusion of consequential damages for injury to the person in the case of consumer goods is prima facie unconscionable but limitation, alteration, or exclusion of damages where the loss is commercial is not prima facie unconscionable.

4. Rights and remedies on default by the lessor or the lessee with respect to any obligation or promise collateral or ancillary to the lease contract are not impaired by this Article.

94 Acts, ch 1052, §55
Referred to in §554.13518, 554.13519, 554.13527, 554.13528

554.13504 Liquidation of damages.

1. Damages payable by either party for default, or any other act or omission, including indemnity for loss or diminution of anticipated tax benefits or loss or damage to lessor's residual interest, may be liquidated in the lease agreement but only at an amount or by a formula that is reasonable in light of the then anticipated harm caused by the default or other act or omission.

2. If the lease agreement provides for liquidation of damages, and such provision does not comply with subsection 1, or such provision is an exclusive or limited remedy that circumstances cause to fail of its essential purpose, remedy may be had as provided in this Article.

3. If the lessor justifiably withholds or stops delivery of goods because of the lessee's default or insolvency (section 554.13525 or 554.13526), the lessee is entitled to restitution of any amount by which the sum of the lessee's payments exceeds:

a. the amount to which the lessor is entitled by virtue of terms liquidating the lessor's damages in accordance with subsection 1; or

b. in the absence of those terms, twenty percent of the then present value of the total rent the lessee was obligated to pay for the balance of the lease term, or, in the case of a consumer lease, the lesser of such amount or five hundred dollars.

4. A lessee's right to restitution under subsection 3 is subject to offset to the extent the lessor establishes:

a. a right to recover damages under the provisions of this Article other than subsection 1; and

b. the amount or value of any benefits received by the lessee directly or indirectly by reason of the lease contract.

94 Acts, ch 1052, §56
Referred to in §554.13503, 554.13518, 554.13519, 554.13527, 554.13528

554.13505 Cancellation and termination and effect of cancellation, termination, rescission, or fraud on rights and remedies.

1. On cancellation of the lease contract, all obligations that are still executory on both sides are discharged, but any right based on prior default or performance survives, and the canceling party also retains any remedy for default of the whole lease contract or any unperformed balance.

2. On termination of the lease contract, all obligations that are still executory on both sides are discharged but any right based on prior default or performance survives.

3. Unless the contrary intention clearly appears, expressions of "cancellation", "rescission", or the like of the lease contract may not be construed as a renunciation or discharge of any claim in damages for an antecedent default.

4. Rights and remedies for material misrepresentation or fraud include all rights and remedies available under this Article for default.

5. Neither rescission nor a claim for rescission of the lease contract nor rejection or return

of the goods may bar or be deemed inconsistent with a claim for damages or other right or remedy.

94 Acts, ch 1052, §57
Referred to in §554.13406, 554.13508, 554.13523

554.13506 Statute of limitations.

1. An action for default under a lease contract, including breach of warranty or indemnity, must be commenced within four years after the cause of action accrued. By the original lease contract the parties may reduce the period of limitation to not less than one year.

2. A cause of action for default accrues when the act or omission on which the default or breach of warranty is based is or should have been discovered by the aggrieved party, or when the default occurs, whichever is later. A cause of action for indemnity accrues when the act or omission on which the claim for indemnity is based is or should have been discovered by the indemnified party, whichever is later.

3. If an action commenced within the time limited by subsection 1 is so terminated as to leave available a remedy by another action for the same default or breach of warranty or indemnity, the other action may be commenced after the expiration of the time limited and within six months after the termination of the first action unless the termination resulted from voluntary discontinuance or from dismissal for failure or neglect to prosecute.

4. This section does not alter the law on tolling of the statute of limitations nor does it apply to causes of action that have accrued before this Article becomes effective.

94 Acts, ch 1052, §58

554.13507 Proof of market rent — time and place.

1. Damages based on market rent (section 554.13519 or 554.13528) are determined according to the rent for the use of the goods concerned for a lease term identical to the remaining lease term of the original lease agreement and prevailing at the times specified in sections 554.13519 and 554.13528.

2. If evidence of rent for the use of the goods concerned for a lease term identical to the remaining lease term of the original lease agreement and prevailing at the times or places described in this Article is not readily available, the rent prevailing within any reasonable time before or after the time described or at any other place or for a different lease term which in commercial judgment or under usage of trade would serve as a reasonable substitute for the one described may be used, making any proper allowance for the difference, including the cost of transporting the goods to or from the other place.

3. Evidence of a relevant rent prevailing at a time or place or for a lease term other than the one described in this Article offered by one party is not admissible unless and until the party has given the other party notice the court finds sufficient to prevent unfair surprise.

4. If the prevailing rent or value of any goods regularly leased in any established market is in issue, reports in official publications or trade journals or in newspapers or periodicals of general circulation published as the reports of that market are admissible in evidence. The circumstances of the preparation of the report may be shown to affect its weight but not its admissibility.

94 Acts, ch 1052, §59

SUBPART B

DEFAULT BY LESSOR

554.13508 Lessee's remedies.

1. If a lessor fails to deliver the goods in conformity to the lease contract (section 554.13509) or repudiates the lease contract (section 554.13402), or a lessee rightfully rejects the goods (section 554.13509) or justifiably revokes acceptance of the goods (section 554.13517), then with respect to any goods involved, and with respect to all of the goods if under an installment lease contract the value of the whole lease contract is substantially

impaired (section 554.13510), the lessor is in default under the lease contract and the lessee may:

a. cancel the lease contract (section 554.13505, subsection 1);

b. recover so much of the rent and security as has been paid and is just under the circumstances;

c. cover and recover damages as to all goods affected whether or not they have been identified to the lease contract (sections 554.13518 and 554.13520), or recover damages for nondelivery (sections 554.13519 and 554.13520);

d. exercise any other rights or pursue any other remedies provided in the lease contract.

2. If a lessor fails to deliver the goods in conformity to the lease contract or repudiates the lease contract, the lessee may also:

a. if the goods have been identified, recover them (section 554.13522); or

b. in a proper case, obtain specific performance or replevy the goods (section 554.13521).

3. If a lessor is otherwise in default under a lease contract, the lessee may exercise the rights and pursue the remedies provided in the lease contract, which may include a right to cancel the lease, and in section 554.13519, subsection 3.

4. If a lessor has breached a warranty, whether express or implied, the lessee may recover damages (section 554.13519, subsection 4).

5. On rightful rejection or justifiable revocation of acceptance, a lessee has a security interest in goods in the lessee's possession or control for any rent and security that has been paid and any expenses reasonably incurred in their inspection, receipt, transportation, and care and custody and may hold those goods and dispose of them in good faith and in a commercially reasonable manner, subject to section 554.13527, subsection 5.

6. Subject to the provisions of section 554.13407, a lessee, on notifying the lessor of the lessee's intention to do so, may deduct all or any part of the damages resulting from any default under the lease contract from any part of the rent still due under the same lease contract.

94 Acts, ch 1052, §60

Referred to in §554.9102, 554.9109, 554.9110, 554.9309, 554.9325, 554.13511, 554.13512, 554.13518, 554.13527

554.13509 Lessee's rights on improper delivery — rightful rejection.

1. Subject to the provisions of section 554.13510 on default in installment lease contracts, if the goods or the tender or delivery fail in any respect to conform to the lease contract, the lessee may reject or accept the goods or accept any commercial unit or units and reject the rest of the goods.

2. Rejection of goods is ineffective unless it is within a reasonable time after tender or delivery of the goods and the lessee seasonably notifies the lessor.

94 Acts, ch 1052, §61

Referred to in §554.13508, 554.13515

554.13510 Installment lease contracts — rejection and default.

1. Under an installment lease contract a lessee may reject any delivery that is nonconforming if the nonconformity substantially impairs the value of that delivery and cannot be cured or the nonconformity is a defect in the required documents; but if the nonconformity does not fall within subsection 2 and the lessor or the supplier gives adequate assurance of its cure, the lessee must accept that delivery.

2. Whenever nonconformity or default with respect to one or more deliveries substantially impairs the value of the installment lease contract as a whole there is a default with respect to the whole. But, the aggrieved party reinstates the installment lease contract as a whole if the aggrieved party accepts a nonconforming delivery without seasonably notifying of cancellation or brings an action with respect only to past deliveries or demands performance as to future deliveries.

94 Acts, ch 1052, §62

Referred to in §554.13406, 554.13508, 554.13509, 554.13523

554.13511 Merchant lessee's duties as to rightfully rejected goods.

1. Subject to any security interest of a lessee (section 554.13508, subsection 5), if a lessor

or a supplier has no agent or place of business at the market of rejection, a merchant lessee, after rejection of goods in the merchant lessee's possession or control, shall follow any reasonable instructions received from the lessor or the supplier with respect to the goods. In the absence of those instructions, a merchant lessee shall make reasonable efforts to sell, lease, or otherwise dispose of the goods for the lessor's or supplier's account if they threaten to decline in value speedily. Instructions are not reasonable if on demand indemnity for expenses is not forthcoming.

2. If a merchant lessee (subsection 1) or any other lessee (section 554.13512) disposes of goods, the lessee is entitled to reimbursement either from the lessor or the supplier or out of the proceeds for reasonable expenses of caring for and disposing of the goods and, if the expenses include no disposition commission, to such commission as is usual in the trade, or if there is none, to a reasonable sum not exceeding ten percent of the gross proceeds.

3. In complying with this section or section 554.13512, the lessee is held only to good faith. Good faith conduct hereunder is neither acceptance or conversion nor the basis of an action for damages.

4. A purchaser who purchases in good faith from a lessee pursuant to this section or section 554.13512 takes the goods free of any rights of the lessor and the supplier even though the lessee fails to comply with one or more of the requirements of this Article.

94 Acts, ch 1052, §63
Referred to in §554.13305, 554.13512

554.13512 Lessee's duties as to rightfully rejected goods.

1. Except as otherwise provided with respect to goods that threaten to decline in value speedily (section 554.13511) and subject to any security interest of a lessee (section 554.13508, subsection 5):

a. the lessee, after rejection of goods in the lessee's possession, shall hold them with reasonable care at the lessor's or the supplier's disposition for a reasonable time after the lessee's seasonable notification of rejection;

b. if the lessor or the supplier gives no instructions within a reasonable time after notification of rejection, the lessee may store the rejected goods for the lessor's or the supplier's account or ship them to the lessor or the supplier or dispose of them for the lessor's or the supplier's account with reimbursement in the manner provided in section 554.13511; but

c. the lessee has no further obligations with regard to goods rightfully rejected.

2. Action by the lessee pursuant to subsection 1 is not acceptance or conversion.

94 Acts, ch 1052, §64
Referred to in §554.13511

554.13513 Cure by lessor of improper tender or delivery — replacement.

1. If any tender or delivery by the lessor or the supplier is rejected because nonconforming and the time for performance has not yet expired, the lessor or the supplier may seasonably notify the lessee of the lessor's or the supplier's intention to cure and may then make a conforming delivery within the time provided in the lease contract.

2. If the lessee rejects a nonconforming tender that the lessor or the supplier had reasonable grounds to believe would be acceptable with or without money allowance, the lessor or the supplier may have a further reasonable time to substitute a conforming tender if the lessor or supplier seasonably notifies the lessee.

94 Acts, ch 1052, §65
Referred to in §554.13514

554.13514 Waiver of lessee's objections.

1. In rejecting goods, a lessee's failure to state a particular defect that is ascertainable by reasonable inspection precludes the lessee from relying on the defect to justify rejection or to establish default:

a. if, stated seasonably, the lessor or the supplier could have cured it (section 554.13513); or

b. between merchants if the lessor or the supplier after rejection has made a request in

writing for a full and final written statement of all defects on which the lessee proposes to rely.

2. A lessee's failure to reserve rights when paying rent or other consideration against documents precludes recovery of the payment for defects apparent in the documents.

94 Acts, ch 1052, §66; 2007 Acts, ch 30, §45, 46, 78

554.13515 Acceptance of goods.

1. Acceptance of goods occurs after the lessee has had a reasonable opportunity to inspect the goods and

a. the lessee signifies or acts with respect to the goods in a manner that signifies to the lessor or the supplier that the goods are conforming or that the lessee will take or retain them in spite of their nonconformity; or

b. the lessee fails to make an effective rejection of the goods (section 554.13509, subsection 2).

2. Acceptance of a part of any commercial unit is acceptance of that entire unit.

94 Acts, ch 1052, §67

554.13516 Effect of acceptance of goods — notice of default — burden of establishing default after acceptance — notice of claim or litigation to person answerable over.

1. A lessee must pay rent for any goods accepted in accordance with the lease contract, with due allowance for goods rightfully rejected or not delivered.

2. A lessee's acceptance of goods precludes rejection of the goods accepted. In the case of a finance lease, if made with knowledge of a nonconformity, acceptance cannot be revoked because of it. In any other case, if made with knowledge of a nonconformity, acceptance cannot be revoked because of it unless the acceptance was on the reasonable assumption that the nonconformity would be seasonably cured. Acceptance does not of itself impair any other remedy provided by this Article or the lease agreement for nonconformity.

3. If a tender has been accepted:

a. within a reasonable time after the lessee discovers or should have discovered any default, the lessee shall notify the lessor and the supplier, if any, or be barred from any remedy against the party not notified;

b. except in the case of a consumer lease, within a reasonable time after the lessee receives notice of litigation for infringement or the like (section 554.13211) the lessee shall notify the lessor or be barred from any remedy over for liability established by the litigation; and

c. the burden is on the lessee to establish any default.

4. If a lessee is sued for breach of a warranty or other obligation for which a lessor or a supplier is answerable over the following apply:

a. The lessee may give the lessor or the supplier, or both, written notice of the litigation. If the notice states that the person notified may come in and defend and that if the person notified does not do so that person will be bound in any action against that person by the lessee by any determination of fact common to the two litigations, then unless the person notified after seasonable receipt of the notice does come in and defend that person is so bound.

b. The lessor or the supplier may demand in writing that the lessee turn over control of the litigation including settlement if the claim is one for infringement or the like (section 554.13211) or else be barred from any remedy over. If the demand states that the lessor or the supplier agrees to bear all expense and to satisfy any adverse judgment, then unless the lessee after seasonable receipt of the demand does turn over control the lessee is so barred.

5. Subsections 3 and 4 apply to any obligation of a lessee to hold the lessor or the supplier harmless against infringement or the like (section 554.13211).

94 Acts, ch 1052, §68

Referred to in §554.13519

554.13517 Revocation of acceptance of goods.

1. A lessee may revoke acceptance of a lot or commercial unit whose nonconformity substantially impairs its value to the lessee if the lessee has accepted it:

a. except in the case of a finance lease, on the reasonable assumption that its nonconformity would be cured and it has not been seasonably cured; or

b. without discovery of the nonconformity if the lessee's acceptance was reasonably induced either by the lessor's assurances or, except in the case of a finance lease, by the difficulty of discovery before acceptance.

2. Except in the case of a finance lease that is not a consumer lease, a lessee may revoke acceptance of a lot or commercial unit if the lessor defaults under the lease contract and the default substantially impairs the value of that lot or commercial unit to the lessee.

3. If the lease agreement so provides, the lessee may revoke acceptance of a lot or commercial unit because of other defaults by the lessor.

4. Revocation of acceptance must occur within a reasonable time after the lessee discovers or should have discovered the ground for it and before any substantial change in condition of the goods which is not caused by the nonconformity. Revocation is not effective until the lessee notifies the lessor.

5. A lessee who so revokes has the same rights and duties with regard to the goods involved as if the lessee had rejected them.

94 Acts, ch 1052, §69
Referred to in §554.13508

554.13518 Cover — substitute goods.

1. After a default by a lessor under the lease contract of the type described in section 554.13508, subsection 1, or, if agreed, after other default by the lessor, the lessee may cover by making any purchase or lease of or contract to purchase or lease goods in substitution for those due from the lessor.

2. Except as otherwise provided with respect to damages liquidated in the lease agreement (section 554.13504) or otherwise determined pursuant to agreement of the parties (sections 554.1302 and 554.13503), if a lessee's cover is by a lease agreement substantially similar to the original lease agreement and the new lease agreement is made in good faith and in a commercially reasonable manner, the lessee may recover from the lessor as damages the present value, as of the date of the commencement of the term of the new lease agreement, of the rent under the new lease agreement applicable to that period of the new lease term which is comparable to the then remaining term of the original lease agreement minus the present value as of the same date of the total rent for the then remaining lease term of the original lease agreement, and any incidental or consequential damages, less expenses saved in consequence of the lessor's default.

3. If a lessee's cover is by lease agreement that for any reason does not qualify for treatment under subsection 2, or is by purchase or otherwise, the lessee may recover from the lessor as if the lessee had elected not to cover and section 554.13519 governs.

94 Acts, ch 1052, §70; 2007 Acts, ch 41, §36; 2013 Acts, ch 30, §261
Referred to in §554.13508, 554.13519

554.13519 Lessee's damages for nondelivery, repudiation, default, and breach of warranty in regard to accepted goods.

1. Except as otherwise provided with respect to damages liquidated in the lease agreement (section 554.13504) or otherwise determined pursuant to agreement of the parties (sections 554.1302 and 554.13503), if a lessee elects not to cover or a lessee elects to cover and the cover is by lease agreement that for any reason does not qualify for treatment under section 554.13518, subsection 2, or is by purchase or otherwise, the measure of damages for nondelivery or repudiation by the lessor or for rejection or revocation of acceptance by the lessee is the present value, as of the date of the default, of the then market rent minus the present value as of the same date of the original rent, computed for the remaining lease term of the original lease agreement, together with incidental and consequential damages, less expenses saved in consequence of the lessor's default.

2. Market rent is to be determined as of the place for tender or, in cases of rejection after arrival or revocation of acceptance, as of the place of arrival.

3. Except as otherwise agreed, if the lessee has accepted goods and given notification

(section 554.13516, subsection 3), the measure of damages for nonconforming tender or delivery or other default by a lessor is the loss resulting in the ordinary course of events from the lessor's default as determined in any manner that is reasonable together with incidental and consequential damages, less expenses saved in consequence of the lessor's default.

4. Except as otherwise agreed, the measure of damages for breach of warranty is the present value at the time and place of acceptance of the difference between the value of the use of the goods accepted and the value if they had been as warranted for the lease term, unless special circumstances show proximate damages of a different amount, together with incidental and consequential damages, less expenses saved in consequence of the lessor's default or breach of warranty.

94 Acts, ch 1052, §71; 2007 Acts, ch 41, §37
Referred to in §554.13507, 554.13508, 554.13518

554.13520 Lessee's incidental and consequential damages.

1. Incidental damages resulting from a lessor's default include expenses reasonably incurred in inspection, receipt, transportation, and care and custody of goods rightfully rejected or goods the acceptance of which is justifiably revoked, any commercially reasonable charges, expenses or commissions in connection with effecting cover, and any other reasonable expense incident to the default.

2. Consequential damages resulting from a lessor's default include:

a. any loss resulting from general or particular requirements and needs of which the lessor at the time of contracting had reason to know and which could not reasonably be prevented by cover or otherwise; and

b. injury to person or property proximately resulting from any breach of warranty.

94 Acts, ch 1052, §72
Referred to in §554.13508

554.13521 Lessee's right to specific performance or replevin.

1. Specific performance may be decreed if the goods are unique or in other proper circumstances.

2. A decree for specific performance may include any terms and conditions as to payment of the rent, damages, or other relief that the court deems just.

3. A lessee has a right of replevin, detinue, sequestration, claim and delivery, or the like for goods identified to the lease contract if after reasonable effort the lessee is unable to effect cover for those goods or the circumstances reasonably indicate that the effort will be unavailing.

94 Acts, ch 1052, §73
Referred to in §554.13508

554.13522 Lessee's right to goods on lessor's insolvency.

1. Subject to subsection 2 and even though the goods have not been shipped, a lessee who has paid a part or all of the rent and security for goods identified to a lease contract (section 554.13217) on making and keeping good a tender of any unpaid portion of the rent and security due under the lease contract may recover the goods identified from the lessor if the lessor becomes insolvent within ten days after receipt of the first installment of rent and security.

2. A lessee acquires the right to recover goods identified to a lease contract only if they conform to the lease contract.

94 Acts, ch 1052, §74
Referred to in §554.13508

SUBPART C

DEFAULT BY LESSEE

554.13523 Lessor's remedies.

1. If a lessee wrongfully rejects or revokes acceptance of goods or fails to make a payment

when due or repudiates with respect to a part or the whole, then, with respect to any goods involved, and with respect to all of the goods if under an installment lease contract the value of the whole lease contract is substantially impaired (section 554.13510), the lessee is in default under the lease contract and the lessor may:

a. cancel the lease contract (section 554.13505, subsection 1);

b. proceed respecting goods not identified to the lease contract (section 554.13524);

c. withhold delivery of the goods and take possession of goods previously delivered (section 554.13525);

d. stop delivery of the goods by any bailee (section 554.13526);

e. dispose of the goods and recover damages (section 554.13527), or retain the goods and recover damages (section 554.13528), or in a proper case recover rent (section 554.13529);

f. exercise any other rights or pursue any other remedies provided in the lease contract.

2. If a lessor does not fully exercise a right or obtain a remedy to which the lessor is entitled under subsection 1, the lessor may recover the loss resulting in the ordinary course of events from the lessee's default as determined in any reasonable manner, together with incidental damages, less expenses saved in consequence of the lessee's default.

3. If a lessee is otherwise in default under a lease contract, the lessor may exercise the rights and pursue the remedies provided in the lease contract, which may include a right to cancel the lease. In addition, unless otherwise provided in the lease contract:

a. if the default substantially impairs the value of the lease contract to the lessor, the lessor may exercise the rights and pursue the remedies provided in subsection 1 or 2; or

b. if the default does not substantially impair the value of the lease contract to the lessor, the lessor may recover as provided in subsection 2.

94 Acts, ch 1052, §75
Referred to in §554.13524, 554.13525, 554.13527, 554.13528, 554.13529

554.13524 Lessor's right to identify goods to lease contract.

1. After default by the lessee under the lease contract of the type described in section 554.13523, subsection 1, or section 554.13523, subsection 3, paragraph *"a"* or, if agreed, after other default by the lessee, the lessor may:

a. identify to the lease contract conforming goods not already identified if at the time the lessor learned of the default they were in the lessor's or the supplier's possession or control; and

b. dispose of goods (section 554.13527, subsection 1) that demonstrably have been intended for the particular lease contract even though those goods are unfinished.

2. If the goods are unfinished, in the exercise of reasonable commercial judgment for the purposes of avoiding loss and of effective realization, an aggrieved lessor or the supplier may either complete manufacture and wholly identify the goods to the lease contract or cease manufacture and lease, sell, or otherwise dispose of the goods for scrap or salvage value or proceed in any other reasonable manner.

94 Acts, ch 1052, §76
Referred to in §554.13402, 554.13523

554.13525 Lessor's right to possession of goods.

1. If a lessor discovers the lessee to be insolvent, the lessor may refuse to deliver the goods.

2. After a default by the lessee under the lease contract of the type described in section 554.13523, subsection 1, or section 554.13523, subsection 3, paragraph *"a"* or, if agreed, after other default by the lessee, the lessor has the right to take possession of the goods. If the lease contract so provides, the lessor may require the lessee to assemble the goods and make them available to the lessor at a place to be designated by the lessor which is reasonably convenient to both parties. Without removal, the lessor may render unusable any goods employed in trade or business, and may dispose of goods on the lessee's premises (section 554.13527).

3. The lessor may proceed under subsection 2 without judicial process if it can be done without breach of the peace or the lessor may proceed by action.

94 Acts, ch 1052, §77
Referred to in §554.13504, 554.13523, 554.13527

554.13526 Lessor's stoppage of delivery in transit or otherwise.

1. A lessor may stop delivery of goods in the possession of a carrier or other bailee if the lessor discovers the lessee to be insolvent and may stop delivery of carload, truckload, planeload, or larger shipments of express or freight if the lessee repudiates or fails to make a payment due before delivery, whether for rent, security or otherwise under the lease contract, or for any other reason the lessor has a right to withhold or take possession of the goods.

2. In pursuing its remedies under subsection 1, the lessor may stop delivery until

a. receipt of the goods by the lessee;

b. acknowledgment to the lessee by any bailee of the goods, except a carrier, that the bailee holds the goods for the lessee; or

c. such an acknowledgment to the lessee by a carrier via reshipment or as a warehouse.

3. *a.* To stop delivery, a lessor shall so notify as to enable the bailee by reasonable diligence to prevent delivery of the goods.

b. After notification, the bailee shall hold and deliver the goods according to the directions of the lessor, but the lessor is liable to the bailee for any ensuing charges or damages.

c. A carrier who has issued a nonnegotiable bill of lading is not obliged to obey a notification to stop received from a person other than the consignor.

94 Acts, ch 1052, §78; 2007 Acts, ch 30, §45, 46, 79

Referred to in §554.7403, 554.7504, 554.13504, 554.13523, 554.13527

554.13527 Lessor's rights to dispose of goods.

1. After a default by a lessee under the lease contract of the type described in section 554.13523, subsection 1, or section 554.13523, subsection 3, paragraph *"a"*, or after the lessor refuses to deliver or takes possession of goods (section 554.13525 or 554.13526), or, if agreed, after other default by a lessee, the lessor may dispose of the goods concerned or the undelivered balance thereof by lease, sale, or otherwise.

2. Except as otherwise provided with respect to damages liquidated in the lease agreement (section 554.13504) or otherwise determined pursuant to agreement of the parties (sections 554.1302 and 554.13503), if the disposition is by lease agreement substantially similar to the original lease agreement and the new lease agreement is made in good faith and in a commercially reasonable manner, the lessor may recover from the lessee as damages accrued and unpaid rent as of the date of the commencement of the term of the new lease agreement; the present value, as of the same date, of the total rent for the remaining lease term of the original lease agreement minus the present value, as of the same date, of the rent under the new lease agreement applicable to that period of the new lease term which is comparable to the then remaining term of the original lease agreement; and any incidental damages allowed under section 554.13530, less expenses saved in consequence of the lessee's default.

3. If the lessor's disposition is by lease agreement that for any reason does not qualify for treatment under subsection 2, or is by sale or otherwise, the lessor may recover from the lessee as if the lessor had elected not to dispose of the goods and section 554.13528 governs.

4. A subsequent buyer or lessee who buys or leases from the lessor in good faith for value as a result of a disposition under this section takes the goods free of the original lease contract and any rights of the original lessee even though the lessor fails to comply with one or more of the requirements of this Article.

5. The lessor is not accountable to the lessee for any profit made on any disposition. A lessee who has rightfully rejected or justifiably revoked acceptance shall account to the lessor for any excess over the amount of the lessee's security interest (section 554.13508, subsection 5).

94 Acts, ch 1052, §79; 2007 Acts, ch 41, §38; 2013 Acts, ch 30, §156

Referred to in §554.13304, 554.13508, 554.13523, 554.13524, 554.13525, 554.13528, 554.13529

554.13528 Lessor's damages for nonacceptance, failure to pay, repudiation, or other default.

1. Except as otherwise provided with respect to damages liquidated in the lease agreement (section 554.13504) or otherwise determined pursuant to agreement of the parties (sections 554.1302 and 554.13503), if a lessor elects to retain the goods or a lessor elects to dispose of

the goods and the disposition is by lease agreement that for any reason does not qualify for treatment under section 554.13527, subsection 2, or is by sale or otherwise, the lessor may recover from the lessee as damages for a default of the type described in section 554.13523, subsection 1, or section 554.13523, subsection 3, paragraph *"a"*, or, if agreed, for other default of the lessee,

a. accrued and unpaid rent as of the date of default if the lessee has never taken possession of the goods, or, if the lessee has taken possession of the goods, as of the date the lessor repossesses the goods or an earlier date on which the lessee makes a tender of the goods to the lessor,

b. the present value as of the date determined under paragraph *"a"* of the total rent for the then remaining lease term of the original lease agreement minus the present value as of the same date of the market rent at the place where the goods are located computed for the same lease term, and

c. any incidental damages allowed under section 554.13530, less expenses saved in consequence of the lessee's default.

2. If the measure of damages provided in subsection 1 is inadequate to put a lessor in as good a position as performance would have, the measure of damages is the present value of the profit, including reasonable overhead, the lessor would have made from full performance by the lessee, together with any incidental damages allowed under section 554.13530, due allowance for costs reasonably incurred and due credit for payments or proceeds of disposition.

94 Acts, ch 1052, §80; 2007 Acts, ch 41, §39; 2013 Acts, ch 30, §157
Referred to in §554.13507, 554.13523, 554.13527, 554.13529

554.13529 Lessor's action for the rent.

1. After default by the lessee under the lease contract of the type described in section 554.13523, subsection 1, or section 554.13523, subsection 3, paragraph *"a"*, or, if agreed, after other default by the lessee, if the lessor complies with subsection 2, the lessor may recover from the lessee as damages:

a. for goods accepted by the lessee and not repossessed by or tendered to the lessor, and for conforming goods lost or damaged within a commercially reasonable time after risk of loss passes to the lessee (section 554.13219), accrued and unpaid rent as of the date of entry of judgment in favor of the lessor, the present value as of the same date of the rent for the then remaining lease term of the lease agreement, and any incidental damages allowed under section 554.13530, less expenses saved in consequence of the lessee's default; and

b. for goods identified to the lease contract if the lessor is unable after reasonable effort to dispose of them at a reasonable price or the circumstances reasonably indicate that effort will be unavailing, accrued and unpaid rent as of the date of entry of judgment in favor of the lessor, the present value as of the same date of the rent for the then remaining lease term of the lease agreement, and any incidental damages allowed under section 554.13530, less expenses saved in consequence of the lessee's default.

2. Except as provided in subsection 3, the lessor shall hold for the lessee for the remaining lease term of the lease agreement any goods that have been identified to the lease contract and are in the lessor's control.

3. The lessor may dispose of the goods at any time before collection of the judgment for damages obtained pursuant to subsection 1. If the disposition is before the end of the remaining lease term of the lease agreement, the lessor's recovery against the lessee for damages is governed by section 554.13527 or 554.13528, and the lessor will cause an appropriate credit to be provided against a judgment for damages to the extent that the amount of the judgment exceeds the recovery available pursuant to section 554.13527 or 554.13528.

4. Payment of the judgment for damages obtained pursuant to subsection 1 entitles the lessee to the use and possession of the goods not then disposed of for the remaining lease term of and in accordance with the lease agreement.

5. After default by the lessee under the lease contract of the type described in section 554.13523, subsection 1, or section 554.13523, subsection 3, paragraph *"a"*, or, if agreed,

after other default by the lessee, a lessor who is held not entitled to rent under this section must nevertheless be awarded damages for nonacceptance under section 554.13527 or section 554.13528.

94 Acts, ch 1052, §81; 2013 Acts, ch 30, §261
Referred to in §554.13523

554.13530 Lessor's incidental damages.

Incidental damages to an aggrieved lessor include any commercially reasonable charges, expenses, or commissions incurred in stopping delivery, in the transportation, care and custody of goods after the lessee's default, in connection with return or disposition of the goods, or otherwise resulting from the default.

94 Acts, ch 1052, §82
Referred to in §554.13527, 554.13528, 554.13529

554.13531 Standing to sue third parties for injury to goods.

1. If a third party so deals with goods that have been identified to a lease contract as to cause actionable injury to a party to the lease contract the lessor has a right of action against the third party, and the lessee also has a right of action against the third party if the lessee:

a. has a security interest in the goods;

b. has an insurable interest in the goods; or

c. bears the risk of loss under the lease contract or has since the injury assumed that risk as against the lessor and the goods have been converted or destroyed.

2. If at the time of the injury the party plaintiff did not bear the risk of loss as against the other party to the lease contract and there is no arrangement between them for disposition of the recovery, the plaintiff party's suit or settlement, subject to party plaintiff's own interest, is as a fiduciary for the other party to the lease contract.

3. Either party with the consent of the other may sue for the benefit of whom it may concern.

94 Acts, ch 1052, §83; 2013 Acts, ch 30, §261

554.13532 Lessor's rights to residual interest.

In addition to any other recovery permitted by this Article or other law, the lessor may recover from the lessee an amount that will fully compensate the lessor for any loss of or damage to the lessor's residual interest in the goods caused by the default of the lessee.

94 Acts, ch 1052, §84

CHAPTER 554A

LIVESTOCK WARRANTY EXEMPTION

554A.1 Livestock sales — when exempt from implied warranty.

554A.1 Livestock sales — when exempt from implied warranty.

1. Notwithstanding section 554.2316, subsection 2, all implied warranties arising under sections 554.2314 and 554.2315 are excluded from a sale of cattle, hogs, sheep, ostriches, rheas, emus, and horses if the following information is disclosed to the prospective buyer or the buyer's agent in advance of the sale, and if confirmed in writing at or before the time of acceptance of the livestock when confirmation is requested by the buyer or the buyer's agent:

a. That the animals to be sold have been inspected in accordance with existing federal and state animal health regulations and found apparently free from any infectious, contagious, or communicable disease.

b. One of the following, as applicable:

(1) Except when the livestock have been confined with livestock from another source or

assembled within the meaning of subparagraph 2, the name and address of the present owner, and whether or not that owner has owned all of the livestock for at least thirty days.

(2) If the livestock have been confined with livestock from another source or assembled from two or more sources within the previous thirty days, the livestock shall be represented as being "assembled livestock". As used in this subparagraph, "confined with livestock from another source" means the placement of livestock in a livestock auction market, yard, or other unitary facility in which livestock from another source are confined, but does not include livestock confined at the facility where the sale takes place if such confinement is for less than forty-eight hours prior to the day of sale; provided that livestock which are not sold after being confined with livestock from another source at a facility and offered for sale shall be deemed "assembled livestock" for the thirty-day period following the day when offered for sale.

2. If the livestock are represented as being "assembled livestock", the name and address of the present owner shall be disclosed.

3. In the case of an auction sale, the disclosure required by this section shall be made verbally immediately before the sale by the owner, an agent for the owner, or the person who is conducting the auction of the lot of livestock in question. Warranties shall be implied to the person who is conducting the auction only if the disclosure contains representations which that person knew or had reason to know were untrue.

[C81, §554A.1]
95 Acts, ch 43, §12

CHAPTER 554B

SECURED TRANSACTIONS OF TRANSMITTING UTILITIES

Referred to in §554.1110

554B.1 Definitions.
554B.2 Security interest.
554B.3 Recording mortgage or deed of trust upon real estate.
554B.4 Recording memorandum of mortgage or deed of trust.

554B.1 Definitions.

As used in this chapter *"transmitting utility"* has the same meaning as defined in the Uniform Commercial Code, section 554.9102, subsection 1. Security interests filed pursuant to this chapter prior to January 1, 1975, which have not been terminated, are deemed to be filed in accordance with section 554.9501, subsection 2.

[C66, 71, 73, 75, 77, 79, 81, §555.1]
C93, §554B.1
2000 Acts, ch 1149, §175, 187

554B.2 Security interest.

A security interest in rolling stock of a transmitting utility may be perfected either as provided in the Uniform Commercial Code, chapter 554, or as provided in the ICC Termination Act of 1995, 49 U.S.C. §701, 11301.

[C66, 71, 73, 75, 77, 79, 81, §555.2]
C93, §554B.2
2010 Acts, ch 1061, §74

554B.3 Recording mortgage or deed of trust upon real estate.

Any mortgage or deed of trust upon real estate executed by a transmitting utility may provide that property of the transmitting utility, whether owned at the time of the execution of the instrument or subsequently acquired, shall secure the obligations covered by the instrument. Recording the instrument in the office of the recorder of each county in which

any portion of the property described in the instrument is situated shall give constructive notice to all persons of the lien of the mortgage or deed of trust from the time of recording or, in the case of subsequently acquired real estate, from the time of acquisition.

[C66, 71, 73, 75, 77, 79, 81, §555.3]

C93, §554B.3

2014 Acts, ch 1002, §1

Referred to in §554B.4

554B.4 Recording memorandum of mortgage or deed of trust.

If a mortgage or deed of trust upon real estate is executed by a transmitting utility and the real estate described in the instrument is situated in more than one county, the recording requirement of section 554B.3 establishing constructive notice is satisfied by either of the following:

1. Recording the mortgage or deed of trust in each county in which any portion of the property is situated.

2. Recording the mortgage or deed of trust in at least one county in which a portion of the real estate is situated, and by recording in every other county in which a portion of the real estate is situated a memorandum of the mortgage or deed of trust containing, at a minimum, the following:

a. The names and addresses of the mortgagor and mortgagee.

b. A legal description of all real property and interests therein subject to the mortgage or deed of trust.

c. The date of maturity of the indebtedness secured by the mortgage or deed of trust and whether the instrument secures future advances.

d. A statement as to whether or not the mortgage or deed of trust applies to subsequently acquired property of the transmitting utility.

e. The county recorder's office where the mortgage or deed of trust is recorded, the recording date, and document identification number.

f. Such other information as deemed appropriate by the transmitting utility.

2014 Acts, ch 1002, §2

CHAPTER 554C

ELECTRONIC COMMERCE SECURITY ACT

Repealed by 2000 Acts, ch 1189, §31; see chapter 554D

CHAPTER 554D

ELECTRONIC TRANSACTIONS — COMPUTER AGREEMENTS

Referred to in §22.7(38)(a), 22.7(38)(b), 75.14, 97B.17, 159.34, 331.506, 459.302, 459A.201, 484C.9, 505B.1, 505B.2, 554.7103, 715C.2

SUBCHAPTER 1

UNIFORM ELECTRONIC TRANSACTIONS ACT

554D.101 Short title.
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554D.121 Interoperability.
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554D.123 False or unauthorized request — penalty. Repealed by 2004 Acts, ch 1067, §10.
554D.124 Severability.

SUBCHAPTER 2

COMPUTER AGREEMENTS

554D.125 Computer information agreements.

SUBCHAPTER 1

UNIFORM ELECTRONIC TRANSACTIONS ACT

554D.101 Short title.
This subchapter may be cited as the *"Uniform Electronic Transactions Act"*.
2000 Acts, ch 1189, §1; 2004 Acts, ch 1067, §1; 2005 Acts, ch 3, §95

554D.102 Legislative intent. Repealed by 2004 Acts, ch 1067, §10.

554D.103 Definitions.
As used in this chapter, unless the context otherwise requires:

1. *"Agreement"* means the bargain of the parties in fact, as found in their language or inferred from other circumstances and from rules, regulations, and procedures given the effect of agreements under laws otherwise applicable to a particular transaction.

2. *"Automated transaction"* means a transaction conducted or performed, in whole or in part, by electronic means or electronic records, in which the acts or records of one or both parties are not reviewed by an individual in the ordinary course of forming a contract, performing under an existing contract, or fulfilling an obligation required by the transaction.

3. *"Computer program"* means a set of statements or instructions to be used directly or indirectly in an information processing system in order to bring about a certain result.

4. *"Contract"* means the total legal obligation resulting from the parties' agreement as affected by this chapter and other applicable law.

5. *"Electronic"* means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

6. *"Electronic agent"* means a computer program or an electronic or other automated means used independently to initiate an action or respond to electronic records or performances in whole or in part, without review or action by an individual.

7. *"Electronic record"* means a record created, generated, sent, communicated, received, or stored by electronic means.

8. *"Electronic signature"* means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

9. *"Governmental agency"* means an executive, legislative, or judicial agency, department, board, commission, authority, institution, or instrumentality of the federal government or of a state or of a county, municipality, or other political subdivision of a state.

10. *"Information"* means data, text, images, sounds, codes, computer programs, software, databases, or the like.

11. *"Information processing system"* means an electronic system for creating, generating, sending, receiving, storing, displaying, or processing information.

12. *"Person"* means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, governmental agency, public corporation, or any other legal or commercial entity.

13. *"Record"* means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

14. *"Security procedure"* means a procedure employed for the purpose of verifying that an electronic signature, record, or performance is that of a specific person or for detecting changes or errors in the information in an electronic record. *"Security procedure"* includes a procedure that requires the use of algorithms or other codes, identifying words or numbers, encryption, or callback or other acknowledgment procedures, and includes digital signature technology.

15. *"State"* means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. *"State"* includes an Indian tribe or band, or Alaskan native village, which is recognized by federal law or formally acknowledged by a state.

16. *"Transaction"* means an action or set of actions occurring between two or more persons relating to the conduct of business, commercial, or governmental affairs.

2000 Acts, ch 1189, §3; 2004 Acts, ch 1067, §2, 3

Referred to in §4.1, 633A.5107

554D.104 Scope.

1. Except as provided in subsection 2, this chapter applies to electronic records and electronic signatures relating to a transaction.

2. This chapter does not apply to a transaction to the extent it is governed by any of the following:

a. A law governing the creation or execution of wills, codicils, or testamentary trusts.

b. Chapter 554 other than chapter 554, articles 2 and 13, and section 554.1306.

3. A transaction subject to this chapter is also subject to other applicable substantive law.

2000 Acts, ch 1189, §4; 2000 Acts, ch 1232, §29; 2004 Acts, ch 1067, §4, 11; 2007 Acts, ch 41, §42; 2013 Acts, ch 30, §158

554D.105 Prospective application. Repealed by 2004 Acts, ch 1067, §10.

554D.106 Use of electronic records and electronic signatures — variation by agreement.

1. This chapter does not require a record or signature to be created, generated, sent, communicated, received, stored, or otherwise processed or used by electronic means or in electronic form.

2. This chapter applies only to transactions between parties each of which has agreed to conduct transactions by electronic means. Whether the parties agree to conduct a transaction by electronic means is determined from the context and surrounding circumstances, including the parties' conduct.

3. A party who agrees to conduct a transaction by electronic means may refuse to conduct other transactions by electronic means. The right granted by this subsection may not be waived by agreement.

4. Except as otherwise provided in this chapter, the effect of any of its provisions may be varied by agreement. The presence in certain provisions of this chapter of the words "unless otherwise agreed", or words of similar import, does not imply that the effect of other provisions may not be varied by agreement.

5. Whether an electronic record or electronic signature has legal consequences is determined by this chapter and other applicable law.

2000 Acts, ch 1189, §6

554D.107 Construction and application.

This chapter shall be construed and applied as follows:

1. To facilitate electronic transactions consistent with other applicable law.

2. To be consistent with reasonable practices concerning electronic transactions and with the continued expansion of those practices.

3. To effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting the uniform law.

2000 Acts, ch 1189, §7

554D.108 Legal recognition of electronic records, electronic signatures, and electronic contracts.

1. A record or signature shall not be denied legal effect or enforceability solely because it is in electronic form.

2. A contract shall not be denied legal effect or enforceability solely because an electronic record was used in its formation.

3. If a law requires a record to be in writing, an electronic record satisfies the law.

4. If a law requires a signature, an electronic signature satisfies the law.

2000 Acts, ch 1189, §8

554D.109 Legal recognition of electronic records affecting interests in real property. Repealed by 2004 Acts, ch 1067, §10.

554D.110 Provision of information in writing — presentation of records.

1. If parties have agreed to conduct a transaction by electronic means and a law requires a person to provide, send, or deliver information in writing to another person, the requirement is satisfied if the information is provided, sent, or delivered in an electronic record capable of retention by the recipient at the time of receipt. An electronic record is not capable of retention by the recipient if the sender or its information processing system inhibits the ability of the recipient to print or store the electronic record.

2. If a law other than this chapter requires a record to be posted or displayed in a certain manner; to be sent, communicated, or transmitted by a specified method; or to contain information that is formatted in a certain manner, all of the following apply:

a. The record must be posted or displayed in the manner specified in the other law.

b. Except as otherwise provided in subsection 4, paragraph *"b"*, the record must be sent, communicated, or transmitted by the method specified in the other law.

c. The record must contain the information formatted in the manner specified in the other law.

3. If a sender inhibits the ability of a recipient to store or print an electronic record, the electronic record is not enforceable against the recipient.

4. The requirements of this section shall not be varied by agreement, except as follows:

a. To the extent a law other than this chapter requires information to be provided, sent, or delivered in writing but permits that requirement to be varied by agreement, the requirement under subsection 1 that the information be in the form of an electronic record capable of retention may also be varied by agreement.

b. A requirement under a law other than this chapter to send, communicate, or transmit a record by first-class mail postage prepaid may be varied by agreement to the extent permitted by the other law.

2000 Acts, ch 1189, §10; 2004 Acts, ch 1067, §5

554D.111 Attribution and effect of electronic record and electronic signature.

1. An electronic record or electronic signature is attributable to a person if it was the act of the person. The act of the person may be shown in any manner, including a showing of the efficacy of any security procedure applied to determine the person to which the electronic record or electronic signature was attributable.

2. The effect of an electronic record or electronic signature attributed to a person under subsection 1 is determined from the context and surrounding circumstances at the time of its

creation, execution, or adoption, including the parties' agreement, if any, and otherwise as provided by law.

2000 Acts, ch 1189, §11; 2004 Acts, ch 1067, §6

554D.112 Effect of change or error.

If a change or error in an electronic record occurs in a transmission between parties to a transaction, the following rules apply:

1. If the parties have agreed to use a security procedure to detect changes or errors and one party has conformed to the procedure, but the other party has not, and the nonconforming party would have detected the change or error had that party also conformed, the conforming party may avoid the effect of the changed or erroneous electronic record.

2. In an automated transaction involving an individual, the individual may avoid the effect of an electronic record that resulted from an error made by the individual in dealing with the electronic agent of another person if the electronic agent did not provide an opportunity for the prevention or correction of the error and, at the time the individual learns of the error, all of the following apply:

a. The individual promptly notifies the other person of the error and that the individual does not intend to be bound by the electronic record received by the other person.

b. The individual takes reasonable steps, including steps that conform to the other person's reasonable instructions, to return to the other person or, if instructed by the other person, to destroy the consideration received, if any, as a result of the erroneous electronic record.

c. The individual has not used or received any benefit or value from the consideration, if any, received from the other person.

3. If subsection 1 or 2 does not apply, the change or error has the effect provided by other law, including the law of mistake, and the parties' contract, if any.

4. In a consumer transaction, any substantive law limiting a consumer's liability shall apply to an electronic transaction.

5. Subsections 2, 3, and 4 shall not be varied by agreement of the parties.

2000 Acts, ch 1189, §12

554D.113 Notarization and acknowledgment.

If a law requires a signature or record to be notarized, acknowledged, verified, or made under oath, the requirement is satisfied if the electronic signature of the person authorized to perform those acts, together with all other information required to be included by other applicable law, is attached to or logically associated with the signature or record.

2000 Acts, ch 1189, §13

Referred to in §331.506, 331.554

554D.114 Retention of electronic records — originals.

1. If a law requires that a record be retained, the requirement is satisfied by retaining an electronic record of the information in the record which does both of the following:

a. Accurately reflects the information set forth in the record after it was first generated in its final form as an electronic record or otherwise.

b. Remains accessible for later reference.

2. A requirement to retain a record in accordance with subsection 1 does not apply to any information the sole purpose of which is to enable the record to be sent, communicated, or received.

3. A person may satisfy subsection 1 by using the services of another person if the requirements of that subsection are satisfied.

4. If a law requires a record to be presented or retained in its original form, or provides consequences if the record is not presented or retained in its original form, that law is satisfied by an electronic record retained in accordance with subsection 1.

5. If a law requires retention of a check, that requirement is satisfied by retention of an electronic record of the information on the front and back of the check in accordance with subsection 1.

6. A record retained as an electronic record in accordance with subsection 1 satisfies a law requiring a person to retain a record for evidentiary, audit, or like purposes, unless a law enacted after July 1, 2000, specifically prohibits the use of an electronic record for the specified purpose.

7. This section does not preclude a governmental agency of this state from specifying additional requirements for the retention of a record subject to the agency's jurisdiction.

2000 Acts, ch 1189, §14; 2004 Acts, ch 1067, §7

Referred to in §554D.120

554D.115 Admissibility in evidence.

In a proceeding, evidence of a record or signature shall not be excluded solely because it is in electronic form.

2000 Acts, ch 1189, §15

554D.116 Automated transaction.

In an automated transaction, the following rules apply:

1. A contract may be formed by the interaction of electronic agents of the parties, even if no individual was aware of or reviewed the electronic agents' actions or the resulting terms and agreements.

2. A contract may be formed by the interaction of an electronic agent and an individual, acting on the individual's own behalf or for another person, including by an interaction in which the individual performs actions that the individual is free to refuse to perform and which the individual knows or has reason to know will cause the electronic agent to complete the transaction or performance.

3. The terms of the contract are determined by the substantive law applicable to it.

2000 Acts, ch 1189, §16

554D.117 Time and place of sending and receipt.

1. Unless otherwise agreed between the sender and the recipient, an electronic record is sent when all of the following occur:

a. The electronic record is addressed properly or otherwise directed properly to an information processing system that the recipient has designated or uses for the purpose of receiving electronic records or information of the type sent and from which the recipient is able to retrieve the electronic record.

b. The electronic record is in a form capable of being processed by that information processing system.

c. The electronic record enters an information processing system outside the control of the sender or of a person who sent the electronic record on behalf of the sender or enters a region of the information processing system designated or used by the recipient which is under the control of the recipient.

2. Unless otherwise agreed between a sender and the recipient, an electronic record is received when both of the following occur:

a. The electronic record enters an information processing system that the recipient has designated or uses for the purpose of receiving electronic records or information of the type sent and from which the recipient is able to retrieve the electronic record.

b. The electronic record is in a form capable of being processed by that information processing system.

3. Subsection 2 applies even if the place the information processing system is located is different from the place the electronic record is deemed to be received under subsection 4.

4. Unless otherwise expressly provided in the electronic record or agreed between the sender and the recipient, an electronic record is deemed to be sent from the sender's place of business and to be received at the recipient's place of business. For purposes of this subsection, both of the following apply:

a. If the sender or recipient has more than one place of business, the place of business of such person is the place having the closest relationship to the underlying transaction.

b. If the sender or the recipient does not have a place of business, the place of business is the sender's or recipient's residence, as the case may be.

5. An electronic record is received under subsection 2 even if no individual is aware of its receipt.

6. Receipt of an electronic acknowledgment from an information processing system described in subsection 2 establishes that a record was received but, by itself, does not establish that the content sent corresponds to the content received.

7. If a person is aware that an electronic record purportedly sent under subsection 1, or purportedly received under subsection 2, was not actually sent or received, the legal effect of the sending or receipt is determined by other applicable law. Except to the extent permitted or required by the other law, the requirements of this subsection shall not be varied by agreement.

2000 Acts, ch 1189, §17
Referred to in §505B.1

554D.118 Transferable records.

1. For purposes of this section, *"transferable record"* means an electronic record that satisfies both of the following:

a. The electronic record would be a note under chapter 554, article 3, or a document under chapter 554, article 7, if the electronic record were in writing.

b. The issuer of the electronic record expressly has agreed such electronic record is a transferable record.

2. A person has control of a transferable record if a system employed for evidencing the transfer of interests in the transferable record reliably establishes that person as the person to which the transferable record was issued or transferred.

3. A system satisfies subsection 2, and a person is deemed to have control of a transferable record, if the transferable record is created, stored, and assigned in such a manner that satisfies all of the following:

a. A single authoritative copy of the transferable record exists which is unique, identifiable, and, except as otherwise provided in paragraphs *"d"*, *"e"*, and *"f"*, unalterable.

b. The authoritative copy identifies the person asserting control as one of the following:

(1) The person to which the transferable record was issued.

(2) If the authoritative copy indicates that the transferable record has been transferred, the person to which the transferable record was most recently transferred.

c. The authoritative copy is communicated to and maintained by the person asserting control or such person's designated custodian.

d. Copies or revisions that add or change an identified assignee of the authoritative copy can be made only with the consent of the person asserting control.

e. Each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy.

f. A revision of the authoritative copy is readily identifiable as authorized or unauthorized.

4. Except as otherwise agreed, a person having control of a transferable record is the holder, as defined in section 554.1201, of the transferable record and has the same rights and defenses as a holder of an equivalent record or writing under chapter 554, including, if the applicable statutory requirements under section 554.3302, subsection 1, section 554.7501, or section 554.9330 are satisfied, the rights and defenses of a holder in due course, a holder to which a negotiable document of title has been duly negotiated, or a purchaser, respectively. Delivery, possession, and endorsement are not required to obtain or exercise any of the rights under this subsection.

5. Except as otherwise agreed, an obligor under a transferable record has the same rights and defenses as an equivalent obligor under equivalent records or writings under chapter 554.

6. If requested by a person against which enforcement is sought, the person seeking to enforce the transferable record shall provide reasonable proof that the person is in control of the transferable record. Proof may include access to the authoritative copy of the transferable

record and related business records sufficient to review the terms of the transferable record and to establish the identity of the person having control of the transferable record.

2000 Acts, ch 1189, §18; 2003 Acts, ch 44, §97

554D.119 Creation and retention of electronic records and conversion of written records by governmental agencies.

A governmental agency of this state shall determine whether, and the extent to which, the governmental agency will create and retain electronic records and convert written records to electronic records.

2000 Acts, ch 1189, §19

554D.120 Acceptance and distribution of electronic records by governmental agencies.

1. Except as otherwise provided in section 554D.114, subsection 6, a governmental agency of this state other than a state executive branch agency, department, board, commission, authority, or institution, shall determine whether, and the extent to which, the governmental agency will send and accept electronic records and electronic signatures to and from other persons and otherwise create, generate, communicate, store, process, use, and rely upon electronic records and electronic signatures.

2. Except as otherwise provided in section 554D.114, subsection 6, on or before July 1, 2003, a state executive branch agency, department, board, commission, authority, or institution, in consultation and cooperation with the department of administrative services, shall send and accept electronic records and electronic signatures to and from other persons and otherwise create, generate, communicate, store, process, use, and rely upon electronic records and signatures. The department of management, upon the written request of a state executive branch agency, department, board, commission, authority, or institution and for good cause shown, may grant a waiver from the July 1, 2003, deadline established in this section to the state executive branch agency, department, board, commission, authority, or institution.

3. To the extent that a governmental agency of this state uses electronic records and electronic signatures under subsection 1 or 2, the office of the secretary of state and the department of administrative services, jointly, and in consultation with the office of the attorney general, giving due consideration to security, may specify by rule all of the following:

a. The manner and format in which the electronic records must be created, generated, sent, communicated, received, and stored and the information processing systems established for those purposes.

b. If electronic records must be signed by electronic means, the type of electronic signature required, the manner and format in which the electronic signature must be affixed to the electronic record, and the identity of, or criteria that must be met by, any third party used by a person filing a document to facilitate the process.

c. Control processes and procedures as appropriate to ensure adequate preservation, disposition, integrity, security, confidentiality, and auditability of electronic records.

d. Any other required attributes for electronic records which are specified for corresponding nonelectronic records or reasonably necessary under the circumstances.

4. Except as otherwise provided in subsection 2 and in section 554D.114, subsection 6, this chapter does not require a governmental agency of this state to use or permit the use of electronic records or electronic signatures.

5. Notwithstanding this section, an institution governed under chapter 262 shall conform with national standards with respect to electronic records and electronic signatures, as such standards are developed.

2000 Acts, ch 1189, §20; 2002 Acts, ch 1119, §187, 188; 2003 Acts, ch 44, §98; 2003 Acts, ch 145, §286

Referred to in §10A.802, 554D.121, 602.1614

Electronic records policy for judicial branch, see §602.1614

554D.121 Interoperability.

The standards adopted pursuant to section 554D.120 should encourage and promote consistency and interoperability with similar requirements adopted by another governmental agency and nongovernmental persons interacting with governmental agencies of this state. If appropriate, such standards may specify differing levels of standards from which a governmental agency of this state may choose in implementing the most appropriate standard for a particular application.

2000 Acts, ch 1189, §21

554D.122 Fraudulent purpose — penalty. Repealed by 2004 Acts, ch 1067, §10.

554D.123 False or unauthorized request — penalty. Repealed by 2004 Acts, ch 1067, §10.

554D.124 Severability.

If any provision of this chapter or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of the chapter which can be given effect without the invalid provisions or application and, to this end, the provisions of this chapter are severable.

2004 Acts, ch 1067, §9

SUBCHAPTER 2

COMPUTER AGREEMENTS

554D.125 Computer information agreements.

A choice of law provision in a computer information agreement which provides that the contract is to be interpreted pursuant to the laws of a state that has enacted the uniform computer information transactions Act, as proposed by the national conference of commissioners on uniform state laws, or any substantially similar law, is voidable and the agreement shall be interpreted pursuant to the laws of this state if the party against whom enforcement of the choice of law provision is sought is a resident of this state or has its principal place of business located in this state. For purposes of this section, a "*computer information agreement*" means an agreement that would be governed by the uniform computer information transactions Act or substantially similar law as enacted in the state specified in the choice of laws provision if that state's law were applied to the agreement.

2004 Acts, ch 1067, §11